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Attorneys for Teleguam Holdings, LLC and its wholly owned subsidiaries

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF
PACIFIC DATA SYSTEMS, INC.,
Appellant.

Docket No. OPA-PA-12-017

**MOTION IN LIMINE TO EXCLUDE
IRRELEVANT AND UNDISCLOSED
EVIDENCE**

Teleguam Holdings, LLC ("GTA") and its wholly owned subsidiaries hereby moves the OPA *in limine* to preclude Pacific Data Systems, Inc.'s ("PDS") submission of the National Exchange Carrier Association ("NECA") Sections 8 and 17 because these documents are irrelevant and were improperly disclosed.

The Public Auditor and/or the Hearing Officer have the authority to exclude the NECA documents. *See* 2 GAR §§ 12101, 12109(e) and (f) (The hearing officer has the power to [r]egulate the course of the hearing and conduct of participants therein and [r]eceive, rule on, exclude, or limit evidence . . . which is irrelevant, immaterial, or unduly repetitious.)

I. NECA DOCUMENTS ARE IRRELEVANT TO THE ISSUES IN THIS CASE

In its Procurement Appeal, PDS challenges GSA's award to GTA on three grounds: (1) GTA's bid affidavit disclosing ownership and commission violates 5 GCA § 5233, (2) GTA failed to meet the requirements of the IFB by improperly condition its bid, and (3) the joint bid submission by Teleguam Holdings LLC, GTA Telecom LLC, GTA Services LLC and Pulse Mobile LLC was improper and must be rejected. Nowhere in PDS' appeal or the record in this case is there any mention of these documents or its contents.

The NECA documents lack any relevance to this case. PDS failed to identify the purpose and the relevance of this document in its Protest thus far and fails to specify the purpose of the information contained in the over 500 page document. Further, the NECA documents only relate to specific tariffs, which is outside the scope of PDS's appeal to Bid Form 10.

II. NECA DOCUMENTS HAVE NOT BEEN PROPERLY DISCLOSED

The basic purpose of discovery is to take the "game" element out of trial preparation by enabling parties to obtain the evidence necessary to evaluate and resolve their dispute beforehand. *Herbert v. Lando*, 441 U.S. 153, 177 (1979). PDS' failure to disclose the NECA documents until this point has violated the basic purpose of discovery.

PDS's error negatively impacts GTA because it now has only a limited amount of time until trial to try to understand the relevance of the NECA documents, and because an initial review of this exhibit conveys no relevance whatsoever. Had this exhibit been produced earlier, GTA would be able to question witnesses regarding this document, and are now unable to do so with the short amount of time remaining before the hearing. PDS cannot provide any substantial justification for failing to produce this exhibit at an earlier time.

III. CONCLUSION

GTA respectfully requests that the OPA issue an order precluding PDS from utilizing the

above-stated exhibit at the hearing in this case. The NECA documents are not only irrelevant to the instant appeal, but GTA will be harmed by the failure of PDS to produce this exhibit earlier. PDS also has no justification for its failure to disclose.

DATED: Hagåtña, Guam, and December 24, 2012.

CARLSMITH BALL LLP

A handwritten signature in black ink, appearing to read 'VINCENT C. CAMACHO', is written over a horizontal line.

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