

**LAW OFFICES
CUNLIFFE & COOK**
210 Archbishop F.C. Flores Street
Hagåtña, Guam 96910
Telephone: (671) 472-1824
Telecopier: (671) 472-2422

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

NOV 05 2010

TIME: 1:26 BY: Mal
FILE NO. OPA-PA: 10-005

Attorneys for: TeleGuam Holdings LLC dba GTA TeleGuam

OFFICE OF PUBLIC ACCOUNTABILITY

IN THE APPEAL OF)	DOCKET NO. OPA-PA10-005
)	
PACIFIC DATA SYSTEMS, INC.,)	TELEGUAM HOLDINGS LLC'S
)	COMMENTS ON PROCUREMENT
Appellant.)	APPEAL AND AGENCY REPORT
_____)	

Pursuant to 2 GAR §12104(c)(4), TeleGuam Holdings LLC (hereafter referred to as "GTA") submit the following comments regarding the procurement appeal filed by Appellant Pacific Data Systems, Inc. (hereafter referred to as "PDS") on October 12, 2010, and the Agency Report filed by Guam Community College (hereafter referred as "GCC") on October 26, 2010.

PDS challenges GCC's award of a bid to GTA on Invitation for Bid No. GCC-FB-10-015, Voice Over Internet Protocol (VOIP) Telephone System Project (hereafter referred to as "the bid"). PDS contends GTA did not properly identify its shareholders in the original bid proposal on the major shareholders disclosure affidavit submitted with GTA's bid.

GTA Telecom LLC and TeleGuam Holdings LLC are Delaware limited liability companies. GTA's major shareholders are Shamrock Capital Advisors and GE Asset Management Inc. GTA Telecom LLC's major shareholder is GTA (100%).

GTA has Guam business licenses doing business under the following names: MPulse, Spyder, GTA Services, GTA Telecom, TeleGuam Holdings LLC, GTA Yellow Book, Guam Digital Televisions/GUD TV. Therefore, TeleGuam Holdings LLC is one of

many dba's of TeleGuam Holdings LLC. Therefore, technically it is correct for TeleGuam Holdings LLC to state that it is one hundred percent (100%) owned by TeleGuam Holdings LLC based on its Guam business license.

When GCC contacted GTA to ask for clarification of who are the major owners of GTA, it listed the two (2) companies that are the major members of TeleGuam Holdings LLC. The initial shareholders' affidavit was a clerical mistake in listing the dba owner. Once contacted by GCC, GTA understood the requested information was the actual members of the LLC, which was then provided by TeleGuam Holdings LLC.

In addition to the arguments herein, GTA adopts the reasoning of GCC in its statement (Exhibit "D" of Agency Report) as to why the bid proposal by GTA should not be rejected as requested in the appeal by PDS. GTA notes that the procurement law of Guam supports the position taken by GCC. 5 GCA §5001(b)(5) states procurement law is: " ... to maximize ... the purchasing value of public funds ...", and subsection (6) provides: "to foster effective broad-based competition within the free enterprise system."

5 GCA §5211(f) provides for correction of bids. It states that there should be no changes in prices or provisions prejudicial to fair competition after bids are opened. The correction of who the majority owner is of a bidder such as GTA does not affect the price or prejudice fair competition. This is akin to the argument made by GCC's counsel comparing responsibility to responsiveness. Responsiveness goes to the specific information, i.e., price, specs, etc. Responsibility goes to the company's ability to perform.

5 GCA §5211(f) goes on to provide that a decision to permit the correction shall be supported by a written determination by the chief procurement officer or head of the purchasing agency. That occurred in this case. If there was a mistake in this case in

the information provided by GTA, it did not change the bid one iota. More importantly, it did not prejudice the other bidders, including PDS. It is unreasonable to believe the procurement law was intended to result in the Government of Guam having to pay a higher price for a service because of a mistake of the type that PDS is challenging in this appeal.

GTA further notes that federal law applies to this particular bid because it is federally funded, as noted in the bid documents. 48 CFR §14.407 provides guidance when there is a mistake in a procurement bid. 48 CFR §14.407-1 states:

After the opening of bids, contracting officer shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake.

48 CFR §14.407-3(g) describes the process for dealing with suspected mistakes.

Subsection (1)(IV) of that section states:

The contracting officer shall immediately request the bidder to verify the bid. ... To assure that the bidder will be put on notice of a mistake suspected by the contracting officer, the bidder should be advised as appropriate (iv) of any other information, proper for disclosure, that leaves the contracting officer to believe that there is a mistake in bid."

A helpful federal case is Griffy's Landscape Maintenance LLC v. United States, 46 Fed.Cl.257 (2000). In that case, the bidder failed to include point of contact information regarding insurance. The court stated: "The government's obligations as respects an apparent clerical error is clear – it has a duty to inquire. (Cites omitted)." 46 Fed.Cl at 259. The court went on to state:

But even in the sealed bid procurement framework an exception the no contact rule is recognized for clarification of overt errors:

In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid calling attention to the suspected mistake.

48 CFR §14.406-1. The FAR makes this exception because of the great importance of one of the cornerstone policy goals underlying public procurement – insuring that the government attains the best contract possible and does not take advantage of obvious contractor errors. The FAR is not diverted from this goal by easily remedied clerical errors.

46 Fed.Cl at 259.

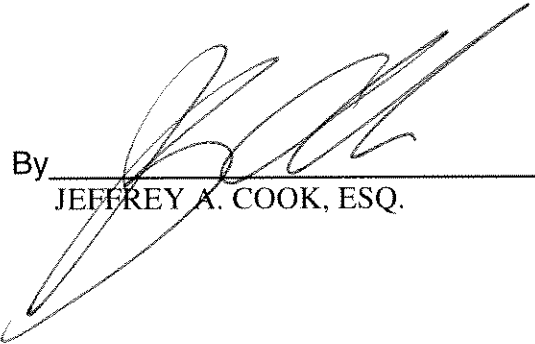
As previously noted herein, the Guam Procurement Law likewise has a stated policy that the Government of Guam should get the best value for its money. A non-price and non-prejudicial error by a bidder should not jeopardize the overall policy of the Guam Procurement Law. It is fairly obvious from reading the Guam Procurement Law, Federal CFR and federal cases that concern over mistakes in bids is almost always related to an issue as to price and as a result, a prejudice to competition. A mistake in identity of the shareholders can and was easily corrected once the issue was pointed out to the bidder. GTA has no reason to not be forthcoming as to its ownership. As PDS points out in its appeal, GTA's website provides the information as to who are the major shareholders of GTA. This information is publicly available. Thus, GTA publicly meets the responsibility requirements of a bid such as the one at issue.

An honest mistake or error should not result in a rejected bid. More importantly, an error that has no effect on the bid price should not result in GCC having to pay any more than the winning bid proposes; both local law and federal law support this result.

For all the reasons stated herein, as well as those set forth by GCC, GTA respectfully asks that PDS's appeal be dismissed.

Respectfully submitted this 4th day of November, 2010.

CUNLIFFE & COOK
A Professional Corporation
Attorneys for TeleGuam Holdings LLC

By  _____
JEFFREY A. COOK, ESQ.