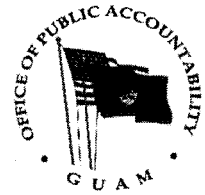


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
	Ms. Shannon Taitano Mr. Joseph Perez Assistant Attorney Generals C/O Marie Cruz Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	Pages:	15 (including cover page)
CC:	Vincent C. Camacho, Esq. (Attorney for Appellant TeleGuam Holdings LLC) Camacho Calvo Law Group LLC 134 W Soledad Ave., Suite 401 Hagatna, Guam 96910 Phone: (671) 472-6813 Fax: (671) 477-4375	Date:	January 29, 2019
	John Day, President (Interested Party Pacific Data Systems) 185 Ilipog Drive HBC Bldg. Suite 204A Tamuning, Guam 96913 Phone: (671) 300-0200 Fax: (671) 300-0265	Phone:	(671) 475-0390 x. 208
		Fax:	(671) 472-7951

Re: OPA-PA-18-004 Decision

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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

In the Appeal of
Teleguam Holdings LLC,
Appellant.

Appeal No: OPA-PA-18-004

DECISION

A. INTRODUCTION

This is the Decision of the Public Auditor for an appeal filed on July 26, 2018, by Teleguam Holdings, LLC, and its wholly owned subsidiaries, GTA Telecom, LLC; GTA Services, LLC; and Pulse Mobil, LLC (hereinafter "GTA"). GTA appeals the July 11, 2018, decision issued by the General Services Agency of the government of Guam (hereinafter "GSA") denying GTA's July 9, 2018 Protest of the June 28, 2018 Revised Bid Status for IFB GSA 064-11 (hereinafter "IFB").

GTA asserts the following grounds on appeal: (1) GTA's Protest to GSA was timely; and, (2) GSA's proposed awards for Bid No. 064-11 were based on a materially incomplete record and are contrary to Guam law.

The parties to this appeal stipulated to waive any right to a hearing on the merits and submitted this matter to the Public Auditor for disposition based upon the applicable records and their respective briefs. The Public Auditor is in receipt of the parties' respective briefs and issues this Decision based upon the arguments contained therein, the procurement record, the documents submitted by the parties, applicable Superior Court of Guam records in CV334-13, and the

3
4 B. PROCEDURAL HISTORY

- 5 1. On June 22, 2011, GSA issued Invitation for Bid GSA IFB 064-11 for
6 Telecommunications Services, Mobil Telephone Services, Integrated Services Digital
7 Networking (ISDN), Primary Rate of Interface (PRI), Basic Rate Interface (BRI), and
8 Session Initiation Protocol (SIP) Trunks, Government of Guam (GovGuam) Wide Area
9 Network (GGWAN) Data Communications Services, Broadband Internet Access,
10 DSL/Cable or Wireless Internet Services, Television Services, Routers, Managed
11 Switches, and Network Equipment and Direct Dialing (DID) Numbers. These products
12 and services procured under the IFB would be available to all government of Guam
13 line agencies and autonomous agencies for a period of five years subject to the
14 availability of funds. The IFB also included an option to extend the agreement for two
15 additional one-year periods, subject to availability of funds. The IFB contained Parts
16 A-J and Bid Forms 0-15.
- 17 2. The intent of the IFB was to issue a consolidated, centralized telecommunications bid
18 for services to GovGuam, with consideration given to economies of scale and
19 standardizing telecommunications services and equipment for the government of
20 Guam.
- 21 3. The IFB stated: “Each Part of the IFB shall be treated separately for bid submission
22 and shall not affect the other Parts of the bid.”
- 23 4. Part E, Bid Form 11, of the IFB sought bids for dedicated GovGuam Wide Area
24 Network (“GGWAN”) Data Communication Services. The GGWAN was divided into
25 1 Gbps and 10 Gbps services. Bidders were advised that only one contract would be
26 awarded for each part of the IFB. In response to public questions from IT&E, the GSA
27 stated: “There will only be one contract awarded for each Part.”
- 28 5. The IFB 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.

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- The Bidder shall provide an LC interface for interface to high capacity switches/routers.
6. Although Part E, Bid Form 11 contained two sections, it was treated as one part and only one contract would be awarded for that part.
 7. GSA hired a consultant concerning the IFB. As to Part E, Bid Form 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.
 8. GTA and PDS submitted bids for IFB Part E.
 9. In its response to Part E, Bid Form 11, GTA offered the following: (1) for 1,000 Mbps: Installation (Per Node)-waived; MRC-\$750.00; number of services-18; number of months-24; Total-\$324,000.00; (2) for 10,000 Mbps: Installation (Per Node)-\$48,832.00; MRC-\$9,400.00; number of services-18; number of months-24; Total-\$4,939,776.00.
 10. GTA's Bid was compliant with the IFB.
 11. In its response to Part E, Bid Form 11, PDS offered the following: (1) for 1,000 Mbps: Installation (Per Node)-\$0; MRC-\$870.00; number of services-18; number of months-24; Total-\$375,840.00; (2) for 10,000 Mbps: Installation (Per Node)-\$0; MRC-\$1,500.00; number of services-18; number of Months-24; Total-\$648,000.00.
 12. PDS's Bid was compliant with the IFB.
 13. GTA's Bid was the lowest for Bid Form 11 section for 1,000 Mbps.
 14. PDS's Bid was lowest in the aggregate when both sections of Bid Form 11 were added and totaled.
 15. Bid Status. On April 27, 2012, GSA issued a Bid Status. In it, GSA rejected GTA's Bid Form 11 due to the price being higher than that of PDS and awarded Bid Form 11 to PDS. The April 27, 2012 Bid Status recommended multiple awards to multiple bidders, specifically:
 - GTA: Bid Forms 2, 3, 8, 8A, 10, 12, 15
 - PDS: Bid Forms 5, 6, 11, 13, 14
 - IT&E: Bid Form 8A

1 16. Revised Bid Status. On May 3, 2012, GSA issued a Revised Bid Status. In it, GSA
2 rejected GTA's Bid Form 11 due to the price being higher than that of PDS and awarded
3 Bid Form 11 to PDS. The May 3, 2012 Revised Bid Status recommended multiple
4 awards to multiple bidders, specifically:

- 5 • GTA: Bid Forms 8, 8A, 10, 12, 15
- 6 • PDS: Bid Forms 2, 3, 5, 6, 11, 13, 14
- 7 • IT&E: Bid Form 8A

8 17. Protest. On May 11, 2012, GTA filed a formal Protest with the Chief Procurement
9 Officer entitled "Protest of Award of Bid GSA-064-11, Bid Form 11 GovGuam Wide
10 Area Network, to Pacific Data Systems and Rejection of Bid Form 11 by TeleGuam
11 Holdings, LLC. GTA's Protest was regarding Bid Form 11.

12 18. Protest Denial. On October 19, 2012, GSA denied GTA's Protest. GSA's Protest denial
13 was regarding Part E, Bid Form 11.

14 19. Procurement Appeal. On November 5, 2012, GTA filed a procurement appeal with the
15 Public Auditor in OPA-PA-12-018. GTA's procurement appeal was regarding Part E,
16 Bid Form 11. Throughout GTA's Procurement Appeal filing, GTA stated that the
17 appeal pertained to Bid Form 11. For example, it stated, "[GTA] hereby appeal[s] a
18 decision rendered by the General Services Agency of the government of Guam...on
19 October 19, 2012, denying GTA's protest of the Bid Status Intent to Award Bid Form
20 11, a part of GSA 064-11., to Pacific Data Systems..." [GTA Procurement Appeal,
21 page 1]. The appeal stated, "This appeal pertains to IFB GSA 064-11 Bid Form 11."
22 [GTA Procurement Appeal, Section II, page 2]. GTA's Procurement Appeal sought
23 rulings from the Public Auditor rescinding GSA's Revised Bid Status award of Bid
24 Form 11 to PDS or alternatively awarding Bid Form 11 to GTA. [GTA Procurement
25 Appeal, page 8].

26 20. In the Procurement Appeal proceedings, GTA argued that the GSA's single award of
27 Part E, Bid Form 11, to PDS was improper because its 1 Gbps bid was lower than
28 PDS's. After instructing the parties to develop the record, the Public Auditor held a
two-day hearing in the Office of Public Accountability. Hearings on the appeal were
held on January 29-30, 2013. GTA asserted the following grounds on appeal: (1) That
GSA incorrectly awarded the 1 Gbps for the Dedicated Wide Area Network
("GGWAN") Data Communications Services to PDA who was not the lowest most

1 responsive and responsible bidder pursuant to the criteria set forth in the IFB; and (2)
2 That GSA failed to apply objectively measurable criteria in evaluating the technical
3 bids for the 10 Gbps bid and did not attempt to confirm GTA's bid as required by the
4 Guam Procurement Rules and Regulations.

5 21. Consolidated Decisions. On March 6, 2013, the Public Auditor issued Consolidated
6 Decisions affirming the single award of Part E, Bid Form 11, to PDS. In the
7 Consolidated Decisions, the Public Auditor found that "[t]he intent of the IFB was to
8 issue a consolidated, centralized telecommunications bid for services to GovGuam,
9 with consideration given to economies of scale and standardizing telecommunications
10 services and equipment for GovGuam." The Public Auditor also found that "GSA hired
11 a consultant concerning the IFB. As to [Part E], GovGuam wanted only one provider,
12 envisioning one carrier to increase efficiency and to avoid incompatibilities, duplicate
13 costs, and other potential problems which might arise with more than one provider."
Id. The Public Auditor affirmed GSA's award of RBF 11 to PDS.

14 22. Superior Court Appeal. GTA appealed the Public Auditor's Consolidated Decisions,
15 specifically regarding OPA-PA-012-18, Bid Form 11. On March 20, 2013, GTA filed
16 a Verified Complaint in the Superior Court of Guam Civil Case CV0334-13, *TeleGuam*
17 *Holdings LLC and Its Wholly Owned Subsidiaries v. Territory of Guam; Department*
18 *of Administration, General Services Agency; the Office of Public Accountability;*
19 *Pacific Data Systems, Inc.*(The "Civil Action"). The Verified Complaint requested
20 *inter alia* that the Court vacate Part E of GSA's April 27, 2012, and May 3, 2012 Bid
21 Status, and an award of IFB Part E 1 Gbps network to GTA. [Verified Complaint,
22 Prayer ¶¶ 3,4]. The Complaint alleged the following: that the Public Auditor's decision
23 that only one contract should be awarded for IFB GSA 064-11 Part E is arbitrary,
24 capricious, clearly erroneous, or contrary to law; that the Public Auditor's affirmation
25 of the award of Part E to PDS is arbitrary, capricious, clearly erroneous, or contrary to
26 law; and that GSA erred in aggregating the prices for Part E. GTA's Verified
27 Complaint in the Civil Action appealed only the Public Auditor's Consolidated
28

1 Decision regarding OPA-PA-12-018, Part E of the IFB, not the IFB in its entirety nor
2 any other part of the IFB. ¹

3 23. Remand. On June 18, 2014, the Superior Court held an evidentiary hearing with regard
4 to GTA's Motion for Sanctions and the Government of Guam's Cross-Motion for
5 Sanctions. On August 8, 2014, the Superior Court issued a Decision and Order. The
6 Decision and Order vacated the Public Auditor's March 6, 2013 Decision in OPA-PA-
7 12-018 and ordered the Public Auditor to issue a new Decision, not inconsistent with
8 the Court's Decision and Order, in light of the new evidence discovered in the Court
9 proceedings. [Decision and Order, 27:21-24].

10 24. Decision on Remand. Subsequent and pursuant to the Superior Court's Decision and
11 Order, the Public Auditor reopened the appeal for the limited purpose of issuing a new
12 decision not inconsistent with the Court's Decision and Order of August 8, 2014, in
13 light of the new evidence discovered in this case. An appeal hearing was held on
14 November 20, 2014. The Public Auditor determined, having considered the
15 procurement record, the new evidence revealed in CV0334-13, the Court's Decision
16 and Order dated August 8, 2014 in CV0334-13, the documents submitted by the parties,
17 the testimony, evidence, and arguments presented at the appeal hearings, and
18 interpreting and applying the Guam Procurement Law, and on the basis of the findings
19 of fact and conclusions of law in the Consolidated Decisions issued on March 6, 2013,
20 specifically for OPA-PA-12-018, the original decision of the Public Auditor issued on
21 March 6, 2013 stands. The Public Auditor found that no new evidence was presented
22 that required alteration of the Public Auditor's previously issued Consolidated
23 Decisions. On those bases, the Public Auditor ordered that the Consolidated Decisions
24 of March 6, 2013, regarding OPA-PA-12-018 stood and was thereby reissued and the
25 decision of the GSA regarding OPA-PA-12-018 was affirmed.

26 25. Superior Court Decision and Order. On August 18, 2016, the Court issued a Decision
27 and Order granting GTA's cross-motion for summary judgment. The Court ruled that,
28 because the procurement record for IFB GSA 064-11 was incomplete, the solicitation

¹ On November 23, 2015, GTA filed an Amended Verified Complaint. In addition to the relief prayed for in the Verified Complaint, in the Amended Verified Complaint GTA requested cancellation of the entire IFB. [Amended Verified Complaint, Prayer ¶ 2].

1 and proposed award based on this record are in violation of the Procurement Law.
2 [Decision and Order, 7:17-19]. The Court ordered the entirety of IFB GSA 064-11 be
3 canceled. [Decision and Order, 9:4-7].

4 26. Superior Court Judgment. On October 6, 2016, the Superior Court issued a Judgment
5 pursuant to its August 18, 2016 Decision and Order. The Judgment provided, "IT IS
6 HEREBY ORDERED, ADJUDGED, AND DECREED that the entirety of
7 procurement IFB GSA 064-11 be canceled, with each side to pay its own costs pursuant
8 to 5 G.C.A. § 5425(h)."

9 27. PDS Appeal. On October 12, 2016, PDS appealed the Superior Court Decision and
10 Order and Judgment to the Supreme Court of Guam.

11 28. Supreme Court Opinion. On May 14, 2018, the Supreme Court issued its Opinion in
12 *Teleguam Holdings, LLC v. Territory of Guam et al.*, 2018 Guam 5. The Supreme Court
13 ruled that the Superior Court's subject matter jurisdiction was properly invoked only
14 over Part E of the IFB. The Supreme Court found that the Superior Court's jurisdiction
15 over Parts A-D and Parts F-J were not invoked by GTA within 14 days of the Public
16 Auditor's decision and that the Superior Court lacked authority to exercise that
17 jurisdiction. The Public Auditor's decision became final over the other Parts when GTA
18 did not timely commence an action in the Superior Court. Finding no basis for the
19 Superior Court's exercise of jurisdiction over Parts A-D and Parts F-J of the IFB, the
20 Supreme Court reversed the portions of the Superior Court's Decision and Order and
21 Judgment canceling those parts. *Id.* at ¶¶ 19-22.

22 29. On July 24, 2018, the Superior Court issued an Amended Judgment in CV0334-13. The
23 Amended Judgment provided:

24 Based on the Opinion of the Supreme Court of Guam, *Teleguam Holdings LLC v.*
25 *Territory of Guam, et al.*, 2018 Guam 5, IT IS HEREBY ORDERED, ADJUDGED
26 and DECREED that Part E of the procurement IFB GSA 064-11 is CANCELLED. The
27 awards made pursuant to all other Parts of said procurement are AFFIRMED. Each
28 side shall pay its own costs.

29 30. Revised Bid Status. On June 28, 2018, GSA issued a Revised Bid Status for IFB GSA-
30 064-11. The Revised Bid Status differed from the May 3, 2012 Revised Bid Status in
31 a number of areas. It identified the Bid statuses for Bid Forms 0-15. However, it noted
32 that Part E Bid Form 11 was canceled and that a new bid would be scheduled at a later
33 time. The Revised Bid Status rejected multiple previously proposed awards to GTA
34 due to GTA's inability to adhere to original bid prices or other requirements including

1 for Bid Forms 8, 8A, 12, 14, and 15. Regarding Bid Form 12, the Revised Bid Status
2 stated that a new bid will be scheduled at a later time. The June 28, 2018 Revised Bid
3 Status recommended revised multiple awards to multiple bidders, specifically:

- 4 • GTA: Bid Form 9
- 5 • PDS: Bid Forms 2, 3, 5, 6, 10, 13, and 14
- 6 • Docomo Pacific, Inc.: Bid Form 8 and 9
- 7 • IT&E: Bid Form 8A and 9
- 8 • Guam Telecom, LLC: Bid Form 15

9 31. Protest. On July 9, 2018, GTA submitted a written Protest of the Revised Bid Status
10 proposed awards. GTA asserted that it's Protest of the June 28, 2018 Revised Bid Status
11 was timely and that because the procurement record for the IFB was materially
12 incomplete, Guam law prohibited the proposed procurement awards in the Revised Bid
13 Status.

14 32. Protest denial. On July 11, 2018, GSA denied GTA's Protest. GSA rejected GTA's
15 assertion that GTA's Protest was timely. GSA stated that with the exception of IFB
16 Part E, Bid Form 11, all other portions of the award remain the same. GSA also referred
17 GTA to the Supreme Court Opinion finding that GTA had only sought review of IFB
18 Part E, Bid Form 11, and not the other parts of the IFB.

19 33. Procurement appeal. On July 26, 2018, GTA filed a Notice of Procurement Appeal
20 with the Public Auditor, *In the Appeal of Teleguam Holdings, LLC*, OPA-PA-18-004.
21 GTA appeals GSA's July 11, 2018 decision denying GTA's Protest.

22 34. Proceedings were held before the Public Auditor. At the Pre-Hearing Conference on
23 October 30, 2018, the parties agreed that a hearing was unnecessary and that the parties
24 would rely solely on the record and their respective briefs.

25 C. FINDINGS OF FACT

- 26 1. GTA was a bidder in IFB GSA 064-11.
- 27 2. Pursuant to the May 3, 2012 Revised Bid Status, GSA proposed to award GTA Bid Forms
28 8, 8A, 10, 12, 15. The other parts of the IFB that GSA proposed to award, were proposed
to be awarded to bidders other than GTA.
3. GTA's original Protest, filed on May 11, 2012, applied only to IFB Part E, Bid Form 11,
and to no other parts of the IFB. GTA filed a formal Protest with the Chief Procurement
Officer entitled "Protest of Award of Bid GSA-064-11, Bid Form 11 GovGuam Wide Area

1 Network, to Pacific Data Systems and Rejection of Bid Form 11 by TeleGuam Holdings,
2 LLC. The Protest did not challenge any other IFB Parts or Revised Bid Status proposed
3 awards.

- 4 4. GSA's Protest denial, issued on October 19, 2012, applied only to IFB Part E, Bid Form
5 11, and to no other parts of the IFB. GSA denied GTA's Protest. GSA's Protest Denial was
6 regarding Part E, Bid Form 11.
- 7 5. GTA's procurement appeal of GSA's Protest denial to Public Auditor, filed on November
8 5, 2012, applied only to IFB Part E, Bid Form 11, and to no other parts of the IFB.
9 Throughout GTA's Procurement Appeal filing and in the relief it therein requested, GTA
10 stated that the appeal pertained to Bid Form 11. For example, it stated, "[GTA] hereby
11 appeal[s] a decision rendered by the General Services Agency of the government of
12 Guam...on October 19, 2012, denying GTA's protest of the Bid Status Intent to Award
13 Bid Form 11, a part of GSA 064-11., to Pacific Data Systems..." [GTA Procurement
14 Appeal, page 1]. The appeal stated, "This appeal pertains to IFB GSA 064-11 Bid Form
15 11." [GTA Procurement Appeal, page 2]. GTA's Procurement Appeal sought rulings from
16 the Public Auditor rescinding GSA's Revised Bid Status award of Bid Form 11 to PDS or
17 alternatively awarding Bid Form 11 to GTA. [GTA Procurement Appeal, page 8].
- 18 6. GTA's appeal of the Public Auditor's Consolidated Decisions, specifically regarding
19 OPA-PA-012-18, filed by Verified Complaint on March 20, 2013, in the Superior Court of
20 Guam Civil Case CV334-13, *TeleGuam Holdings LLC and Its Wholly Owned Subsidiaries*
21 *v. Territory of Guam; Department of Administration, General Services Agency; the Office*
22 *of Public Accountability; Pacific Data Systems, Inc.* (The "Civil Action"), applied only to
23 IFB Part E, Bid Form 11. The Verified Complaint requested *inter alia* that the Court vacate
24 Part E of GSA's April 27, 2012 and May 3, 2012 Bid Status, and an award of IFB Part E 1
25 Gbps network to GTA. [Verified Complaint, Prayer ¶¶ 3,4]. The Complaint alleged the
26 following: that the Public Auditor's decision that only one contract should be awarded for
27 IFB GSA 064-11 Part E is arbitrary, capricious, clearly erroneous, or contrary to law; that
28 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, Bid form II. GTA's Verified Complaint in the Civil Action appealed only the Public
Auditor's Consolidated Decision regarding OPA-PA-12-018, Part E of the IFB, not the
IFB in its entirety nor any other part of the IFB.

- 1 7. The IFB procurement record was materially incomplete. Both the Superior Court and the
2 Supreme Court of Guam held that the IFB procurement record is materially incomplete.
- 3 8. The Superior Court held that the IFB procurement record is materially incomplete. On
4 August 18, 2016, the Court issued a Decision and Order granting GTA’s cross-motion for
5 summary judgment. The Court ruled that, because the procurement record for IFB GSA
6 064-11 was incomplete, the solicitation and proposed award based on this record are in
7 violation of the Procurement Law. [Decision and Order, 7:17-19]. The Court ordered the
8 entirety of IFB GSA 064-11 be canceled. [Decision and Order, 9:4-7].
- 9 9. The Supreme Court held that the IFB procurement record is materially incomplete. On May
10 5, 2018, the Supreme Court issued its Opinion in *Teleguam Holdings, LLC v. Territory of*
11 *Guam et al.*, 2018 Guam 5. In it, the Supreme Court ruled *inter alia* that the IFB
12 procurement record is materially incomplete: “GTA established that the Procurement
13 Record was Materially Incomplete” *Id.* at ¶ 34; “In the absence of a complete record, GTA
14 is entitled to challenge the award” *Id.* at ¶38; ‘GTA has satisfied the “materiality” standard’
15 *Id.* at ¶ 39; “The trial judge properly observed that the law requires a complete procurement
16 record...When faced with this materially incomplete procurement record, the trial judge
17 acted within the law when he canceled Part E.” *Id.* at ¶ 41; “Since GTA showed the
18 procurement record was materially incomplete and the trial judge has the authority to
19 cancel an award where the procurement record is incomplete, Part E was not improperly
20 canceled.” *Id.* at ¶ 42.
- 21 10. The Supreme Court ruled that the Superior Court’s subject matter jurisdiction was properly
22 invoked only over Part E of the IFB. The Supreme Court found that the Superior Court’s
23 jurisdiction over Parts A-D and Parts F-J were not invoked by GTA within 14 days of the
24 Public Auditor’s decision and that the Superior Court lacked authority to exercise that
25 jurisdiction. The Public Auditor’s decision became final over the other Parts when GTA
26 did not timely commence an action in the Superior Court. Finding no basis for the Superior
27 Court’s exercise of jurisdiction over Parts A-D and Parts F-J of the IFB, the Supreme Court
28 reversed the portions of the Superior Court’s Decision and Order and Judgment canceling
those parts. *Id.* at ¶¶ 19-22.
11. At the time of its May 11, 2012 Protest, its November 5, 2012 procurement appeal in OPA-
PA-12-018, and in its Civil Action in CV0334-13, GTA challenged IFB Part E, Bid Form

1 11, and failed to invoke the Superior Court’s jurisdiction over IFB Parts A-D and Parts F-
2 J.

3 12. However, when GSA issued on the June 28, 2018 Revised Bid Status, GTA filed a Protest
4 of the revised proposed awards. The Revised Bid Status differed from the May 3, 2012
5 Revised Bid Status in a number of areas. In identifying the Bid statuses for Bid Forms 0-
6 15 it now noted that Part E Bid Form 11 was canceled and that a new bid would be
7 scheduled at a later time; it rejected multiple previously proposed awards to GTA due to
8 GTA’s inability to adhere to original bid prices or other requirements, including for Bid
9 Forms 8, 8A, 12, 14, and 15; and, it stated that a new bid will be scheduled at a later time
10 for Bid Form 12.

11 13. The June 28, 2018 Revised Bid Status proposed procurement awards are based on a
12 materially incomplete IFB procurement record.

13 14. GTA’s July 9, 2018 Protest of the June 28, 2018 Revised Bid Status was timely.

14 D. CONCLUSIONS OF LAW

15 (1) The IFB Procurement Record Is Materially Incomplete.

16 The IFB procurement record is materially incomplete. Both the Superior and Supreme
17 Court of Guam determined that the IFB procurement record is materially incomplete. These
18 determinations are binding on the Public Auditor. On August 18, 2016, the Court issued a Decision
19 and Order granting GTA’s cross-motion for summary judgment. The Court ruled that, because the
20 procurement record for IFB GSA 064-11 was incomplete, the solicitation and proposed award
21 based on this record are in violation of the Procurement Law. [Decision and Order, 7:17-19]. The
22 Court ordered the entirety of IFB GSA 064-11 be canceled. [Decision and Order, 9:4-7].

23 On May 14, 2018, the Supreme Court issued its Opinion in *Teleguam Holdings, LLC v.*
24 *Territory of Guam et al.*, 2018 Guam 5. In it, the Supreme Court ruled *inter alia* that the IFB
25 procurement record is materially incomplete: “GTA established that the Procurement Record was
26 Materially Incomplete” *Id.* at ¶ 34; “In the absence of a complete record, GTA is entitled to
27 challenge the award” *Id.* at ¶38; ‘GTA has satisfied the “materiality” standard’ *Id.* at ¶ 39; “The

1 trial judge properly observed that the law requires a complete procurement record...When faced
2 with this materially incomplete procurement record, the trial judge acted within the law when he
3 canceled Part E.” *Id.* at ¶ 41; “Since GTA showed the procurement record was materially
4 incomplete and the trial judge has the authority to cancel an award when the procurement record
5 is incomplete, Part E was not improperly cancelled.” *Id.* at ¶ 42.

7 Guam law specifies that “[e]ach procurement officer shall maintain a complete record of
8 each procurement.” 5 G.C.A. § 5249 (2005). The statute further identifies the specific records that
9 must be kept. *Id.* at § 5249(a)-(e). The statutes also require a complete record and dictate that “[n]o
10 procurement award shall be made...” without one. *Id.* at § 5250. GSA failed to comply with Guam
11 procurement law in its failure to maintain a materially complete IFB procurement record.

12
13 (2) GTA’s Protest Was Timely.

14 GTA’s Protest was timely.² On June 28, 2018, GSA issued a Revised Bid Status. The
15 Revised Bid Status differed from the May 3, 2012 Revised Bid Status in a number of areas. In
16 identifying the Bid statuses for Bid Forms 0-15, it now noted that Part E Bid Form 11 was canceled
17 and that a new bid would be scheduled at a later time; it rejected multiple previously proposed
18 awards to GTA due to GTA’s inability to adhere to original bid prices or other requirements,
19 including for Bid Forms 8, 8A, 12, 14, and 15; it stated that a new bid will be scheduled at a later
20 time for Bid Form 12; and it proposed to award multiple parts of the IFB to bidders other than
21 GTA. On July 9, 2018, GTA submitted a written Protest of the Revised Bid Status proposed actions
22 and awards. GTA asserted that its Protest of the June 28, 2018 Revised Bid Status was timely and
23
24
25

26 ² Although in its Opinion in *Teleguam Holdings, LLC v. Territory of Guam et al.*, 2018 Guam 5, the Supreme Court
27 ruled: that the Superior Court’s subject matter jurisdiction was properly invoked only over Part E of the IFB; that the
28 Superior Court’s jurisdiction over Parts A-D and Parts F-J were not invoked by GTA within 14 days of the Public
Auditor’s decision; and that the Superior Court lacked authority to exercise that jurisdiction, GSA’s issuance of the
June 28, 2018 Revised Bid Status triggered GTA’s right to protest the actions proposed therein.

1 that because the procurement record for the IFB was materially incomplete, Guam law prohibited
2 the proposed procurement awards in the Revised Bid Status.

3 Guam Procurement Law provides:

4
5 (a) Right to Protest. Any actual or prospective bidder, offeror, or
6 contractor who may be aggrieved in connection with the method
7 of source selection, solicitation, or award of contract, may
8 protest to the Chief Procurement Officer, the Director of Public
9 Works or the head of the purchasing agency. The protest shall
10 be submitted in writing within fourteen (14) days after such
11 aggrieved person knows or should have known of the facts
12 giving rise thereto.

13 5 G.C.A. § 5425(a).

14 An aggrieved party is “[a] party entitled to a remedy.” *Teleguam Holdings, LLC v. Territory*
15 *of Guam et al.*, 2018 Guam 5, ¶ 37. The June 28, 2018 Revised Bid Status proposing revised
16 awards and actions triggered GTA’s status as an “aggrieved party”. GTA was a bidder on the IFB.
17 The Revised Bid Status affected GTA’s bids. The Supreme Court held, “[i]n the absence of a
18 complete record, GTA is entitled to challenge the award.” *Id.* at ¶ 38. GTA filed its Protest on July
19 9, 2018. This was within fourteen days of the June 28, 2018 Revised Bid Status. Because GSA
20 issued a June 28, 2018 Revised Bid Status which revised the proposed awards and actions of the
21 original May 3, 2012 Revised Bid Status, GTA had new grounds upon which to submit a Protest.³
22 Having filed a timely Protest with GSA, and GSA having denied GTA’s Protest, GTA invoked the
23 Public Auditor’s jurisdiction by timely filing the instant procurement appeal. The Public Auditor
24 is now presented with GSA’s proposed revised awards and actions on a procurement record that
25 both the Superior Court and the Supreme Court have held is materially incomplete.

26
27 (3) The Revised Bid Status Proposed Awards and Actions Are in Violation of Law and Must
28 Be Cancelled.

³ Had GSA simply issued a notice canceling IFB Part E, Bid Form 11, or left the May 3, 2012 Revised Bid Status undisturbed, the IFB awards for Parts A-D and F-J would have been final.

