

Office of the Attorney General
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Attorneys for the Government of Guam

BEFORE THE OFFICE OF THE PUBLIC AUDITOR
Procurement Appeal

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS
 FEB 15 2010
 TIME: 1:41
 BY: MUV
 FILE No. OPA-PA 10-002

In the Matter of the Appeal of)	DOCKET NO. OPA-PA 10-002
Teleguam Holdings, LLC)	
)	
D/B/A GTA Telecom,)	Agency Report
)	
Appellant.)	
)	
)	
)	

Comes now the Office of the Attorney General, attorneys for the General Services Agency, Department of Administration, Government of Guam, and submits this agency report as required by Guam law and the procurement regulations duly enacted by the Office of the Public Auditor.

Matters Required by 2 GAR, Div. 4, §12105.

- (a) A copy of the protest may be found at Tab 1 of the Procurement Record filed in this matter by the General Services Agency on February 5, 2010 ("Procurement Record").

COPY

- (b) A copy of the bid submitted by Appellant is found at Tab 3 of the Procurement Record. A copy of the bid submitted by Pacific Data Systems, who has been awarded a contract in this procurement, is found at Tab 4 of the Procurement Record.
- (c) A copy of the original Bid Solicitation is found at Tab 5 of the Procurement Record.
- (d) A copy of the abstract of bids is found at Tab 6 of the Procurement Record.
- (e) Any other documents which are relevant include:
 - (i.) A copy of the Purchase Order that was received by Pacific Data Systems on December 16, 2009 and which forms part of the contract and evidence of the award of the contract, found at Exhibit 1 attached hereto.
 - (ii.) A copy of the Protest of Teleguam Holdings LLC showing the date and time of delivery to the General Services Agency as December 16, 2009 at 4:22 p.m., found at Exhibit 2 attached hereto.
 - (iii.) A copy of the General Services Agency Visitor Register for December 16, 2009 showing that J. Day from PDS picked up the Purchase Order at 10:00 a.m., found at Exhibit 3 attached hereto.
- (f) The decision from which the appeal is taken is found at Exhibit 6 of Appellant's Notice of Procurement Appeal, and at Tab 17 of the Procurement Record.
- (g) A statement answering the allegation follows:

The Guam Bureau of Statistics and Planning is designated by the Governor as the local agency to coordinate the activities of the US Bureau of Census for the 2010 Census Report. As part of its request for having the local government's participation in this project, the U.S. Census provides funding to Guam for the acquisition of the Telephone Services and Equipment

that the local government will use to carry out 2010 census activities. On October 28, 2009, the General Services Agency (GSA) approved Invitation for Bid No. GSA-004-10 for Telephone Services and Equipment. On October 29, 2009, GSA published Bid No. GSA-004-10. As part of this publication, the bid announcement appeared in the Marianas Variety newspaper. See Tab 5 of the Procurement Record.

Five (5) vendors picked up this bid package. They are G4S, Pacific Data Systems, ITS Services, GTA- Guam Teleguam Holdings, LLC, and Dimension Systems.

On November 13, 2009 at 3 p.m. the bids were opened. Two (2) bidders submitted on this bid, namely, Guam Telephone Authority—Teleguam Holdings, LLC (“GTA”), and Pacific Data Systems (“PDS”). See Tab 3 and 4 of the Procurement Record. On the same day, GSA sent a memorandum to the Bureau of Statistics and Planning requesting its review and evaluation of the specifications provided by PDS in its bid package. On November 18, 2009, the Bureau of Statistics and Planning responded, stating that the PDS bid met the specifications published in the Invitation For Bid. See Tab 7 of the Procurement Record.

An analysis and recommendation concerning the bids received from GTA and PDS was completed at GSA. See Tab 8 of the Procurement Record.

On December 15, 2009, the Chief Procurement Officer issued a purchase order, Purchase Order No. P106A01542, to PDS, accepting the PDS bid and, thereby, placing the order for the phone system requested by the Bureau of Statistics and Planning. See Exhibit 1 attached hereto. GSA contacted PDS by phone and advised that the purchase order to PDS was executed and available to be picked up. In addition, GSA sent by facsimile its Bid Status to GTA, advising the company that Bid No. GSA-004-10 was awarded to PDS. See Tab 9 of the Procurement Record.

On December 16, 2009, at approximately 10:00 a.m., PDS picked up the purchase order from GSA. At 4:22 p.m. on December 16, 2009, GTA filed a protest alleging that the system that PDS was providing was an "Astra" 480, which was not digital and therefore failed to conform to the bid specifications. The second reason provided was that the system was not in compliance with the bid specifications.

In response to the protest filed by GTA, GSA sought additional assistance in assessing the specifications of the phone system offered and being provided by PDS. See Tab 14 of the Procurement Record. GSA received conflicting responses from three information technology staff of the government of Guam. Two individuals, Jim Lacson, head of the Bureau of Technology, Department of Administration, and Michael Cruz, Systems Analyst for the Bureau of Technology, advised that the PDS system, as a whole, met the specifications in the Invitation For Bids. Both however acknowledged that they were not telecommunications experts. One individual, Ben Camacho, System and Programming Manager for the Department of Revenue and Taxation, advised that the PDS system did not meet the specifications.

The Bureau of Statistics and Planning confirmed for a second time that the Telephone Services and Equipment bid by PDS met the bid specifications. See Tab 15 of the Procurement Record. On January 25, 2010 GSA responded to, and denied the protest filed by GTA. See Tab 17 of the Procurement Record.

Despite some contrary information and indications from GSA, there has never been a legal stay of the procurement process in this matter. Once there was an award, as occurred no later than approximately 10:00 a.m. on December 16, 2009, there could be no stay of the

procurement as the protest from GTA occurred after the award of the contract. *Guam Imaging Consultants, Inc. v. Guam Memorial Hospital Authority*, 2004 Guam 15, ¶34.

Guam procurement law provides that bids will be unconditionally accepted, and then evaluated based upon the requirements set forth in the Invitation For Bids. 5 GCA§ 5211 (e). GSA exercised due diligence in confirming with the Bureau of Statistics and Planning on two occasions that the bid received from PDS was responsive to the Bid Specifications. In addition, GSA took additional steps to have information technology staff within the Department of Administration review the bid of PDS to determine if the equipment offered by PDS conforms to the bid specifications.

Obviously, there is a difference of opinion here as to the application of the specifications to the bid from PDS. Nonetheless, the agency responsible for management of the 2010 census, the agency buying the equipment and services, the Bureau of Statistics and Planning, has determined that the phone system and services offered by PDS meet the specifications in the Invitation For Bids. In this regard, Guam procurement law provides that “[a]ll specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Territory’s needs, and shall not be unduly restrictive.” 5 GCA § 5265.

Conclusion.

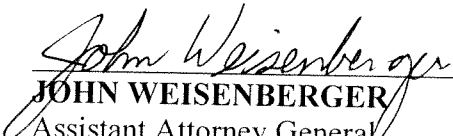
The Territory’s needs have been met by PDS, competition has been encouraged, and overall economy and cost savings have been accomplished by the actions of the Bureau of Statistics and Planning, and the General Services Agency. The denial of the protest of GTA by the Chief Procurement Officer should be upheld by the Public Auditor in this matter.

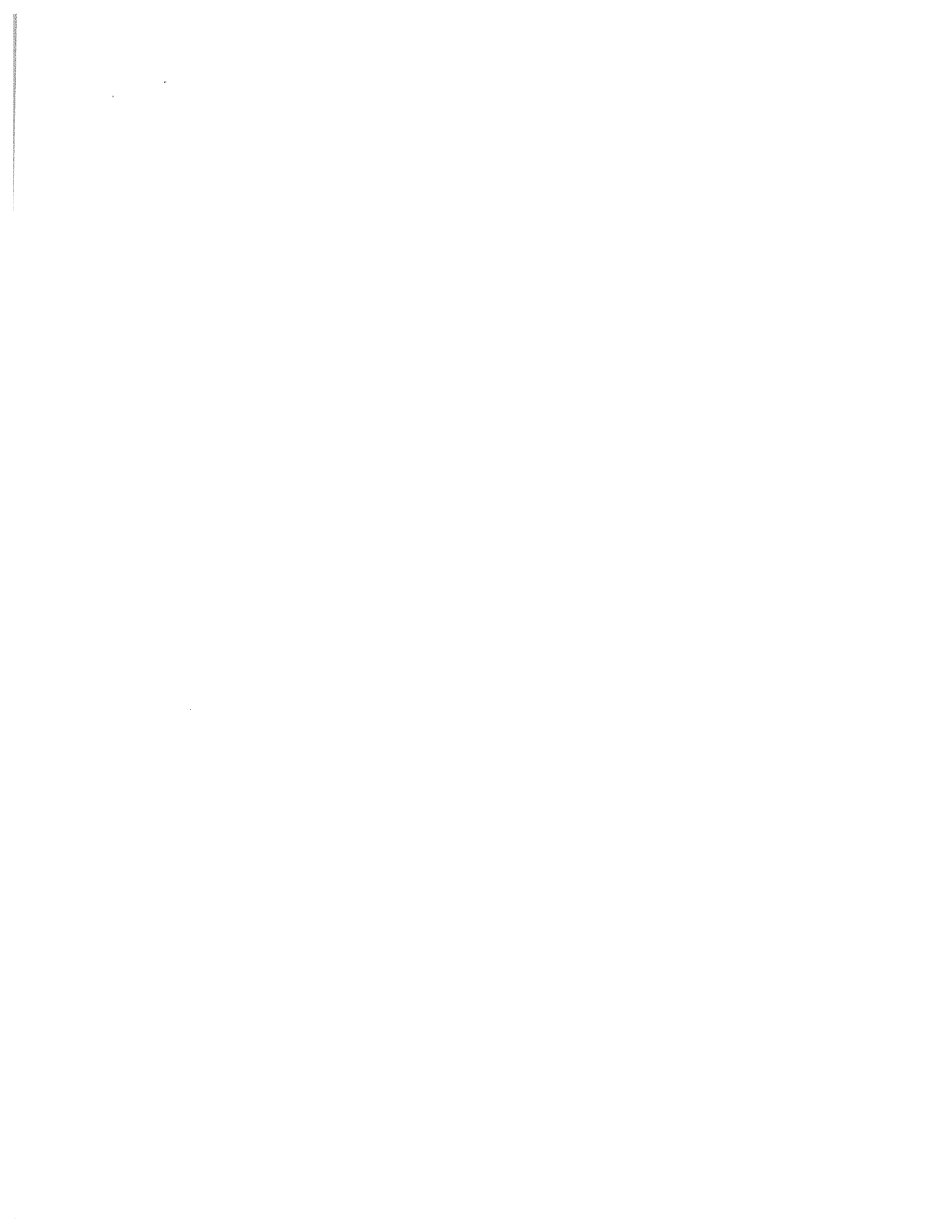
- (h) The award was made prior to the receipt of the protest.

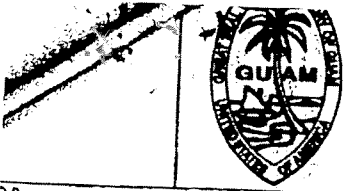
- (i) The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Respectfully submitted this 15th day of February 2010.

OFFICE OF THE ATTORNEY GENERAL
Alicia G. Limtiaco, Attorney General

By: 
JOHN WEISENBERGER
Assistant Attorney General





GENERAL SERVICES AGENCY
DEPARTMENT OF ADMINISTRATION
GOVERNMENT OF GUAM

148 Route 1
Marine Drive
Piti, Guam 96925

THIS PURCHASE ORDER NUMBER

No. P106A01542

MUST APPEAR ON ALL INVOICES,
PACKING SLIPS, PACKAGES, B/L,
CORRESPONDENCE ETC.

D.B.		*AIR FREIGHT TEL CONTACT	SHIP VIA:	DATE 11/23/2009	JOB ORDER NO. 091000013	OBJ CL 363
PREPAID-SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE						

TO: PACIFIC DATA SYSTEMS 186 ILIPOG DRIVE RMC 304A TAMUNING, GU 96913-0185 Telephone: 671 648-4361 Fax: 671 300-0255		VENDOR P0076701	CONSIGNEE, DESTINATION & MARKING BUREAU OF STATISTICS & PLANS (BS) P.O. BOX 2950 MAGATHA, GU 96932-6000 PLANNING INFORMATION PROGRAM 2010 GUAM CENSUS			
UPOBITY 3109	**AVIATION NO. GSA-004-010	**CONTRACT NO.	TIME FOR DELIVERY SEE BELOW	EXPIRING	DISCOUNT TERMS:	

<p>2010 GUAM CENSUS TELECOMMUNICATIONS SPECIFICATIONS FOR TELEPHONE SERVICE AND EQUIPMENT.</p> <p>GEA-004-010 ITEM NO.: 1.1 12 MDS. X \$592.00 = \$7,104.00</p> <p>ITEM NO.: 1.2 DIGITAL BUSINESS PHONE SYSTEMS 35 EA. X \$75.00 = \$2,625.00 Aastra 480</p> <p>ITEM NO.: 1.3 DIGITAL BUSINESS CONFERENCE SPEAKER SYSTEM 1 EACH X \$3,995.00 = \$3,995.00 POLYCOM VOICE STATION 300</p> <p>ITEM NO.: 1.4 OPERATOR CONSOLE DIGITAL</p> <p>NOTE: THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR UNAUTHORIZED PURCHASES OR SERVICES. Note: Amounts for this Purchase Order may be off set for monies due the Gov. of Guam inclusive of but not limited to taxes, fees, and returned checks. Payment in full must be coordinated between requesting agency and vendor. ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 610191(A) OF THE G.A.R.</p>					
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- SPECIAL INSTRUCTIONS TO VENDOR:
- SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
 - PAYMENT UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
 - THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
 - * THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND TO GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS B/L.
 - * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

PAGE 1 OF 2

↑ TOTAL ↑

A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL

INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT

RETURN TO SUPPLY MANAGEMENT DIVISION	ADVANCE PAYMENT AUTHORIZATION	SIGNATURE	12/15/09
DATE OF RECEIPT OF THIS ORDER	PAYMENT ENCLOSED	Claudia S. Acasile	Chief Procurement Officer
SIGNATURE	PAGE	NAME	TITLE

Control No.

ACKNOWLEDGEMENT COPY

EXHIBIT 1



DEPARTMENT OF ADMINISTRATION
GOVERNMENT OF GUAM

148 Route 1
Marine Drive
Piti, Guam 96925

No.

MUST APPEAR ON ALL INVOICES,
PACKING SLIPS, PACKAGES, B/L,
CORRESPONDENCE ETC.

D.B.	*AIR FREIGHT TEL CONTACT	SHIP VIA:	DATE 11/23/2009	JOB ORDER NO. 091005201383	OBJ CL 363
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PREPAID-SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE.

TO: PACIFIC DATA SYSTEMS 185 ILIPOG DRIVE RBC 2044 Telephone: 671 646-4361 Fax: 671 300-0265	VENDOR P0076701	CONSIGNEE, DESTINATION & MARKING BUREAU OF STATISTICS & PLANS (BS) P.O. BOX 2950 MAGATNA, GU 96932-0000 PLANNING INFORMATION PROGRAM 2010 GUAM CENSUS
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**LIMITATION	**CONTRACT NO.	DATE FOR DELIVERY	EXPIRING	DISCOUNT TERMS:
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ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
1	BUSINESS PHONE SYSTEM WITH APPROPRIATE EXPANSION UNIT(S)	1	\$295.00	\$295.00
1	LOT \$800.00	1	\$800.00	\$800.00
1	LOT \$1,000.00	1	\$1,000.00	\$1,000.00
1	LOT \$3,100.00	1	\$3,100.00	\$3,100.00
1	LOT \$1,600.00	1	\$1,600.00	\$1,600.00
1	LOT \$930.00	1	\$930.00	\$930.00

NOTE:
THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR UNAUTHORIZED PURCHASES OR SERVICES. Note: Amounts due this Purchase Order may be off set for monies due the Govt. of Guam inclusive of but not limited to, taxes, fees, and returned checks. No interest or other damages shall be assessed and attorney's fees, after a finding by the court, shall be payable for the date of filing of the lawsuit.
*TO BE COORDINATED BETWEEN REQUESTING AGENCY AND VENDOR.
ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9)(a) OF THE GAR.

23069.00

A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.
INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.

↑ TOTAL ↑

SPECIAL INSTRUCTIONS TO VENDOR:

- SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
- PAYMENT UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- * THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- * ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY LOG THE NUMBER UPON ARRIVAL OF GOODS IN GUAM.

RETURN TO SUPPLY MANAGEMENT DIVISION	ADVANCE PAYMENT AUTHORIZATION	SIGNATURE
DATE OF RECEIPT OF THIS ORDER	PAYMENT ENCLOSED <input checked="" type="checkbox"/>	<i>[Signature]</i>
SIGNATURE	PAGE	NAME
<i>[Signature]</i>	2	CLAYTON S. ACILLA
		Chief Procurement Officer

Control No.

ACKNOWLEDGEMENT COPY

CONTINUED ON NEXT PAGE



624 North Marine Corps Drive
Tamuning, Guam 96913

16 December 2009

Via Hand Delivery

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
P.O. Box FG
Hagatna, Guam 96910

SUBJECT: Protest of Award of Bid GSA-004-010 to Pacific Data Systems and Rejection of Bid by Teleguam Holdings LLC.

Dear Ms. Acfalle:

GTA Teleguam hereby submits this protest of award of Bid GSA-004-010 to Pacific Data Systems (PDS), and the rejection of the bid submitted by Teleguam Holdings LLC (GTA). The GTA bid was submitted in response to the Invitation for Bids for GSA-004-010, dated October 29, 2009.

1. Background

The Invitation for Bids for GSA-004-010 pertains to Telephone Service and Equipment. The Invitation for Bids specifies the following:

- i. The first specification under Section 1.1 of the Invitation for Bids states: "PBX-based service VOIP is strictly prohibited for this implementation".
- ii. Section 2.1 of the Invitation for Bids describing the type of telephone equipment required for the bid states: "Digital business phone systems".

At the bid opening held on November 13, 2009, the GSA representative announced that the PDS telephone equipment in its bid was an Aastra 480. The Aastra 480 is not compatible with a digital phone system. The Aastra 480 is a VOIP phone.

Enclosed with this Protest is a copy of the Invitation for Bids and the specifications for the Aastra 480 phone.

2. Discussion.

There are two grounds for sustaining this protest.

First, the bid award is defective because the phone system proposed by the winning bidder, PDS, is a VOIP phone system, which was "strictly prohibited" according to the bid

specifications. The phone system proposed by GTA was not a VOIP system and thus GTA's was the only bid that complied with the bid specifications.

Second, the bid award is defective because the phone equipment proposed by the winning bidder, PDS, is not compatible with a digital phone system. The equipment proposed by GTA was compatible with a digital phone system and thus, GTA's was the only bid that complied with section 2.1 of the Invitation for Bid.

This protest is timely as it is being submitted within 14 days after GTA received notice of its bid rejection and the award to PDS pursuant to a Bid Status notice dated November 19, 2009 but signed by the Chief Procurement Officer on December 15, 2009.

GTA suffered prejudice because its system was both a digital phone system and it was not a VOIP system. Those requirements resulted in GTA submitting a bid that was higher than what it would have bid for a VOIP system or non-digital phone system equipment. Its bid was the only one that was responsive to the Invitation to Bid.

GSA, at the time of the bid opening, was informed verbally that the phone system bid by PDS did not comply with the specifications set forth in the Invitation for Bids and was therefore not responsive to the bid specifications.


3. Request for Relief.

GTA requests that the PDS bid be deemed non-compliant with the Invitation to Bid specifications, and that the award be made to GTA, the only responsive bidder. In the alternative, PDS asks that the Invitation for Bids be re-issued with revised specifications allowing a non-digital phone system and a VOIP phone system, so that GTA may submit a bid on that basis.

Finally, GTA requests that the bid award be stayed as required by law until this protest is resolved, 5 GCA 5425(g), and that it be allowed reimbursement of its costs incurred in preparing the Protest, 5 GCA 5425(h).

I look forward to your favorable response.

Sincerely,


Eric N. Votaw

Cc: Ms. Jennifer Sgambelluri
Bureau of Statistics

**GENERAL SERVICES AGENCY
VISITOR REGISTER**

NAME OF VISITOR (Print) (Last, First, MI)	AGENCY OR ORGANIZATION	PURPOSE OF ENTRY	DATE MO/D/YR	ENTRY TIME		REMARKS
				In	Out	
Joe Lead Guebers	POSH	Drop Docs	12-16-09	8:58		
SSC Agudo	GLS	"	" " "	9:37	9:44	
M. Passeres	SPB	Training	12/16/09	0955		
J. K. Bell	SPD	Training (Head)	12/16/09	10:00		
Enrico Kizian	SPD	Training ("")	12/16/09	10:00		
Sam N. Dinkler	SPD	Training	12/16/09	10:07		
David B. Dyer	SPD	Training	12/16/09	10:07		
Wm B. Patis, Jr	SPD	TRNG	12-16-09	10:08		
Christopher D. Champion	SPD	TRNG	12-16-09	10:08		
Phil J. Langan	SPD	TRNG	12-16-09	10:08		
Jeff I. Aguero	SPD/SPC	TRNG	12-16-09	10:00		
John J. Viti	SPD/SPC	TRNG	12-16-09	10:00		
Anthony A. Forjan	SPD/SPC	TRNG	12-16-09	10:00		
Samuel E. Rivera	SPD/SPC	TRNG	12-16-09	10:00		
John D. Asper	SPD/SPC	TRNG	12-16-09	10:00		
John J. Bay	SPB	P/u PO	12-16-09	10:00		
Monica R. Ybarra	STIDA LEAN	DEPT OFF BLD	12-16-09	10:14		
Theresa M. Chang	CIV	P/u PO	12/16/09	10:38		
Doreen S. Puentes	DYA	OK BY	12-16-09	11:37		
John S. H.C.	S.H.C.	OK BY PDC (2)	12-16-2009	10:57		