

Pacific Data Systems
DOCKET NO: OPA-PA-18-004
INTERESTED PARTY HEARING BRIEF

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PROCUREMENT APPEALS

DATE: Dec 28, 2018

TIME: 4:27 AM PM BY: FDJ

FILE NO OPA-PA: 18-004

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**BEFORE THE
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION**

)	
)	
IN THE PETITION OF)	DOCKET NO: OPA-PA-18-004
)	
TELEGUAM HOLDINGS, LLC dba GTA)	
)	INTERESTED PARTY RESPONSE TO
Appellant)	TELEGUAM HOLDINGS, LLC dba GTA
)	REPLIES TO OPPOSITION TO HEARING
		BRIEF

Comes now Pacific Data Systems (PDS) to provide its reply response to the Opposition to Hearing Brief submitted by Teleguam Holdings, LLC (GTA) through its counsel on the Teleguam Holdings, LLC, (dba GTA) Appeal related to the General Services Agency (GSA) Invitation For Bid GSA-064-11.

OPPOSITION COMMENTS

PDS opposes GTA's position that these proposed awards must be cancelled and provides the following specific points of comments related to GTA's most recent Hearing filing with the OPA:

1 **1. This is GTA's Effort for a "Second Chance" to Litigate and Delay this**

2 **Procurement:** With this protest and appeal, GTA seeks to recast previously
3 litigated issues and arguments as "new". The Public Auditor, the Superior Court
4 and even the Supreme Court of Guam have all ruled on the matter and a final
5 determination has been made that, with the exception of Part E, all other parts of
6 the bid are affirmed because GTA did not originally timely commence an action
7 in the Superior Court. GTA should not now be given a "second chance" to
8 litigate these issues when the time to do so has expired and a final
9 determination has been made.

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11 **2. GTA's Protest is Invalid:** GTA's Reply comments seek to dismiss the
12 importance of the June 6, 2018 GSA letter and June 8, 2018 GTA response that
13 referenced the recent Guam Supreme Court decision on this procurement. GSA
14 requested that GTA confirm its original bid. Confirmation was needed by GSA
15 since the original time for the validity of the bid (90 days) had passed. 5 GCA
16 §5212(f)¹ allows for the bidder to withdraw its bid after the expiration of the
17 required validity date. When asked by GSA on June 6, 2018 to confirm its bid,
18 GTA answered "**NO**" on June 8, 2018². GTA also included a comment
19 regarding its concern over awards being made in this procurement but DID NOT
20 PROTEST THIS ACTION BY GSA. GTA's Reply Comments state the basis of

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¹ 5 GCA §5212(f) states "(f) Withdrawal of Bids: After the bids are opened, they shall be irrevocable for
23 the period specified in the Invitation for Bids, except as provided in §§ 5211(f) of this Chapter. If a bidder
24 is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

25 ² See PDS Exhibit E – PDS Interested Party Hearing Brief dated December 14, 2018.

1 the current protest is: ***"Again, the basis for GTA's protest is GSA's official***
2 ***Action made on June 28, 2018."***³

3
4 This exchange between GSA and GTA is clear and vital in this case. GSA's
5 letter of June 6, 2018 makes clear that GSA is confirming awards to be made to
6 GTA for sections affirmed by the Supreme Court. GTA clearly understood what
7 GSA was doing by the comments they included with their response, and yet did
8 not take this opportunity to Protest this action by GSA⁴. Instead, GTA refuses to
9 confirm its bid, effectively withdrawing its bid from further consideration for an
10 award, as was GTA's right to do.

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12 GTA's own action by stating "**NO**" in its June 8, 2018 response to GSA and
13 inaction for failing to Protest the GSA awards planned by GSA in procurement
14 are both significant reasons to declare the GTA Protest as invalid and denying
15 this protest and Appeal by GTA. GTA's NO response caused its bid to be
16 withdrawn and forfeiture of its Right to Protest (reference 5 GCA §5425(a)) and
17 GTA's inaction to protest within the 14 days required by the same section made
18 any protest of these issues after this period untimely.

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³ reference page 3 of GTA Reply Comments

23 ⁴ 5 GCA §5425(a) requires that a bidder that may be aggrieved in connection with a bid may protest and
24 "The protest shall be submitted in writing with fourteen (14) days after such aggrieved person knows or
25 should know of the facts give rise thereto.

SUMMARY

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2 GTA's protest is invalid due to its withdrawal of its bid and failure to make its filing
3 in the time allowed. If the OPA finds that the GTA Protest was properly filed, the
4 content of the filing is without merit since the issues have been previously litigated
5 through the procurement appeals and judiciary process. For these reasons, the GTA
6 Appeal should be DENIED with a legal foundation that precludes the potential for further
7 judicial appeals.

8
9 **RESPECTFULLY SUBMITTED** this 28th day of December 2018.

10 **PACIFIC DATA SYSTEMS**

11
12 
13 _____
14 **JOHN DAY**
15 *President*