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Attorneys for Appellant  
Teleguam Holdings, LLC and its wholly owned subsidiaries

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  
HEARING BRIEF**

Teleguam Holdings, LLC and its wholly owned subsidiaries ("GTA") summarize its position on the issues in this case as follows:

1. **Objection to PDS' Untimely Request for Hearing.**

PDS disingenuously continues to request a hearing in OPA-PA-12-016. PDS failed to timely file its request for hearing as required. 2 G.A.R. § 12108(a). PDS' only explanation is that its counsel was not aware of the issue at the November 20, 2012 Scheduling Conference. The fact is that PDS' failed to request for a hearing on October 15, 2012 when it entered its appearance. The fact remains that PDS had twenty-one (21) days to request for a hearing and did not.

As pointed out previously, "[r]equests for a hearing after the expiration of the time period allowed for filing of the Comments to the Agency Report *will not be honored* except in *unusual circumstances*." *Id* (emphasis added). PDS' failure to consult with its attorney about whether or not it wants a hearing, prior to a pre-hearing conference, is *not unusual circumstances*. Rather, PDS' failure to request a hearing at the pre-hearing conference is ordinary oversight, lack of communication, and prejudicial to GTA.

Scheduling a hearing in this matter means that GTA must prepare for a hearing on the issues presented in OPA-PA-12-016. Because a hearing was waived during the Prehearing Conference and because PDS has failed to present the OPA with unusual circumstances, the OPA should deny PDS' untimely request for one.

**2. GSA erroneously revised the Bid Status relative to Bid Forms 2 & 3 because GTA's submission for Bid Form 3 was compliant with the Bid Specifications as provided by GSA.**

Although Bid Form 3 contained descriptions of instruments with "digital display," GSA never amended the bid specifications to specifically require digital display. All of GTA's products offered complied with the specifications noted in the solicitation, which did not include digital display. Agency Report, Tab 6 at 40-43. GTA contends that GSA could not use Bid Form 3 to amend the specifications because the instructions set forth in Bid Form 3 states that, "[t]he *Bidder shall provide the description*, purchase price, and monthly rental rate for all phone and accessories." Agency Report, Tab 6 at BF3. Thus, the descriptions in Bid Form 3 could not be made to be specifications without amending the IFB. GSA' assertion that the descriptions indicated in the Bid Form are the specifications contradicts the Bid Form instructions directed the "bidder" to complete the description of the actual instrument it was going to offer.

Without properly amending the IFB specifications to require that all instruments have "digital displays" for Bid Form 3, GSA could not have found that GTA's bid was non-responsive. OPA should find that GSA failed to properly amend its specifications to include a "digital display" and rescind GSA's Bid Status dated May 3, 2012 and find that GSA's Bid Status dated April 27, 2012 is valid and enforceable.

**3. GSA erroneously determined that GTA submitted multiple price offers for Bid Form 3. GTA simply provided a selection of telephone instruments to the government of Guam as required by the Bid Specifications, not different price offers.**

GSA's bid specifications clearly state "[t]he Bidder shall offer a range of analog, single line, feature phone and multi-line feature phones. An automated call distribution station shall also be provided. The phone specifications and user manual must be included in the bid." Agency Report, Tab 6 at 40-43. A range of phones is different from a price offer because the range of phones submitted by GTA did not change the price offer. Bid Form 3 required the Bidders to offer a range of instruments and did not limit bidders to propose only one instrument. This is exactly what GTA did without changing the price offer. Therefore, GSA improperly decided that GTA submitted multiple offers for Bid Form 3.

GSA's response to this Appeal did not even address the issue of "multiple price offers." Instead GSA refers to Response to Questions issued on September 17, 2011, which provides that potential bidders must refer to Revised Bid Forms that were issued as RBF's. In this Appeal, GSA determined that GTA provided multiple price offers but does not address what part of GTA's bid submission for Bid Forms 2 & 3 constitute multiple pricing offers.

**4. GSA erroneously determined that PDS was the lowest responsible bidder for Bid Forms 2 & 3.**

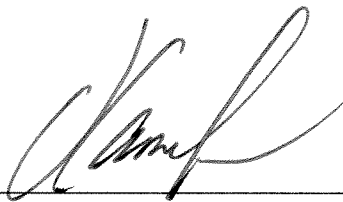
GSA initially determined that GTA offered the lowest prices for the phones. GTA offered instruments at the lowest average price offered by any bidder with a price of \$3.10 for Bid Form 3. *See* Agency Report filed in OPA-PA-12-11, Vol. II, Tab 5 (showing GTA's pricing). Because GTA's instruments were 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.

With regards to 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). As stated above, GTA is the lowest responsible bidder. Therefore, GSA erroneously determined that PDS was the lowest responsible bidder for Bid Forms 2 & 3.

Based on the foregoing, GSA incorrectly revised the Bid Status; erroneously determined that GTA submitted multiple price offers for Bid Form 3; and wrongly determined that PDS was the lowest responsible bidder for Bid Forms 2 & 3. Accordingly, the initial award to GTA should be reinstated.

Submitted this 18th day of January, 2013.

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