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8 *PACIFIC DATA SYSTEMS, INC.*

9 **OFFICE OF PUBLIC ACCOUNTABILITY**

10 **PROCUREMENT APPEALS**

11 IN THE APPEAL OF

OPA Docket No. OPA PA 12-016

12 **TELEGUAM HOLDINGS, LLC AND ITS
13 WHOLLY OWNED SUBSIDIARIES,
14 GTA TELECOM, LLC; GTA SERVICES,
15 LLC; AND PULSE MOBILE LLC,**

**HEARING BRIEF OF PACIFIC DATA
SYSTEMS, INC.**

Appellants.

16 Per the OPA's order in this matter, Interested Party Pacific Data Systems,
17 Inc. ("PDS") provides the following Hearing Brief as instructed by the Hearing Officer:

18 **WITNESSES**

- 19 1. John Day, President of PDS.
- 20 2. Ed Cruz, Chief Information Officer for the Government of Guam.
- 21 3. John Kim, GTA Controller.
- 22 4. Jennifer Sgambelluri, GTA Senior Account Manager.
- 23 5. Rebuttal witnesses as needed.

24 **EXHIBITS**

25 Other than the documents which are already part of the Procurement
26 Record, PDS will introduce the following exhibits at the hearing:

- 27 1. Attached photograph of Cisco SPA501G telephone (physical phone
28 will be lodged at hearing).

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2 GTA has also argued that PDS should be denied its right to a hearing on
3 this appeal. In summary, on November 19, 2012, undersigned counsel entered his
4 appearance in this appeal. This was because a pre-hearing conference had been
5 scheduled on this appeal for November 20, 2012 and John Day, the President of PDS,
6 was off-island. At that time, GTA had already requested a hearing on this appeal, so
7 there was no reason for PDS to separately request a hearing.

8 At the Pre-hearing Conference on November 20, the Public Auditor
9 announced that the three pending appeals would be consolidated. The question was
10 also raised whether the parties would waive the hearing in the appeals. Undersigned
11 counsel was aware that PDS was willing to waive hearings on the appeals in OPA-PA-
12 12-017 and 018 in order to expedite decisions in those appeals. However, since GTA
13 had requested a hearing in 016 (and in fact the November 20 Conference itself was a
14 Pre-hearing Conference in 016), undersigned counsel had not discussed with John Day
15 whether PDS would waive the hearing in 016. There was no reason for the issue to
16 come up since GTA had already requested a hearing.

17 Undersigned counsel then mistakenly assumed that since PDS would
18 waive the hearing in 017 and 018, it would likewise be willing to do so in 016. This was
19 incorrect. In 016, it will be important for witnesses to explain why GSA made a correct
20 evaluation of the PDS and GTA bids. Technical witnesses will be necessary for that
21 purpose. In addition, at the hearing, PDS intends to introduce into evidence the actual
22 telephone that GTA intended to provide under the IFB. PDS believes the Hearing
23 Officer will be able to immediately recognize, as GSA did, that the phone did not
24 comply with the IFB requirements.

25 Undersigned counsel quickly corrected this error by a filing on November
26 26, 2012, and there is no prejudice to GTA. It would be most unfair to deny PDS a
27 hearing in 016, which would also deny the Hearing Officer the opportunity to hear
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evidence which will be very beneficial in making the correct decision on this appeal. PDS notes that the OPA Procurement Appeal website for 016 has consistently reflected that a hearing is scheduled in this appeal for January 29, 2013, and PDS requests that the Hearing Officer now confirm that there will be a hearing in 016.

DATED this 11th day of January 2013.

Respectfully submitted,

BERMAN O'CONNOR & MANN
Attorneys for *PACIFIC DATA SYSTEMS, INC.*

By: 

BILL R. MANN

