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PROCUREMENT APPEALS

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FILE NO. OPA-PA: 10-005

Attorneys for: Real Party in Interest TeleGuam Holdings LLC

**OFFICE OF PUBLIC ACCOUNTABILITY**

IN THE APPEAL OF	)	DOCKET NO. OPA-PA10-005
	)	
PACIFIC DATA SYSTEMS, INC.,	)	
	)	
Appellant.	)	
_____	)	

**REAL PARTY IN INTEREST TELEGUAM HOLDINGS LLC'S  
OPPOSITION TO MOTION TO COMPEL GCC TO PROVIDE  
COMPLETE AGENCY REPORT**

Real Party In Interest, TeleGuam Holdings, LLC (hereafter referred to as "GTA"), by its counsel of record, Cunliffe & Cook, A Professional Corporation, through Jeffrey A. Cook, Esq., hereby opposes the Motion to Compel Guam Community College to Provide Complete Agency Report filed November 3, 2010, submitted by Appellant Pacific Data Systems, Inc (hereafter referred to as "PDS").

From PDS's Motion to Compel, it appears Guam Community College ("hereafter referred to as "GCC") transmitted GTA's complete bid to the Office of Public Accountability (hereafter referred to as "the OPA"). Portions of the bid proposal were identified as confidential and proprietary by GTA at the time it submitted its bid and that designation continued to be honored by GCC by identifying those portions in the record forwarded to the OPA.

The real issue presented by PDS is whether confidential and proprietary information that was acknowledged as such by the procurement officer at the time of the bid should be made public as the result of an appeal filed by a protestor, i.e., PDS.

GTA agrees that 2 GAR §3109(l)(2) provides: "Prices and makes and models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary." GTA has, in fact, instructed GCC that those portions of its bid proposal should be made public as part of the record. See, the attached email to Sarah Strock, Esq., counsel for GCC dated November 4, 2010.

2 GAR §3109(l)(3) provides that the procurement officer shall examine the bids to determine the validity of requests for non disclosures of trade secrets and other proprietary information. This was done in this case. PDS did not file a protest objecting to information not being made public that GTA claimed was confidential and proprietary. PDS now argues because an appeal has been filed, this information should be made public over the determinations of the procurement officer that it is trade secrets or confidential and proprietary. PDS does not cite any statute or rule and regulation that would require this.

GTA agrees that 2 GAR §12105(b) states that the agency shall include a copy of the bid that is being considered for an award. GCC, in fact, provided a copy of the GTA bid but identified portions that should not be made public due to their having been identified as trade secrets or confidential and proprietary at the bidding level. 2 GCA §12106 states:

The Public Auditor shall, upon written request, make available to any Interested Party or member of the public information submitted that bears on the substance of the Appeal *except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation.* Persons who wish to keep such information submitted by them confidential shall so request by specifically identifying such information within documents

submitted and indicating on the front page of each document that it contains such information. (Emphasis added).

Thus, the Public Auditor is not supposed to reveal information that has been identified as confidential and proprietary. Therefore, when GCC forwarded GTA's bid proposal to the OPA, the OPA should, pursuant to its rules, honor the identification of confidential and proprietary information. Reading the rules together, the fact that GCC submits a complete bid proposal to the OPA does not result in the OPA revealing the entire bid proposal to the public. Section 12106 controls the revealing of information to the public.

GTA respectfully asks the OPA to honor its designation of certain information as confidential and proprietary. GTA has already agreed and identified those portions of its bid that should not have been identified as confidential and proprietary, primarily pertaining to pricing. GTA has authorized GCC to make that information available. But the remaining information should retain its confidential and proprietary status and not be revealed to PDS or any other party.

Respectfully submitted this 4th day of November, 2010.

**CUNLIFFE & COOK**  
A Professional Corporation  
Attorneys for *Real Party In Interest*  
TeleGuam Holdings LLC

By 

JEFFREY A. COOK, ESQ.

## JAC Sec

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**From:** JAC Sec [cclaw4@teleguam.net]  
**Sent:** Thursday, November 04, 2010 3:52 PM  
**To:** Sarah Strock  
**Cc:** Bill Mann; Daniel J. Tydingco; Eric Votaw  
**Subject:** In the Matter of the Appeal of PDS

Dear Sarah:

This email pertains to the concerns raised by Bill Mann on behalf of his client, Pacific Data Systems, in his letter to you dated October 22, 2010. GTA has reviewed those portions of the bid that it identified as confidential and proprietary under the Procurement Rules and Regulations. GTA has instructed me to advise you and by copy of this email, Bill Mann, on behalf of PDS, that Section No. 6 and Page No. 24 of Section No. 7 of the Bid Proposal should not be marked confidential and proprietary. These pages may be disclosed. GTA still takes the position that the remaining information it marked confidential and proprietary is just that. Therefore, GCC should not release any other information pursuant to the Procurement Rules and Regulations.

Should you have any questions, please do not hesitate to contact me.

Sincerely,  
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