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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 12-018

6 **OFFICE OF PUBLIC ACCOUNTABILITY**  
7 **PROCUREMENT APPEALS**

8 IN THE APPEAL OF  
9 TELEGUAM HOLDINGS LLC and its  
10 WHOLLY OWNED SUBSIDIARIES,  
11 GTA TELECOM LLC; GTA SERVICES  
12 LLC and PULSE MOBILE LLC,

Appellants.

OPA Docket No. OPA PA 12-018

**COMMENTS ON AGENCY REPORT  
BY PACIFIC DATA SYSTEMS, INC.**

13 Comes now Pacific Data Systems, Inc. ("PDS"), by and through its counsel, and  
14 comments as follows on the Agency Report filed by General Services Agency (GSA)  
15 with the Office of Public Accountability (OPA) in this matter on November 21<sup>st</sup>, 2012.

16 A review of the GSA Agency Report makes it clear that GSA has confirmed the  
17 simple fact that the Bid Form 11 submission by Teleguam Holdings LLC, GTA Services  
18 LLC, GTA Telecom LLC, Pulse Mobile LLC (hereafter "GTA") was not the lowest  
19 responsive and responsible submission for this part of the subject IFB (GSA-IFB-064-11).  
20 GSA awarded this part of the bid, Bid Form 11, to PDS as the lowest responsive and  
21 responsible bidder as required by law and regulation. PDS agrees with the award  
22 decision by GSA in this procurement for Bid Form 11, and the GSA denial of the protest  
23 filed by GTA.

24 In GSA's denial of GTA's protest, GSA cited specific instructions and bid terms  
25 and conditions that described how the awards would be made for each of the 14 parts  
26 of the procurement (each part represented a different type of telecom service and was  
27 assigned separate bid form number). GSA made it clear in the bid terms and conditions  
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that only one award would be made per Bid Form and GSA clearly defined the evaluation methodology that would be used for each Bid Form as required by procurement law and regulation. In its original protest and in this appeal, GTA contests the award of Bid Form 11 to PDS for two reasons.

First, GTA calls into question the award methodology used for the 1GB service on Bid Form 11. GTA contends that since its bid for this line item was lower, that it should be awarded these services for this Bid Form. GTA ignores the GSA instructions and evaluation criteria that documented the fact that awards would only be made per bid form and would not be split within the Bid Form. GSA conducted an evaluation according to the criteria defined in the procurement and determined that the PDS offer was the lowest responsive and responsible offer for Bid Form 11.

The bid evaluation used by GSA in Bid Form 11 is the same evaluation criteria that was used throughout the bid and that resulted in awards of Bid Forms to GTA even though GTA was not the lowest bidder for all services on the Bid Form. Examples of this can be found in GSA awards for Bid Form 10 and Bid Form 12 where GTA was awarded the entire Bid Form even though PDS or other bidders offered a lower bid on several services contained on the bid form. GTA's position in this appeal is inconsistent with the facts of the procurement and even awards that GSA has already made to GTA. GTA is asking the OPA to rewrite the rules of this procurement after the fact and in its favor in order for it to be awarded part of Bid Form 11, while at the same time asking that the rules used by GSA in all other parts of the bid that benefited GTA be left unchanged.

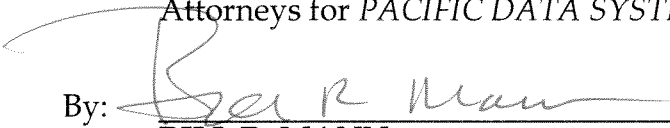
The second reason that GTA gives for its appeal is that *"GSA failed to provide objectively measurable criteria for the 10,000 Mbps which resulted in a substantial price difference among the bidders."* GTA goes on to try to justify the high cost of its bid versus

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the much lower PDS offer for the same services. Though GTA has tried to confuse and cast uncertainty on the PDS offer and the GSA evaluation, the facts are that PDS provided a fully compliant offer for these services that was significantly lower than the offer made by GTA. GSA evaluated the PDS offer, including the detailed technical information provided by PDS as part of its submission, and found the PDS offer to be the lowest responsive and responsible offer for Bid Form 11.

DATED this 3<sup>d</sup> day of December, 2012.

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

By:   
**BILL R. MANN**