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Teleguam Holdings, LLC and its wholly owned subsidiaries

**RECEIVED**

OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 12/10/13

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FILE NO OPA-PA: 13-16

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.

APPEAL NO. OPA-PA-13-16

**TELEGUAM HOLDINGS, LLC'S  
COMMENTS TO AGENCY REPORT**

GDOE's agency report amounts to a waiver of objections to all of GTA's grounds for appeal, and contains no evidence in which to support any of its stated objections.

An agency report shall be "detailed" and include a "statement answering the allegation of the Appeal and setting forth findings, action, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be **fully responsive** to the allegations of the Appeal." 2 GAR Div. 4 §§ 12104(c)(3), 12105(g) (emphasis added).

GDOE's "detailed" statement responding to the Appeal over Part 6 of the GDOE IFB 20-2011 only addressed the issue of timeliness and failed to address the merits of GTA's appeal.

Without an agency report meeting the requirements of sections 12104 and 12105, the OPA lacks findings or information upon which to determine how GDOE arrived at its decision that GTA's appeal is untimely and beyond the scope of a protest as contemplated in § 5425(a). As such, the agency report should be disregarded, and GDOE should be precluded from introducing into evidence any facts or arguments not set forth in its Agency Report.

The record submitted to date supports GTA's grounds for protest. The first ground for appeal presented by GTA is that GDOE failed to properly determine whether PDS was a responsible bidder. As noted in the Appeal, Guam law requires the procuring agency to determine whether a successful bidder is responsible to perform under the contract. A cursory review of whether PDS had the capability or capacity to perform under the contract would have concluded that by July 1, 2011, PDS could not perform pursuant to the bid specifications. Nonetheless, on March 23, 2011, PDS accepted the purchase orders for Part 6 with the condition that the services were to be delivered on July 1, 2011. The record shows that PDS was not able to deliver and in fact failed to deliver the services on July 1, 2011, as required by the purchase order. As a result, PDS defaulted on the award. GDOE should have terminated the award and reissue to the next lowest responsive and responsible bidder or re-issue a new invitation for bid Part 6. GDOE instead allowed PDS to provide services outside the specifications of Part 6. Of course, GTA did not learn any of this information until its recent Freedom of Information Act request.

GTA's next ground for protest is that GDOE allowed PDS to provide "temporary services" without a competitive bid in violation of the Guam Procurement Law. The IFB specified that the award of Part 6 was contingent upon the approval and matching funds by the Schools and Libraries Division, of the Universal Service Administrative Company, funding by the U.S. Congress. In its appeal, GTA established that these "temporary services" were not

eligible for federal funding because GDOE failed to competitively bid out the services. Because "temporary services" were substantially different from the specifications in Part 6, GDOE should have issued a new invitation for bid for the services requested in Part 6 of the IFB. GDOE's action unfortunately resulted in GDOE and the Government of Guam losing out on USAC E-rate reimbursements. Because GDOE could not avail of one-half of the funding source, GDOE should have terminated the award.

GTA's other ground for protest relates to the process for payments for Part 6 services. The IFB states that the award of the contract is subject to the availability of funding approved and received from USAC, funding by U.S. Congress, and the availability of matching funds from GDOE. The record states that the "temporary services" were not eligible for reimbursement under USAC or funding by the U.S. Congress because GDOE failed to competitively bid out such services. As a result, the award should have been terminated because the "temporary services" provided by PDS was not eligible for USAC or U.S. Congress funding. The IFB also required that the successful bidder issue (invoices) bills for the federal share directly to the Schools and Libraries Division. Once GDOE was informed that the temporary services were not reimbursable, GDOE, instructed PDS to submit its bills for the federal funds directly to GDOE in violation of the IFB. As a result, GDOE funded 100% of the "temporary services" in violation of Guam law.

Lastly, GDOE failed protect the interest of the Territory by failing to assess liquidated damages against PDS for its failure to provide services as required by the IFB. GDOE was thus entitled to liquidated damages under Section 41 of the IFB. The IFB and purchase order clearly stated that GDOE would assess liquidated damages for failure to provide services as required by the IFB. As stated above and in the Appeal, PDS violated several conditions of the IFB. GDOE's failure to assess and collect liquidated damages is contrary to protecting the best interest

of the Territory.

In all, GDOE's agency report was wholly non-responsive to GTA's appeal claims. GTA has demonstrated that Part 6 of the IFB should be terminated because PDS and GDOE both failed to comply with numerous terms under the IFB. PDS should be debarred from future participation for its failures and GTA reimbursed for its costs in this appeal.

DATED: Hagåtña, Guam, December 16, 2013.

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