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IN THE OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEAL

IN THE APPEAL OF TELEGUAM HOLDINGS, LLC AND ITS WHOLLY OWNED SUBSIDIARIES, GTA TELECOM, LLC; GTA SERVICES, LLC; AND PULSE MOBILE LLC. Appellant.	Docket No. OPA-PA-12-016 **TELEGUAM HOLDINGS, LLC'S COMMENTS TO AGENCY REPORT**

GSA's agency report amounts to a waiver of objections to at least one of the grounds for appeal, and contains no evidence in which to support any of its stated objections.

An agency report shall be "detailed" and answer the allegations of the appeal. 2 GAR Div. 4 § 12104(c)(3). The agency report shall also include a "statement answering the allegation of the Appeal and setting forth findings, action, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. *The statement shall be fully responsive to the allegations of the Appeal.*" 2 GAR Div. 4 § 12105(g) (emphasis added).

GSA's "detailed" statement responding to the Appeal over Bid Forms 2 & 3 of GSA 064-11 was contained in just three short sentences: "[T]he lowest submitted offer did not meet the

requirements. GSA then went to the next lowest offer and took that offer in making its determination. This offer was not the lowest price for this bid form number." Agency Report at 2. GSA does not explain why GTA's offer "did not meet the requirements," and does not explain what it means in that the next offer taken was not the lowest price.

Without an agency report meeting the requirements of sections 12104 and 12105, the OPA lacks findings or information upon which to determine how GSA arrived at its decision that GTA's offer did not meet the requirements for Bid Forms 2 & 3. As such, the agency report should be disregarded.

Moreover, the record submitted to date supports GTA's grounds for protest. The first ground for appeal presented by GTA is that GSA's Revised Bid Status improperly rejected GTA's offer for Central Office Centrex Telephone Services on the basis of "Non-conformance with the specification offered on Bid Form 3 - Up to 8 line with Digital Display, Hands Free." Procurement Appeal, Ex. G. As noted in the Procurement Appeal, the bid specifications at no time required digital display. GSA required other features such as a message waiting lamp, hands-free speakerphone capability, and options for wireless handsets. See Agency Report filed in OPA-PA-12-11, Tab 6, at 42-43. However, again, digital display was not specified.

Even though GSA required bidders to fill out the Bid Forms as part of the bid, and Bid Form 3 contained descriptions of instruments with "digital display," GSA never amended the bid specifications to specifically require digital display. GTA's offered product of course complied with all specifications noted in the solicitation, which did not include digital display. It was improper for GSA to use its Bid Form to amend the specifications and then reject GTA's compliant offer.

GTA's second ground for protest is that GSA improperly rejected GTA's bid offering a

range of phones by claiming that the offered range amounted to a multiple price offer. GSA instructed bidders to "offer a range of analog, single line feature phone, and multi-line Feature Phones." *See* Appeal, Ex. I.[1] GTA provided that range in accordance with GSA's requirement. **GSA's Agency Report offers absolutely no rebuttal to this argument**. The OPA must find that GTA's submittal complied with GSA's requirements and should not have been rejected on the basis of being a multiple price offer.

Finally, GTA's third ground for protest pertains to GSA's decision to reverse its award for Bid Forms 2 & 3 to GTA. In its appeal, GTA established that GSA had previously determined that GTA offered the lowest prices for the phones offered. For Bid Form 3, GTA had offered instruments at the lowest average price offered by any bidder of $3.10. *See* Agency Report filed in OPA-PA-12-11, Vol. II, Tab 5 (showing GTA's pricing). Because GTA's instruments were in compliance with GSA's specifications, GSA improperly rejected GTA's prices and declared PDS - whose average price was $3.13 - as the lowest offeror. For Bid Form 2, GTA bid on the Centrex Services at a total bid of $1,556.45, whereas PDS' bid was $1,612.45. *Compare* Agency Report filed in OPA-PA-12-11, Vol. II, Tab 5 (GTA's pricing) *with* Vol. I, Tab 4 (PDS' pricing).[2] As already discussed, GTA met the specifications for this item, which did not require digital display in the specifications. Accordingly, the initial award to GTA should be reinstated.

GSA's agency report was wholly non-responsive to GTA's appeal claims. GTA has demonstrated that its submissions for Bid Forms 2 & 3 were in direct compliance with GSA's requirements as stated in the specifications. The original award to GTA must be reinstated.

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[1] This information is also in the Agency Report filed in OPA-PA-12-11, Vol. III, Tab 6.
[2] This information is also summarized in charts provided in GTA's Appeal.

DATED: Hagåtña, Guam, November 5, 2012.

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