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Teleguam Holdings, LLC and its wholly owned subsidiaries

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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
JUN 11 2012  
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FILE NO OPA-PA-12-011

IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT PETITION

IN THE PETITION OF  
PACIFIC DATA SYSTEMS, INC.,  
Appellant.

Docket No. OPA-PA-12-011  
**TELEGUAM HOLDINGS, LLC'S  
COMMENTS**

Teleguam Holdings, LLC, and its wholly owned subsidiaries ("GTA"), support General Services Agency's position as stated in its Agency Report. GTA was not required to submit a local preference application, under Guam law, regulations, or in the language of GSA-064-11. Moreover, GTA qualifies for the local business preference under 5 G.C.A. § 5008, meaning that PDS did not merit any local preference advantage over GTA. PDS' protest appeal must be dismissed.

**I. BACKGROUND**

A. BID SPECIFICATIONS FOR BID FORM 10

PDS' protest concerns only the award for Bid Form 10 of GSA-064-11, and specifically the issue of whether GSA should have applied the local procurement preference to PDS' bid, and not to GTA's bid.

Bid Form 10 solicited Integrated Services Digital Networking PRI Interface ("ISDN PRI"), Integrated Services Digital Networking - Basic Rate Interface ("ISDN BRI"), SIP Trunks, and a Direct Inward Dialing ("DID") Number Block of 25 numbers. *See Agency Rep., Tab 6.* GSA awarded Bid Form 10 in its entirety to GTA. The following compares GTA's and PDS' offered rates for 60 months of service plus installation:

	GTA	PDS
1. ISDN PRI	\$457,239.60	\$397,332.00
2. ISDN BRI	\$19,022.40	\$19,800.00
3. SIP Trunks	\$298,080.00	\$428,241.60
4. DID Number Block of 25 Numbers	\$4,500.00	\$9,000.00
TOTAL	\$778,842.00	\$854,373.60

*See Agency Rep., Tab 11.*

**B. GENERAL IFB LANGUAGE REGARDING LOCAL PREFERENCE**

The General Terms and Conditions of the IFB indicated that "All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations." *Agency Rep., Tab 6 at 19.* Other than that language, the IFB made no mention of any requirements for any bidder to submit information specifically addressing the local procurement preference, or certifying the bidder's qualifications.

**II. GTA WAS NOT REQUIRED BY GUAM LAW TO SUBMIT A LOCAL PREFERENCE APPLICATION**

The local preference law derives from section 5008 of Title 5 of the Guam Code.

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- (a) a licensed bonafide manufacturing business that adds at least twenty-five percent of the value of an item, not to include administrative overhead, using workers who are U.S. citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands;
- (b) a business that regularly carries an inventory for regular or immediate sale of at least fifty percent (50%) of the items or supplies to be procured; or
- (c) a business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000) which ever is less, of supplies and items of a similar nature to those being sought; or
- (d) a service business actually in business, doing a substantial portion of its business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference.

Guam's Procurement Regulations reiterate section 5008's requirements. *See* 2 GAR Div. 4 § 1104. Section 5008 also makes no mention of a requirement that a bidder fill out a certification form similar to what PDS submitted. Accordingly, while section 5008 outlines how a business qualifies for the local preference, it does not require bidders to submit any documentation. GSA

correctly explains this in its Agency Report. *See* Agency Rep., Tab 1.

On this basis, PDS incorrectly asks the OPA for a ruling that GTA was required under section 5008, or the IFB, to submit a local preference application. Certainly, the Department of Education form submitted by PDS was not required for this GSA solicitation, and has no significance in proving that PDS, over other bidders, satisfies the local business definition. Furthermore, as PDS' form constitutes only a facial verification, without substantiating facts or evidence, the form should be disregarded. It is not evidence in any way that PDS itself is a local business qualifying under section 5008. It is simply improper to accept PDS' facial verification on an unrelated form.

On the basis that the local procurement preference application was not required by Guam law or regulation, GTA cannot be disqualified from GSA-064-11 solely on the basis of not submitting such an application. Moreover, the OPA should disregard PDS' submittal on the basis that it was irrelevant to the bid and carries no substantive weight.

### **III. GTA MEETS THE REQUIREMENTS OF A LOCAL BUSINESS**

As GSA points out in its Agency Report, GSA is familiar with all the bidders being local companies, and did not need to formulate whether any one local bidder's offered price was no less than 15% more than an off-island bidder. *See* Agency Rep., Tab 1. GSA's familiarity with GTA stems from GTA's submittals and GSA's existing contractual relationships with GTA to provide telecommunications services to the Government of Guam.

In fact, GTA is well-known in the community as a local company. As part of its bid, GTA furnished business licenses issued by the Department of Revenue and Taxation. *See* Agency Rep., Tab 5. GTA also listed its address as 624 North Marine Corps Drive, Tamuning, Guam, which is the same address used for its FCC filings and business licenses. *See* Agency Rep., Tab 5. This address is known as GTA's headquarters for its entire operation. These two

factors - a Guam business license and a local address - qualified GTA as a local business, and satisfied section 5008's requirement that the "procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam."<sup>1</sup>

Bid Form 10 in particular required that the supplies be delivered within 21 days of receipt of an order. *See Agency Rep., Tab 6, p. 47.* This implies that the bidder have on-island the necessary equipment to activate the ISDN PRI, ISDN BRI, SIP Trunks, and DID numbers, as procuring such equipment from off-island would be time-consuming. By bidding on Bid Form 10, GTA guaranteed that it had such equipment readily available, thereby meeting, at the least, section 5008(b)'s requirement of "regularly carr[ying] an inventory for regular or immediate sale of at least fifty percent (50%) of the items or supplies to be procured."

PDS believes that GSA should have applied a 15% advantage to its bid for Bid Form 10, which would have placed its bid price below GTA's. The preference actually works in this way: a local business licensed to do business on Guam that maintains an office on Guam, and meets one of the criteria under 5 G.C.A. § 5008(a) through (d), must be given a preference if its price is no more than 15% over an off-island bidder.<sup>2</sup> 5 G.C.A. § 5008. As explained above, GTA maintains an office on Guam and holds a local business license. GTA also carried an inventory of the supplies to be procured for regular or immediate sale, as required by the solicitation itself. *See 5 G.C.A. § 5008(b).* Moreover, if it was required by GSA to demonstrate, GTA would have proven and can establish that it has a bonafide retail business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid, of supplies and items of

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<sup>1</sup> GTA also furnished its Certificate of Authority issued by the Guam Public Utilities Commission. Its wholly owned subsidiary, GTA Telecom, LLC, is the incumbent local exchange carrier for the island. Without a doubt, GTA qualifies as a local business, beyond just holding Guam business licenses and having a Guam location.

a similar nature to those being sought; and, of its over 350 employees, GTA hires at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work.<sup>3</sup> See 5 G.C.A. § 5008(c) and (d). As GTA meets the criteria under section 5008 for a local business, PDS did not deserve a local procurement advantage over GTA.

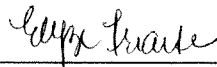
**IV. CONCLUSION**

Guam law did not require GTA to submit a local procurement preference application, or to use the DOE form submitted by PDS. Moreover, GSA did not need a local business verification from GTA because GSA was familiar with GTA as licensed on Guam, located on Guam, operating as the ILEC, operating extensively throughout the island, and having the necessary supplies to immediately and regularly complete the order.

For these reasons, GSA did not err in treating all bidders equally.

DATED: Hagåtña, Guam, June 10, 2012.

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<sup>2</sup> That is, a bidder that is not a local business and does not satisfy 5 G.C.A. § 5008(a), (b), (c), or (d).

<sup>3</sup> If necessary, GTA will present evidence supporting its qualifications under 5 G.C.A. § 5008(b) through (d) at the hearing in this matter.