

CAMACHO CALVO LAW GROUP LLC

VINCENT C. CAMACHO
vcamacho@camachocalvo.law
134 W Soledad Ave., Suite 401
Hagåtña, GU 96910
Tel No. 671.472.6813
Fax No. 671.477.4375

Attorney for Appellant
TELEGUAM HOLDINGS, LLC

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

IN THE MATTER OF

TELEGUAM HOLDINGS, LLC,

Appellant,

And

GENERAL SERVICES AGENCY,

Purchasing Agency.

Docket No. OPA-PA-18-004

**TELEGUAM HOLDINGS, LLC'S
REPLY TO GENERAL SERVICES
AGENCY AND INTERESTED PARTY
PDS'S OPPOSITION BRIEFS**

Teleguam Holdings, LLC and its wholly owned subsidiaries, GTA Telecom, LLC, GTA Services, LLC, and Pulse Mobile LLC (collectively "GTA") respectfully submit their Reply to General Service Agency ("GSA") and Interested Party PDS's Opposition Briefs.

A. The Affirmative Defenses of Statute of Limitations, Res Judicata, and Jurisdiction Do Not Grant GSA the Authority to Make Procurement Awards that Fail to Comply with Guam Procurement Law

GSA and PDS argue that GTA's protest is barred by the statute of limitations, *res judicata*, and other jurisdictional principles. They contend that GTA should have raised the incomplete record issue in 2012 and 2013. GSA and PDS misunderstand GTA's protest in this matter. The event that GTA protests is GSA's June 28, 2018 decision to propose awards without the statutorily-

ORIGINAL

mandated complete procurement record. GSA's official action taken on June 28, 2018 is a separate event to which GTA protests. This event has not been, nor could it have been, litigated in the past. First, this event happened after the series of protests, civil actions, and judicial reviews. Second, GTA did not have the opportunity to fully litigate the issue on the merits. While many of the facts are the same, this individual event is the key difference that forms the basis of GTA's protest.

Further, neither the doctrine of *res judicata*, the statute of limitations, nor other jurisdictional principles preempts the requirements of Guam Procurement Law. Guam law clearly mandates that the procurement officer keep a complete procurement record and unequivocally prohibits the award of any procurement contract without a complete procurement record. Absent from GSA and PDS's accusations and arguments is any authority that supports the proposition that the government does not have to follow the law. The reason for this absence is simple – there is no provision that permits the government to violate the law or that protects procurement awards in violation of the law. Instead, as the Supreme Court of Guam has held, when the procurement record is materially incomplete in violation of the procurement law, cancellation of the award is appropriate. Teleguam Holdings LLC v. Guam, 2018 Guam 5 ¶ 41.

B. GTA's Protest is a Good Faith Effort to Ensure Compliance with Guam Law

PDS argues that GTA's protest was made with the goal of delaying the procurement process further "to the detriment of the Procurement System and Government of Guam as a whole," and that GTA's protest was not made in good faith. Additionally, PDS asserts that GTA provides "no valid reasons for why GSA should not be allowed to proceed with the implementation of this procurement." GSA posits that allowing GTA's protest to stand will "set a dangerous precedent to the procurement process."

These baseless accusations highlight GSA and PDS's misunderstanding of GTA's protest and the requirements of Guam Procurement Law. GTA's protest is not for the purpose of delaying the procurement process. To the contrary, the purpose of the protest is to ensure compliance with the clear requirements set forth in the law. Unlike PDS's view, GTA believes that compliance with duly enacted legislation and the safeguard of the public's trust and money in the procurement process are valid reasons to protest and review the June 28 decision to propose awards. Further, GTA finds that the "dangerous precedent" that must be avoided is awarding government procurement contracts without a complete procurement record in violation of Guam law. Such a precedent would render the requirements of the law toothless or turn them into mere guidelines and suggestions.

C. GTA Has a Right to Protest the Proposed Awards

PDS argues that GTA does not have the right to protest due to GTA's "de facto withdrawal of its bid." PDS contends that GTA withdrew its bid when GTA checked the "No" box in a correspondence from GSA that requested confirmation of bid prices offered for the Bid. PDS's claim is erroneous. While GTA did check the "No" box, GTA also noted that its "position is that any award of this IFB is contrary to the Guam Procurement Law." Because the procurement record was deficient and in violation of Guam law, GTA had no basis to confirm its bid amount. GTA is still a prospective bidder in this matter and has the right to protest the present determination or methods of award.

CONCLUSION

GTA's timely protest is a response to GSA's proposal of awards issued through the June 28, 2018 Revised Bid Status. The driving force behind GTA's protest is that Guam law clearly

requires a complete procurement record and strictly prohibits the award of any contract without a complete record. In this matter, the law was not followed as GSA failed to compile and maintain a complete procurement record and has taken official action of proposing awards based on the deficient record. To serve the policies underlying the Procurement Law, especially to safeguard the public's trust in the procurement system and the taxpayer money used in government procurement, the Public Auditor must sustain GTA's protest and cancel the entirety of IFB 064-11.

DATED: Hagåtña, GU, December 28, 2018.

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VINCENT C. CAMACHO
Attorney for Appellant
TELEGUAM HOLDINGS LLC And Its
Wholly Owned Subsidiaries.