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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 1/11/13

TIME: 300  AM  PM BY: MH

FILE NO OPA-PA: 12-018

IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL

IN THE APPEAL OF

TELEGUAM HOLDINGS LLC and its  
WHOLLY OWNED SUBSIDIARIES, GTA  
TELECOM LLC; GTA SERVICES LLC and  
PULSE MOBILE LLC,

Appellant.

Docket No. OPA-PA-12-018

**TELEGUAM HOLDINGS, LLC'S  
HEARING BRIEF**

Teleguam Holdings, LLC and its wholly owned subsidiaries ("GTA") summarize its position on the issues in this case as follows:

1. **GSA incorrectly awarded the 1 Gbps for the Dedicated Government of Guam Wide Area Network ("GGWAN") Data Communications Services to Pacific Data Systems ("PDS") who was NOT the lowest most responsive and responsible bidder pursuant to the criteria set forth in GSA IFB 064-11 ("IFB").**

The IFB states that the purpose of the IFB "is to enable the Government of Guam

("GovGuam") to establish a Price List for Telecommunication Services (PLTS)." Agency Report, Tab 6 at 25. Section III, Part E of the IFB states that GovGuam is seeking dedicated fiber based capacity of 1 or 10 Gpbs that would be used only by authorized GovGuam agencies." Agency Report, Tab 6 at 26 (emphasis added). Additionally, the IFB states that "the IFB will result in multiple Price Lists for Telecommunication Services or Equipment established through a Fixed Price Contract in accordance with the terms of the IFB. Section IV (E)." Agency Report, Tab 6 at 29. A final determination of the quantity or type of services will be made by the individual GovGuam agencies after the agency conducts an analysis of the price and the availability of funds. Agency Report, Tab 6 at 29. GovGuam agencies are not obligated to purchase all or any of the services listed in the IFB. *Id.*

GSA rejected GTA's bid due to high price and awarded the 1 Gbps service to PDS. Agency Report, Tab 10 at 1. GSA's award to PDS is in violation of the Guam Procurement Law and its related rules and regulations because PDS' bid was \$120 GREATER per month than GTA's price.

GSA's rejection of GTA's bid for the 1 Gbps service violates Section 5211(g) of the Guam Procurement Law requiring that GSA award the 1 Gbps service to GTA, the lowest most responsible bidder. Awarding both the 1 Gbps and the 10 Gbps to the bidder that has a lower price when the two prices are combined is not consistent with the intent of the IFB, which is to create a price list for which the government of Guam agencies can select. Agency Report, Tab 6 at 25. GovGuam agencies requiring or having limited funds for the 1 Gbps service should not be forced to pay a higher price simply because another bidder submitted a lower aggregate price for the 1 Gbps and 10 Gbps services. GSA's response would result in agencies paying a higher price for the 1 Gbps service simply because the bidder submitted a lower overall price for both the 1

and 10 Gbps services. The OPA should award the 1 Gbps service to GTA, the lowest responsible responsive bidder.

**2. GSA failed to apply objectively measurable criteria in evaluating the technical bids for the 10 Gbps bid and did not attempt to confirm GTA's bid as required by the Guam procurement rules and regulations.**

Guam Procurement Law and its related regulations require that "[b]ids be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose." 5 G.C.A. § 5211(e); 2 G.A.R. § 3109(n)(4). Any criteria that "affects the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation cost, and total or life cycle costs. *Id.*

In *In the Appeal of O&M Energy, S.A.*, OPA-PA-08-004, the OPA found that a price disparity of six million dollars (\$6,000,000) indicate that the agency did very little to evaluate the bids before deciding to award the contract. OPA-PA-08-004 at 4. Specifically, the OPA found that the agency favored an incumbent contractor by failing to properly evaluate the incumbent's technical specifications offered by the incumbent. OPA-PA-08-004 at 5. In other words, the agency failed to employ objectively measurable criteria set forth in the IFB to determine whether the lowest bidder did in fact meet the criteria set forth in the IFB. OPA-PA-08-004 at 5. In her decision, the OPA found that the proposed award was not adequate under the procurement law and regulations because the agency failed to evaluate the bids based on objectively measurable criteria and thus cancelled the procurement in its entirety. OPA-PA-08-004 at 6.

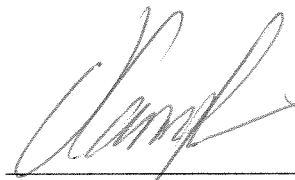
In the instant Appeal, GSA could not have reviewed PDS' technical specifications to evaluate whether PDS' bid was responsive because PDS did not submit its technical

specifications as required by the IFB.<sup>1</sup> Instead, GSA relied solely on the price for the 10 Gbps service in violation of the Guam Procurement Law and its related rules and regulations. GSA's failure to objectively evaluate all bids violates the Guam Procurement Law and its related rules and regulations.

Additionally, the Guam Administrative Rules and Regulations state that when the procurement officer knows or has reason to conclude that a mistake has been made, such officer should request the bidder to confirm the bid. Cases where confirmations should be requested include obvious, apparent errors on the face of the bid or *a bid unreasonably lower than the other bids submitted*. 2 G.A.R. § 3109(m)(3). GSA did not attempt to confirm the bids submitted by either GTA or PDS as required. Instead, GSA made its decision to award without again attempting to determine the cause of the obviously huge price difference. The OPA should cancel the award for 10 Gbps service and rebid so that any issues addressing the price disparity can be properly evaluated and the service awarded to the lowest responsible and responsive bidder.

Submitted this 11th day of January, 2013.

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<sup>1</sup> On May 4, 2012, GTA submitted a request pursuant to the Freedom of Information Act for a copy of PDS' technical submission to determine if the disparity in the bid prices submitted were due to technical specifications that were not set forth in the IFB. As of this writing, GTA can only conclude that GSA's failure to respond to the request is evidence that PDS failed to submit its technical specifications as required by the IFB.