

RAZZANO WALSH & TORRES, P.C.
JOSHUA D. WALSH
Pan American Building
139 Murray Blvd. Suite 100
Hagåtña, Guam 96910
Telephone: (671) 989-3009
Facsimile: (671) 989-8750
Electronic Service: eservice@rwtguam.com

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Attorneys for Appellant
Pacific Data Systems, Inc.

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of

Pacific Data Systems, Inc. (PDS),

Appellant.

DOCKET NO. OPA-PA-21-001

**MOTION TO REMAND TO GHURA
WITH DIRECTION TO ISSUE A
FINAL PROTEST DECISION**

I. INTRODUCTION

Appellant Pacific Data Systems, Inc. (“PDS”) moves the Office of Public Accountability (“OPA”) to remand this matter to the Guam Housing and Urban Renewal Authority (“GHURA”) with direction that GHURA issue a final decision on the merits of PDS’s protest within 30 days of the remand order. On May 9, 2025, the Superior Court issued a Decision and Order reversing the OPA’s dismissal of PDS’s appeal and remanding the case back to the OPA. Because GHURA’s rejection of the PDS protest was based upon a jurisdictional timeliness assertion — an assertion that has since been rejected as legally inform — no tribunal has reached the merits of PDS’s protest. The Superior Court expressly declined to decide whether IT&E’s bid

was responsive and did not instruct OPA on how to rule on the merits. In the interests of administrative orderliness, expedition, and to finally resolve the protest on its merits, PDS requests a targeted remand directing GHURA—the purchasing agency—to issue a final protest decision within 30 days.

II. PROCEDURAL HISTORY

1. GHURA issued IFB GHURA-COCC-21-003 on January 5, 2021; bids were received and opened on February 12, 2021, and GHURA created an abstract of bids.

2. On February 12, 2021, PDS submitted a Sunshine Act/FOIA request for Docomo and IT&E bid materials; GHURA responded on February 18, 2021.

3. On February 22, 2021, PDS identified to GHURA four deficiencies in IT&E's bid.

4. GHURA's Board awarded the IFB to IT&E on March 4, 2021.

5. GHURA issued a Notice of Non-Award to PDS on March 12, 2021.

6. PDS filed its agency-level protest with GHURA on March 26, 2021.

7. GHURA denied PDS's protest on May 5, 2021.

8. PDS appealed to OPA on May 19, 2021.

9. After hearing July 14, 2021, the OPA granted GHURA's request to dismiss the appeal for lack of jurisdiction on July 16, 2021, based upon the claim of an untimely agency level protest; The OPA's written Decision and Order dismissed the appeal as untimely and treated other pending motions as moot.

10. PDS sought judicial review, and on May 9, 2025, the Superior Court reversed OPA's dismissal and remanded to OPA.

11. Since the Remand the OPA has allowed the parties a period of time within which to explore a mutually agreed resolution, and while the parties continue to discuss matters, no resolution has been finalized.

III. GROUNDS FOR RELIEF

A. The Merits of the Case have not been reviewed by the Agency, and the OPA does not have a valid agency decision to review.

The Superior Court held that PDS's protest was timely, reversed OPA's dismissal, and remanded the matter to the OPA. The Court expressly did not decide whether IT&E's bid was responsive and did not direct how the OPA should rule on the merits. Thus, the substantive protest issues have not yet been adjudicated by either GHURA or OPA. An expedited remand to GHURA for a final decision promotes efficiency and compliance with procurement dispute procedures. Here, GHURA is the purchasing agency that initially denied the protest, and this matter is now poised to go to a procurement evidentiary hearing without an agency decision. The OPA should remand to GHURA with direction to issue a final merits decision within 30 days. This targeted remand will promptly compel the agency to confront the merits of PDS's original protest, generate a final agency decision on the merits suitable for OPA review, allow the parties additional negotiation time within which to find a resolution. The limited remand will also avoid further delay that may appear in an OPA appeal that has not been first addressed by an agency decision.

B. Guam law requires an initial Agency Decision before OPA review

Guam law grants the Public Auditor with explicit powers and duties. 1 GCA § 1909; *SH Enters., Inc. v. Territory of Guam*, 2025 Guam 10 ¶¶ 23, 31, 40. “The Public Auditor’s jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.” 5 GCA § 5703(f). “The Public Auditor shall have the power to review and determine *de novo* any matter properly submitted to her or him.” 5 GCA § 5703(a) (emphasis added). The Public Auditor has the power to “hear and decide all appeals of decisions that arise under 5 GCA § 5425(c), as provided for by 5 GCA § 5425(e).” 1 GCA § 1909(k); *SH Enters.*, 2025 Guam 10 ¶ 28 (“[S]ubsection 5425(e) grants the OPA authority to review a ‘decision’ regarding protest appeals.”). Thus, in order for the Public Auditor to review an appeal of a decision, there must first be an agency decision with findings and conclusions to review. At this juncture, the merits of the protest are not properly before the OPA and must be remanded to the agency to make the necessary determinations.

The Supreme Court of Guam explained that “[t]he Procurement Code contemplates two layers of administrative review.” *Pac. Data Sys., Inc. v. Guam Dep’t of Educ.*, 2024 Guam 4 ¶ 20; see 5 GCA § 5425. The first of these is review and determination of a protest by the agency. *Pac. Data Sys.*, 2024 Guam 4 ¶ 20; see 5 GCA § 5425(a)-(c). The Procurement Code vests the authority “to settle and resolve a protest” in the first instance with the agency. 5 GCA § 5425(b). Only after this first step is review by the Public Auditor necessary or provided by statute. 5 GCA § 5425(e); *Pac. Data Sys.*, 2024 Guam 4 ¶ 20 (stating that review by the Public Auditor

is the second layer); *see also DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20 ¶¶ 50, 62 (stating that “claims arising under the Procurement Code must be administratively exhausted” and that the procedural steps in the Code are jurisdictional in nature); *SH Enters.*, 2025 Guam 10 ¶ 52 (requiring that OPA proceedings “follow the statutory procedure outlined in the Procurement Law”); *Data Mgmt. Res., LLC v. Off. of Pub. Accountability*, 2013 Guam 27 ¶¶ 50-51 (concluding OPA had jurisdiction to determine whether bidder was “manufacturer authorized reseller” after agency decided the issue). Following the procedural steps provided in the Code serves an important policy purpose “by providing an opportunity for agencies to correct mistakes” and “promotes efficiency by taking advantage of the specialized expertise of administrative agencies.” *DFS Guam*, 2020 Guam 20 ¶ 63. The agency has not yet issued a decision on the merits of the protest. Hence, the merits of the protest are not properly before the Public Auditor at this time, and the OPA should remand this matter to the agency to make its determination.

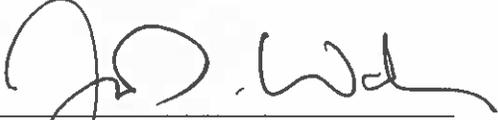
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IV. REQUESTED RELIEF

PDS respectfully requests that OPA enter an order: a) Remanding this matter to GHURA with direction to issue a final written decision on the merits of PDS's protest within 30 days of the remand order; and b) Setting a status conference 35 days from the remand order to confirm compliance and to establish a schedule for any party-initiated OPA review following GHURA's final decision.

Respectfully submitted this 16th day of January 2026 at Hagatna, Guam.

RAZZANO WALSH & TORRES, P.C.

By: 

JOSHUA D. WALSH
Attorneys for Appellant
Pacific Data Systems, Inc.