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**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

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**In re the  
PROTEST OF  
PACIFIC DATA SYSTEMS, INC.,  
Protestant.**

**OPA Docket OPA PA 12-014  
AMENDED SCHEDULING ORDER**

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In a paper entitled Partial Response to Hearing Officer's Order that Pacific Data Systems, Inc. (PDS) filed with the Public Auditor October 4, 2012, counsel for PDS correctly notes that the Scheduling Order issued October 3, 2012, cited to 5 G.C.A. § 5425A instead of to 5 G.C.A. § 5425.1. Public Law 31-12, enacted March 9, 2011, created § 5425A and the Compiler of Laws, in a note following the section, states the provision was renumbered as § 5425.1 "to harmoniously fit the general codification scheme of the GCA."

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It appears that "[n]otwithstanding any other provision of [5 G.C.A., Chapter 5]," the Public Auditor has exclusive authority to hear protests arising from "an award or contract funded, in whole or in part, by the funds allotted to the Gam Department of Education from the 2009 American Recovery and Reinvestment Act (ARRA)." 5 G.C.A. §5425.1. But the Public Auditor is concerned whether 5 G.C.A. § 5425.1 has been impliedly repealed by § 8 of Public Law 31-196, enacted March 28, 2012, which states in pertinent party:

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(a) Notwithstanding any other provision of the Guam Procurement Law and any rules promulgated therefore, *if* an actual or non-selected vendor, contractor, or service provider is aggrieved by an award or a contract funded, in whole or in part, by funds allotted to the Guam Department of Education for Capital Improvement Projects and air conditioning repair and maintenance, the procedure for protest outlined in this Section *shall* apply and *shall* be the exclusive means available to resolve the concerns of persons aggrieved in connection with awards or solicitations involving Capital Improvement Projects and air conditioning

1 repair and maintenance, in whole or in part. The protest *shall* be submitted to the  
2 Public Auditor who may settle and resolve a protest by one (1) or more of the  
following means:

- 3 1) Amending or canceling the solicitation;
- 4 2) Terminating the contract that was awarded;
- 5 3) Declaring the contract null and void from the time of its award; *or*
- 6 4) Affirming the contract award decision. If the protest is *not* resolved by  
7 mutual agreement, the Public Auditor *shall* issue a decision, in writing, within *no*  
8 *more than* ten (1) working days of receipt of the protest. The decisions *shall* state  
the reasons taken. A copy of the written decision *shall* be mailed, using certified  
9 mail, *or* otherwise furnished to the vendor, contractor, or service provider who  
10 initiated the protest, the person awarded the contract, and to all other non-selected  
11 bidders or offerors.

12 (b) For purposes of this Section, the determination of facts and decision by the  
13 Public Auditor for the resolution of protests *shall* be final and conclusive with *no*  
14 right of appeal *or* judicial review. The fact that a protest has been filed pursuant  
15 to this Section *shall not* stay the procurement process or award of any contract,  
16 whether in whole or in part, *unless* so ordered by the Public Auditor. A request  
17 for reconsideration *shall also not* stay the award of any contract, whether in whole  
18 or in part, *unless* so ordered by the Public Auditor. This Section is repealed  
19 effective December 31, 2012.

20 Public Law 31-196, § 8; emphasis in original.

21 Given the striking similarity in language between § 8 of Public Law 31-196 and that of 5  
22 G.C.A. § 5425.1, it is reasonable to question whether the later act, Public Law 31-196, impliedly  
23 repealed 5 G.C.A. § 5425.1 as added by Public Law 31-12. In addressing this question, one must  
24 be mindful of the following:

25 Repeals by implication are disfavored. *See Lujan v. Lujan*, 2000 Guam 21, ¶ 21  
26 (citation omitted); *see also People v. Quinata*, Crim. No. 81-0004A, 1982 WL  
27 30546, at \* 2 (D.Guam App. Div. Jun. 29, 1982 (citations omitted)). Implied  
28 repeals can be found in two instances: “(1) where provisions in the two acts are in  
irreconcilable conflict: or “(2) if the later act covers the whole subject of the  
earlier one and is clearly intended as a substitute.” *Quinata*, 1982 WL 30546, at \*  
2 (citation omitted). Courts can avoid a finding of implied repeal if the two  
statutes can be reconciled. *See id.; Lujan*, 2000 Guam 21 at ¶ 11. The  
Procurement Law itself contains an implied repealer provision. *See* Title 5 GCA  
§ 5006 (1998). That section provides:

Construction Against Implied Repealer. Since this Chapter is a general  
law, no part of it shall be deemed to be impliedly repealed by subsequent

1                   legislation if such construction of the subsequent legislation can be  
2                   reasonably avoided.

3                   *Id.* Therefore, the Procurement Law requires a court to attempt to reconcile a  
4                   contradictory statute before determining that the later statute repeals a provision  
5                   of the Procurement Law by implication.

6                   *Sumitomo Construction Co., Ltd. v. Government of Guam*, 2001 Guam 23, ¶ 16.

7                   In light of the foregoing, the Scheduling Order issued October 3, 2012, is hereby amended  
8                   to read:

9                   Peter C. Perez, Esq., duly appointed by the Public Auditor as the Hearing Officer in the  
10                  above-captioned matter and acting pursuant to powers granted to the Public Auditor by Public  
11                  Law 31-196, § 8, codified as 5 G.C.A. § 5425A, relevant to protests of Department of Education  
12                  (DOE) actions pertaining to the expenditure of funds allocated to DOE for “Capital Improvement  
13                  Projects and air conditioning repair and maintenance,” hereby orders:

- 14                  1. A hearing shall be had before the Public Auditor at 3:00 p.m., Monday, October 8, 2012,  
15                  at Room 907, DNA Building, 238 Archbishop Flores Street, Hagatna, Guam 96910, for  
16                  Pacific Data Systems, Inc. (PDS), and the Department of Education to address questions  
17                  relative to DOE's issuance of purchase orders to Softchoice in response to DOE's  
18                  Invitation for Bid (IFB) 014-2012 for the purchase of an indefinite quantity of laptops,  
19                  mobile computer labs, laptops with docking stations and desktop computers. *See* DOE's  
20                  Answer filed September 28, 2012, and DOE's Notice of Bid Status and Intent to Award  
21                  dated September 20, 2012, Exhibit 1 to PDS protest.
- 22                  2. Softchoice and Compacific, as interested parties, may appear through their  
23                  representatives and shall be heard as the Hearing Officer may deem appropriate.
- 24                  3. On or before 10:00 a.m., Monday, October 8, 2012, DOE shall submit to the Public  
25                  Auditor written evidence to support the statement in its Opposition to PDS' Request for  
26                  Entry of Stay that “if any obligations are cancelled or modified or if any orders cannot be  
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1 filled by September 30, 2012, such actions will result in the loss of these funds.” In  
2 responding to this paragraph, DOE’s attention is directed to the letter of September 25,  
3 2012, from the U.S. Department of Education to the Governor of Guam, a copy of which  
4 is attached hereto as Exhibit A.

- 5 4. On or before 10 a.m., Monday, October 8, 2012, DOE, PDS, Softchoice and Compacific  
6 are invited to submit to the Public Auditor any additional materials which they believe  
7 may assist the Public Auditor in reaching an expedited decision in this matter. The Public  
8 Auditor specifically requests the parties, including the interested parties, to assess whether  
9 the PDS protest is taken pursuant to 5 G.C.A. § 5425.1 or whether that section of the  
10 Procurement Law was impliedly repealed by § 8 of Public Law 31-196; and, if such repeal  
11 occurred, whether DOE IFB 014-2012 is for a “capital improvement project.”
- 12 5. The parties, including the interested parties, may also offer comments on whether Buy  
13 American or local preference statues apply to the subject IFB. Please note that in its bid  
14 Softchoice identified itself as being 100 per cent owned by Softchoice Corporation of  
15 Toronto, Canada.

16 Dated October 5, 2012.



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**PETER C. PEREZ, ESQ.,**  
**Hearing Officer**



# FAX

To: **Mr. Marcus Pido**  
**Supply Management Administrator**  
**Guam Department of Education**

From: **Doris Flores Brooks, CPA, CGFM**  
**Public Auditor**  
OPA Procurement Appeals  
Suite 401 DNA Bldg.  
238 Archbishop Flores St.  
Hagatna, Guam 96910

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Agency: **Guam Department of Education** Pages 5 (including cover page)

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CC: John Day, President Date: October 5, 2012  
Bill R. Mann, Attorney for PDS  
Pacific Data Systems

Rebecca M. Perez, Esq., Legal Counsel  
Andrew T. Perez, Esq., Legal Counsel  
Guam Department of Education

All Media

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Fax: PDS: 300-0265/477-2778 Point of Contact Tel: 475-0390 x 210  
GDOE: 472-5001 (Vince Duenas)  
Nos. Fax: 472-7951

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Re: **Amended Scheduling Order - OPA-PA-12-014**

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Vince Duenas – [vduenas@guamopa.org](mailto:vduenas@guamopa.org)

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