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PROCUREMENT APPEALS  
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OFFICE OF PUBLIC ACCOUNTABILITY

GUAM

IN THE MATTER OF  
  
TELEGUAM HOLDINGS, LLC,  
  
Appellant,  
  
and  
  
GENERAL SERVICES AGENCY,  
  
Purchasing Agency.

Docket No. OPA-PA-18-004

**TELEGUAM HOLDINGS, LLC AND ITS  
WHOLLY OWNED SUBSIDIARIES'  
COMMENTS TO AGENCY REPORT**

An agency report shall be detailed and answer the allegations of the appeal. 2 GAR Div. 4 § 12104(c)(3). The agency report shall also include a “statement 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 § 12105(g) (emphasis added).

GSA’s “detailed” statement responding to the Appeal is that the Supreme Court of Guam fully addressed the issue on Appeal. Supplemental Agency Report at 1. GSA completely misconstrues the Supreme Court’s decision.

The Supreme Court did not decide on the merits of the incomplete record for Parts A-D and Parts F-J. The Court explicitly states, “[s]ince the Superior Court’s jurisdiction over Parts A-D and Parts F-J was not invoked within fourteen days of the Public Auditor’s decision, the Superior Court lacked the authority to cancel those portions.” Teleguam Holdings LLC v. Guam, 2018 Guam 5 ¶5. The Court held that “[f]inding no basis for the Superior Court’s exercise of jurisdiction over Parts A-D and Parts F-J of IFB 064-11, we reverse the portions of the Superior Court’s Order and Judgment canceling those parts.” Id. In other words, the Court merely addressed the trial court’s jurisdiction to Parts A-D and Parts F-J of the IFB.

Moreover, the record submitted to date supports GTA’s protest and the remedy sought. GTA protests any potential award under GSA IFB 064-11 because the procurement record remains materially incomplete. GSA is attempting to circumvent the Guam Procurement Law based on a misconstrued reading of the Supreme Court’s decision in Teleguam, 2018 Guam 5. The Supreme Court held that “in the absence of a complete record, GTA is entitled to challenge [an] award.” Id. at ¶38. More significantly, the Court held that “[s]ince GTA showed that the procurement record was materially incomplete and the trial judge has the authority to cancel an award where the procurement record is incomplete; Part E was not improperly canceled.” Id. at 42.

Guam law specifically provides that “each procurement officer shall maintain a complete record of each procurement.” 5 GCA §5249. The statute further provides that a record contain specific records. 5 GCA § 5249 (a)-(e). The statute then provides, that “[n]o procurement award shall be made unless ...” the record is maintained according to § 5249. 5 GCA § 5250. Any award made in GSA IFB 064-11 is a violation of law and subject to cancellation. 5 GCA §§ 5450 & 5451.<sup>1</sup>

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<sup>1</sup> GSA has admitted on the record that the record is in fact materially incomplete and cannot be made complete. The sole remedy available is to cancel the GSA IFB 064-11, similar to the Supreme Court’s decision to affirm the trial court’s order to cancel Part E of GSA IFB 064-11.

In light of the statutory regime and the interpretation by the Guam Supreme Court, GSA's denial of GTA's protest is without merit. GSA cannot make any award in GSA IFB 064-11 in light of the incomplete record. The Public Auditor should grant GTA's Appeal and cancel GSA IFB 064-11 in its entirety.

DATED: Hagåtña, GU, October 26, 2018

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