

1 **GUAM DEPARTMENT OF EDUCATION**

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO OPA-PA-21-004 + 21-005

6 **OFFICE OF THE PUBLIC AUDITOR**
7 **PROCUREMENT APPEALS**

8 In the Appeal of

9 Pacific Data Systems, Inc. (PDS),

11 Appellant.

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

**MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

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15 The Guam Department of Education (GDOE), by and through its undersigned counsel,
16 moves to dismiss for lack of subject matter jurisdiction in the Appeal of Case Nos. OPA-PA-21-
17 004 and OPA-PA-21-005.

18 **BACKGROUND**

19 On April 28, 2021, GDOE issued its Invitation for Bids (IFB) 027-2021 and 028-2021 for
20 Telecommunication Services. On June 9 and June 10, 2021, Appellant filed their respective
21 protests for the two IFBs. The above referenced protests include Appellant's accusations against
22 Teleguam Holdings LLC (GTA), claiming that GTA has allegedly violated the Guam
23 Telecommunications Act as set forth in a separate civil lawsuit between GTA and the Office of
24 the Attorney General of Guam (OAG). Appellant's protests include the separate claim of GTA's
25 alleged violation of the Telecommunications Act. GDOE now moves the Office of Public
26 Accountability (OPA) to dismiss the appeals for the following reasons.

1 ARGUMENT

2 The Public Auditor shall have the power to review and determine *de novo* any matter
3 properly submitted. *See* 5 GCA §5703; *see also* 2 GAR Div. 4 §12103(a). This includes the
4 power to rule on motions, and other procedural matters before the OPA. *See* 2 GAR Div. 4
5 §12109(d). Any motion concerning the jurisdiction of the Public Auditor shall be promptly filed,
6 and the Public Auditor shall have the right to raise the issue of jurisdiction *sua sponte* at any time.
7 *See* 2 GAR Div. 4 §12104(c)(9).

8 The issue here is that the OPA lacks subject matter jurisdiction for Appellant's protests
9 related to GTA's alleged violation of the Telecommunications Act because the Guam Public
10 Utilities Commission (GPUC) is the proper forum for the Appellant's disputes against GTA. In
11 addition, the OPA has previously dismissed a similar appeal for lack of jurisdiction and should do
12 so here.

13 The Public Auditor shall determine whether a decision on the protest of method of
14 selection, solicitation or award of a contract, or entitlement to costs is in accordance with the
15 statutes, regulations, and the terms and conditions of the solicitation. *See* 2 GAR Div. 4 §12112.
16 Appellant's protests are related to an alleged GTA violation of the Guam Telecommunications
17 Act based on a separate lawsuit between GTA and OAG. The alleged violations of the
18 Telecommunications Act are not a part of the selection, solicitation or award of a contract, or
19 entitlement to costs, and are not found anywhere in the terms and conditions of the solicitation.
20 *Id.* Because Guam Procurement law does not provide the Public Auditor with authority to
21 determine alleged violations of the Telecommunications Act, the appeals should be dismissed
22 based on a lack of jurisdiction.

23
24 The agency with authority over disputes regarding the Guam Telecommunications Act is
25 the Guam Public Utilities Commission (GPUC). *See* 12 GCA §12207. Guam law states that it is
26 the GPUC that shall issue final orders resolving petitions or complaints regarding anything done
27 or omitted to be done by any telecommunications company in violation of the rules, regulations,
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1 and orders of the GPUC, and that any interested person complaining of violations **shall file a**
2 **petition or complaint with the GPUC.** *Id.* Therefore, Guam law bestows on the GPUC the
3 authority to investigate petitions or complaints regarding the Telecommunications Act. *Id.* The
4 OPA was not given this authority because GPUC is statutorily authorized to address allegations
5 regarding the Guam Telecommunication Act, there is no legal authority for the OPA to address
6 the Guam Telecommunication Act allegations, and therefore the Appellant's claims should be
7 dismissed.

8 Finally, the OPA has already ruled that it does not have jurisdiction over similar
9 allegations, specifically allegations of Guam Labor law violations. *In the Appeal of JRN Air*
10 *Conditioning & Refrigeration, Inc.*, OPA-PA-10-008, the Public Auditor reiterated that it has the
11 specific jurisdiction to hear an appeal of a purchasing agency's written decision on a protest
12 concerning the purchasing agency's method of source selection, solicitation, or award of a
13 contract. *Id.* at 8. **However, the Public Auditor made it clear that it does not have**
14 **jurisdiction to enforce the provisions of Guam Labor law, or to investigate violations of said**
15 **statutes, as that rests with the Guam Department of Labor (GDOL).** *Id.* at 9-10. The OPA
16 held that the enforcement of GDOL statutory provisions is separate and apart from the
17 procurement protest and appeal process, and is instead handled by a separate administrative
18 adjudicatory process entrusted to the Guam Department of Labor. *Id.* at 9. This case is directly
19 analogous here because similar to how GDOL has authority to investigate claims regarding
20 alleged labor violations, it is the GPUC that has specific authority to investigate alleged
21 Telecommunications Act violations. Therefore, the procurement protest and appeal process
22 before the OPA is not the proper forum for alleged violations of the Telecommunications Act.
23 *See* 12 GCA §12207; *see also* 2 GAR Div. 4 §12112. In conclusion, because the OPA lacks
24 jurisdiction as discussed above, GDOE hereby moves for dismissal of Appellant's claims.
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CONCLUSION

For these reasons, GDOE respectfully requests that the OPA dismiss Appeal Case Nos. OPA-PA-21-004 and OPA-PA-21-005 for lack of subject matter jurisdiction.

Respectfully submitted this 31st day of August, 2021.

GUAM DEPARTMENT OF EDUCATION

By:


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