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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: Nov. 5, 2012

TIME: 4:22 AM PM BY: R. Field

FILE NO OPA-PA: 12-016

1 PACIFIC DATA SYSTEMS, INC.
185 Ilipog Drive
2 HBC Building, Suite 204A
Tamuning, Guam 96913
3 Telephone No.: (671) 300-0200
Facsimile No.: (671) 300-0265
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6 **OFFICE OF PUBLIC ACCOUNTABILITY**
7 **PROCUREMENT APPEALS**

8 IN THE APPEAL OF

OPA Docket No. OPA PA 12-016

9
10 TELEGUAM HOLDINGS, LLC AND ITS
WHOLLY OWNED SUBSIDIARIES,
11 GTA TELECOM, LLC; GTA SERVICES,
LLC; AND PULSE MOBILE LLC,

**REPLY OF PACIFIC DATA SYSTEMS,
INC. TO TELEGUAM HOLDINGS,
LLC'S OPPOSITION TO PDS'
OBJECTION TO APPEAL AND
MOTION FOR DISMISSAL**

12 Appellant.

13
14 Pacific Data Systems, Inc. ("PDS") replies as follows to the Opposition of
15 Teleguam Holdings, LLC to the PDS Objection to Appeal and Motion for Dismissal.

16 **I. THE ISSUE OF TIMELINESS IS BEFORE THE OPA.**

17 GTA argues that the Public Auditor may not consider the issue of whether
18 GTA's original protest to GSA was timely filed. GTA argues this is so because GSA did
19 not raise the issue of the timeliness of the GTA protest when it denied the GTA protest
20 on October 5, 2012. GTA refers to *In Re: Town House Dept. Stores, Inc. dba Island Business*
21 *Systems & Supplies*, OPA-PA-11-02. In that case, the Public Auditor stated that if neither
22 the party protesting nor the agency raise an issue, the issue is not properly before the
23 Public Auditor.

24 However, this ignores the fact it was GTA and not PDS that filed the
25 protest. The role of PDS in this appeal is that of an Interested Party. This appeal is the
26 first opportunity PDS has had to raise the timeliness issue.

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The first opportunity any Interested Party has to comment on the agency's denial of a protest is after an appeal is taken. An Interested Party, as here, may well be able to assert grounds for upholding the protest denial in addition to those stated by the agency. If an Interested Party is only limited to second the agency's denial of the protest, there would be little reason to allow comments by an Interested Party. The issue of the timeliness of GSA's original protest is thus properly before the Public Auditor. As stated at 5 GCA § 5703:

The Public Auditor shall have the power to review and determine *de novo* any matter properly submitted to her or him ... Notwithstanding § 5245 of this Chapter, no prior determination shall be final or conclusive on the Public Auditor or upon any appeal from the Public Auditor ...

II. GTA'S ORIGINAL PROTEST WAS UNTIMELY.

In its Brief, GTA claims that it did not receive notice of GSA's Revised Bid Status until May 4, 2012. This is not true. Attached as Exhibit "A" is the fax transmission confirmation from GSA that shows that the Revised Bid Status was sent to GTA on May 3, 2012 at 5:27pm. This is consistent with the same fax notifications for this document that GSA sent to the other bidders in this procurement, as shown in Exhibit "B". The following summarizes the GSA fax transmission confirmation dates and times for the Revised Bid status for all bidders:

- GTA - sent by GSA on May 3, 2012 at 5:28pm, fax confirmation received
- PDS - sent by GSA on May 3, 2012 at 5:36pm, fax confirmation received
- IT&E - sent by GSA on May 3, 2012 at 5:31pm, fax confirmation received
- GT/MCV - sent by GSA on May 3, 2012 at 5:30pm, fax confirmation received
- Docomo Pacific - sent by GSA on May 3, 2012 at 5:37pm, fax confirmation received

It is clear from the documentation that PDS has provided in Exhibit A and B, that all bidders received the Revised Bid Status from GSA on May 3, 2012 at about the same

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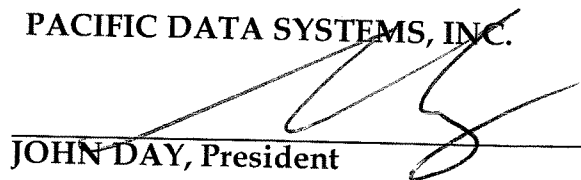
time. This documentation establishes May 3, 2012 as the date on which any protest of the GSA decision tolls and must be based. Therefore, the protest filed by GTA on May 18, 2012 was not timely filed and this basis should also be considered by the OPA in the denial of the GTA Protest by GSA.

III. CONCLUSION.

The issue of timeliness of GSA's original protest is properly before the Public Auditor, and the record demonstrates that the original protest was untimely for one day. GSA's denial of the GTA protest must be upheld for this reason also.

DATED this 5th day of November, 2012.

Respectfully submitted,
PACIFIC DATA SYSTEMS, INC.

By: 
JOHN DAY, President

- Exhibit A: GSA fax confirmation to GTA - May 3, 2012 5:28pm
- Exhibit B: GSA fax confirmation to PDS - May 3, 2012 5:36pm
- GSA fax confirmation to IT&E - May 3, 2012 5:31pm
- GSA fax confirmation to GT/MCV - May 3, 2012 5:30pm
- GSA fax confirmation to Docomo Pacific - May 3, 2012 5:37pm

WorkCentre 7346 Transmission Report

Exhibit B

671 10

671 472 4217

Date Time: 05/03/2012 05:26PM
Page: 1 (Last Page)

Local Name: GENERAL SVCS AGENCY
Local: _____

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Document size 8,5714*3EF

GENERAL SERVICE AGENCY
(Aghensan Setibasion/Hinirat)
Government of Guam
P.O. Box FG, Agaña, Guam 96910
Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

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REVISED BID STATUS

Pacific Data Systems
Attn: John Day, President/COO
185 Lipog Drive, Suite 204A
Tamuning, Guam 96913
Tel: 300-0229 / Fax: 300-0265

Date: ~~MAY~~ 03, 2012

BID INVITATION NO.: GSA-664-11 OPENING DATE: December 19, 2011

DESCRIPTION: TELECOMMUNICATION SERVICES

The following is the result of the above-mentioned bid. Refer to the items checked below.

- Cancelled (in its entirety), or partially cancelled due to:
 - Insufficient funds;
 - Change of specifications; or
 - Insufficient number of bidders.
- Rejected due to:
 - Late submission of bid;
 - No bid security or insufficient bid security amount submitted, as required by section 11 of the General Terms and Conditions;
 - Not meeting the delivery requirement as stated in the IFB;
 - Non-conformance with bid requirement: **Bid Form 12 - Did not adhere to equal increments**
 - Inability to provide future maintenance and services to the equipment;
 - High Price for Bid Forms: 10
 - Others: Submitted "No Quote" for Bid Forms 8, 8A, 9 and 15

Bid recommended for award: **MULTIPLE AWARD**

- Teleguam Holdings, LLC - See attached award
- Pacific Data Systems - See attached award
- PTI Pacific Inc. dba: IT&E - See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

Doc. No.	Doc. Description	Start Time	Duration	Pages	Mode	Content	Status
1	14196110000000	5/3/2012 5:26PM	00:47	5	5	02	CP

FB: Forward FB: Forward to Fax/Print EC: Echo/cast MP: Multi-Forward H: Forward per H...
 FQ: Forward FB: Fata Echo/cast RS: Fata Send EF: Eo/Fa Forward CK: Completed
 AT: Send Admin BT: Bounced AS: Auto Send TM: Terminated

WorkCentre 7346 Transmission Report

Exhibit B

05/10/2012 07:47:42

Date/Time: 05/05/2012 05:31PM
Page: 1 (Last Page)

Local Name: GENERAL SVCS AGENCY
Logo:

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Document Size: 9.5145KB

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(Aghusan Sebasion Hinirat)
Government of Guam
P.O. Box 90, Agaña, Guam 96910
Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

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REVISED BID STATUS

Date: MAY 05, 2012

PTI Pacific Inc. dba: IT&E
Attn: Ariene Taitingfong
Business Account Manager
P.O. Box 2488
Barrigada, Guam 96921
Tel: 922-4478 / Fax: 922-4329

BID INVITATION NO.: GSA-064-11

OPENING DATE: December 19, 2011

DESCRIPTION: TELECOMMUNICATION SERVICES

The following is the result of the above-mentioned bid. Refer to the items checked below.

Canceled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with the specification;
- Inability to provide future maintenance and services to the equipment;
- High Price for Bid Forms: 8, 9, and 14
- Others: No Submittal for Bid Forms: 2, 3, 5, 6, 10, 11, 12, 13, and 15

Bid recommended for award: **MULTIPLE AWARD**

Telegam Holdings, LLC - See attached award

Pacific Data Systems - See attached award

PTI Pacific Inc. dba: IT&E - See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

Total Pages: 5 Total Pages Sent: 5

Doc. Doc.	Response Station	Start Time	Duration	Pages	Mode	Content	Status
1	PTI Pacific Inc. dba: IT&E	5/5/2012 5:30:00 PM	00:00	5	5	5/5/2012	OK

RE: Received ME: send to Mailbox E: Embedded MF: Multi-Polling F: Forward S: Send
 RE: Polling RE: Receive Embedded E: Polls Send EF: EoF Poll Forward F: Forward
 RE: Send Again EII: Engaged A: Auto Send T: Terminated

WorkCentre 7346 Transmission Report

Exhibit B

02 ID

671 472 4217

Date Time: 05/03/2012 08:30PM
Page: 1 (Last Page)

Local Name: GENERAL SVCS AGENC.
Logo:

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Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

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REVISED BID STATUS

Guam Telecom LLC
Attn: Craig R. Thompson, President/CEO
497 Harmon Loop Road
Dededo, Guam 96929
Tel: 969-4003 / Fax: 632-6280

Date: MAY 03, 2012

BID INVITATION NO: GSA-064-11

OPENING DATE: December 19, 2011

DESCRIPTION: TELECOMMUNICATION SERVICES

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with bid requirement: Bid Form 12 - Did not adhere to equal increments
- Inability to provide future maintenance and services to the equipment;
- High Prices for Bid Forms: 13, 15
- Others: No Submittal for Bid Forms: 2, 3, 5, 6, 8, 8A, 9, 10, 11, and 14

Bid recommended for award: **MULTIPLE AWARD (See Attached)**

Telequam Holdings, LLC - See attached award

Pacific Data Systems - See attached award

PTI Pacific Inc. dba: IT&E - See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

Total Pages Received: 5 Total Pages Sent: 5

Doc. ID	Remote Station	Start Time	Duration	Pages	Mode	Content	Status
1	10.10.1.100	5/3/2012 8:30PM	5:55	5	6	100	1

Note:
 RB: Rollback MB: send to Mailbox EC: Broadcast MF: Multi-Polling RB: Remote Send
 RC: Rollback RE: Relo. Broadcast FC: Relo. Send EF: Ed. For Forward RF: Rollback
 AL: Load Again BU: Engaged AU: Auto Send IA: Terminated

WorkCentre 7346 Transmission Report

Exhibit B

52 ID

671-472-4217

Date/Time: 05/05/2012 05:37PM
Page: 1 (Last Page)

Local Name: GENERAL SVCS AGENCY
Local ID:

Document has been sent.
Document Size: 5.51475KB

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(Añensian Seibision Hinira)
Government of Guam
P.O. Box FG, Agaña, Guam 96910
Tel: 477-1710-13 Fax: 472-4217 / 475-171627

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REVISED BID STATUS

Date: MAY 03, 2012

Docomo Pacific Inc.
Attn: Marilyn R. Borja, Sales Manager
219 E. Marine Drive Ste. 206
Tarruning, Guam 96913
Tel: 688-5741 / Fax: 649-7247

BID INVITATION NO.: GSA-864-11

OPENING DATE: December 19, 2011

DESCRIPTION: TELECOMMUNICATION SERVICES

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with the specifications;
- Inability to provide future maintenance and services to the equipment;
- High Price for Bid Forms: 8, 8A and 9
- Others: No Submittals for Bid Forms: 2, 3, 5, 6, 10, 11, 12, 13, 14, and 15

Bid recommended for award: **MULTIPLE AWARD**

Teleguam Holdings, LLC - See attached award

Pacific Data Systems - See attached award

PTI Pacific Inc. dba: IT&E - See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

Total Pages: 5
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Doc. ID	Remote Station	Start Time	Duration	Pages	Mode	Content	Status
012000114924		5/3/12 5:06:14	5:07	5	5	5/3/12	Completed

Notes:

HE: Hold send HE: send to Mailbox E: Embedded MF: Multi-Frame
 H: Hold send H: Hold E: Embedded EF: Embedded
 B: Embedded B: Embedded T: Terminated