

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915

Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

Anthony C. Blaz
Deputy Director

September 6, 2012

Memorandum

To: Office of Public Accountability

From: General Services Agency
Acting Chief Procurement Officer

Subject: Certification of Record for OPA-PA-012-12

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT DIVISION
SEP 06 2012
2:35pm
MH
12-12

Pursuant to your memorandum of September 4, 2012, in which you requested that General Services Agency certify that the procurement record that submitted for GSA-064-11 is complete in its entirety and will be the same procurement record for OPA-PA-012-12.

I, Robert H. Kono, Acting Chief Procurement Officer at General Services Agency do hereby certify that the record submitted in OPA-PA-012-11 (GSA 064-11) is the same without any further record for this appeal, but for the following documents:

General Services Agency email copy dated May 25, 2012 ref OPA Notice of Receipt of Appeal

Entry of Appearance and Request for Notice filed by Carlsmith Ball, LLP, filed May 29, 2012 (Attachment #1)

Teleguam Holdings, LLC's Comments filed June 11, 2012 (Attachment #2)

Office of Public Accountability letter requesting for a Conflicts Check – Information Request filed June 12, 2012 (Attachment #3)

Pacific Data Systems Comments on Agency Report filed June 12, 2012 (Attachment #4)

General Services Agency Conflicts Check – Information Request on June 12, 2012 (Attachment #5)

Office of the Attorney General Rebuttal to Appellant's Comments on Agency Report filed on June 15, 2012 (Attachment #6)

Office of the Attorney General Request for Disqualification filed on July 6, 2012 (Attachment #7)

Carlsmith Ball LLP, Teleguam Holdings LLC's Motion to Dismiss; Memorandum of Points and Authorities filed on July 12, 2012 (Attachment #8)

Carlsmith Ball LLP, Teleguam Holdings LLC's Request for Production of Documents filed July 17, 2012 (Attachment #9)

Carlsmith Ball LLP, Teleguam Holdings LLC's Reply Memorandum in Support of its Motion to Dismiss filed August 21, 2012 (Attachment #10)

Carlsmith Ball LLP, Teleguam Holdings LLC's Request for Clarification Re Hearing; Witness and Exhibit Lists filed August 29, 2012 (Attachment #11)

Office of Public Accountability letter Re Notice of Receipt of Appeal – OPA-PA-12-012 on August 30, 2012 (Attachment #12)

General Services Agency letter Ref Procurement Record for OPA 012-12 on August 31, 2012 (Attachment #13)

Office of Public Accountability letter Ref Procurement Record for OPA-PA-12-012 on September 4, 2012 (Attachment #14)

Office of Public Accountability on Decision on OPA-PA-12-011 dated September 5, 2012 (Attachment #15)

Should you have any questions please do not hesitate to call my attention at 475-1720.

Sincerely,

A handwritten signature in black ink that reads "Robert H. Kono". The signature is written in a cursive, slightly slanted style.

Robert H. Kono

OPA Notice of Receipt of Appeal - OPA-PA-12-011 PDS vs GSA

Marie Villanueva <marie.villanueva@gsa.guam.gov>

Fri, May 25, 2012 at 5:17 PM

To: Claudia Acfalle <Claudia.acfalle@gsa.guam.gov>, Marie Villanueva <marie.villanueva@gsa.guam.gov>, rmarquez@guamopa.org

Ref OPA Notice of Receipt of Appeal – OPA-PA-12-011

Chief,

I spoke with Rodalyn Marquez of OPA and questioned if another thumb drive and cd is required for the Agency Report. She had mentioned that they did not have time to review the CD or Thumb drive received with the Procurement Record file received yesterday, but if its contents are not of the actual protested appeal, and we feel it would not assist our plight to re-submit again, then another set would not be required for the submittal of our Agency Report.

Regards,

Marie Villanueva

Marie N. Villanueva
General Services Agency
Department of Administration
148 Route 1 Marine Drive
Piti, Guam 96915
Tel: (671) 475-1713 Fax: (671) 475-1727

This email transmission and accompanying attachment(s) may contain confidential or privileged information. If you are not the intended recipient of this email, please inform the sender and delete it and any other electronic or hard copies immediately. Please do not distribute or disclose the contents to anyone. Thank you.

CARLSMITH BALL LLP

ELYZE M. IRIARTE
eiriarte@carlsmith.com
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagåtña, Guam 96932-5027
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

FILED 2012-4489
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
MAY 29 2012
10:55 AM
FILED 12-011

Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

RECEIVED
2012 MAY 29 AM 11:31
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

IN THE PETITION OF
PACIFIC DATA SYSTEMS, INC.,
Appellant.

Docket No. OPA-PA-12-011
ENTRY OF APPEARANCE AND
REQUEST FOR NOTICE

Carlsmith Ball LLP, by and through Elyze M. Iriarte, Esq., hereby enters its appearance on behalf of Teleguam Holdings, LLC and its wholly owned subsidiaries (referred to as "GTA"), as an Interested Party in the above Appeal. GTA asks that, pursuant to 2 GAR Div. 4 § 12106, its counsel be advised of any information that bears on the substance of the appeal, be served with all papers and pleadings filed hereafter in this matter, and be given notice of any and all proceedings or hearings herein.

DATED: Hagåtña, Guam, May 29, 2012.

CARLSMITH BALL LLP

Elyze Iriarte
ELYZE M. IRIARTE
Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

COPY

Attachment #2
CARLSMITH BALL LLP

ELYZE M. IRIARTE
eiriarte@carlsmith.com
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagåtña, Guam 96932-5027
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

1317 JUN 11 PM 2:43

RECEIVED

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT SERVICES
JUN 11 2012
2:20 pm
R. Field
FILE # OPA-12-011

Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

IN THE PETITION OF
PACIFIC DATA SYSTEMS, INC.,
Appellant.

Docket No. OPA-PA-12-011

**TELEGUAM HOLDINGS, LLC'S
COMMENTS**

Teleguam Holdings, LLC, and its wholly owned subsidiaries ("GTA"), support General Services Agency's position as stated in its Agency Report. GTA was not required to submit a local preference application, under Guam law, regulations, or in the language of GSA-064-11. Moreover, GTA qualifies for the local business preference under 5 G.C.A. § 5008, meaning that PDS did not merit any local preference advantage over GTA. PDS' protest appeal must be dismissed.

I. BACKGROUND

A. BID SPECIFICATIONS FOR BID FORM 10

PDS' protest concerns only the award for Bid Form 10 of GSA-064-11, and specifically the issue of whether GSA should have applied the local procurement preference to PDS' bid, and not to GTA's bid.

Bid Form 10 solicited Integrated Services Digital Networking PRI Interface ("ISDN PRI"), Integrated Services Digital Networking - Basic Rate Interface ("ISDN BRI"), SIP Trunks, and a Direct Inward Dialing ("DID") Number Block of 25 numbers. See Agency Rep., Tab 6. GSA awarded Bid Form 10 in its entirety to GTA. The following compares GTA's and PDS' offered rates for 60 months of service plus installation:

	GTA	PDS
1. ISDN PRI	\$457,239.60	\$397,332.00
2. ISDN BRI	\$19,022.40	\$19,800.00
3. SIP Trunks	\$298,080.00	\$428,241.60
4. DID Number Block of 25 Numbers	\$4,500.00	\$9,000.00
TOTAL	\$778,842.00	\$854,373.60

See Agency Rep., Tab 11.

B. GENERAL IFB LANGUAGE REGARDING LOCAL PREFERENCE

The General Terms and Conditions of the IFB indicated that "All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations." Agency Rep., Tab 6 at 19. Other than that language, the IFB made no mention of any requirements for any bidder to submit information specifically addressing the local procurement preference, or certifying the bidder's qualifications.

II. GTA WAS NOT REQUIRED BY GUAM LAW TO SUBMIT A LOCAL PREFERENCE APPLICATION

The local preference law derives from section 5008 of Title 5 of the Guam Code.

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

(a) a licensed bonafide manufacturing business that adds at least twenty-five percent of the value of an item, not to include administrative overhead, using workers who are U.S. citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands;

(b) a business that regularly carries an inventory for regular or immediate sale of at least fifty percent (50%) of the items or supplies to be procured; or

(c) a business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000) which ever is less, of supplies and items of a similar nature to those being sought; or

(d) a service business actually in business, doing a substantial portion of its business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference.

Guam's Procurement Regulations reiterate section 5008's requirements. *See* 2 GAR Div. 4 § 1104. Section 5008 also makes no mention of a requirement that a bidder fill out a certification form similar to what PDS submitted. Accordingly, while section 5008 outlines how a business qualifies for the local preference, it does not require bidders to submit any documentation. GSA

correctly explains this in its Agency Report. *See* Agency Rep., Tab 1.

On this basis, PDS incorrectly asks the OPA for a ruling that GTA was required under section 5008, or the IFB, to submit a local preference application. Certainly, the Department of Education form submitted by PDS was not required for this GSA solicitation, and has no significance in proving that PDS, over other bidders, satisfies the local business definition. Furthermore, as PDS' form constitutes only a facial verification, without substantiating facts or evidence, the form should be disregarded. It is not evidence in any way that PDS itself is a local business qualifying under section 5008. It is simply improper to accept PDS' facial verification on an unrelated form.

On the basis that the local procurement preference application was not required by Guam law or regulation, GTA cannot be disqualified from GSA-064-11 solely on the basis of not submitting such an application. Moreover, the OPA should disregard PDS' submittal on the basis that it was irrelevant to the bid and carries no substantive weight.

III. GTA MEETS THE REQUIREMENTS OF A LOCAL BUSINESS

As GSA points out in its Agency Report, GSA is familiar with all the bidders being local companies, and did not need to formulate whether any one local bidder's offered price was no less than 15% more than an off-island bidder. *See* Agency Rep., Tab 1. GSA's familiarity with GTA stems from GTA's submittals and GSA's existing contractual relationships with GTA to provide telecommunications services to the Government of Guam.

In fact, GTA is well-known in the community as a local company. As part of its bid, GTA furnished business licenses issued by the Department of Revenue and Taxation. *See* Agency Rep., Tab 5. GTA also listed its address as 624 North Marine Corps Drive, Tamuning, Guam, which is the same address used for its FCC filings and business licenses. *See* Agency Rep., Tab 5. This address is known as GTA's headquarters for its entire operation. These two

factors - a Guam business license and a local address - qualified GTA as a local business, and satisfied section 5008's requirement that the "procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam."¹

Bid Form 10 in particular required that the supplies be delivered within 21 days of receipt of an order. *See* Agency Rep., Tab 6, p. 47. This implies that the bidder have on-island the necessary equipment to activate the ISDN PRI, ISDN BRI, SIP Trunks, and DID numbers, as procuring such equipment from off-island would be time-consuming. By bidding on Bid Form 10, GTA guaranteed that it had such equipment readily available, thereby meeting, at the least, section 5008(b)'s requirement of "regularly carr[ying] an inventory for regular or immediate sale of at least fifty percent (50%) of the items or supplies to be procured."

PDS believes that GSA should have applied a 15% advantage to its bid for Bid Form 10, which would have placed its bid price below GTA's. The preference actually works in this way: a local business licensed to do business on Guam that maintains an office on Guam, and meets one of the criteria under 5 G.C.A. § 5008(a) through (d), must be given a preference if its price is no more than 15% over an off-island bidder.² 5 G.C.A. § 5008. As explained above, GTA maintains an office on Guam and holds a local business license. GTA also carried an inventory of the supplies to be procured for regular or immediate sale, as required by the solicitation itself. *See* 5 G.C.A. § 5008(b). Moreover, if it was required by GSA to demonstrate, GTA would have proven and can establish that it has a bonafide retail business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid, of supplies and items of

¹ GTA also furnished its Certificate of Authority issued by the Guam Public Utilities Commission. Its wholly owned subsidiary, GTA Telecom, LLC, is the incumbent local exchange carrier for the island. Without a doubt, GTA qualifies as a local business, beyond just holding Guam business licenses and having a Guam location.

a similar nature to those being sought; and, of its over 350 employees, GTA hires at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work.³ See 5 G.C.A. § 5008(c) and (d). As GTA meets the criteria under section 5008 for a local business, PDS did not deserve a local procurement advantage over GTA.

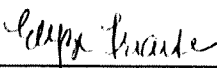
IV. CONCLUSION

Guam law did not require GTA to submit a local procurement preference application, or to use the DOE form submitted by PDS. Moreover, GSA did not need a local business verification from GTA because GSA was familiar with GTA as licensed on Guam, located on Guam, operating as the ILEC, operating extensively throughout the island, and having the necessary supplies to immediately and regularly complete the order.

For these reasons, GSA did not err in treating all bidders equally.

DATED: Hagåtña, Guam, June 10, 2012.

CARLSMITH BALL LLP



ELYZE M. IRIARTE
Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly
owned subsidiaries

² That is, a bidder that is not a local business and does not satisfy 5 G.C.A. § 5008(a), (b), (c), or (d).

³ If necessary, GTA will present evidence supporting its qualifications under 5 G.C.A. § 5008(b) through (d) at the hearing in this matter.

Attachment #3



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

F42012-462

June 12, 2012

Appellee: **General Services Agency**
Ms. Claudia Acfalle
Chief Procurement Officer
General Services Agency
P.O. Box 884
Hagatna, Guam 96932
Tel: 475-1707
Fax: 475-1727

Reference: Procurement Appeals File No. OPA-PA-12-011
Subject: Conflicts Check – Information Request

GOVERNMENT OF GUAM
2012 JUN 12 AM 10:30
RECEIVED

Dear Ms. Acfalle,

Relative to the above-referenced procurement appeal filed with the Office of Public Accountability on May 17, 2012, please provide the full legal names of the following General Services Agency (GSA) officials (if applicable):

- Legal Counsel
- Procurement Officer
- Board of Directors
- All GSA officials relative to this appeal
- Any other procurement officials relative to this appeal

Our office requires the information to complete conflict of interest research. A similar request was sent to the Pacific Data Systems and Teleguam Holdings, LLP. Should you have any questions, please contact me at 475-0390 ext. 204 or at email address rmarquez@guamopa.org.

Thank you for your prompt attention to our request.

Sincerely,

Rodalyn Marquez, CIA, CGFM, CPA, CGAP
Audit Supervisor



COPY

June 11, 2012

Fy2012-463
VIA EMAIL

Mrs. Doris Flores-Brooks
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

2012 JUN 12 AM 11:04
RECEIVED
Jm

5011 OF GUAM

Re: Procurement Appeal OPA-PA-12-011, PDS Comments on Agency Report

Dear Mrs. Flores-Brooks:

This letter represents comments on the GSA Agency Report and Procurement Record by Appellate, Pacific Data Systems, in the above referenced Procurement Appeal. PDS makes the following comments:

1. As noted by GSA in point (e) of the Agency Report, tab 11 of the Procurement Record documents the bid evaluation performed by GSA as evidenced by two memos written by Anita Cruz on April 17, 2012 and May 3, 2012 to the Acting Chief Procurement Officer. A review of these memos and the other documents contained in the Agency Report do not provide evidence of any evaluation undertaken by GSA to determine if the bidders participating in the Bid have qualified for Local Procurement Preference. If GSA has documentation supporting this evaluation and determination it should have provided this information with the Agency Report or Procurement Record and should be compelled to do so.
2. In point (g) of the GSA Agency Report, GSA acknowledges that GSA has developed a Local Procurement Preference Application form for the purpose of qualifying bidders for this preference in accordance with 5 GCA Section 5008. GSA has not provided a copy of this form with its Agency Report and should be instructed to do so as this is a material document to the issues before the OPA in this appeal.
3. In point (g) of the GSA Agency Report, GSA makes the assumption that all bidders in this procurement, GSA-064-11, qualify for the local procurement preference criteria thus applying any preference would be mute and have no effect on the outcome of the bid evaluation. PDS believes this is a false assumption for GSA to make and the reason that the Local Procurement Preference Application was developed by GSA to implement 5



GCA Section 5008. There is no evidence provided in the Agency Report or Procurement Record that any bidder, other than PDS, made an application for the Section 5008 Local Procurement Preference. If other bidders did make an application for this procurement preference then GSA should produce these documents.

5 GCA Section 5008 is specific in its definition of requirements and criteria that should apply to any bidder seeking this preference. Which of the required Section 5008 criteria a Bidder qualifies for is not information that is available to GSA or the general public. This must be one of the reasons why GSA developed the Local Procurement Preference Application form. The Application form requires a bidder to state which criteria the Bidder qualifies for and requires the Bidder to make an affirmative statement requesting the local procurement preference. GSA's position that a Bidder need not submit a Local Procurement Preference Application form at the time of bidding to qualify for this preference is a false assumption and contradictory to GSA's past practices in the implementation of this section of the Guam Procurement Act.

4. In point (g) of the GSA Agency Report, GSA makes the assumption that all bidders in this procurement, GSA-064-11, would qualify for and choose to receive the local procurement preference. In making its evaluation and award, GSA ignored the local procurement preference entirely. This evaluation was in contradiction to the General Terms and Conditions of this Procurement which stated that this procurement preference would be applicable to this bid.
5. In point (g) of the GSA Agency Report, GSA decided the Section 5008 Local Procurement Preference would be extended to all bidders, effectively eliminating the effect of the preference. It should be noted here again, that PDS has found no evidence of how GSA made this determination in the Agency Report or Procurement Record or how GSA qualified these bidders for eligibility. Once more this is a false assumption on GSA's part, as the attached Exhibit A shows, in a recent procurement at GDOE, Teleguam Holdings LLC (GTA) requested that the local procurement preference **NOT** (emphasis added) be applied to its bid submission. This exhibit provides evidence that GSA cannot make assumptions without specific facts and documentation from Bidders to backup qualification for and the local procurement preference. Once again it is clear that the Local Procurement Preference Application provides a critical function to establish bidder qualifications for the preference and a statement, affirmative or negative, of the Bidders desire to be considered for the preference.



6. In point (g) of the GSA Agency Report, GSA alleges that the Local Procurement Preference Application used by PDS is a DOE form, this is false. The Application submitted by PDS fully complies with the language of 5 GCA Section 5008 related to the requirements for a Bidder to take advantage of this local procurement preference.
7. In point (i) of the GSA Agency Report, GSA alleges that there may be some linkage between pending litigation that PDS and John Day are involved with and the subject appeal. PDS believes these are separate matters and there is no linkage whatsoever to the current appeal.

These comments provide further evidence of the deficiency by GSA in the award of Bid Form 10 to GTA in this procurement and the need for the OPA to issue a ruling requiring GSA to re-evaluate the award of Bid Form 10 by properly applying the applicable 5 GCA Section 5008 Local Procurement Preference.

Appellant, PDS, requests that the OPA conduct a hearing on this Procurement Appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Day', is written over the word 'Sincerely,'.

John Day
President

Exhibit A: Copy of GTA Local Procurement Preference Application in GDOE IFB-020-2011



Exhibit A:
Copy of GTA Local Procurement Preference Application in GDOE IFB-020-2011



INVITATION FOR BID

ISSUING OFFICE
OFFICE OF SUPPLY MANAGEMENT
DEPARTMENT OF EDUCATION
P.O. BOX DE
HAGATNA, GUAM 96932
Tel: 300-1580/1581 Fax: 472-5001

MARCUS Y. PIDO
Supply Management Administrator

DATE ISSUED: Tuesday, February 16, 2011
BID INVITATION NO: GDOE IFB 020-2011
BID FOR: GDOE E-RATE NETWORK (GENET) 2011

SPECIFICATION: See Attached Specifications

DESTINATION: GUAM DEPARTMENT OF EDUCATION

REQUIRED DELIVERY DATE: SEE INDIVIDUAL SCOPES OF WORK FOR REQUIRED DELIVERY DATE

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: Delaware

This bid shall be submitted in duplicate and sealed to the Office of Supply Management, P.O. Box DE, Hagatna, Guam 96932 no later than **2:00 p.m., Thursday, March 17, 2011** and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within **180** calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:
Teleguam Holdings, LLC
624 N Marine Corps Drive
Tamuning, Guam 96913

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:

John J. Kim, Vice President, Controller

AWARD: CONTRACT NO.:	AMOUNT:	DATE:
ITEM NO(S) AWARDED:		
CONTRACTING OFFICER:		
MARCUS Y. PIDO Supply Management Administrator		
NAME AND ADDRESS OF CONTRACTOR:	SIGNATURE AND TITLE OF PERSON AUTHORIZED TO SIGN THIS CONTRACT:	
_____	_____	
_____	_____	

THIS DOCUMENT MUST BE COMPLETED AND RETURNED WITH THE FORMAL BID DOCUMENTS

DEPARTMENT OF EDUCATION
GOVERNMENT OF GUAM



**LOCAL PROCUREMENT PREFERENCE
APPLICATION**

Based on the law stipulated below, please place a check or mark an "x" on the (1-4) block indicating the section that applies to your business:

5GCA, Chapter 5, Section 5008 titled "Policy in Favor of Local Procurement" of the Guam Procurement Law and the Department of Education Procurement Regulations Section 1.7 States:

"All procurement of supplies and services shall be made from among business licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- 1. A licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands;
- 2. A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured;
- 3. A business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars (\$150,000), whichever is less, of supplies and items of a similar nature to those being sought; or
- 4. A service business actually in business, doing a substantial portion of its business on Guam, and hiring at least ninety-five percent (95%) U.S. Citizens lawfully admitted permanent residents or nationals of the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off-Guam may be made if no local agent for such supplies or services may be found on Guam or if the total cost F.O.B. job-site, unloaded, of procurement from off-island is not greater than eighty-five percent (85%) of the total cost F.O.B. job-site, unloaded, of the same supplies or services when procured from a local source. Justification for off-island procurement must be submitted in writing to the Superintendent of Education or his designee.

1. I, _____, representative for _____, have read the requirements of the law cited above and do hereby qualify and elect to be given the Local Procurement Preference for Bid No. _____. By filing in this information and placing my signature below, I understand that Department of Education will review my application and shall determine whether or not the fifteen percent (15%) preference will be applied to the referenced bid.

2. I, JOHN J. KIM, representative for TELEGUAM HOLDINGS, LLC, have read the requirements of the law cited above and do not wish to apply for the Local Procurement Preference for Bid No. GDOE ERATE NETWORK IFB 020-2011.

Name: JOHN J. KIM
Address: 624 N MARINE CORPS DRIVE
TAMUNING, GUAM 96913

Title: VICE PRESIDENT, CONTROLLER
Telephone No: 671.644.1654
Fax No: 671.644.0106
E-Mail: jkim@gta.net

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

Attachment #5

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Anthony C. Blaz
Deputy Director

June 12, 2012

Memorandum

To: Office of Public Accountability
From: Chief Procurement Officer
Subject: Conflicts Check – Information Request for OPA-PA-012-011

In response to your memorandum dated June 12, 2012, here is the following answer:


Legal Counsel ----- Assistant Attorney General Fred Nishihira
Office of the Attorney General

Procurement Office -- Ms. Anita Cruz, Buyer Supervisor
General Services Agency

Board of Director --- None

All GSA officials relative to this appeal ---Mr. Pete San Nicolas, Buyer II,
Mr. Robert H. Kono, GSA Advisor

Any other procurement officials relative to this appeal--- None


ANITA CRUZ
Buyer Supervisor

GSA COPY
ACKNOWLEDGEMENT COPY
RECEIVED BY OPA MICHELE
DATE 12 June 12

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
June 12 2012
3:25 PM
FILE NO OPA-PA-12-011

Carlsmith Ball LLP

ACKNOWLEDGEMENT COPY

RECEIVE BY RJ Broudo

DATE 6/12/12

AG's

ACKNOWLEDGEMENT COPY

RECEIVE BY Charlene Cruz

DATE 6/12/12

PDS

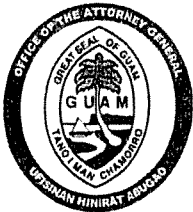
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DATE 6-12-12

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Office of the Attorney General of Guam
Civil/Solicitor Division



Attachment #6

Office of the Attorney General
Leonardo M. Rapadas
Attorney General of Guam
Civil Division
287 West O'Brien Drive
Hagåtña, Guam 96910 • USA
(671) 475-3324 • (671) 472-2493 (Fax)
www.guamattorneygeneral.com

Attorneys for the General Services Agency

Pacific Data Systems
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TIME: 2:17
REP: [Signature]

Ky2012-874

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
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R. BILAND

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEAL

IN THE APPEAL OF

PACIFIC DATA SYSTEMS, INC.

Appellant.

DOCKET NO. OPA-PA-12-011

REBUTTAL TO
APPELLANT'S COMMENTS ON
AGENCY REPORT

2012 JUN 15 09:44:04
GOVERNMENT OF GUAM

Pursuant to 2 GAR § 12194(c)(4) the General Service's Agency submits the following rebuttal to PDS' Comments on Agency Report filed on June 11, 2012.

Local Procurement Applicable

The Government of Guam is mandated to apply the policy in favor of local procurement. 5 GCA § 5008 states:

“All procurement of supplies and ad services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:...” (Emphasis added)

5 GCA § 5008 does not give discretion to GSA to pick and choose to whom the policy of local procurement applies. In other words 5 GCA § 5008 applies to all vendors that meet the criteria. GTA meets the requirements 5 GCA § 5008.

COPY


CV0647-11 Currently before Judge Lamorena

On April 8, 2011 PDS filed CV0647-11 this case remains open at the Superior Court of Guam. Attached is a copy of the Complaint. GSA disputes PDS's assertion that these are separate matters and unrelated matters. The heart of both CV0647-11 and IFB GSA-064-11 is telecommunication services for the Government of Guam.

Respectfully submitted this 15th day of June 2012.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By:


FRED NISHIHIRA
Assistant Attorney General

1 BERMAN O'CONNOR & MANN
2 Suite 503, Bank of Guam Bldg.
3 111 Chalan Santo Papa
4 Hagåtña, Guam 96910
5 Telephone No.: (671) 477-2778
6 Facsimile No.: (671) 477-4366

7 Attorneys for Plaintiffs:
8 PACIFIC DATA SYSTEMS, INC. and
9 JOHN DAY

10 IN THE SUPERIOR COURT OF GUAM

11 PACIFIC DATA SYSTEMS, INC., and
12 JOHN DAY,

13 Plaintiffs,

14 vs.

15 GOVERNMENT OF GUAM, and
16 CLAUDIA ACFALLE, personally and
17 in her capacity as Chief Procurement
18 Officer for the Government of Guam,

19 Defendants.

20 CIVIL CASE NO. CV 0647-10

21 COMPLAINT

22 The Plaintiffs PACIFIC DATA SYSTEMS, INC. and JOHN DAY for their
23 Complaint state as follows:

24 1. The Plaintiff Pacific Data Systems, Inc. ("PDS") is a
25 telecommunications company which is authorized to do business on Guam, and pays
26 taxes on Guam.

27 2. The Plaintiff John Day is a resident of Guam, President of PDS,
28 and a taxpayer on Guam.

1 The Defendant Government of Guam is the political entity which
2 governs Guam.

3 4. The Defendant Claudia Acfalle is an employee of the Government
4 of Guam, and serves as the Chief Procurement Officer for the Government of Guam.
5 She is sued herein in both her personal and official capacity.

6 H:\Christine\BRM\Day\PDS v GovGuam\Complaint 04082011.doc

7 RECEIVED
8 APR 08 2011
9 7:06pm
10 Office of the Attorney General of Guam
11 Civil/Solicitor Division

1
2 5. This Court has jurisdiction in this matter pursuant to 7 G.C.A.
3 § 3105.

4
5 **FIRST CLAIM FOR RELIEF**

6 6. The Guam Telecommunications Act of 2004 provided for the
7 privatization of Guam Telephone Authority. The purposes of that Act include the
8 creation of a regulatory environment conducive to competition, and to encourage the
9 entry of new providers of telecommunications services in Guam.

10 7. PDS is a Competitive Local Exchange Carrier ("CLEC"). It
11 received a Certificate of Authority by the Guam Public Utilities Commission (GPUC)
12 to engage in telecommunication services on Guam on September 23, 2005.

13 8. After its receipt of its Certificate of Authority, PDS negotiated an
14 Interconnection Agreement with GTA Telecom LLC ("GTA") and filed a tariff for
15 services with the GPUC as required by Guam law. As of July 5, 2008, PDS was
16 authorized to provide local exchange services to customers on Guam, became a
17 competitor to GTA, and was ready and able to provide telecommunications services to
18 the Government of Guam.

19 9. Guam's procurement law, 5 G.C.A. § 5001 et seq., mandates that
20 the Government of Guam including all line agencies procure their telecommunication
21 services through competitive bidding in accordance with Guam's procurement law.

22 10. Commencing in 2008, representatives of PDS had a series of
23 meetings and communications with representatives of the General Services
24 Administration, Government of Guam ("GSA"), including the Defendant Acfalle, to
25 discuss the new deregulated local telecommunications environment, and to request
26 that the Government procure its telecommunication services in accordance with
27 Guam's procurement law.

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provision of telecommunication services to the line agencies of the Government since July 5, 2008, which amount shall be proven at trial;

(4) Award the Plaintiffs reasonable costs and attorneys' fees pursuant to 5 G.C.A. § 7112;

(5) Award pre-judgment interest as provided by law;

(6) Enter such other and further relief as the Court may deem just.

DATED this 8th day of April, 2011.

BERMAN O'CONNOR & MANN
Attorneys for Plaintiffs
PACIFIC DATA SYSTEMS, INC. and
JOHN DAY

By: 
BILL R. MANN



Attachment #7

2012 JUL 9 AM 9:28

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Fy2012-502

Office of the Attorney General
Leonardo M. Rapadas
Attorney General of Guam
Civil Division
287 West O'Brien Drive
Hagåtña, Guam 96910 • USA
(671) 475-3324 • (671) 472-2493 (Fax)
www.guamattorneygeneral.com

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL
M. THURFER
12-011

Attorneys for the Government of Guam

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF:) DOCKET NO. OPA-PA-12-011
)
)
PACIFIC DATA SYSTEMS)
)
)
)
Appellant.) REQUEST FOR DISQUALIFICATION
)
)
)
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)

Pursuant to the Disclosure and Notice of Status Hearing signed by the Hearing Officer and concurred by the Public Auditor on June 29, 2012 the purchasing agency, Guam Services Agency (GSA) hereby files this written objection and request for disqualification of the Lujan Aguigui & Perez LLP (LAP) firm as the Hearing Officer for this matter.

After making full disclosure of LAP's dealings with GTA the fact remains that LAP represented GTA in matters wherein PDS was the opposing party. In an effort to ensure that there exist no appearance of bias, GSA is of the position that LAP be recused in this matter.

COPY

A. Case Law Disqualification Standards

The Hearing Officer for OPA procurement appeals function as a judge¹ and therefore the rules that govern recusals of judges apply. The rule that a decision maker shall be disqualified from a case in which that person is interested or prejudiced is to insure a fair and impartial hearing of the issues involved, and to guarantee that no decision maker shall preside in a case in which she is not wholly free, disinterested and independent. Litinsky v. Querard, 683 P.2d 816, 818 (Colo. Ct. App. 1984) (“The purpose of this [disqualification] rule is to ensure a fair and impartial hearing of the issues involved.”) (citing Wood Bros. Homes, Inc. v. Fort Collins, 670 P.2d 9 (Colo. Ct. App. 1983)); Dacey

¹ 12109. Authority of the Hearing Officer.

The Public Auditor may appoint a Hearing Officer for Procurement Appeals. If no Hearing Officer is appointed or in the event of the Hearing Officer's recusal, the Public Auditor may appoint and contract with another Guam-licensed attorney, who may be an attorney in full time service of the government of Guam, or an attorney in private practice, to act as Hearing Officer for all further proceedings with respect to that matter. The Hearing Officer shall receive written, oral, or otherwise presented testimony, evaluate such testimony and make recommendations to the Public Auditor. No prior determination shall be final or conclusive. The Hearing Officer has the power, among others, to:

- (a) Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;
- (b) Require parties to state their positions with respect to the various issues in the proceeding;
- (c) Require parties to produce for examination those relevant witnesses and documents under their control;
- (d) Rule on motions, and other procedural items on matters pending before such officer;
- (e) Regulate the course of the hearing and conduct of participants therein;
- (f) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (g) Fix time limits for submission of written documents in matters before such officer;
- (h) Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
 - (1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (2) Excluding all testimony of an unresponsive or evasive witness;
 - (3) Expelling any party or person from further participation in the hearing; and
 - (4) Taking official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.
- (i) Compel attendance and testimony of and production of documents by any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission;
- (j) Consider testimony and evidence submitted by any competing bidder, offeror or contractor of the protestant or appellants

page 2

Request for Recusal

In the Appeal of Pacific Data Systems

Office of Public Accountability Docket Nos. OPA-PA-12-002 thru 006 & 009

v. Conn. Bar Ass'n, 441 A.2d 49, 52 (Conn. 1981) (“The objective of the [disqualification] statute is to assure that the person who participates in any judicial proceeding in a judicial capacity is disinterested.”) (citing Groton & Ledyard v. Hurlburt, 22 Conn. 178, 191, 1852 WL 674 (Conn. 1852)).

The statutory grounds for disqualification are founded upon the Canons of Judicial Ethics (Code of Judicial Conduct), but those provisions are not exhaustive. See A.B.A. Model Code of Judicial Conduct, Canon 3 subd. C(1) (“A judge shall diligently discharge the judge’s administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.”); see also 7 G.C.A. § 6103 (“In addition to the requirements of § 6104 and § 6105 of this Chapter, the standards of conduct prescribed by the American Bar Association’s Canon of Judicial Ethics shall apply to and govern the conduct of the Justices of the Supreme Court of Guam and the Judges of the Superior Court of Guam.”).

The situations in which a judicial officer should recuse himself are varied and are not limited arbitrarily to cases of kinship, personal interest in the litigation **or prior representation of a party**; there are areas beyond these where a judge may not sit in judgment. 46 Am. Jur. 2d, Judges § 95; see also Walker v. State, 358 So.2d 800 (Ala. Crim. App. 1978) (“Statutory grounds or rules of court are not exclusive of the common law principles that disqualify a judge.”) (citing Morgan County Comm’n v. Powell, 292 Ala. 300, 293 So.2d 830 (Ala. 1974)). A judicial officer “not only has the right but, moreover, has the obligation to recuse himself on his own motion if he is satisfied that there is good cause for believing that his not doing so might preclude a fair and unbiased

hearing and judgment, or might reasonably lead counsel or the parties to believe so.” State v. Tucker, 625 A.2d 34, 36 (N.J. Super. Ct. App. Div. 1993) (quoting State v. Utsch, 184 N.J. Super. 575, 581, 446 A.2d 1236 (N.J. Super. Ct. App. Div. 1982)) (internal quotations and ellipses omitted), cert. denied, 135 N.J. 468, 640 A.2d 850 (N.J. 1994).

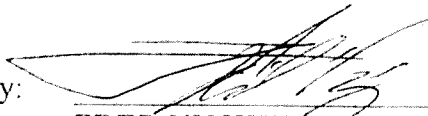
B. The Facts Here Warrant Disqualification under the Statutory and Case Law Standards

Judicial disqualification is required if a reasonable person would question the judge’s impartiality, even though no actual bias or prejudice has been shown. Gray v. Univ. of Ark. at Fayetteville, 883 F.2d 1394, 1397-98 (8th Cir. 1989) (“Because the goal of the [disqualification] statute is to ensure the appearance of impartiality, disqualification is required if a reasonable person who knew the circumstances would question the judge’s impartiality, even though no actual bias or prejudice has been shown.”). Because LAP has represented GTA in 4 matters involving telecommunications and of the four matters two were in opposition to PDS, this creates an appearance of partiality which arguably taints the public’s perception of the legitimacy of these proceedings.

In light of the foregoing, GSA respectfully request that Hearing Officer Delia Lujan Wolff recuse herself from this case. The grounds set forth above constitute sufficient reason to believe that LAP’s impartiality might reasonably be questioned by a third party.

Dated this 6th day of July, 2012.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By: 
FRED NISHIHIRA
Assistant Attorney General

Attachment #8

CARLSMITH BALL LLP

ELYZE M. IRIARTE
eiriarte@carlsmith.com
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagåtña, Guam 96932-5027
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

3PM M. HUFFER
12-011

Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

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2012 JUL 12 PM 4:12
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IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

IN THE PETITION OF
PACIFIC DATA SYSTEMS, INC.,
Appellant.

Docket No. OPA-PA-12-011
**TELEGUAM HOLDINGS, LLC'S
MOTION TO DISMISS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Teleguam Holdings, LLC and its wholly owned subsidiaries ("GTA") move to dismiss this action on the grounds that PDS did not bring a timely protest. GTA waives a hearing on this motion.

DATED: Hagåtña, Guam, 12 July, 2012.

CARLSMITH BALL LLP

Elyze Iriarte
ELYZE M. IRIARTE
Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A bidder must submit a protest within 14 days from when it knows or should know of the

facts giving rise to the protest. In this case, PDS waited about ten months to protest GSA's failure to require bidders to submit a local procurement preference application. Its protest is not timely and must be dismissed.

II. BACKGROUND

GSA issued GSA-064-11 on June 22, 2011.¹ Agency Rep., Tab 6 at 1. In the solicitation, GSA noted that "All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations." Agency Rep., Tab 6 at 19. Other than that language, the IFB made no mention of any requirements for any bidder to submit information specifically addressing the local procurement preference, or certifying the bidder's qualifications. The IFB also did not specify that bidders were to submit a local procurement preference application.

GSA has admitted in this action that in certain solicitations it uses a local procurement preference application form, but did not do so in this case because all bidders qualified for the preference.

On April 30, 2012, PDS protested GSA's failure to apply the local procurement preference. PDS claimed that it was entitled to the preference over GTA because it submitted a DOE local procurement preference application form, and GTA did not. PDS protests the award of Bid Form 10 of GSA-064-11 to GTA.

III. PDS' PROTEST IS UNTIMELY

PDS claims that GSA should have applied the local procurement preference to PDS only, because it and not GTA submitted a local procurement preference application. Whether or not the parties were required to submit a local procurement preference application is therefore

pivotal to the OPA's analysis in this proceeding.

When PDS did not find the Local Procurement Preference Application in the bid package, it then had grounds to protest that GSA could not properly evaluate the bids or apply the local procurement preference. In fact, PDS claims that GSA should have used the Application to implement 5 G.C.A. § 5008. *See* PDS Comments, filed June 12, 2012, at pp. 1-2. PDS also claims that because the Application requires a bidder to select the criteria qualifying it as a local business, GSA erred in not requiring that the bidders fill out an application form.

To be timely, PDS must have submitted its protest in writing within 14 days after it knew or should have known of the facts giving rise thereto. 5 G.C.A. § 5425. The very first instance in which PDS knew or should have known that GSA was not using the Local Procurement Preference Application occurred back when the IFB was first issued - June 22, 2011. At that point, PDS had possession of the facts purportedly supporting its claim that GSA did not utilize its own Local Procurement Preference Application, and then, could not have properly evaluated the bids. Thus, PDS had 14 days from the date the IFB was released to file a timely protest. Its protest dated April 30, 2012, was therefore about ten months late.

The time for PDS to protest did not become renewed after GSA awarded Bid Form 10 to GTA. PDS' complaints over GSA's process of applying and utilizing the local procurement preference begin at the solicitation. At the time of the issuance of the solicitation, PDS knew or should have known that GSA did not intend to utilize the local procurement preference application and then could not have made a proper evaluation of which bidders qualified for the preference. If PDS had submitted a protest back in June or early July 2011, PDS' allegation of a deficiency in the procurement process would have been timely addressed and, if necessary, rectified. Instead, PDS did not protest and sat on its rights to claim that GSA mishandled the

¹ PDS' protest concerns only Bid Form 10 of GSA-064-11.


application of the local procurement preference. PDS' claims arose at the date of solicitation, and not at the date of award.

IV. CONCLUSION

PDS knew or should have known of its claims that GSA did not properly apply the local procurement preference when GSA issued the solicitation and failed to include the local procurement preference application in the bid packet. PDS waited beyond 14 days to protest, thereby making its protest time-barred. The OPA should dismiss this appeal on the basis of untimeliness.

DATED: Hagåtña, Guam, 12 July 2012.

CARLSMITH BALL LLP



ELYZE M. IRIARTE
Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly
owned subsidiaries

CARLSMITH BALL LLP

ELYZE M. IRIARTE
eiriarte@carlsmith.com
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagåtña, Guam 96932-5027
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

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JUL 17 2012
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Comptroller's Division

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

IN THE PETITION OF
PACIFIC DATA SYSTEMS, INC.,
Appellant.

Docket No. OPA-PA-12-011
**TELEGUAM HOLDINGS, LLC'S
REQUEST FOR PRODUCTION OF
DOCUMENTS**

TO: RESPONDENT GENERAL SERVICES AGENCY ("GSA")

Interested Party Teleguam Holdings, LLC and its wholly owned subsidiaries ("GTA") request that GSA produce the following documents to GTA'S undersigned counsel no later than August 7, 2012:

1. All requests for production of documents directed to GSA from Appellant Pacific Data Systems, Inc. in this matter.
2. All documents, including responses, produced in response to requests for production of documents directed to GSA from Appellant Pacific Data Systems, Inc. in this matter.

GTA further requests that GSA supplement its responses no later than August 17, 2012, for any responsive documents created or produced after August 7, 2012.



DATED: Hagåtña, Guam, 17 July 2012.

CARLSMITH BALL LLP

Elyze Iriarte

ELYZE M. IRIARTE

Attorneys for Party in Interest

Teleguam Holdings, LLC and its wholly
owned subsidiaries

CARLSMITH BALL LLP

ELYZE M. IRIARTE
eiriarte@carlsmith.com
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagåtña, Guam 96932-5027
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

MALC

20 Sep 12-2011

Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

4/11/2011

IN THE PETITION OF
PACIFIC DATA SYSTEMS, INC.,
Appellant.

Docket No. OPA-PA-12-011

**TELEGUAM HOLDINGS, LLC'S
REPLY MEMORANDUM IN SUPPORT
OF ITS MOTION TO DISMISS**

I. INTRODUCTION

Pacific Data Systems, Inc.'s ("PDS") Opposition to Teleguam Holdings, LLC's ("GTA") Motion to Dismiss lacks legal and factual substance. GTA's Motion demonstrates that PDS failed to submit its protest to GSA within 14 days from when it knew or should have known of the facts underlying its protest that GSA could not properly evaluate the bidders for the local procurement preference. Instead, PDS waited about ten months to protest. In response to GTA's Motion to Dismiss, PDS claims the OPA should not consider whether it filed a timely protest because GTA did not raise the issue in its Comments. As discussed below, the issue of a timely protest is elemental to the OPA's exercise of jurisdiction. Because PDS did not file a timely protest, the OPA simply cannot proceed regardless of when or whether an interested party raises the issue of timeliness.

Moreover, in an attempt to cloud and confuse the OPA, PDS makes a number of misstatements demonstrating its complete inability to grasp the basics of GTA's motion arguments. The OPA should disregard PDS' arguments and rule that PDS' underlying protest was untimely.

II. THE MOTION IS NOT UNTIMELY

The OPA has jurisdiction to review only matters properly submitted, meaning, matters that have been timely protested and appealed. 2 GAR Div. 4 § 12103(a). PDS claims that the OPA should ignore its untimely protest on the basis that GTA, an Interested Party, did not argue PDS' untimeliness in its Comments. However, the purpose of the Comments is to allow an Appellant or an Interested Party to respond to an *agency report*. 2 GAR Div. 4 § 12104(c)(4). The regulations do not prohibit an Interested Party from moving to dismiss after Comments to the agency report have been filed, and thus, the regulations allowed GTA to file the Motion to Dismiss at any point during the proceedings.

Moreover, in other matters the OPA has considered motions to dismiss after the parties have submitted Comments. *See, e.g., In the Appeal of Town House Department Stores, Inc. dba Island Business Systems & Supplies*, OPA-OA-10-010 (Mar. 7, 2011 Decision at 12) (considering a motion to dismiss brought by appellant more than a month after Comments were due). The OPA is not restrained to only consider matters of timeliness at the Comments phase. In fact, section 12103(a) makes it incumbent upon the OPA to determine, without restriction, if a matter has timely protested and appealed, and therefore properly submitted to the OPA for consideration. The OPA's jurisdiction depends on a matter having been timely protested. Therefore, the OPA must consider whether PDS filed a timely protest either upon GTA's Motion or on its own accord.

III. PDS DOES NOT ADDRESS THE MERITS OF THE MOTION TO DISMISS

PDS' Opposition makes two misstatements demonstrating its fundamental (and potentially intentional) misunderstanding of GTA's motion. First, PDS asserts that GTA argues that PDS should have known what bidders submitted "beforehand." Second, PDS claims that GTA argues that PDS should assume responsibility for notifying other bidders to submit the Local Procurement Preference Application. A review of GTA's clearly laid out arguments shows that PDS completely misconstrues the basis for the Motion to Dismiss.

GTA does not contend that PDS should engage in any advance discovery of what other bidders submitted, and does not contend that PDS should notify other bidders to submit the Local Procurement Preference Application. Instead, GTA contends that PDS was ten months untimely because when the solicitation was issued, PDS then gained knowledge of its claim that GSA could not evaluate the bidders for a local procurement preference. As PDS claims, GSA's failure to include the Application as part of the bid prejudiced its ability to determine if the bidders qualified for a local preference. Once PDS saw that GSA did not require submission of the Local Procurement Preference Application, the 14-day clock started ticking for PDS to protest GSA's alleged inability to properly evaluate the bids for a local preference.


PDS' understanding of GTA's arguments strays so far from what GTA actually argues that PDS' misrepresentations appear to be intentional, in order to confuse the OPA.

IV. CONCLUSION

PDS has not provided a single sustainable basis to defeat GTA's Motion to Dismiss. The Motion should be granted, and this matter must be dismissed.

DATED: Hagåtña, Guam, 21 August 2012.

CARLSMITH BALL LLP



ELYZE M. IRIARTE

Attorneys for Party in Interest

Teleguam Holdings, LLC and its wholly
owned subsidiaries

CARLSMITH BALL LLP

ELYZE M. IRIARTE
eiriarte@carlsmith.com
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagåtña, Guam 96932-5027
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

AUG 9 3:20 PM MH 12-011

Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

Accepted
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AUG 9 3:20

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

IN THE PETITION OF
PACIFIC DATA SYSTEMS, INC.,
Appellant.

Docket No. OPA-PA-12-011

**TELEGUAM HOLDINGS, LLC'S
REQUEST FOR CLARIFICATION RE
HEARING; WITNESS AND EXHIBIT
LISTS**

On August 8, 2012, Appellant Pacific Data Systems, Inc. filed a Motion to Withdraw Request for Hearing. As PDS was the only party to have requested a hearing, Teleguam is under the understanding that a hearing in this matter has been waived and the matter has been submitted for consideration on the record. *See* 2 GAR Div. 4 § 12108(a). Teleguam requests that the OPA clarify whether a hearing will proceed on September 6, 2012.

In the event the hearing proceeds, Teleguam intends to call as witnesses Teleguam employees John Kim, Daniel J. Tydingco, and Marie Mesa. For its exhibits, Teleguam will rely on the procurement record as submitted.

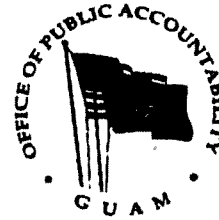
DATED: Hagåtña, Guam, 29 August 2012.

CARLSMITH BALL LLP

Elyze Iriarte

ELYZE M. IRIARTE
Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly
owned subsidiaries

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



FAX

To:	Claudia Acfalle Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	475-1707 475-1727	Pages:	4 (including cover page)
CC:	John Day President Pacific Data Systems	Date:	Thursday, August 30, 2012
Phone: Fax:	300-0202 300-0265	Phone: Fax:	475-0390 x. 216 201 472-7951

Re: Notice of Receipt of Appeal - OPA-PA-12-012

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Michele Huffer
Administrative Officer
mhuffer@guamopa.org

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

August 30, 2012

Ms. Claudia Acfalle
Chief Procurement Officer
General Services Agency
P.O. Box 884
Hagatna, Guam 96932

VIA FACSIMILE: 475-1727

Re: Notice of Receipt of Appeal – OPA-PA-12-012

Dear Ms. Acfalle,

Please be advised that Pacific Data Systems (PDS) filed an appeal with the Office of Public Accountability (OPA) on August 29, 2012 of the General Services Agency (GSA)'s response to PDS' protest relative to the procurement solicitation Invitation for Bid No. GSA-064-11: Telecommunication Services. OPA has assigned this appeal case number OPA-PA-12-012.

Immediate action is required of GSA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.guamopa.org. The first page of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

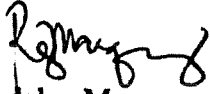
Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Friday, September 7, 2012** five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Friday, September 14, 2012**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to PDS. OPA respectfully asks that GSA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations

require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact me at 475-0390 ext. 201 or mhuffer@guamopa.org should you have any questions regarding this notice.

Sincerely,



Rodalyn Marquez, CIA, CGFM, CPA, CGAP
Audit Supervisor

Enclosure: First Page of the Notice of Appeal – OPA-PA-12-012

Cc: Mr. John Day, President, Pacific Data Systems



**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

AUG 29 2016
TIME 3:20 PM BY Vince D.
FILE NO. 12-012

PART I- To be completed by OPA

In the Appeal of)
)
)
)
)
)
)
)

NOTICE OF APPEAL

(Name of Company), APPELLANT

Docket No. OPA-PA _____

PART II- Appellant Information

Name:	<u>Pacific Data Systems</u>
Mailing Address:	<u>185 Ilipog Drive, Suite 204A</u>
	<u>Tamuning, GU 96913</u>
Business Address:	<u>same as above</u>

Email Address:	<u>john@pdsguam.com</u>
Daytime Contact No:	<u>671-300-0202</u>
Fax No.:	<u>671-300-0265</u>

PART III- Appeal Information

- A) Purchasing Agency: General Services Agency
- B) Identification/Number of Procurement, Solicitation, or Contract: GSA-064-11
GSA has not made a decision
- C) Decision being appealed was made on on PDS protest (date) by:
 ___ Chief Procurement Officer ___ Director of Public Works ___ Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

- D) Appeal is made from:
(Please select one and attach a copy of the Decision to this form)
- Decision on Protest of Method, Solicitation or Award
- Decision on Debarment or Suspension
- Decision on Contract or Breach of Contract Controversy
 (Excluding claims of money owed to or by the government)
- Determination on Award not Stayed Pending Protest or Appeal
 (Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Anthony C. Blaz
Deputy Director

Attachment #13

August 31, 2012

Memorandum

To: Office of Public Accountability
From: Chief Procurement Officer (Acting)
General Services Agency
Subject: Procurement Record for OPA 012-012

RECEIVED
OFFICE OF THE ATTORNEY GENERAL
AUG 31 2012
2:05 pm R. Tield
12-012

I am in receipt of your memorandum dated August 30, 2012, in which you informed the General Services Agency that Pacific Data Systems (PDS) filed an appeal with your office, relative to the procurement solicitation (Invitation for Bid No. GSA-064-11). Pursuant to the rules, you are requesting a complete procurement record be provided by Friday, September 7, 2012.

The Office of Public Accountability already has the complete procurement record of GSA-064-11, as PDS has previously filed an appeal (See case OPA-012-11). The complete record is over 1000 pages. We respectfully request that the OPA use the current procurement record without the need for the government to provide a duplicate record.

For your information, there are still 4 or 5 protests that should they also appeal, there will no change to the procurement record that you already have. These protests have been submitted in the procurement record in OPA-012-11 and can be found on Tab 15, which is in book 6 and 7. If you require a complete record, even though it will be a duplication of what you have, you are looking at over 5,000 pages being given to you. We believe that in an effort to improve the efficiency and economic impact on the government of Guam GSA, we are requesting that you take judicial notice that the record has been submitted in OPA Case No. 012-11, and therefore meeting the record requirement of 2 GAR.

We hope that you will allow the use of the procurement record that you already have in the other case for this matter. Please inform us if this is acceptable or not.

RECEIVED
OFFICE OF THE ATTORNEY GENERAL

AUG 31 2012

Civil/Solicitor Division
Time: 2:26 Initial: SM

Robert H. Kono
ROBERT H. KONO
Acting

cc: AG Office

Attachment #14



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

September 4, 2012

Robert H. Kono
Acting Chief Procurement Officer
General Services Agency
P.O. Box 884
Hagatna, Guam 96932

VIA FACSIMILE: 475-1727

RE: Procurement Record for OPA-PA-12-012

Dear Mr. Kono,

The Office of Public Accountability (OPA) is in receipt of your memorandum dated August 31, 2012 with regards to the procurement record for OPA-PA-12-012 in which General Services Agency (GSA) states that the procurement record for OPA-PA-12-012 is the same as OPA-PA-12-011. OPA acknowledges that a procurement record of GSA-064-11 was submitted for OPA-PA-12-011 on May 24, 2012. OPA understands that the procurement record is voluminous and to increase efficiency, OPA will not require a duplicate copy of the record. However to ensure the completeness of the procurement record OPA requires GSA to certify that the procurement record that was submitted for GSA-064-11 is complete in its entirety and will be the same procurement record for OPA-PA-12-012.

Should you have any questions, please contact our Administrative Officer, Michele Huffer, at 475-0390 extension 201.

Senseramente,

Doris Flores Brooks, CPA, CGFM
Public Auditor

Cc: Mr. John Day, President, Pacific Data Systems

WorkCentre 7346 Transmission Report

67 11 071 472 423 09/05/2012 09:17:37 a.m. 09/05/2012 1:22

FROM: [Redacted] TO: [Redacted]

Procurement - [Redacted]
Procurement - [Redacted]

4727851 OFFICE OF PUBLIC AUDIT 09/05/2012 1:22

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



RECEIVED
109 SEP 5 PM 05:53

FAX

To:	Robert Koon Acting Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone:	475-1707	Pages:	2 (including cover page)
Fax:	475-1727	Date:	September 5, 2012
CC:	John Day President Pacific Data Systems	Phone:	475-0390 x. 201
Phone:	300-0202	Fax:	472-7951
Fax:	300-0265		

Re: Response to GSA's Letter dated 8/31/12 Re: Procurement Record for OPA-PA-12-012

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

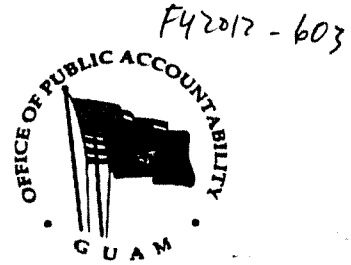
See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Michele Huffer
Administrative Officer
mhuffer@opaguar.gov

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

 From: [Redacted] To: [Redacted]
 Subject: [Redacted]
 Date: [Redacted]

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



FAX

To:	Robert Kono Acting Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	475-1707 475-1727	Pages:	2 (including cover page)
CC:	John Day President Pacific Data Systems	Date:	September 5, 2012
Phone: Fax:	300-0202 300-0265	Phone: Fax:	475-0390 x. 201 472-7951

Re: Response to GSA's Letter dated 8/31/12 Re: Procurement Record for OPA-PA-12-012

Urgent For Review Please Comment Please Reply Please Recycle

Comments: -

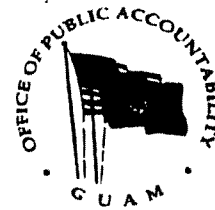
See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Michele Huffer
Administrative Officer
mhuffer@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

Attachment #15

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



FAX

Fy2012-605

To:	General Services Agency C/O Fred Nishihira, Esq. Attorney General of Guam	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	475-3324 472-2493	Pages:	8 (including cover page)
CC:	John Day President Pacific Data Systems	Date:	Wednesday, September 5, 2012
Phone: Fax:	300-0202 300-0265	Phone: Fax:	475-0390 x. 216 472-7951
CC:	Teleguam Holdings, LLC C/O Elyze M. Iriarte Carlsmith Ball, LLP		
Phone: Fax:	472-6813 477-4375		

Re: OPA-PA-12-011 DECISION

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

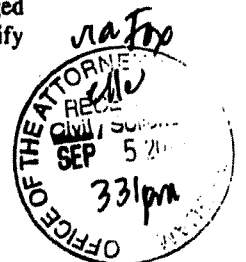
Thank you,

Joy Bulatao

Audit Staff

jbulatao@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



12.0286/FN

1 1. On or about June 22, 2011, GSA issued Invitation for Bid No. GSA-064-11.¹
2 The IFB stated in relevant part that:

- 3 a. Documents required to be submitted in the Bid envelope, included: Bid
4 Guarantee of fifteen percent (15%) of the Bid amount, Statement of
5 Qualifications, Brochure Descriptive Literature, Affidavit Disclosing
6 Ownership and Commission, Non-Collusion Affidavit, DOL Wage
7 Determination Affidavit, Restriction Against Sexual Offenders Affidavit,
8 No Kick Back Gratuities Affidavit and Ethical Standards Affidavit, and
9 Affidavit regarding Prohibition of Contingent Fees.²
10 b. All procurement of supplies and services where possible, will be made
11 from among businesses licensed to do business on Guam in accordance
12 with section 5008 of the Guam Procurement Act (5 G.C.A., Chapter 5).³

13 2. Eight amendments to the IFB were issued between July 6, 2011 and November
14 23, 2011. The bid opening date was extended seven times from the originally stated July 20,
15 2011 to December 9, 2011.⁴

16 3. The Bid was opened by GSA on December 9, 2011.⁵

17 4. On April 27, 2012, the Bid status form was sent to PDS informing it that its Bid
18 had been rejected, in part, for various reasons but also recommending it for award of certain
19 items and services along with awards to Teleguam Holdings, LLC ("GTA") and PTI Pacifica,
20 Inc. ("IT&E").⁶

21 5. On April 30, 2012, PDS protested to GSA on six areas, one of which PDS
22 claimed that GSA did not consider PDS's Local Procurement Preference application in the
23

24 ¹ Newspaper Publication dated June 22, 2011, Exhibit 14, GSA Procurement
25 Record filed on May 24, 2012 and Page 1 of 56, IFB No. GSA-064-11, Exhibit 5,
26 GSA Procurement Record.

27 ² Page 2 of 56, IFB No. GSA-064-11, Exhibit 5, GSA Procurement Record filed on
28 May 24, 2012.

29 ³ Local Procurement Preference, Government of Guam General Terms and
30 Conditions #5, Page 19 of 56, IFB No. GSA-064-11, Exhibit 5, GSA Procurement
31 Record filed on May 24, 2012.

32 ⁴ IFB Amendment Nos. 1 through 8, Exhibit 7, Id.

33 ⁵ Bid Abstract and Register, Exhibit 6, Id.

34 ⁶ Bid Status, Exhibit 9, Id.

1 award of Bid Form 10 and that PDS should be the lowest responsive and responsible bidder
2 after application of the 15% Local Procurement Preference.⁷

3 6. On May 3, 2012, GSA denied the protest concerning local procurement
4 preference, stating that "Local procurement preference was not applicable in this case as all of
5 the businesses which submitted a bid was [sic] considered to meet the requirements to be
6 considered local and have the local preference available. As such, there was no benefit available
7 to any of the submitted vendors."⁸

8 7. Fourteen days later, on May 17, 2012, PDS filed this appeal with the Office of
9 Public Accountability ("OPA").

10 8. On July 12, 2012, GTA filed a Motion to Dismiss the Appeal alleging PDS
11 untimely protested to GSA. PDS filed a Reply (Opposition) to the Motion to Dismiss on
12 August 14, 2012, and GTA filed a Response on August 21, 2012.

13 9. On August 14, 2012, PDS filed a Motion to Withdraw Request for Hearing and
14 requested that the OPA make a determination in this appeal based on the applicable filings.

15 16 III. ANALYSIS

17 Pursuant to 5 G.C.A. § 5703, the Public Auditor shall review GSA's May 3, 2012
18 decision denying PDS's April 30, 2012 protest *de novo*.

19 A. PDS'S PROTEST WAS TIMELY.

20 To be timely, the Protest must have been submitted in writing to the head of the
21 Purchasing Agency within fourteen (14) days after PDS knew or should have known of the facts
22 giving rise thereto. 5 G.C.A. § 5425(a). If the protest was not filed within the time required, it
23 would have been untimely and could not be appealed to the OPA. *In Re Appeal of Island*
24 *Business Systems & Supplies*, OPA-PA-08-011, Page 6. PDS had an obligation to protest at
25 the point in time when it knew or should have known that it had not received a Local
26

27
28 ⁷ Protest Letter from PDS President John Day to GSA Chief Procurement Officer
Claudia Acfalle on April 30, 2012, Exhibit 1, Id.

⁸ Response Letter from GSA Chief Procurement Officer Claudia Acfalle to PDS
President John Day on May 3, 2012, Exhibit 2, Id.

1 Procurement Preference to the exclusion of other bidders. At that point, its fourteen (14) day
2 clock started to run.

3 The issue raised by PDS in its protest was that GSA did not factor in the Local
4 Procurement Preference in awarding Bid Form 10 to GTA⁹. PDS stated that the Local
5 Procurement Preference was a requirement of the IFB and that it (PDS) was the only party to
6 submit a Local Procurement Preference application. PDS further stated that it, and not GTA,
7 was entitled to the fifteen percent (15%) preference in construing its bid. When PDS knew or
8 should have known that the Preference application was not interpreted by GSA as entitling only
9 PDS to the fifteen percent (15%) preference is not clear from the record. PDS argues that it did
10 not know whether other bidders submitted the Local Procurement Preference Application¹⁰.
11 Conversely, GTA argued that the fourteen (14) day clock started to run when PDS picked up its
12 IFB packet or shortly thereafter and discovered that the Local Procurement Preference
13 Application was not included with the Bid Packet. GTA asserts that since PDS did not Protest
14 within fourteen (14) days from picking up the IFB package, PDS's Protest was untimely.¹¹

15 The IFB required certain documents and affidavits to be submitted in the bidder's bid
16 envelope, such as the Bid Guarantee of fifteen percent (15%) of the Bid amount, Statement of
17 Qualifications, Affidavit Disclosing Ownership and Commission, Non-Collusion Affidavit,
18 DOL Wage Determination Affidavit, etc.

19 The Bids were opened on December 9, 2011, but the record is unclear as to whether the
20 issue of a Local Procurement Preference was discussed and, therefore, whether PDS knew or
21 should have known about the application of the fifteen percent (15%) local preference at the Bid
22 opening. On April 27, 2012, GSA sent PDS a bid status form indicating that PDS, GTA, and
23 IT&E were partial awardees. On April 27, 2012, PDS knew how its bid preference was being
24 treated. PDS filed its protest to GSA on April 30, 2012, within the 14-day time requirement.
25 On May 3, 2012, GSA denied the Protest.

26 _____
27 ⁹ Protest Letter from PDS President John Day to GSA Chief Procurement Officer
Claudia Acfalle on April 30, 2012, Exhibit 1, Id.

28 ¹⁰ PDS Reply to GTA Teleguam LLC Motion to Dismiss filed on August 14, 2012.

¹¹ Teleguam Holdings, LLC's Motion to Dismiss; Memorandum of Points and
Authorities, filed on July 12, 2012.

1 On May 17, 2012, PDS filed its Appeal in this case with the OPA, arguing that it, and
2 not GTA, had submitted the Local Procurement Preference Application as part of its bid
3 submission and was entitled to a fifteen percent (15%) local procurement preference adjustment
4 by GSA in the evaluation of the Bid Form 10 submissions, between PDS and GTA.

5 The question of when a protesting offeror knew or should have known is a question of
6 fact. The Guam Supreme Court reviewed similar facts and the issue of when a protesting offeror
7 knew or should have known of protest-triggering facts in *Guam Imaging Consultants, Inc., et*
8 *al., v. GMHA, et al.*, 2004 Guam 15. The protesting offeror had, at an earlier date, received
9 notice of intent to award the contract to another offeror, but did not protest until later when
10 information was revealed in a government memorandum which suggested the protester may be
11 aggrieved. The Supreme Court held the protesting offeror "did not know, nor should it have
12 known, of the facts giving rise to this protest until it received" the memorandum. The Court
13 ruled that the protest was timely filed based on that revelation, and was not time barred because
14 of the earlier notice of intent to award to another. *Id* at ¶ 33. The Public Auditor finds that it was
15 only upon receipt of the April 27, 2012 Bid Status that PDS was made aware how its bid was
16 evaluated against other bidders. Therefore, by filing a bid protest on April 30, 2012, PDS
17 timely protested within the 14-day requirement and properly set forth its grounds for appeal as
18 required by 2 G.A.R. § 12104.

19 **B. MERITS OF THE APPEAL.**

20 PDS's appeal seeks the remedy of rescinding the award of Bid Form 10 to GTA and
21 reassessing the Bid Form 10 evaluations taking into consideration the fifteen percent (15%)
22 local procurement preference that PDS argues it qualifies for, and not GTA, since GTA did not
23 submit the Local Procurement Preference Application. The Public Auditor must now decide
24 whether to uphold or deny the Appeal.

25 On page 2 of the IFB, GSA identifies all of the requirements to be submitted with the
26 Bid. It states in bold lettering that failure to comply may be cause for disqualification and
27 rejection of the Bid. A review of the IFB finds that nowhere therein is a stated requirement to
28 submit a Local Procurement Preference Application. The designation of a Local Procurement

1 Preference is found at page 19 of the IFB's General Terms and Conditions, but the items
2 specified therein are not all required to be included in the bid packet. The Public Auditor finds
3 that the Local Procurement Preference Application is not a requirement of a qualifying bid.¹²
4 On May 3, 2012, GSA stated that the Local Procurement Preference was not applicable because
5 all bidders were considered local and PDS suffered no prejudice. As such, the Public Auditor
6 finds that there is no merit to PDS's arguments pertaining to the application of the Local
7 Procurement Preference and request for rescinding of the award. Therefore, PDS's appeal is
8 DENIED.

10 IV. CONCLUSION

11 Based on the foregoing, the Public Auditor hereby determines the following:

- 12 1. The Public Auditor finds that PDS's Protest was timely.
- 13 2. The Public Auditor finds no merit to PDS's Protest allegation that the Local
14 Procurement Preference Application was a requirement to be qualified for the Bid or that PDS
15 was entitled to a fifteen percent (15%) adjustment of its Bid price because only PDS, and not
16 GTA, submitted a Local Procurement Preference Application.
- 17 3. The Public Auditor finds that both GTA and PDS were entitled to a Local
18 Procurement Preference, as both parties were local companies known to GSA, and as such, PDS
19 suffered no prejudice or harm in that regard.
- 20 4. Pacific Data Systems' Appeal is hereby DENIED.

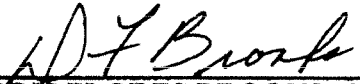
21
22 This is a Final Administrative Decision. The parties are hereby informed of their right
23 to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance
24 with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final
25 Administrative Decision (5 G.C.A. § 5481(a)).
26
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28 ¹² For future reference, GSA may, through the Administrative Adjudication Act, want to clarify whether or not a local procurement preference application will be required for bid submission.

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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 5th day of September, 2012.


DORIS FLORES BROOKS, CPA, CGFM
PUBLIC AUDITOR

*** FAX RX REPORT ***

RECEPTION OK

JOB NO.	7243
DESTINATION ADDRESS	4727951
PSWD/SUBADDRESS	
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RESULT	OK