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238 Archbishop Flores St.
Hagåtña, Guam 96910

FAX

To:	**General Services Agency** **C/O Fred Nishihira** Office of the Attorney General	**From:**	**Doris Flores Brooks** **Guam Public Auditor** Office of Public Accountability
Phone: **Fax:**	475-3324 472-2493	**Pages:**	7 (including cover page)
CC:	**Teleguam Holdings, LLC** **C/O Vince C. Camacho, ESQ.** Carlsmith Ball, LLP	**Date:**	December 15, 2014
Phone: **Fax:**	472-6813 477-4375	**Phone:** **Fax:**	475-0390 x. 203 472-7951
CC:	**Pacific Data Systems, Inc.** **C/O Bill R. Mann, ESQ.** Berman O'Connor & Mann		
Phone: **Fax:**	477-2778 477-4366		

Re: OPA-PA-12-018: Decision on Remand

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ✔ **Please Reply** ☐ **Please Recycle**

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Thank you,

Jerrick Hernandez

Auditor

jhernandez@guamopa.org

OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

BEFORE THE PUBLIC AUDITOR

PROCUREMENT APPEALS

TERRITORY OF GUAM

In the Appeal of TELEGUAM HOLDINGS LLC, and its WHOLLY OWNED SUBSIDIARIES, GTA TELECOM, LLC; GTA SERVICES, LLC, and PULSE MOBILE, LLC, Appellants.	Docket No. OPA-PA 12-018 **DECISION ON REMAND**

This is a Decision of the Public Auditor after Remand from the Superior Court of Guam for an appeal filed on November 5, 2012, by TeleGuam Holdings, LLC, and its wholly owned subsidiaries, GTA Telecom, LLC; GTA Services, LLC; and Pulse Mobil, LLC (hereinafter "GTA"). GTA appeals the October 19, 2012, decision rendered by the General Services Agency of the Government of Guam (hereinafter "GSA") denying GTA's protest of the Bid Status Intent to Award Revised Bid Form (RBF) 11, a part of Invitation for Bid (IFB) No. GSA 064-11, to Pacific Data Systems, Inc. (hereinafter "PDS").

Hearings on the appeal were held on January 29-30, 2013, before Public Auditor Doris Flores Brooks and Hearing Officer Peter C. Perez, Esq. Vincent C. Camacho, Esq. appeared on behalf of GTA; Assistant Attorney General Fred Nishihara, Esq., appeared on behalf of GSA and Bill R. Mann, Esq., appeared on behalf of PDS.

GTA asserted the following grounds on appeal: (1) That GSA incorrectly awarded the 1 Gbps for the Dedicated Government of Guam Wide Area Network ("GGWAN") Data

Communications Services to PDS who was not the lowest most responsive and responsible bidder pursuant to the criteria set forth in the IFB; and (2) That GSA failed to apply objectively measurable criteria in evaluating the technical bids for the 10 Gigabytes per second (Gbps) of 10,000 Megabytes per second (Mbps) bid and did not attempt to confirm GTA's bid as required by the Guam Procurement Rules and Regulations.

On March 6, 2013, the Public Auditor issued Consolidated Decisions in OPA-PA-12-016, OPA-PA-017, and OPA-PA-12-018. In the Consolidated Decisions section pertaining to OPA-PA-12-018, the Public Auditor found:

1. On June 22, 2011, GSA issued Invitation for Bid GSA 064-11 for Telecommunications Services, Mobil Telephone Services, Integrated Services Digital Networking (ISDN), Primary Rate of Interface (PRI), Basic Rate Interface (BRI), and Session Initiation Protocol (SIP) Trunks, GGWAN Data Communications Services, Broadband Internet Access, DSL/Cable or Wireless Internet Services, Television Services, Routers, Managed Switches, and Network Equipment and Direct Dialing (DID) Numbers. These products and services procured under the IFB would be available to all Government of Guam line agencies and autonomous agencies for a period of five years subject to the availability of funds. The IFB also included an option to extend the agreement for two additional one-year periods, subject to availability of funds.
2. The intent of the IFB was to issue a consolidated, centralized telecommunications bid for services to the Government of Guam, with consideration given to economies of

scale and standardizing telecommunications services and equipment for the Government of Guam.

3. IFB RBF 064-11 required:

> The Bidder shall provide the price for a fiber DWDM based Wide Area Network (WAN) Network to connect GovGuam agencies. The service is a dedicated GovGuam wide service and must provide 100% CIR between two GovGuam locations configured on the ring. The Bidder shall provide an LC interface for interface to high capacity switches/routers.

4. RBF 11 contained two sections: 1,000 Mbps or 1 Gbps and 10,000 Mbps or 10 Gbps. Each section required an installation price (per node) and a Per Node Monthly Recurring Cost (MRC) including all surcharges.

5. GSA hired a consultant concerning the IFB. As to RBF 11, the Government wanted only one provider, envisioning one carrier to increase efficiency and to avoid incompatibilities, duplicate costs, and other potential problems which might arise with more than one provider.

6. Bidders were advised that only one contract would be awarded for each part of the IFB.

7. Although RBF 11 contained two sections, it was treated as one part and only one contract would be awarded for that part.

8. Over a long period of time, the Bidders were given the opportunity to ask questions and to seek clarifications regarding the IFB. The IFB was issued June 2011. The bidding closed six months later, December 2011.

9. In its response to RBF 11, GTA offered the following: (1) for 1,000 Mbps: Installation (per node)-waived; MRC-$750; number of services-18; number of months-24; Total-

$324,000; (2) for 10,000 Mbps: Installation (per node)-$48,832; MRC-$9,400; number of services-18; number of months-24; Total-$4,939,776.

10. GTA's Bid was compliant with the IFB.

11. In its response to RBF 11, PDS offered the following: (1) for 1,000 Mbps: Installation (per node)-$0; MRC-$870; number of services-18; number of months-24; Total-$375,840; (2) for 10,000 Mbps: Installation (per node)-0; MRC-$1,500; number of services-18; number of Months-24; Total-$648,000.

12. PDS's Bid was compliant with the IFB.

13. GTA's Bid was the lowest for RBF 11 section for 1,000 Mbps.

14. PDS's Bid was lowest in the aggregate, when both sections of RBF 11 were added and totaled.

15. On May 3, 2012 GSA issued a Bid Status. In it, GSA rejected GTA's RBF 11 due to price being higher than that of PDS and awarded RBF 11 to PDS.

In the March 6, 2013 Consolidated Decisions, section pertaining to OPA-PA-12-018, the Public Auditor concluded as a matter of law:

1. Only one Bidder would be awarded a contract for RBF 11.
2. PDS's total bid price for RBF 11 was the lower than that of GTA.
3. GSA's award of RBF 11 to PDS was proper.

On March 20, 2013, GTA filed a Complaint in the Superior Court of Guam in *TeleGuam Holdings, LLC and Its Wholly Owned Subsidiaries v. Territory of Guam; Department of Administration, General Services Agency; the Office of Public Accountability; Pacific Data Systems, Inc.,* in Superior Court of Guam Civil Case No. CV0334-13. (The "Civil Action"). The Complaint alleged the following: that the Public Auditor's decision that only one contract should

be awarded for IFB GSA 064-11 Part E is arbitrary, capricious, clearly erroneous, or contrary to law; that the Public Auditor's affirmation of the award of Part E to PDS is arbitrary, capricious, clearly erroneous, or contrary to law; and that GSA erred in aggregating the prices for Part E.

On June 18, 2014, the Court held an evidentiary hearing with regard to GTA's Motion for Sanctions and the Government of Guam's Cross-Motion for Sanctions. On August 8, 2014, the Court issued a Decision and Order. The Decision and Order vacated the Public Auditor's March 6, 2013 Decision in OPA-PA-12-018 and ordered the Public Auditor to issue a new Decision, not inconsistent with the Court's Decision and Order, in light of the new evidence discovered in the Court proceedings.

Subsequent and pursuant to the Court's Decision and Order, the Public Auditor reopened this appeal for the limited purpose of issuing a new decision not inconsistent with the Court's Decision and Order of August 8, 2014, in light of the new evidence discovered in this case. An appeal hearing was held on November 20, 2014 before the Public Auditor, Doris Flores Brooks, and Hearing Officer, Peter C. Perez, Esq. Vincent C. Camacho, Esq. appeared on behalf of GTA. Assistant Attorney General Fred Nishihara, Esq. appeared on behalf of the Government of Guam. Bill Mann, Esq. appeared on behalf of PDS.

Having considered the procurement record, the new evidence revealed in CV0334-13, the Court's Decision and Order dated August 8, 2014 in CV0334-13, the documents submitted by the parties, the testimony, evidence, and arguments presented at the appeal hearings, and interpreting and applying the Guam Procurement Law, and on the basis of the findings of fact and conclusions of law in the Consolidated Decisions issued on March 6, 2013, specifically for OPA-PA-12-018,

the original decision of the Public Auditor issued on March 6, 2013 stands. No new evidence was presented that alters the Public Auditor's previously issued Consolidated Decisions.

IT IS HEREBY ORDERED:

1. The March 6, 2013 Consolidated Decision regarding OPA-PA-12-018 stands and is hereby reissued.
2. The decision of GSA regarding OPA-PA-12-018 is affirmed.
3. The Parties shall bear their respective costs and fees associated with this appeal.

This is a Final Administrative Decision. The Parties are informed of their right to appeal from a Decision of the Public Auditor to the Superior Court of Guam in accordance with Part D of Article 9 of 5 G.C.A. § 5481(a) within fourteen (14) days after receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties and their respective attorneys in accordance with 5 G.C.A. § 5702 and shall be made available for review on the OPA Website www.guamopa.org.

DATED this 15th day of December, 2014.

DORIS FLORES BROOKS, CPA, CGFM
Public Auditor of Guam

TRANSACTION REPORT

DEC/15/2014/MON 04:57 PM

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002		04:51PM	4774375	0:03:39	7	MEMORY OK SG3	2147
003		04:55PM	4774366	0:01:30	7	MEMORY OK SG3	2147
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