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FILE NO OPA-PA: 21-004 | 21-005

1 **GUAM DEPARTMENT OF EDUCATION**
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8 **OFFICE OF THE PUBLIC AUDITOR**
9 **PROCUREMENT APPEALS**

10 In the Appeal of

11 APPEAL CASE NOS.: OPA-PA-21-004 and
12 OPA-PA-21-005

13 Pacific Data Systems, Inc. (PDS),

14 Appellant.

15 **GDOE'S OPPOSITION TO APPELLANT'S**
16 **MOTION FOR INJUNCTIVE RELIEF AND**
17 **STAY OF PROCUREMENT PENDING**
18 **FINAL RESOLUTION OF APPEAL**

19 The Guam Department of Education (GDOE), by and through its undersigned counsel,
20 files this Opposition to Appellant's Motion for Injunctive Relief and Confirmation of Stay of
21 Procurement Pending Final Resolution of Appeal, for Appeal of Case Nos. OPA-PA-21-004 and
22 OPA-PA-21-005. Appellant's motion violates Guam law and is without merit and should be
23 denied.

24 **I. RELEVANT BACKGROUND**

25 On April 28, 2021, GDOE issued its Invitation for Bids (IFB) 027-2021 and 028-2021 for
26 Telecommunication Services. On June 4, 2021, GDOE made awards to GTA as the lowest, most
27 responsible and responsive bid for the two (2) IFBs. On June 9 and June 10, 2021, Appellant
28 filed their respective protests for the IFBs. On August 31, 2021, Appellant filed this motion with
numerous new allegations regarding the already issued awards for the first time before the Office

1 of Public Accountability (OPA). GDOE now files its Opposition to Appellant's Motion for the
2 following reasons.

3 **II. APPELLANT'S MOTION VIOLATES GUAM PROCUREMENT LAW BECAUSE**
4 **(1) APPELLANT FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES,**
5 **(2) APPELLANT'S NEW ALLEGATIONS ARE NOT PROPERLY BEFORE THE OPA,**
6 **AND (3) APPELLANT BLATANTLY VIOLATED THE REQUIREMENT TO RAISE**
7 **THIS ISSUE IN ITS PROTEST WITHIN FOURTEEN (14) DAYS AFTER APPELLANT**
8 **KNEW OR SHOULD HAVE KNOWN ABOUT SUCH ISSUE.**

9 Guam Procurement law states that any actual or prospective bidder, offeror, or contractor
10 who may be aggrieved in connection with the method of source selection, solicitation or award of
11 a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the
12 head of a purchasing agency, and the protest shall be submitted in writing within fourteen (14)
13 days after such aggrieved person knows or should know of the facts giving rise thereto. *See* 5
14 GCA §5425(a). Appellant has violated this Guam Procurement law in numerous ways.
15 Specifically, Appellant failed to exhaust their administrative remedies by not raising these issues
16 in their already filed protest to the Purchasing Agency. As a result, these new issues are not
17 properly before the OPA because Appellant failed to comply with the fourteen (14) day
18 requirement under Guam Procurement law. It is now more than sixty (60) days after Appellant
19 knew or should have known these issues. *Id.*

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21 **1. Appellant failed to exhaust their administrative remedies.**

22 On June 4, 2021, GDOE made awards to GTA as the lowest, most responsible and
23 responsive bidder for IFB 027-2021 and IFB 028-2021. *See* Notice of Award, GDOE
24 Procurement Record of IFB 027-2021 at 515 and IFB 028-2021 at 605 (GDOE Procurement
25 Record of IFB 027-2021 and IFB 028-2021 hereafter referred to as "IFB 027" and "IFB 028").
26 On June 9 and 10, 2021, Appellant filed their protests regarding the IFBs. It is clear that the
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1 Appellant failed to timely raise these new issues in their protests. *See* IFB 027 at 517-637 and
2 IFB 028 at 607-795. These issues are not mentioned at all anywhere in the protest documents.
3 Guam Procurement law specifically requires that the Appellant first exhaust their administrative
4 remedies by protesting with the Purchasing Agency prior to an Appeal to the OPA. *See* 5 GCA
5 §5425. Appellant failed to do what is required by law. Therefore, Appellant's motion should be
6 denied.

7 **2. Appellant's new allegations are not properly before the OPA.**

8 Appellant's biased allegations are not properly before the OPA. *Id.* The Public Auditor
9 shall determine whether a decision on the protest of method of selection, solicitation or award of a
10 contract, or entitlement to costs is in accordance with the statutes, regulations, and the terms and
11 conditions of the solicitation. *See* 2 GAR Div. 4 §12112. As stated above, Appellant's issues
12 regarding the award was not part of their protests. Appellant did not afford GDOE the lawful
13 opportunity to review and provide a decision on the issue prior to Appellant filing the appeal now
14 before the OPA. *Id.* Therefore, the OPA does not have proper jurisdiction over Appellant's
15 brand new allegations regarding the award, and Appellant's motion should be denied. *Id.*

16 **3. Appellant blatantly violated the requirement to raise this issue in its protest**
17 **within fourteen (14) days after Appellant knew or should have known about such issue.**

18 Protests shall be submitted in writing within fourteen (14) days after such aggrieved
19 person knows or should know of the facts giving rise thereto. *See* 5 GCA §5425(a). On June 4,
20 2021, GDOE made awards regarding the IFBs and directly addressed the award notices to the
21 Appellant. *See* IFB 027 at 516 and IFB 028 at 605. On August 31, 2021, Appellant improperly
22 raised new issues regarding the award, more than sixty (60) days after Appellant knew of the
23 award. This is in clearly not allowed by law. Appellant fails to provide any authority that would
24 allow the raising of new issues after the fourteen (14) days prescribed by law. *See* 5 GCA
25 §5425(a). Therefore, GDOE respectfully requests that the OPA deny the motion.
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In conclusion for the reasons stated above, Appellant's motion should be denied in its entirety.

Respectfully submitted this 8th day of September, 2021.

GUAM DEPARTMENT OF EDUCATION

By: 
JAMES L.G. STAKE
Legal Counsel