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**RECEIVED**  
 OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEALS  
 DATE: Dec 21, 2018  
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 FILE NO OPA-PA: 18-004

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEAL**

<b>IN THE APPEAL OF:</b>	)	<b>DOCKET NO. OPA-PA-18-004</b>
	)	
<b>TELEGUAM HOLDINGS, LLC,</b>	)	
	)	
<b>Appellant,</b>	)	<b>GENERAL SERVICES AGENCY'S</b>
	)	<b>OPPOSITION TO TELEGUAM</b>
<b>AND</b>	)	<b>HOLDINGS, LLC'S HEARING BRIEF</b>
	)	
<b>GENERAL SERVICES AGENCY,</b>	)	
	)	
<b>Purchasing Agency.</b>	)	
	)	

**Comes now** the General Services Agency (“GSA”), by and through its counsel, and files its Opposition to Teleguam Holdings, LLC (“GTA”) Hearing Brief.

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**ORIGINAL**

## OPPOSITION TO GTA'S HEARING BRIEF

GSA opposes GTA's Hearing Brief filed on December 14, 2014, as GTA's protest is barred on basic jurisdictional principles.

### POINTS AND AUTHORITIES

#### **I. GTA is Barred From Protesting IFB GSA-064-11 Based on Basic Jurisdictional Principles, Statute of Limitations Grounds and *Res Judicata***

GTA argues that its protest is timely because the triggering event for appealing IFB GSA-064-11 ("IFB") was the release of the Revised Bid Status on June 28, 2018. GTA Hearing Brief p. 5. This argument is flawed, as GTA missed the statute of limitations to bring an incomplete record protest for parts A-D and Parts F-J of IFB GSA-064-11 back in 2012 in the appeal before the Public Auditor, Appeal No. OPA-PA-12-018 (Procurement Appeal, Nov. 5, 2012), and the appeal before the Superior Court in 2013, Civil Case No. CV0334-13.

Furthermore, GTA overlooks the issue of *res judicata*. The Supreme Court laid out the standard of judicial review for Public Auditor decisions during the first appeal of this matter. The Supreme Court stated, "There are two options for a disappointed bidder after the OPA issues a decision in dispute: (1) to seek judicial review of the OPA's decision within the requisite fourteen days under 5 GCA § 5481(a), or (2) to refrain from seeking judicial review and allowing the procurement process to go forward upon expiration of the fourteen days." *Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13 ¶ 31. The facts are clear. GTA decided to pursue the first of two options by seeking judicial review for only Part E and then only pursued the second option for Parts A-D and Parts F-J.

Here, GTA cannot refrain from seeking judicial review for Parts A-D and Parts F-J, miss the statute of limitations, and bring a protest to the Public Auditor later. This is in essence a

waiver and will give GTA a second bite of the apple and set a dangerous precedent to the procurement process.

**II. GTA's Claim That It Was Surprised By GSA's Reliance On A Deficient Procurement Record Is Flawed, Because The Supreme Court Affirmed The IFB And, In Turn, Affirmed Both Public Auditor Decisions In This Matter**

In GTA's Hearing Brief, GTA states, "However, it should be made clear that the [2018] *Teleguam* Opinion did not give GSA the authority to grant awards based on an incomplete record, nor did the Opinion affirm or approve any previous awards." GTA Hearing Brief fn. 3. GTA, however, overlooks the finality of Supreme Court opinions. The Supreme Court directly affirmed, the remaining parts of the IFB and the Public Auditor's Decision. *See Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5 ¶ 21 (citing 5 GCA § 5425(f)) ("The Public Auditor's decision became final over the other Parts when GTA did not timely commence an action in the Superior Court.").

Additionally, GTA argues that it "had absolutely no knowledge or reason to believe that GSA would continue to rely on a deficient procurement record . . ." GTA Hearing Brief p. 5. The decision to issue the June 28, 2018 Bid Status was not because GSA continued to rely on a deficient procurement record, but rather, relied on the Supreme Court Opinion affirming the validity of the remaining parts of IFB GSA-064-11 and the Public Auditor's Decision. *Teleguam*, 2018 Guam 5 ¶ 21. The Supreme Court did not leave any issues open-ended when it held, "The Public Auditor's decision became final over the other Parts when GTA did not timely commence an action in the Superior Court. 5 GCA § 5425(f)." *Id.*

## CONCLUSION


In conclusion, GTA's failure to seek judicial review for Parts A-D and Parts F-J years after the Public Auditor issued its March 6, 2013 Decision precludes GTA from taking a second bite of the apple and appealing the same issues in the IFB presented in CV0334-13. Additionally, as another jurisdictional bar to the present protest, is that this protest is barred by *res judicata*. This protest arises out of the same transactional nucleus of facts presented in *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5.

Based on the foregoing, we respectfully request that the Public Auditor deny GTA's appeal and request for attorney's fees and costs, and affirm its December 15, 2014 Decision on Remand.

Submitted this 21 day of December, 2018.

OFFICE OF THE ATTORNEY GENERAL  
**Elizabeth Barrett-Anderson**, Attorney General

By:

  
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