



**Appendix A: Notice of Appeal Form  
PROCUREMENT APPEAL**

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT PROGRAM  
AUG 29 2012  
THE 3:20 PM by Vince D.  
FILED 08:00 12-012

**PART I- To be completed by OPA**

In the Appeal of \_\_\_\_\_ )  
 )  
 )  
(Name of Company), APPELLANT )  
 )  
 )

**NOTICE OF APPEAL**

Docket No. OPA-PA \_\_\_\_\_

**PART II- Appellant Information**

Name: Pacific Data Systems  
Mailing Address: 185 Ilipog Drive, Suite 204A  
Tamuning, GU 96913  
Business Address: same as above  
Email Address: john@pdsguam.com  
Daytime Contact No: 671-300-0202  
Fax No.: 671-300-0265

**PART III- Appeal Information**

- A) Purchasing Agency: General Services Agency
- B) Identification/Number of Procurement, Solicitation, or Contract: GSA-064-11  
GSA has not made a decision
- C) Decision being appealed was made on \_\_\_\_\_ on PDS protest \_\_\_\_\_ (date) by:  
\_\_\_\_ Chief Procurement Officer \_\_\_\_\_ Director of Public Works \_\_\_\_\_ Head of Purchasing Agency

*Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.*

- D) Appeal is made from:  
(Please select one and attach a copy of the Decision to this form)
- Decision on Protest of Method, Solicitation or Award  
 Decision on Debarment or Suspension  
 Decision on Contract or Breach of Contract Controversy  
(Excluding claims of money owed to or by the government)  
 Determination on Award not Stayed Pending Protest or Appeal  
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

**Appendix A: Notice of Appeal Form**  
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E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

- Teleguam Holdings LLC and its wholly owned subsidiaries; GTA Telecom LLC, GTA Services LLC, and Pulse Mobile LLC.
- NTT DOCOMO dba DOCOMO Pacific
- PTI Pacifica dba IT&E
- Guam Telecom LLC dba MCV

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**PART IV- Form and Filing**

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;

This appeal is made due to the failure by GSA to render a timely decision in a Protest filed by PDS on May 9, 2012 in GSA Invitation for Bids GSA-IFB-064-11 Telecommunications Services.

GSA Invitation for Bids GSA-IFB-064-11 Telecommunications Services was turned in on December 9, 2011 and on April 27, 2012, GSA issued a Bid Status which included specific decisions related to awards in GSA-IFB-064-11. After receipt of this Bid Status, PDS filed two timely protests regarding the GSA Bid Status and associated GSA award decisions.

The first protest was filed by PDS on April 30, 2012 and was promptly answered by GSA on May 3, 2012. The GSA response to the PDS protest sustained 5 of the 6 protest points made by PDS and GSA issued a revised Bid Status on May 3, 2012 as a result. PDS subsequently filed a timely appeal with the OPA (OPA-PA-12-011) on May 17, 2012 in reference to the one protest point denied by GSA in its response to the PDS Protest of April 30, 2012 which dealt with the issue of Local Procurement Preference.

On May 9, 2012 PDS filed a second protest with GSA related to other issues of the GSA award decisions contained in the April 27 and May 3, 2012 Bid Status for GSA-064-11. As of this date (almost 4 months later), GSA has yet to issue any decision regarding the second protest made by PDS on May 9, 2012 or to engage PDS in any discussions to resolve the protest.

PDS is also aware of 3 other protests that have been made by other bidders in this procurement. On May 10, 2012 protests were filed by DOCOMO Pacific, MCV, and IT&E. Though all protests seem to deal with essentially the same issues regarding the GSA awards (that were also included in the PDS Protest of May 9, 2012); GSA has yet to issue a decision on any of these pending protests.

PDS now makes this appeal to the Public Auditor in an effort to have the OPA compel GSA to comply with Guam Procurement Law<sup>1</sup> and regulations<sup>2</sup> by issuing a decision on the pending PDS May 9<sup>th</sup>, 2012 protest. We also request that the OPA require GSA to also issue decisions in any other pending protests related to this procurement.

There is a previous precedent for the OPA taking the action requested by PDS. In **OPA-PA-08-003 IBSS - Guam Public School System (GPSS)**, the OPA ordered GPSS to take action on a long pending protest by IBSS of a GPSS procurement. In the Hearing Officer's Finding and Recommendations the OPA determined GPSS' failure to produce a Protest decision was:

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<sup>1</sup> 5 GCA § 5425(b) gives the head of the purchasing agency the "authority" and duty<sup>9</sup> to settle and resolve a protest. § 5425(c) requires that the decision "shall" be issued "promptly".

<sup>2</sup> 2 GAR § 9101(g)(1) requires ("shall") the head of the purchasing agency to issue a decision on a protest "as expeditiously as possible".

**Appendix A: Notice of Appeal Form**  
**PROCUREMENT APPEAL**

- a violation of 5 G.C.A. § 5425(c) and (d)
- a violation of 2 G.A.R., Div.4, Chap. 9 §9101(g)
- a bad faith act that violates 5 G.C.A. §5003
- a failure that undermined the integrity of the procurement process

PDS believes the failure by GSA to act in a timely manner on the pending protests in GSA-064-11 is no less egregious behavior by GSA than the failure to act by GPSS cited by the OPA in OPA-PA-08-003. In communications with GSA regarding the status of the PDS protest, PDS has referenced this OPA Appeal decision, however this has not resulted in any action by GSA to issue a decision or to resolve the protest via negotiations with PDS.

GSA's failure to act on the PDS Protest is even more confusing given the significant cost savings and additional benefits that the Government will realize via the implementation of the telecommunications services that are included in this procurement. It has been independently estimated that the Government of Guam will save more than \$1M a year in telecommunications expenditures through the expanded services and reduced costs included in GSA-064-11. Aside from its legal obligations to deal with the PDS Protest promptly, good governance and common sense would imply that GSA would take expeditious action to resolve any procurement protests to enable the timely award and implementation of this procurement to the great benefit of the Government of Guam and Taxpayers. As the record clearly shows, this has not been the case and we are now forced to seek intervention by the OPA to resolve this issue so that the procurement process can move forward through the resolution of the issues identified in the pending protests and ultimately award and implementation of the telecommunications services included in this procurement.

**2. A statement specifying the ruling requested;**

PDS requests that the OPA order GSA to immediately make a decision (an order to GSA to issue a protest decision within 7 days of the OPA Decision) on the protests pending in GSA Invitation to Bid GSA-064-011. PDS further requests expedited handling of this matter that since this procurement (GSA-064-011) is already before the OPA in a separate Appeal (OPA-PA-12-011) and the Procurement Record has already been filed with the OPA in this appeal. We request that the OPA only require GSA to issue its Agency Report related to this appeal.

**3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.**

Exhibit 1: GSA IFB-064-011 Bid Status issued on April 27, 2012

Exhibit 2: GSA IFB-064-011 Bid Status issued on May 3, 2012

Exhibit 3: PDS Protest to GSA dated May 9, 2012

Exhibit 4: OPA Appeal OPA-PA-08-003 Findings and Recommendations of Hearing Officer

*Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.*

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*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

**PART V- Declaration Re Court Action**

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 29th day of August, 2012.

By: \_\_\_\_\_

APPELLANT – John Day

Authorized Representative of Pacific Data Systems

*APPENDIX A*

*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

Exhibit 1

GSA IFB-064-011 Bid Status issued on April 27, 2012

GENERAL SERVICE AGENCY  
 (Ahensian Setbision Hinirat)  
 Government of Guam  
 P.O. Box FG, Agana, Guam 96910  
 Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

Accountability \* Impartiality \* Competence \* Openness \* Value

## BID STATUS

Date: APRIL 27, 2012

Pacific Data Systems  
 Attn: John Day, President/COO  
 185 Llipog Drive, Suite 204A  
 Tamuning, Guam 96913  
 Tel: 300-0229 / Fax: 300-0265

BID INVITATION NO.: GSA-064-11

OPENING DATE: December 19, 2011

DESCRIPTION: TELECOMMUNICATION SERVICES

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with bid requirement: Bid Form 12 – Did not adhere to equal increments**
- Inability to provide future maintenance and services to the equipment;
- High Price for Bid Forms: 2, 3, 10**
- Others: Submitted "No Quote" for Bid Forms 8, 8A, 9 and 15**

Bid recommended for award: **MULTIPLE AWARD**

Telequam Holdings, LLC – See attached award

Pacific Data Systems – See attached award

PTI Pacific Inc. dba: IT&E – See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

Please Print  
 ACKNOWLEDGEMENT COPY (Re-fax to GSA)

Received BY:

Date:

Vendor Name:

Fax #'s:

*[Signature]*  
 4-27-12 John Day

Pacific Data Systems

472-4217 / 475-1727 / 1716

for: Pedro F. San Nicolas 4/27/12  
 CLAUDIA S. ACFALLE  
 Chief Procurement Officer

Rev: 1/95

**Bid Form 2 – Non-Recurring and Monthly Recurring Cost (MRC) for Centrex Telephone Service****Teleguam Holdings, LLC :**

Analog Plain Old Telephone Services	Total MRC:	\$27.21
Digital (VoIP) Centrex with all Features Provided in IFB	Total MRC:	\$16.00

**Bid Form 3 – Centrex Telephone Instruments**

		Monthly Lease	
		Purchase	Purchase Price
-	<b><u>Teleguam Holdings, LLC</u></b>		
1.	Single Line Analog Phone with call hold	\$1.85	\$61.20
2.	Up to 8 Line with Digital display, Hands-Free	\$3.52	\$116.64
3.	4 Line with Digital display, Hand-Free telephone	\$4.93	\$163.30
4.	Up to 8 Line with Digital display, Hands-Free	\$3.52	\$116.64
5.	Wireless Handset (Plantronics CS50)	\$6.70	\$221.94
6.	Cisco Attendent Console	\$2.35	\$77.79

**Bid Form 5 – Non-Recurring and Monthly Recurring Cost (MRC) for Non Centrex Telephones****Pacific Data Systems**

Wireless or Cable Telephone	Total MRC:	\$16.24
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**Bid Form 6 – Non-Centrex Telephone Instruments**

		Monthly Lease	
		Purchase	Purchase Price
-	<b><u>Pacific Data Systems</u></b>		
1.	Single Line Phone with Call Hold and Message waiting Lamp.	\$3.65	\$95.00
2.	Single Line Digital display with Hands-Free, Display, Speaker Phone, Programmable Feature Keys and Wireless Handset Option	\$2.50	\$65.00
3.	4 Line digital with Digital Display, Hands-Free, Hold, Speaker Phone, Programmable Feature Keys and Wireless Handset Option	\$3.65	\$95.00
4.	6 Line digital with Digital Display, Hands-Free, Hold, Speaker Phone, Programmable Feature Keys and Wireless Handset Option	\$5.95	\$155.0
5.	Attendent Console	\$3.65	\$95.00

**Bid Form 8 - Monthly Recurring Cost for Mobile Telephone Service and Device**

<b>BIDDER NAME: TELEGUAM HOLDINGS LLC</b>	
<b>BLACKBERRY (Plan 1)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 22.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ -
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35

<b>ANDROID (Plan 2)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 29.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ -
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35

<b>Iphone, 8GB (Plan 3)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 29.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ 100.00
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35

<b>Iphone 4, 32GB (Plan 4)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 29.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ 300.00
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35



**Bid Form 8A - Mobile Data Card**

<b>BIDDER NAME: TELEGUAM HOLDINGS LLC</b>		<b>USAC SPIN: 43002715</b>	
Description		Mobile Service Cost	
MRC for Unlimited Air-Card "data-only" plan within Guam.		\$	29.95
Data Device that enables a Mobile Wifi to the Data Card		\$	-

<b>BIDDER NAME: PTI PACIFICA INC DBA IT&amp;E</b>		<b>USAC SPIN: 143032800</b>	
Description		Mobile Service Cost	
MRC for Unlimited Air-Card "data-only" plan within Guam.		\$	29.95
Data Device that enables a Mobile Wifi to the Data Card		\$	-

**Bid Form 10 – ISDN PRI, ISDN BRI, SIP Trunks, and DID's**

- <u>Teleguam Holdings, LLC</u>	<u>Installation:</u>	<u>MRC</u>
1. Integrated Services Digital Networking PRI interface (23B+1D)	Waived	\$423.37
2. Integrated Services Digital Networking (Basic Rate Interface -- 128 Kbps)	Waived	\$105.68
3. SIP Per Trunk Rate	Waived	\$12.00
4. DID Number Block of 25 Numbers	-0-	\$ 2.50 \$

**Bid Form 11 – GovGuam Wide Area Network (1 and 10 Gbps)**

- <u>Pacific Data Systems</u>	<u>Installation:</u>	<u>MRC</u>
1. 1,000 Mbps or 1 Gbps Dedicated for GovGuam (100% CIR, Ring Topology, NMS)	-0-	\$870.00
2. 10,000 Mbps or 10 Gbps Dedicated for Govguam (100% CIR, Ring topology, NMS)	-0-	\$1,500.00

**Bid Form 12 – Broadband Internet Access Services****Teleguam Holdings, LLC**

		<u>Installation</u>	<u>MRC for 1 Mbps Internet Access QoS and SLA</u>
1 to 25 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$65.00
26 to 50 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$60.00
51 to 75 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$55.00
75 to 100 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$50.00
101 to 125 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$45.00
126 to 150 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$40.00
151 to 175 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$35.00
175 to 200 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$30.00

**Bid Form 13 – Cable, DSL or Wireless Internet Services for Small Offices****Pacific Data Systems**

		<u>Installation</u>	<u>MRC for Internet Services</u>
2 Mbps	The DSL or Cable internet Service must include 8 External IP Addresses	-0-	\$35.00
7 Mbps	the DSL or Cable Internet Service must include 10 External IP Addresses	-0-	\$48.00

**Bid Form 14 – Routers Managed Switches, and Network Equipment Price Bid and Evaluation Model**

<b><u>Pacific Data Systems</u></b>	<b>Cisco 3800 Router with LC Ports</b>	<b>\$12,040.00</b>
(37% discount) =		\$7,585.20
(15% for Shipping & Installation) =		\$1,806.00
(15% discount Annual Maintenance =		\$1,806.00 with a <b><u>Total Proposed Price of \$11,197.20</u></b>

**Bid Form 15 - Television Services****Teleguam Holdings, LLC**

<u>Television Service</u>	<u>Description</u>	<u>Installation</u>	<u>MRC</u>
Analog and digital television service (GTA Essential Package: 39 Channels + 1 Set Top Box	The initial drop to a building unless a drop already exists.	\$ -	\$ 40.95
Analog and digital television service (GTA Choice Package: 110 Channels + 1 Set Top Box	Each Additional drop within the same building.	\$ 29.95	\$ 5.95

Message Confirmation Report

27-APR-2012 16:26 FRI

WorkCentre M20 Series  
Machine ID : Pacific Data Systems  
Serial Number : not installed  
Fax Number : 6713000265

Name/Number : 94724217  
Page : 5  
Start Time : 27-APR-2012 16:24 FRI  
Elapsed Time : 01'46"  
Mode : STD G3  
Results : O.K

GENERAL SERVICE AGENCY  
(Ahensian Setbision Hinirat)  
Government of Guam  
P.O. Box FG, Agana, Guam 96910  
Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

Accountability \* Impartiality \* Competence \* Openness \* Value

**BID STATUS**

Date: APRIL 27, 2012

Pacific Data Systems  
Attn: John Day, President/COO  
185 Lipog Drive, Suite 204A  
Tamuning, Guam 96913  
Tel: 300-0229 / Fax: 300-0265

BID INVITATION NO.: GSA-064-11      OPENING DATE: December 19, 2011

DESCRIPTION: TELECOMMUNICATION SERVICES

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with bid requirement: **Bid Form 12 – Did not adhere to equal increments**
- Inability to provide future maintenance and services to the equipment;
- High Price for Bid Forms: 2, 3, 10
- Others: Submitted "No Quote" for Bid Forms 8, 8A, 9 and 15

Bid recommended for award: **MULTIPLE AWARD**

Teleguam Holdings, LLC – See attached award

Pacific Data Systems – See attached award

PTI Pacific Inc. dba: IT&E - See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

Exhibit 2

GSA IFB-064-011 Bid Status issued on May 3, 2012

GENERAL SERVICE AGENCY  
 (Ahensian Setbision Hinirat)  
 Government of Guam  
 P.O. Box FG, Agana, Guam 96910  
 Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

Accountability \* Impartiality \* Competence \* Openness \* Value

## REVISED BID STATUS

Date: **MAY 03, 2012**

Pacific Data Systems  
 Attn: John Day, President/COO  
 185 Llipog Drive, Suite 204A  
 Tamuning, Guam 96913  
 Tel: 300-0229 / Fax: 300-0265

BID INVITATION NO.: **GSA-064-11**

OPENING DATE: **December 19, 2011**

DESCRIPTION: **TELECOMMUNICATION SERVICES**

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

**Rejected due to:**

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with bid requirement: Bid Form 12 – Did not adhere to equal increments**
- Inability to provide future maintenance and services to the equipment;
- High Price for Bid Forms: 10**
- Others: Submitted "No Quote" for Bid Forms 8, 8A, 9 and 15**

**Bid recommended for award: MULTIPLE AWARD**

Teleguam Holdings, LLC – See attached award

Pacific Data Systems – See attached award

PTI Pacific Inc. dba: IT&E – See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

Please Print  
 ACKNOWLEDGEMENT COPY (Re-fax to GSA)

Received BY:

Date:

Vendor Name:

*J. Mantarona*

5-4-12

Pacific Data Systems

*For: Pedro F. San Nicolas 5/3/12*

CLAUDIA S. ACFALLE  
 Chief Procurement Officer

Rev: 1/95

**TELECOMMUNICATION SERVICES GSA-064-11  
REVISED BID AWARD – MAY 03, 2012**

**Bid Form 2 – Non-Recurring and Monthly Recurring Cost (MRC) for Centrex Telephone Service**

- **Pacific Data Systems:**

Analog Plain Old Telephone Services	Total MRC:	\$28.94
Centrex with all Features Provided in IFB	Total MRC:	\$16.24

**Bid Form 3 – Centrex Telephone Instruments**

		Monthly Lease Purchase	Purchase Price
-	<b><u>Pacific Data Systems:</u></b>		
1.	<b><u>9116LP</u></b> - Single Line Analog Phone with call hold	\$3.00	\$95.00
2.	<b><u>GXP285</u></b> – Single Line Digital Display with Hands-Free, Display Programmable Feature Keys and Wireless Handset Option	\$2.00	\$65.00
3.	<b><u>GXP2100</u></b> - 4 Line with Digital display, Hands-Free, Hold, Programmable Feature Keys and Wireless Handset Option	\$3.00	\$95.00
4.	<b><u>GXP2120</u></b> – 6 Line Digital with Digital Display, Hands-Free, Programmable Feature Keys and Wireless Handset Option	\$4.50	\$155.00
5.	<b><u>TL7610</u></b> – Wireless Handset to be used with the Digital Telephone	\$11.50	\$295.00
6.	<b><u>GXPEXP</u></b> – Attendant Console	\$3.00	\$95.00

**Bid Form 5 – Non-Recurring and Monthly Recurring Cost (MRC) for Non Centrex Telephones**

-	<b><u>Pacific Data Systems</u></b>		
	Wireless or Cable Telephone	Total MRC:	\$16.24

**Bid Form 6 – Non-Centrex Telephone Instruments**

		Monthly Lease Purchase	Purchase Price
-	<b><u>Pacific Data Systems</u></b>		
1.	<b><u>966LP</u></b> - Single Line Phone with Call Hold and Message waiting Lamp.	\$3.65	\$95.00
2.	<b><u>GXP285</u></b> - Single Line Digital display with Hands-Free, Display, Speaker Phone, Programmable Feature Keys and Wireless Handset Option	\$2.50	\$65.00
3.	<b><u>GXP2100</u></b> - 4 Line digital with Digital Display, Hands-Free, Hold, Speaker Phone, Programmable Feature Keys and Wireless Handset Option	\$3.65	\$95.00
4.	<b><u>GXP2120</u></b> - 6 Line digital with Digital Display, Hands-Free, Hold, Speaker Phone, Programmable Feature Keys and Wireless Handset Option	\$5.95	\$155.0
5.	<b><u>GXPEXP</u></b> - Attendant Console	\$3.65	\$95.00

**Bid Form 8 - Monthly Recurring Cost for Mobile Telephone Service and Device**

<b>BIDDER NAME: TELEGUAM HOLDINGS LLC</b>	
<b>BLACKBERRY (Plan 1)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 22.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ -
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35

<b>ANDROID (Plan 2)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 29.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ -
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35

<b>Iphone, 8GB (Plan 3)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 29.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ 100.00
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35

<b>Iphone 4, 32GB (Plan 4)</b>	<b>Mobile Service:</b>
Monthly Recurring Cost (MRC) for mobile phone service that provides: (a) 1,000 minutes, per subscriber, for Off-Net calls within Guam which are pooled with other GovGuam subscribers; (b) no charge for ON-NET calls to/from any other subscriber of the Bidder (within Guam); (c) free Nights and Weekends; and Unlimited Text Messaging to the World.	\$ 13.90
MRC for Unlimited data plan within Guam with data tethering device to enable a laptop to use the data capability (Data tethering device must be provided when this option is selected).	\$ 29.95
Cost of Phone (phone must have large display, keyboard, 4 GB of memory (iPhone, Android, or other equal phone).	\$ 300.00
Per Minute Cost of Long Distance Call to the United States (\$ .10 = 10 cents per minute)	\$ 0.03
Per Minute Cost of Long Distance Call to the CNMI	\$ 0.03
Per Minute Call to US State when Roaming within the United States	\$ 0.35
Per Minute Call to/from Guam when Roaming in the United States	\$ 0.35

**Bid Form 8A - Mobile Data Card**

<b>BIDDER NAME: TELEGUAM HOLDINGS LLC</b>		<b>USAC SPIN: 43002715</b>	
Description		Mobile Service Cost	
MRC for Unlimited Air-Card "data-only" plan within Guam.	\$	29.95	
Data Device that enables a Mobile Wifi to the Data Card	\$	-	

<b>BIDDER NAME: PTI PACIFICA INC DBA IT&amp;E</b>		<b>USAC SPIN: 143032800</b>	
Description		Mobile Service Cost	
MRC for Unlimited Air-Card "data-only" plan within Guam.	\$	29.95	
Data Device that enables a Mobile Wifi to the Data Card	\$	-	

**Bid Form 10 – ISDN PRI, ISDN BRI, SIP Trunks, and DID's**

<u>Teleguam Holdings, LLC</u>	<u>Installation:</u>	<u>MRC</u>
1. Integrated Services Digital Networking PRI Interface (23B+1D)	Waived	\$423.37
2. Integrated Services Digital Networking (Basic Rate Interface – 128 Kbps)	Waived	\$105.68
3. SIP Per Trunk Rate	Waived	\$12.00
4. DID Number Block of 25 Numbers	-0-	\$ 2.50 \$

**Bid Form 11 – GovGuam Wide Area Network (1 and 10 Gbps)**

<u>Pacific Data Systems</u>	<u>Installation:</u>	<u>MRC</u>
1. 1,000 Mbps or 1 Gbps Dedicated for GovGuam (100% CIR, Ring Topology, NMS)	-0-	\$870.00
2. 10,000 Mbps or 10 Gbps Dedicated for Govguam (100% CIR, Ring topology, NMS)	-0-	\$1,500.00



**Bid Form 12 – Broadband Internet Access Services****Teleguam Holdings, LLC**

		<u>Installation</u>	<u>MRC for 1 Mbps Internet Access QoS and SLA</u>
1 to 25 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$65.00
26 to 50 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$60.00
51 to 75 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$55.00
75 to 100 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$50.00
101 to 125 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$45.00
126 to 150 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$40.00
151 to 175 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$35.00
175 to 200 Mbps	Broadband Internet Access with SLA for Capacity, Latency and Hops to US	Waived	\$30.00

**Bid Form 13 – Cable, DSL or Wireless Internet Services for Small Offices****Pacific Data Systems**

		<u>Installation</u>	<u>MRC for Internet Services</u>
2 Mbps	The DSL or Cable Internet Service must include 8 External IP Addresses	-0-	\$35.00
7 Mbps	the DSL or Cable Internet Service must include 10 External IP Addresses	-0-	\$48.00

**Bid Form 14 – Routers Managed Switches, and Network Equipment Price Bid and Evaluation Model**

<b><u>Pacific Data Systems</u></b>	<b>Cisco 3800 Router with LC Ports</b>	<b>\$12,040.00</b>
(37% discount) =	\$7,585.20	
(15% for Shipping & Installation) =	\$1,806.00	
(15% discount Annual Maintenance =	\$1,806.00 with a <b><u>Total Proposed Price of \$11,197.20</u></b>	

**Bid Form 15 - Television Services****Teleguam Holdings, LLC**

<u>Television Service</u>	<u>Description</u>	<u>Installation</u>	<u>MRC</u>
Analog and digital television service (GTA Essential Package: 39 Channels + 1 Set Top Box	The initial drop to a building unless a drop already exists.	\$ -	\$ 40.95
Analog and digital television service (GTA Choice Package: 110 Channels + 1 Set Top Box	Each Additional drop within the same building.	\$ 29.95	\$ 5.95

Message Confirmation Report

04-MAY-2012 08:27 FRI

WorkCentre M20 Series

Machine ID : Pacific Data Systems  
Serial Number : not installed  
Fax Number : 6713000265

Name/Number : 94751727  
Page : 5  
Start Time : 04-MAY-2012 08:25 FRI  
Elapsed Time : 01'54"  
Mode : STD G3  
Results : O.K

GENERAL SERVICE AGENCY  
(Ahenian Setbision Hinirat)  
Government of Guam  
P.O. Box FG, Agana, Guam 96910  
Tel: 477-1710-13 Fax: 472-4217 / 475-1716/27

Accountability \* Impartiality \* Competence \* Openness \* Value

**REVISED  
BID STATUS**

Date: **MAY 03, 2012**

Pacific Data Systems  
Attn: John Day, President/COO  
185 Llipog Drive, Suite 204A  
Tamuning, Guam 96913  
Tel: 300-0229 / Fax: 300-0265

BID INVITATION NO.: GSA-064-11

OPENING DATE: December 19, 2011

DESCRIPTION: TELECOMMUNICATION SERVICES

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with bid requirement: **Bid Form 12 – Did not adhere to equal increments**
- Inability to provide future maintenance and services to the equipment;
- High Price for Bid Forms: **10**
- Others: **Submitted "No Quote" for Bid Forms 8, 8A, 9 and 15**

Bid recommended for award: **MULTIPLE AWARD**

Teleguam Holdings, LLC – See attached award

Pacific Data Systems – See attached award

PTI Pacific Inc. dba: IT&E – See attached award

REMARKS:

Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

Exhibit 3

PDS Protest to GSA dated May 9, 2012

**BERMAN  
O'CONNOR &  
MANN**

Attorneys at Law

Suite 503, Bank of Guam Building  
111 Chalan Santo Papa  
Hagåtña, Guam 96910  
Tele. 671-477-2778  
Fax 671-477-4366  
Website: [www.pacific-lawyers.com](http://www.pacific-lawyers.com)  
Email: [brmann@pacific-lawyers.com](mailto:brmann@pacific-lawyers.com)

May 9, 2012

VIA HAND DELIVERY

Ms. Claudia Acfalle  
Chief Procurement Officer  
General Services Agency  
148 Route 1 Marine Corps Drive  
Piti, Guam 96915

GOV'T OF GUAM  
G.S.A.  
2012 MAY -9 AM 10:16  
RECEIVED

Re: Protest by Pacific Data Systems, Inc. to Award to  
Teleguam Holdings, LLC in GSA-064-11

Dear Ms. Acfalle:

This is a protest by Pacific Data Systems, Inc. ("PDS") to the award made to Teleguam Holdings, LLC ("Teleguam") on Bid Form 10 in procurement GSA-064-11. This office represents PDS.

This protest was originally submitted by PDS on December 23, 2011. However, by letter dated January 9, 2012, Chief Procurement Officer Claudia Acfalle denied that protest on the ground that it was premature. Thereafter, by Revised Bid Status dated May 3, 2012, certain awards were made to Teleguam, including the award on Bid Form 10. PDS protests that award. This protest is based upon the following grounds:

I. TELEGUAM'S AFFIDAVIT DISCLOSING OWNERSHIP  
AND COMMISSION VIOLATES 5 G.C.A. § 5233.

The award to Teleguam must be vacated as a result of Teleguam's failure to comply with 5 G.C.A. § 5233. That statute provides in relevant part:

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Ms. Claudia Acfalle  
Chief Procurement Officer  
General Services Agency  
May 9, 2012  
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As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have held by each such person during the twelve (12) month period ... (emphasis added).

Attached to this Protest as Exhibit "1" is the Affidavit Disclosing Ownership and Commission submitted by Teleguam. The Affidavit states that Teleguam is owned 100% by AP Teleguam Holdings, Inc. However, the Affidavit omits any reference to the previous owner of Teleguam, namely Shamrock Teleguam Holdings, LLC. This previous ownership is demonstrated by Exhibit "2" to this Protest, which is an Affidavit submitted in connection with another procurement by Teleguam, namely GDOE IFB 020-2011. That Affidavit was signed on March 15, 2011, and Shamrock Teleguam Holdings, LLC was stated to own an 89% interest in Teleguam. Since this previous ownership occurred within the twelve month period preceding the submission of Teleguam's bid in this procurement, Teleguam's Affidavit is in violation of this statute. The consequence of this violation of 5 G.C.A. § 5233 is that Teleguam's bid should be rejected and the award to it vacated.

This is not the first time Teleguam has failed to comply with this statute. Attached to this Protest as Exhibit "3" is the Decision of the Public Auditor in In the Appeal of Pacific Data Systems, Inc., OPA-PA-10-005. In that case, Teleguam had bid on a Guam Community College telecommunications procurement. In its Major Shareholders Disclosure Affidavit, Teleguam Holdings, LLC stated that it was owned 100% by Teleguam Holdings, LLC, in effect that it owned itself. PDS protested to GCC, but GCC denied the protest on the grounds that the Affidavit related to the bidder's responsibility and not responsiveness to the bid. GCC allowed Teleguam to correct the Affidavit after bid opening. The corrected Affidavit revealed that Teleguam was owned 60% by Shamrock Capital Advisors and 29% by GE Asset Management, Inc.

PDS appealed GCC's rejection of its protest. The Public Auditor found that the Affidavit submitted by Teleguam with its bid was false since it failed to list the names of entities that held more than 10% of its stock. Importantly, the Public Auditor found that

Teleguam's bid was non-responsive since 5 G.C.A. § 5233 requires the Affidavit as a "condition of bidding", and could not be corrected after bid opening. The Public Auditor found that the public interest is best served by "... strict enforcement of the requirement for submission of Major Shareholders Disclosure Affidavit which must be complied with correctly at the time of bid submission." Decision at p. 19. The Public Auditor ruled that Teleguam's bid must be rejected and that the award of the contract by GCC to Teleguam was void.

In response to a Freedom of Information Act request regarding this procurement, GSA provided PDS with certain documents, including Teleguam's response to the protest that PDS had filed on December 23, 2011. In its response, which is attached to this Protest as Exhibit "4", Teleguam acknowledges on p. 2 that its Affidavit Disclosing Ownership and Commissions was mistaken, and then proceeded to make exactly the same arguments that were rejected by the Public Auditor in the above-referenced Decision.

Teleguam argues that its mistaken major stockholders Affidavit does not render its bid non-responsive, but is instead a matter of responsibility which permits GSA to conduct a responsibility investigation and permit correction of the stockholders Affidavit. GSA apparently did so as evidenced by GSA's letter to Teleguam dated April 18, 2012, attached hereto as Exhibit "5", requesting Teleguam to provide an updated Affidavit. Teleguam then responded by letter dated April 19, 2012, attached as Exhibit "6", wherein it provided a new stockholders Affidavit reflecting the previous ownership of Teleguam by Shamrock Capital Advisors and GE Asset Management, Inc. within the one year period prior to its bid. By then making an award to Teleguam, GSA made exactly the same mistake that GCC made in the above-referenced case. In her Decision, the Public Auditor specifically held that Teleguam's bid in that case was non-responsive, since the stockholders Affidavit is required as a condition of bidding. See Decision at p. 11. The Public Auditor also specifically held that the defective shareholders Affidavit could not be corrected through a responsibility inquiry. See Decision at pp. 16-17.

Teleguam further argues that the defect in its major shareholders Affidavit may be viewed as a minor informality. GCC made the same argument to which the Public Auditor replied: "... Here, GTA's failure to submit a valid Major Shareholder's Disclosure Affidavit with its bid is a matter of substance and not merely a matter of form. Specifically, as stated above, GTA's original Affidavit disclosed that one hundred percent of its interest was owned by itself and the substance of this disclosure was false ..." See Decision at p. 14. Teleguam seeks to avoid the impact of the Public Auditor's Decision by arguing that its initial major stockholders Affidavit was not false, but merely incomplete. However, 5 G.C.A. § 5233 clearly requires a bidder to reveal its

Ms. Claudia Acfalle  
Chief Procurement Officer  
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ownership "... at any time during the twelve (12) month period immediately preceding submission of a bid ..." The only inference that can be drawn from Teleguam's original Affidavit is that its only owner was AP Teleguam Holdings, Inc. during said twelve-month period. Its Affidavit was thus not merely "incomplete", it was false.

Teleguam further attempts to draw a distinction between the language in the GCC procurement which stated that failure to comply with the requirements "will mean" a disqualification and rejection of the bid, as opposed to the language in the subject IFB which states that failure to comply with the requirements "may" be cause for disqualification and rejection of the bid. However, in light of the Public Auditor's Decision in the GCC case, this difference in language is irrelevant. Here, GSA made exactly the same mistake as GCC in purporting to allow amendment of the defective major shareholders Affidavit after bid opening, and the result must be the same, namely that Teleguam's bid must be rejected and that the award to Teleguam is void.

## II. TELEGUAM FAILED TO MEET THE REQUIREMENTS OF THE IFB BY IMPROPERLY CONDITIONING ITS BID.

Teleguam included with its bid submission additional Terms and Conditions, attached as Exhibit "7", which improperly conditions its bid. These additional conditions conflict with multiple requirements of the IFB and/or Guam law. Attached as Exhibit "8" are specific examples of Teleguam's improper conditions.

Teleguam's conditions limit its obligations or add new terms not included in the IFB. For example, Teleguam claims the right to impose Early Termination Fees despite the fact that the Bid Form specifically mandates that the Government may terminate the service with no liability. Teleguam also disclaims any warranties, and provides that services are provided "as is". However, the IFB requires that all services shall have a 99.999% up time, and that failure to meet that standard shall result in liquidated damages. Teleguam also reserves the right to require a security deposit or advance payment, despite the prohibition in Guam law against advance payments. See 5 G.C.A. § 5007.

Teleguam's conditions render its bid non-responsive under 5 G.C.A. § 5201(G), which defines a "responsive bidder" as "... a person who has submitted a bid which conforms in all material respects to the Invitation for Bids." Teleguam's Terms and Conditions materially altered its obligations as clearly demonstrated by Exhibit "8". The award to Teleguam is therefore void.

All Teleguam has to say about the Terms and Conditions document is that it was inadvertently inserted in its bid. It apparently claims this was a "minor informality," and that its Terms and Conditions should be ignored. However, withdrawal of a portion of a bid is a modification governed by 2 GAR § 3109(k). A "minor informality" correction can only be made when "... the effect on price, quantity, quality, delivery, or contractual conditions is negligible ..." See 2 GAR § 3109(m)(4)(b). To the contrary, Teleguam's Terms and Conditions materially altered its obligations, and its removal from Teleguam's bid after opening cannot be corrected as a minor informality. As a result, the Teleguam bid must be rejected and the award to it voided.

III. THE JOINT BID SUBMISSION BY TELEGUAM HOLDINGS LLC, GTA TELECOM LLC, GTA SERVICES LLC AND PULSE MOBILE LLC WAS IMPROPER AND MUST BE REJECTED.

Teleguam's bid was submitted on behalf of "Teleguam Holdings LLC and its wholly owned subsidiaries GTA Telecom LLC, GTA Services LLC, and Pulse Mobile LLC". This is an invalid submission. Although Teleguam states that the three LLCs are wholly owned by it, they are still separate legal entities as demonstrated by the fact that Teleguam's bid included separate business licenses for each of these three LLC entities. See Exhibits 9, 10 and 11. Although Teleguam submitted various other business licenses in its bid package, they all expired on June 30, 2011.

The submission of a joint bid by separate legal entities violates multiple requirements in the IFB. For example, on page 1 of Teleguam's bid submission, it is stated that the bidder is incorporated in Delaware. Which bidder? That information is not disclosed. John J. Kim signed the bid in his capacity as "Vice-President, Controller, Authorized Officer", but of which entity?

Fundamentally, the Government has a right to know with whom it is doing business. In Teleguam's bid, it is unclear to which entity the Government would issue a Purchase Order. Even the Teleguam Bid Forms do not clearly identify who the bidder is for each of the parts of the IFB. The IFB clearly does not envision that separate legal entities may submit a joint bid. The fact that the three LLCs may be wholly-owned by Teleguam does not change the fact that they are separate legal entities bidding on separate parts of the IFB. For this reason also, the Teleguam bid must be rejected and the award to it voided.



IV. TELEGUAM HAS FAILED TO SPECIFY THE SPIN NUMBER OF THE ENTITY THAT IS INTENDED TO PROVIDE A SPECIFIC SERVICE.

Bid form 0 at p. 3 requires that "SPIN and SPAC - Service Provider Identification Number (SPIN) and Service Provider Annual Certification (SPAC). A SPIN is required." At the top right of each Bid Form, Teleguam did identify SPIN numbers as follows: "USAC SPIN: 143002715 (GTA Telecom LLC) and/or 143016481 (Pulse Mobile LLC)". Teleguam used the same designation on subsequent Bid Forms where it bids specific prices for specific services. However, there is no way the Government can determine which entity is providing which service. It should be noted there are three possible service providers, GTA Telecom LLC, Pulse Mobile LLC, or both. No SPIN number at all is stated for Teleguam Holdings LLC or GTA Services LLC, even though they are bidders.

Once again, the Government has a right to know with whom it is doing business, namely which entity is providing which service. It is only if the Government knows this that the Government can determine whether the entity actually providing the service is properly licensed and authorized to do so. Teleguam's failure to disclose this basic information is fundamental, and its bid must be rejected in its entirety and the award to it voided.

V. TELEGUAM FAILED TO SUBMIT A CERTIFICATE OF AUTHORITY.

Guam law requires that any person or entity that provides or resells telecommunications services in Guam must obtain a Certificate of Authority issued by the Guam Public Utilities Commission. See 12 G.C.A. § 12103. Bid Form 0 at page 1 contains a similar requirement. As part of its bid package, Teleguam did submit a Certificate of Authority dated February 28, 2005 which was issued by the Guam Public Utilities Commission to TeleGuam Holdings, LLC. However, by Order of the Guam Public Utilities Commission dated July 27, 2005, this Certificate of Authority was transferred from TeleGuam Holdings, LLC to GTA Telecom, LLC. See Exhibit 12, attached to this Protest. As a result, no valid PUC Certificate of Authority was provided for the Teleguam bid, and its bid must be rejected and the award to it voided for failure to comply with the requirement that the bidder submit evidence that it is qualified to bid and provide the services specified.

Ms. Claudia Acfalle  
Chief Procurement Officer  
General Services Agency  
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In its response to the PDS protest of December 23, 2011, Teleguam states that it has a current Certificate of Authority for GTA Telecom LLC, which it is ready to provide to GSA. However, no such document was included in the materials provided to PDS in response to its FOIA request. In any event, the bid was submitted by Teleguam, and a Certificate of Authority issued to GTA Telecom LLC cannot validate Teleguam's bid.

For any or all of the above reasons, Teleguam's bid must be rejected and the award to Teleguam on Bid Form 10 voided. Since PDS was the next lowest bidder, the award for Bid Form 10 should be to PDS.

GSA is reminded that PDS has made a timely protest and under 5 G.C.A. § 5425(g) no further action on this procurement can be taken until this protest has been duly reviewed and a determination made by the Chief Procurement Officer. PDS is available to meet with the Chief Procurement Officer in an effort to resolve this protest pursuant to 5 G.C.A. § 5425(b).

Respectfully submitted,



Bill R. Mann

Attachments: As stated.

# Exhibit 1

Affidavit Disclosing Ownership and Commission submitted by Teleguam

AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSION

TERRITORY OF GUAM )  
 ) SS:  
 HAGATNA, GUAM )

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that [please check only one]:

[ ] The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

[X] The offeror is a corporation, partnership, joint venture, or association known as Teleguam Holdings, LLC and its wholly owned subsidiaries GTA Telecom LLC, GTA Services, LLC, Pulse Mobile, LLC [please state name of offeror company], and the persons, companies, partners, or joint venturers who have held more than 10% of the shares of interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows [if none, please so state]

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
<u>AP Teleguam Holdings, Inc</u>	<u>c/o National Registered Agents, Inc 160 Greentree Drive, Suite 101, City of Dover County of Kent, DE 19904</u>	<u>100% Teleguam Holdings, LLC</u>
<u>Teleguam Holdings, LLC</u>	<u>624 N. Marine Corps Drive Tamuning, Guam 96913</u>	<u>100% GTA Telecom LLC, 100% GTA Services LLC, 100% Pulse Mobile LLC</u>

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows [if none, please so state]:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
<u>None</u>		

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

John J. Kim  
 Vice President, Controller/Authorized Officer

Signature of one of the following:  
 Offeror, if the offeror is an individual;  
 Partner, if the offeror is a partnership;  
 Officer, if the offeror is a corporation.

Subscribed and sworn to before me  
 this 5th day of December, 2011.

Maia L. Anelli  
 NOTARY PUBLIC

**NACRINA F. MENDIOLA**  
 NOTARY PUBLIC  
 In and for Guam, U.S.A.  
 My Commission Expires: Apr. 08, 2016  
 624 N. Marine Corps. Drive Tamuning, Guam 96913

**EXHIBIT 1**

FROM GSA-064-11 BED  
 SUBMISSION BY GTA COPY  
 PROVIDED IN RESPONSE TO  
 WRITTEN REQUEST BY PDS TO GSA.

## Exhibit 2

Affidavit Disclosing Ownership and Commission submitted by Teleguam referencing to the previous owner of Teleguam, namely Shamrock Teleguam Holdings, LLC

**AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS**

CITY OF Tamuning )  
 ) ss.  
ISLAND OF GUAM )

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

- The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.
- The offeror is a corporation, partnership, joint venture, or association known as TELEGUAM HOLDINGS, LLC *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
<u>SHAMROCK TELEGUAM HOLDINGS, LLC</u>	<u>624 N MARINE CORPS DRIVE TAMUNING, GUAM 96913</u>	<u>89%</u>
<u>Various Management Employees with NO individual Employee Owning or controlling more than 10%</u>		<u>11%</u>

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

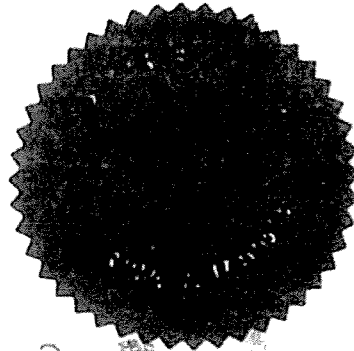
John J. Kim, Vice President, Controller  
 Signature and Date of one of the following:  
 Offeror, if the offeror is an individual;  
 Partner, if the offeror is a partnership;  
 Officer, if the offeror is a corporation.

Subscribed and sworn to before me this 15th day of March, 2011.

*Nacrina F. Mendiola*  
 NOTARY PUBLIC  
 My commission expires: \_\_\_\_\_

This form shall be submitted in the Bid Envelope.

AG Procurement Form 002 (Rev. Nov. 17, 2005)  
**NACRINA F. MENDIOLA**  
 NOTARY PUBLIC  
 In and for Guam, U.S.A.  
 My Commission Expires: April. 06, 2011  
 624 N. Marine Corps. Drive Tamuning, Guam 96913



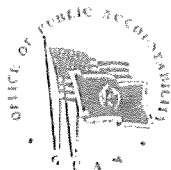
*COPY Provided  
 BY GDOE IN  
 RESPONSE TO  
 PDS FOIA REQUEST*

**EXHIBIT 2**

# Exhibit 3

Decision of the Public Auditor

In the Appeal of Pacific Data Systems, Inc., OPA-PA-10-005



OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,  
PACIFIC DATA SYSTEMS, INC.

Appellant

) APPEAL NO: OPA-PA-10-005

) DECISION

I. INTRODUCTION

This is the Decision of the Public Auditor for an appeal filed on October 12, 2010, by PACIFIC DATA SYSTEMS, INC., (Hereafter "PDS") regarding the GUAM COMMUNITY COLLEGE, Government of Guam's (Hereafter "GCC") October 5, 2010 denial of PDS's August 3, 2010, protest concerning GCC's solicitation of Invitation for Bid No. GCC-FB-10-015 Voice Over-Internet Protocol (VoIP) Telephone System Project (Hereafter "IFB"). The Public Auditor holds that GCC erroneously deemed Interested Party TELEGUAM HOLDINGS LLC, dba GTA TELEGUAM's (Hereafter "GTA") bid to be responsive to the IFB after GTA failed to include a valid Major Shareholder's Affidavit at the time GTA submitted its bid. Accordingly, PDS's appeal is GRANTED.

II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties, pursuant to PDS' November 29, 2010 Withdrawal of Request for Hearing. Additionally, the Public Auditor has considered and incorporated herein all testimony and arguments presented at the November 23, 2010 Hearing on

EXHIBIT 3



1 the PDS's Motion to Compel GCC to Provide Complete Agency Report. Anthony R. Camacho,  
2 Esq. served as the Office of Public Accountability's Hearing Officer at said Hearing. Based on  
3 the aforementioned record in this matter, the Public Auditor makes the following findings of  
4 fact:

- 5  
6 1. On or about May 3, 2010, GCC issued the IFB.<sup>1</sup>
- 7  
8 2. The IFB required bidders to submit an Affidavit of Disclosure of Major Shareholders  
9 with their bids. Specifically, the IFB required that such affidavits:
  - 10 a. Be notarized and dated on the same month as the bid opening and the date of  
11 the signature of the person authorized to sign the bid and the notary date must be the same.<sup>2</sup>
  - 12 b. Be submitted by all bidders in accordance with the requirements of Public Law  
13 18-44 and that failure to do so will mean disqualification and rejection of the bids.<sup>3</sup>
  - 14 c. Be substantially in the same format as the example Major Shareholders  
15 Disclosure Affidavit included in the IFB.<sup>4</sup>
- 16  
17 3. The IFB set the original deadline for submission of bids at 10:00 a.m. on May 19,  
18 2010.<sup>5</sup> On or about May 12, 2010, GCC extended the deadline to 10:00 a.m. on May 26, 2010.<sup>6</sup>

20  
21 <sup>1</sup> Bid Invitation, Tab 2, Procurement Record filed on October 19, 2010.

22 <sup>2</sup> Special Reminder to Prospective Bidders, Id.

23 <sup>3</sup> Special Provision for Major Shareholders Disclosure Affidavit, Id. NOTE:

24 This part of the IFB quotes Section 44 of Public Law 18-44 which is now  
25 codified as 5 G.C.A. §5233. There is no substantial difference in the  
26 language in this part of the IFB and 5 G.C.A. §5233.

27 <sup>4</sup> Major Shareholders Disclosure Affidavit, Id.

28 <sup>5</sup> Bid Invitation, Id.

<sup>6</sup> Amendment No. 1, Tab 4A, Id.

1 On or about May 25, 2010, GCC extended the deadline to 10:00 a.m. on June 10, 2010.<sup>7</sup>

2  
3 4. On June 10, 2010, GCC received bids responding to the IFB from PDS, GTA, and  
4 IT&E (Hereafter "ITE").<sup>8</sup>

5 5. GTA submitted a Major Shareholders Disclosure Affidavit with its bid. GTA filled  
6 out the blanks in the example Major Shareholders Disclosure Affidavit included in the IFB and  
7 said Affidavit disclosed that the persons holding more than ten percent (10%) of the company's  
8 shares were: "TeleGuam Holdings, LLC," whose address was: "624 N Marine Corps Drive,  
9 Tamuning, Guam, 96913," and whose percentage of shares held was: "100%."<sup>9</sup> The Affidavit  
10 was signed on June 3, 2010 by John J. Kim, GTA's Controller, and his signature was notarized  
11 that same day.<sup>10</sup>

12  
13 6. PDS also submitted a Major Shareholders Disclosure Affidavit with its bid. PDS also  
14 filled out the blanks in the example Major Shareholders Disclosure Affidavit included in the IFB  
15 and said Affidavit disclosed that the persons holding more than ten percent (10%) of the  
16 company's shares were: "Pacific Systems Corporation," whose address was: "2<sup>nd</sup> Floor, Tan  
17 Marikita Bldg., PMB 236, Box 10000, Saipan, MP, 96910," and whose percentage of shares held  
18  
19

20  
21 <sup>7</sup> Page 3, Amendment No. 5, Tab 4E, Id.

22 <sup>8</sup> Bid Abstract, Tab 6, Id. NOTE: Said Bid Abstract states that the date was  
23 May 26, 2010, however, it was signed by the persons opening the bids and  
24 witnessing the opening on June 10, 2010. The Public Auditor finds that the  
25 date of the bid opening for the IFB was June 10, 2010 based on said dated  
26 signatures and Amendment Nos. 1 and 5 of the IFB.

27 <sup>9</sup> GTA's Major Shareholders Disclosure Affidavit, Section 2, Government  
28 Documents, GTA's Bid, Tab 7, Procurement Record filed on October 19, 2010.  
<sup>10</sup> Id.

1 was: "99%."<sup>11</sup> The Affidavit was signed on June 7, 2010 by John Day, and his signature was  
2 notarized that same day.<sup>12</sup>

3  
4 7. ITE also submitted a Major Shareholders Disclosure Affidavit with its bid. ITE also  
5 filled out the blanks in the example Major Shareholders Disclosure Affidavit included in the IFB  
6 and said Affidavit disclosed that the persons holding more than ten percent (10%) of the  
7 company's shares were: "Micronesian Telecommunications, Corp.," whose address was: "P.O.  
8 Box 500306, Saipan, MP, 96950," and whose percentage of shares held was: "100%."<sup>13</sup> The  
9 Affidavit was signed on June 9, 2010 by Jovino G. Lorenzo, Jr., and his signature was notarized  
10 that same day.

11  
12 8. On June 23, 2010, GCC completed its evaluation of the bids and recommended GTA's  
13 "Avaya" System Bid for award based on its price.<sup>14</sup>

14  
15 9. On July 27, 2010, GCC issued a Notice of Intent to Award the Contract for the IFB to  
16 GTA.<sup>15</sup>

17  
18  
19  
20 <sup>11</sup> PDS' Major Shareholders Disclosure Affidavit, Section 1, Affidavits and  
21 Forms, PDS Bid, Tab 7, Procurement Record filed on October 19, 2010.

22 <sup>12</sup> Id.

23 <sup>13</sup> ITE's Major Shareholders Disclosure Affidavit, Appendix C Other/Required  
24 Bid Documents, ITE's Bid, Tab 7, Procurement Record filed on October 19,  
25 2010.

26 <sup>14</sup> VoIP Evaluation Summary dated June 23, 2010, Tab 8, Procurement Record  
27 filed on October 19, 2010.

28 <sup>15</sup> Notice of Intent to Award dated July 17, 2010, Tab 9, Procurement Record  
filed on October 19, 2010.

1 10. On July 28, 2010, PDS received GCC's Notice of Intent to Award.<sup>16</sup>

2 11. On August 3, 2010, five (5) days later, PDS filed its Protest concerning GCC's Intent  
3 to Award the IFB's Contract to GTA arguing that GTA's bid must be disqualified for four (4)  
4 reasons.<sup>17</sup> These reasons were that GTA's bid bond, Major Shareholder's Disclosure Affidavit,  
5 Non-Collusion Affidavit, and Representations regarding Ethics in Public Procurement did not  
6 conform to the IFB's requirements.<sup>18</sup> PDS also provided GCC with documents GTA filed with  
7 the Federal Communications Commission (FCC) indicating that on or about September 24, 2004,  
8 Shamrock TeleGuam Holdings, LLC directly owned and controlled 87.27% of GTA, and that the  
9 remaining 12.73% was owned by Robert Taylor, or was being held for the future benefit of  
10 Robert Taylor and other members of GTA's management team.<sup>19</sup>

11 12. On September 17, 2010, GCC responded to PDS' Protest by stating that GTA's Bid  
12 Bond and Non-Collusion Affidavit substantially conformed to the IFB's requirements, and GCC  
13 denied that GTA was required to submit an affidavit to show compliance with Ethics laws and  
14 regulations governing Public Procurement.<sup>20</sup> Further, GCC stated that GTA's Major Shareholder  
15  
16  
17  
18

19 \_\_\_\_\_  
20 <sup>16</sup> Notice of Intent to Award dated July 27, 2010, Exhibit 2, Procurement  
21 Appeal filed on October 12, 2010.

22 <sup>17</sup> PDS' Protest dated August 3, 2010, Exhibit 3, Procurement Appeal filed on  
23 October 12, 2010.

24 <sup>18</sup> Id.

25 <sup>19</sup> Page 2, Domestic Section 214 Application filed for transfer of control of  
26 the Guam Telephone Authority to TeleGuam Holdings, LLC, WC Docket No. 04-382  
27 (FCC, September 24, 2004), Exhibit E, Id.

28 <sup>20</sup> Letter from Sarah A. Strock, Esq., to John Day dated September 17, 2010,  
Exhibit 4, Id.

1 Disclosure Affidavit substantially complies with Guam Law, however, GCC acknowledged that  
2 this issue required further inquiry to determine whether GTA was a responsive bidder.<sup>21</sup> Finally,  
3 GCC acknowledged that its September 17, 2010 letter to PDS was not a denial of PDS' Protest  
4 and that GCC would give a formal decision to said protest after GTA responded to GCC's  
5 responsibility inquiry.<sup>22</sup>

7 13. On or about September 24, 2010, GCC conducted a responsibility inquiry on GTA  
8 pursuant to 2 G.A.R., Div. 4, Chap. 3, §3116(b)(2)(B), and said inquiry consisted of GCC  
9 requesting documents from GTA concerning GTA's responsibility as an bidder.<sup>23</sup>

11 14. On or about September 30, 2010, GTA responded to GCC's responsibility inquiry, in  
12 relevant part, by providing GCC with a second Major Shareholder's Disclosure Affidavit, which  
13 indicated that Shamrock Capital Advisors owned 60% and that GE Asset Management, Inc.  
14 owned 29% of GTA's shares for the past twelve months.<sup>24</sup>

16 15. On October 5, 2010, GCC denied PDS' August 3, 2010 protest, stating that GTA's  
17 Bid Bond substantially conformed to the IFB's Bid Bond requirements and that GTA's Bid  
18 Bond, and Non-Collusion Affidavit substantially conformed to the IFB's requirements, and GCC  
19 denied that GTA was required to submit an affidavit to show compliance with Ethics laws and  
20

21 <sup>21</sup> Id. Page 3.

22 <sup>22</sup> Id. Page 4.

23 <sup>23</sup> Id., and Page 4, GCC's Denial of PDS' August 3, 2010 Protest, Exhibit C,  
24 Agency Report filed on October 26, 2010, and Letter from Jennifer Sgambelluri  
25 to Carmen K. Santos dated September 30, 2010, Exhibit A, Id.

26 <sup>24</sup> Id., and GTA's Major Shareholder's Disclosure Affidavit dated September 30,  
27 2010 attached to Letter from Jennifer Sgambelluri to Carmen K. Santos dated  
28 September 30, 2010, Exhibit A, Id.

1 regulations governing Public Procurement.<sup>25</sup> Concerning GTA's Major Shareholder's  
2 Disclosure Affidavit, GCC admitted that GTA's original Major Shareholders Disclosure  
3 Affidavit stated that TeleGuam Holdings, LLC owns 100% of TeleGuam Holdings, LLC and  
4 that this issue required further inquiry by GCC.<sup>26</sup> However, GCC found that GTA's failure to  
5 provide all required information relating to responsibility in the IFB was not fatal and that  
6 information requested in IFBs can be supplemented after the submission of the bid to cure  
7 shortcomings in bid submissions pursuant to 2 G.A.R., Div. 4, Chap. 3, §3116(b)(3) and that  
8 GTA's September 30, 2010 Major Shareholder's Disclosure Affidavit sufficiently ensured  
9 GTA's responsibility pursuant to 2 G.A.R., Div. 4, Chap. 3, §3116(b)(3) and (2)(B) and cured  
10 GTA's initial failure to submit a valid Major Shareholder's Disclosure Affidavit with its bid.<sup>27</sup>  
11 Accordingly, GCC denied PDS' August 3, 2010 Protest.<sup>28</sup>

12  
13  
14 16. On October 7, 2010, GCC awarded the IFB to GTA.<sup>29</sup> However, GCC did not issue  
15 a Purchase Order to GTA and GTA did not provide any services to GCC under the contract.<sup>30</sup>

16  
17 17. On October 12, 2010, seven (7) days after GCC denied its August 3, 2010 Protest,  
18 PDS filed this appeal. However, PDS limited its appeal to the issue of whether GTA's bid was  
19

20  
21 <sup>25</sup> GCC's Denial of PDS' August 3, 2010 Protest, Exhibit C, Agency Report filed  
22 on October 26, 2010.

23 <sup>26</sup> Page 3, Id.

24 <sup>27</sup> Page 4, Id.

25 <sup>28</sup> Page 5, Id.

26 <sup>29</sup> Notice of Bid Award dated October 7, 2010, Tab 12, Procurement Record filed  
27 on October 19, 2010.

28 <sup>30</sup> Letter from Mary A.Y. Okada to Sarah Strock, Esq., dated January 6, 2011  
made in response to OPA's Inquiry Re GTA Purchase Order.

1 responsive due to GTA's failure to submit a valid Major Shareholders Affidavit at the time the  
2 bids were received.  
3

4  
5 **III. ANALYSIS**

6 **A. GTA Submitted a False Major Shareholder Disclosure Affidavit With Its Bid.**

7  
8 GTA submitted a false Major Shareholders Disclosure Affidavit with its bid on June 10,  
9 2010. As a condition of bidding, any partnership, sole proprietorship, or corporation doing  
10 business with the Government of Guam shall submit an affidavit executed under oath that lists  
11 the name and address of any person who has held more than ten percent (10%) of the outstanding  
12 interest or shares in said partnership, sole proprietorship, or corporation, at any time during the  
13 twelve (12) month period immediately preceding submission of the bid and such affidavit shall  
14 contain the number of shares or the percentage of assets of such partnership, sole proprietorship,  
15 or corporation which have held by each such person during the twelve (12) month period. 5  
16 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3, §3109(e)(3)(E).<sup>31</sup> GTA's June 3, 2010 Major  
17 Shareholder's Disclosure Affidavit did not comply with this requirement. As stated above, the  
18 Major Shareholder's Disclosure Affidavit GTA submitted with its bid on June 10, 2010 stated  
19  
20

21  
22 <sup>31</sup> Generally, Guam Community College (GCC) is exempt from the centralized  
23 procurement regime created by 5 G.C.A. §5120, but is governed by Articles 1,  
24 3, 6, 7, 10, 11, and 12 of Guam's Procurement Law. 5 G.C.A. §5125.

25 Further, although GCC is authorized to promulgate its own procurement  
26 regulations pursuant to 5 G.C.A. §5131, GCC has adapted Guam's Procurement  
27 Regulations as its procurement regulations. See GCC Procurement Policy No.  
28 228 adopted on August 2, 2010 pursuant to GCC Board of Trustee Resolution No.  
9-2010.

1 that 100% of GTA's shares were owned by itself, as TeleGuam Holdings, LLC, dba GTA  
 2 TeleGuam. GTA readily admits that its major shareholders are Shamrock Capital Advisors and  
 3 GE Asset Management, Inc.<sup>32</sup> Further, GTA's September 30, 2010 Major Shareholder's  
 4 Disclosure Affidavit accurately reflects GTA's members who hold a greater than 10% interest in  
 5 GTA. Thus, the Public Auditor finds that GTA's June 3, 2010 Major Shareholder's Disclosure  
 6 Affidavit was false because it did not accurately disclose who held greater than 10% interest in  
 7 GTA.  
 8  
 9

10 There is no merit to GTA's argument that its June 3, 2010 Major Shareholder's  
 11 Disclosure Affidavit was "technically" correct. GTA believes its Guam Business License, which  
 12 indicates that TeleGuam Holdings, LLC is licensed to do business as "TeleGuam Holdings,  
 13 LLC," validates its June 3, 2010 Major Shareholder's Disclosure Affidavit because TeleGuam  
 14 Holdings, LLC owns 100% of the "TeleGuam Holdings, LLC" named in the license. However,  
 15 this belief is misplaced. Guam Procurement Law requires bidders to disclose, in the Major  
 16 Shareholder's Disclosure Affidavit, the name and address of any person who has held more than  
 17 ten percent (10%) of the outstanding **interest or shares** (bold emphasis added) in the  
 18 partnership, sole proprietorship, or corporation submitting a bid. 5 G.C.A. §5233 and 2 G.A.R.,  
 19 Div. 4, Chap. 3, §3109(e)(3)(E). In contrast, a Guam business license is defined as the  
 20 permission granted by the Government of Guam conferring upon the licensee the right to engage  
 21 in business or to practice a trade or profession, which without such authorization or permission  
 22 would be illegal. 11 G.C.A. §70103(h). Thus, the Public Auditor finds that merely disclosing  
 23 bidders who hold a Guam Business License is not the disclosure of the persons holding more  
 24  
 25  
 26

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27 <sup>32</sup> Page 1, GTA's Comments on Procurement Appeal and Agency Report filed on  
 28 November 5, 2010.



1 than ten percent (10%) of the outstanding interest or shares in the partnership, sole  
2 proprietorship, or corporation submitting a bid required by 5 G.C.A. §5233 and 2 G.A.R., Div. 4,  
3 Chap. 3, §3109(e)(3)(E). Further, the term "interest" as used in 5 G.C.A. §5233 and 2 G.A.R.,  
4 Div. 4, Chap. 3, §3109(e)(3)(E) readily applies to GTA. GTA is a Delaware limited liability  
5 company.<sup>33</sup> Generally, persons are admitted as members of a Delaware limited liability  
6 companies at the time such companies are formed or after their formation. 6 Del.C. §18-301(a)  
7 and (b). Generally, members of limited liability companies can obtain an interest in the limited  
8 liability company without making a contribution to the company, and unless otherwise provided  
9 in a limited liability company agreement, persons can become members of limited liability  
10 companies without obtaining an interest in the limited liability company or making a  
11 contribution to such company, even if such member is the sole member of the company. 6  
12 Del.C. §18-301(d). The term "limited liability company interest" as used in the aforementioned  
13 statute means a member's share of the profits and losses of a limited liability company and a  
14 member's right to receive distributions of the limited liability company's assets. 6 Del.C. §18-  
15 101(8). Here, as stated in GTA's September 30, 2010 Major Shareholder's Disclosure Affidavit,  
16 GTA's members have clearly defined interests in GTA, specifically, Shamrock Capital Advisors  
17 and GE Asset Management, Inc. have a sixty percent (60%) and twenty-nine percent (29%)  
18 respective interest in GTA. Therefore, the Public Auditor finds that 5 G.C.A. §5233 and 2  
19 G.A.R., Div. 4, Chap. 3, §3109(e)(3)(E) apply to GTA and GTA was required to disclose all of  
20 its members who held more than a ten percent (10%) interest in GTA at the time it submitted its  
21 bid on June 10, 2010.  
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<sup>33</sup> Id.

1           **B. GTA's Bid Was Non-Responsive.**

2           As a preliminary matter, the Public Auditor must decide whether GCC's argument that  
3 the Major Shareholders Disclosure Affidavit solely concerns a bidder's responsibility has merit.

4           The Major Shareholders Disclosure Affidavit is required as a **condition of bidding** (bold  
5 emphasis added). 5 G.C.A. §5233. Further, as stated above, the IFB expressly required the  
6 bidders to include a Major Shareholders Disclosure Affidavit complying with 5 G.C.A. §5233  
7 with their bids and failure to do so would result in disqualification and rejection of the bids.

8           Based on the statutory mandate and the IFB's express and specific requirements, the Public  
9 Auditor finds that GTA's failure to submit a valid Major Shareholders Disclosure Affidavit with  
10 its bid puts GTA's responsiveness at issue in this matter. The Public Auditor now turns to the  
11 main issue in this matter which is whether GTA's bid, which lacked a valid Major Shareholders  
12 Disclosure Affidavit, was **responsive** (bold emphasis added).

13           GTA's bid was non-responsive because GTA failed to submit a Major Shareholder's  
14 Disclosure Affidavit that complied with 5 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3,  
15 §3109(e)(3)(E) with its bid. The term "responsive bidder," as used in Guam's Procurement Law  
16 and Regulations, means a person who has submitted a bid which conforms in all material  
17 respects to the Invitation for Bids. 5 G.C.A. §5201(g) and 2 G.A.R., Div. 4, Chap. 1, §1106(28).

18           The IFB specifically required bidders to submit a Major Shareholders Disclosure Affidavit in  
19 accordance with Public Law 18-44 (now codified as 5 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap.  
20 3, §3109(e)(3)(E). This was a material requirement of the IFB because the IFB set forth the  
21 penalty of disqualification and rejection of the bids if a bidder failed to comply with the  
22 aforementioned instruction. This material requirement complies with Guam's Procurement Law  
23 which requires Major Shareholder's Disclosure Affidavits as a **condition of bidding** (bold

1 emphasis added). 5 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3, §3109(e)(3)(E). The plain  
2 meaning of this clear statutory language is that bidding is conditional, based on the bidder  
3 disclosing persons holding more than ten percent (10%) of the bidder's ownership interest or  
4 shares. Here, as set forth above, GTA's June 3, 2010 Major Shareholder's Disclosure Affidavit,  
5 which was submitted with its bid, was false and did not comply with the requirements of 5  
6 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3, §3109(e)(3)(E). Thus, the Public Auditor finds that  
7 GTA's bid is non-responsive due to its failure to submit a valid Major Shareholder's Disclosure  
8 Affidavit with its bid, and GTA's bid must be disqualified and rejected as required by the IFB.  
9  
10  
11

12 **C. GTA's September 30, 2010 Major Shareholders Disclosure Affidavit Must Not**  
13 **Be Accepted.**

14  
15 There is no merit to GCC's argument that the filing of GTA's second Major  
16 Shareholder's Disclosure Affidavit on September 30, 2010 cured GTA's flawed original  
17 affidavit. GTA's September 30, 2010 Major Shareholders Disclosure Affidavit is a late bid  
18 modification. After bid opening, no changes in bid prices or other provisions of bids prejudicial  
19 to the interests of the Government of Guam or fair competition shall be permitted. 5 G.C.A.  
20 §5211(f). Any modification of a bid received after the time and date set for bid opening is late.  
21 2 G.A.R., Div. 4, Chap. 3, §3109(k)(1). Further, no late bid modification will be considered  
22 unless received before contract award and that such modification would have been timely but for  
23 the action or inaction of Government of Guam personnel serving the procurement activity. 2  
24 G.A.R., Div. 4, Chap. 3, §3109(k)(2). Here, GTA's September 30, 2010 Major Shareholders  
25 Disclosure Affidavit was late because it was submitted on September 30, 2010 which is three (3)  
26 months and twenty (20) days after the June 10, 2010 bid opening date. Although GTA  
27  
28

1 submitted its September 30, 2010 Major Shareholders Disclosure Affidavit seven (7) days prior  
2 to GCC awarding the contract to GTA on October 7, 2010, there is no evidence that the GTA's  
3 late submission was caused by the action or inaction of GCC's procurement personnel. In fact,  
4 GTA admits that its June 3, 2010 Major Shareholders Disclosure Affidavit was a clerical mistake  
5 and that once contacted by GCC, GTA understood the IFB required the disclosure of the actual  
6 members of TeleGuam Holdings, LLC which GTA provided to GCC on September 30, 2010.<sup>34</sup>  
7 Thus, the Public Auditor finds that the exception for late bid modifications caused by  
8 Government of Guam procurement personnel set forth in 2 G.A.R., Div. 4, Chap. 3, §3109(k)(2)  
9 does not apply to this matter. Further, there is no merit to GTA's argument that GCC's  
10 acceptance of GTA's late bid modification was not prejudicial to other bidders.<sup>35</sup> As set forth  
11 above, PDS and ITE, the other two (2) bidders, submitted valid Major Shareholders Disclosure  
12 Affidavits with their bids on June 10, 2010 and acceptance of GTA's late bid modification  
13 clearly prejudices these responsive bidders by making GTA's non-responsive bid acceptable  
14 notwithstanding its defect. Therefore, the Public Auditor finds that GTA's September 30, 2010  
15 Major Shareholders Disclosure Affidavit must not be accepted because it is a late bid  
16 modification prohibited by Guam Procurement Law and Regulations.

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GCC's argument that GTA's September 30, 2010 Major Shareholder's Disclosure Affidavit can be accepted to correct a minor mistake has no merit. Minor informalities are matters of form rather than substance evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders, that is the effect on price, quantity, quality, delivery, or contractual conditions is negligible and the Procurement Officer

<sup>34</sup> Page 2, GTA's Comments on Procurement Appeal and Agency Report.

<sup>35</sup> Id.

1 shall waive such informalities or allow the bidder to correct them depending on which is in the  
2 best interest of the Government of Guam. 2 G.A.R., Div. 4, Chap. 3, §3109(m)(4)(B). Here,  
3 GTA's failure to submit a valid Major Shareholder's Disclosure Affidavit with its bid is a matter  
4 of substance and not merely a matter of form. Specifically, as stated above, GTA's original  
5 affidavit disclosed that 100% of its interest was owned by itself and the substance of this  
6 disclosure was false. The false substance of GTA's original Major Shareholders Disclosure  
7 Affidavit far exceeds a matter of form such as the failure to provide sufficient copies or sign bid  
8 documents. Further, GTA's failure to comply with the IFB's specific requirements for the  
9 content of the Major Shareholders Disclosure Affidavit is not an insignificant mistake because  
10 the IFB specifically states that bidders who fail to submit valid Major Shareholders Disclosure  
11 Affidavits would have their bids disqualified and rejected. Finally, to allow GTA to correct  
12 their original Major Shareholders Disclosure Affidavit as a minor informality requires that  
13 GCC's Procurement Officer for the IFB prepare a written determination granting the correction  
14 of the minor informality. 2 G.A.R., Div. 4, Chap. 3, §3109(m)(6). A review of the procurement  
15 record in this matter reveals that no such written determination was made by GCC's Procurement  
16 Officer. Therefore, the Public Auditor finds that GTA's original Major Shareholder's  
17 Disclosure Affidavit could not be corrected or waived as a minor informality and that GCC did  
18 waive or grant correction of said original affidavit as a minor informality.

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23 The Public Auditor is unpersuaded by GTA's argument that 48 C.F.R. §14-407, which is  
24 the Federal Procurement Regulations governing verification of bids, should be applied to this  
25 solicitation. Where a procurement involves the expenditure of federal assistance or contract  
26 funds, or other federal funds as defined by Section 20 of the Organic Act of Guam, all persons in  
27 the Government of Guam shall comply with such federal law and regulations which are  
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1 applicable and which may conflict with or which may not be reflected in Guam's Procurement  
2 Law. 5 G.C.A. §5501. Here, the IFB states that it is issued pursuant to and subject to Guam's  
3 Procurement Law and Regulations.<sup>36</sup> Thus, the IFB expressly makes Guam Procurement Law  
4 and Regulations applicable to the solicitation procedures. Further, the only federal laws  
5 applicable to the IFB concern federal laws the contractor awarded the IFB would be required to  
6 comply with. The IFB contains a general and broad requirement the bidder awarded the  
7 contract must comply with the applicable standards, provisions, and stipulations of all pertinent  
8 Federal and local laws, rules, and regulations relative to the performance of this contract and  
9 furnishing of goods.<sup>37</sup> Further, the IFB states that because the IFB concerns a Federally Funded  
10 Project, that the bidder awarded the contract is required to comply with the Federal Davis Bacon  
11 and Related Acts which require all contractors and subcontractors performing work on federal  
12 constructions projects or federally assisted contracts in excess of \$2,000 to pay their laborers and  
13 mechanics not less than the prevailing wage rates and fringe benefits for such work determined  
14 by the U.S. Secretary of Labor.<sup>38</sup> Thus, pursuant to the express terms of the IFB, the Public  
15 Auditor finds that Guam Procurement Law and Regulations govern the IFB's solicitation  
16 procedures and 48 C. F. R. §14-407 is not applicable.  
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22 <sup>36</sup> Paragraph 1, General Terms and Conditions, IFB, Procurement Record filed on  
23 October 19, 2010. NOTE: Although the IFB cites the old Government Code  
24 sections embodying Guam's Procurement Law (Title VII-A, Government Code),  
25 said Procurement Law sections are now codified in 5 G.C.A., Chapter 5.

26 <sup>37</sup> Paragraph 35, Id.

27 <sup>38</sup> Special Reminder to Prospective Bidders, and Informational Page regarding  
28 Davis-Bacon and Related Acts, IFB, Procurement Record filed on October 19,  
2010.

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3 **D. GCC's Responsibility Inquiry Did Not Make GTA's Bid Responsive.**

4 GCC could not correct GTA's original Major Shareholders Disclosure Affidavit through  
5 a responsibility inquiry. As used in Guam's Procurement Law and Regulations, the term  
6 "responsible bidder" means a person who has the capability in all respects to perform fully the  
7 contract requirements, and the integrity and reliability which will assure good faith performance.  
8 5 G.C.A. §5201(f) and 2 G.A.R., Div. 4, Chap. 3, §1106(27). A prospective contractor shall  
9 supply information requested by the Procurement Officer concerning the responsibility of such  
10 contractor and if such contractor fails to supply the requested information, the Procurement  
11 Officer shall base the determination of responsibility upon available information or may find the  
12 prospective contractor non-responsible if such failure is unreasonable. 5 G.C.A. §5230(a) and 2  
13 G.A.R., Div. 4, Chap. 3, §3116(a). Here, as stated above, GCC used its responsibility inquiry to  
14 permit GTA to modify its bid by providing GCC with GTA's September 30, 2010 Major  
15 Shareholders Disclosure Affidavit. The Public Auditor finds that the GCC's use of the  
16 responsibility inquiry to allow GTA to modify or correct their bid violates the provisions of  
17 Guam's Procurement Laws and Regulations prohibiting such late modifications or corrections of  
18 bids. The responsibility inquiry's main purpose is to obtain additional information from the  
19 prospective contractor, to ensure such contractor can perform the contract requirements, and to  
20 ensure the integrity and reliability of such contractor which will assure a good faith performance  
21 of the contract requirements. Such inquiry does not negate or dilute the other provisions of  
22 Guam's Procurement Law and Regulations, cited above, restricting late modifications or  
23 corrections of bids. As stated above, none of the few exceptions governing such late  
24 modifications or corrections apply in this case and allowing the responsibility inquiry to be used  
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1 to waive GTA's non-curable defect in their bid poses a substantial threat to the integrity of the  
2 procurement process. Specifically, by allowing the responsibility inquiry to be used to waive  
3 non-curable defects in bids, after bid opening, a non-responsive lowest bidder who, for whatever  
4 reason (i.e. change in business conditions or unprofitable low bid price), no longer wanted to be  
5 awarded the contract, could refuse to provide the information requested in a responsibility  
6 inquiry and the purchasing agency would have no choice but to reject the bid depriving the  
7 purchasing agency of the bidders assurance that the contract would be entered into and  
8 performed. Additionally, waiver of a non-curable defect in a bid after bid opening via the  
9 responsibility inquiry places the non-responsive bidder in a position of advantage over the  
10 responsive bidders. Here, had ITE and PDS known in advance that they could avoid timely  
11 filing of their valid Major Shareholders Disclosure Affidavits, we can only speculate the  
12 possibility whether this additional time would have allowed them to submit lower bids. Further,  
13 the requirement of submitting a valid Major Shareholders Disclosure Affidavit may have  
14 deterred others from bidding who would have otherwise bid if they had known that GCC would  
15 have waived this requirement. Thus the Public Auditor finds that GCC's use of the  
16 responsibility inquiry to waive GTA's non-curable defect in its Major Shareholders Disclosure  
17 Affidavit undermines fair competition and must not be condoned.

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22 **E. Public Policy Favors the Rejection of GTA's Bid as Non-responsive.**

23 GCC and GTA argue that public policy favors waiving GTA's non-curable failure to  
24 submit a valid Major Shareholders Disclosure Affidavit because GTA submitted the lowest bid.  
25 The Competitive Sealed Bidding procedure requires that the contract be awarded to the lowest  
26 responsible and responsive bidder whose bids meets the requirements and criteria set forth in the  
27 invitation for bids. 5 G.C.A. §5211(g) and 2 G.A.R., Div. 4., Chap. 3, §3109(n)(1).  
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1 Here, GCC and GTA are really asking that GTA be awarded the contract merely because it is  
2 simply the lowest bidder and despite the fact that it submitted a non-responsive bid. Certainly  
3 the policy of providing increased economy and the maximization of the purchasing value of  
4 public funds supports this argument. 5 G.C.A. §5001(b)(5) and 2 G.A.R., Div. 4, Chap. 1,  
5 §1102(4). However, the Public Auditor must balance this policy with other policies underlying  
6 Guam's Procurement Laws and Regulations. Such as the policy to provide for increased public  
7 confidence in the procedures followed in public procurement. 5 G.C.A. §5001(b)(3) and 2  
8 G.A.R., Div. 4, Chap. 1, §1102(2). The policy to ensure the fair and equitable treatment of all  
9 persons who deal with the procurement system. 5 G.C.A. §5001(b)(4) and 2 G.A.R., Div. 4,  
10 Chap. 1, §1102(3). And the policy to provide safeguards for the maintenance of a procurement  
11 system of quality and integrity. 5 G.C.A. §5001(b)(7) and 2 G.A.R., Div. 4, Chap. 1, §1102(6).  
12 The strong public interest in an uninterrupted public procurement system must be outweighed by  
13 the stronger public interest in having agencies abide by the appropriate statutes and regulations.  
14 *Multi-Line Corporation, Inc., v. Lorenzo C. Aflague, et.al.*, CV0667-88, Line 23, Page 10,  
15 Decision, Findings of Fact and Conclusions of Law dated November 21, 1988 (Superior Court of  
16 Guam). Finally, the Public Auditor must exercise her jurisdiction to promote the integrity of the  
17 procurement process. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103. The Public  
18 Auditor finds that the public interest is best served by enforcing the provisions of  
19 Guam's Procurement Law and Regulations requiring bidders to disclose their ownership interests  
20 at the time of bidding and the standard of awarding contracts arising from the Competitive  
21 Sealed Bidding Procedures to the lowest responsible and responsive bidder. The public must be  
22 assured that the information in the Major Shareholders Disclosure Affidavit is accurate and  
23 truthful when sworn to and cannot be subject to modification after bid opening to meet a  
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1 condition of bidding that all other bidders meet in the first instance. The Public Auditor  
2 recognizes that this will cause hardship on GTA, an otherwise responsible bidder who, through  
3 simple negligence, failed to submit a valid Major Shareholders Disclosure Affidavit. However,  
4 the policies underlying Guam's Procurement Laws and Regulations and the public interests they  
5 protect are best served by strict enforcement of the requirement for submission of Major  
6 Shareholders Disclosure Affidavits which must be complied with correctly at the time of bid  
7 submission.  
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10 **F. GCC's Award of the Contract to GTA is Void.**

11 The Public Auditor finds that GCC's award of the contract to GTA is void. If after an  
12 award, it is determined that a solicitation or award of a contract is in violation of law, and the  
13 person awarded the contract has not acted fraudulently or in bad faith, the contract may be: (1)  
14 Ratified or affirmed if doing so is in the best interests of Guam; or (2) The contract may be  
15 terminated and the person awarded the contract shall be compensated for the actual expenses  
16 reasonably incurred under the contract plus a reasonable profit, prior to the termination. 5  
17 G.C.A. §5452(a)(1). Here, as set forth above, the Public Auditor finds that the award of the  
18 contract to GTA violated Guam's Procurement Laws and Regulations because GTA was not a  
19 responsive bidder. Further, the Public Auditor finds that there is nothing in the record indicating  
20 that GTA acted fraudulently or in bad faith in procuring the contract. The Public Auditor finds  
21 that ratifying or affirming GCC's contract with GTA is not in the best interests of the  
22 Government, because waiver of the statutory requirements for the submission of a valid Major  
23 Shareholders Disclosure Affidavit and the statutory requirements that contracts arising from  
24 Competitive Sealed bidding be awarded to the lowest responsible and responsive bidder are  
25 serious threats to the integrity of the procurement system as stated above, and must not be  
26 condoned by contract ratification. The Public Auditor finds that the contract awarded to GTA  
27 shall be terminated as of the date of this Decision. The Public Auditor further finds that GTA  
28 did not incur expenses and is not entitled to reasonable profits because GTA did not perform  
work under the contract due to GCC not issuing GTA a purchase order as set forth above.

#### IV. CONCLUSION

Based on the foregoing, the Public Auditor hereby determines the following:

1. Through simple negligence, GTA Submitted a false Major Shareholder Disclosure Affidavit with its Bid in violation of 5 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3, §3109(e)(3)(E) which resulted in GTA's bid being non-responsive to the IFB.
2. Guam Procurement Laws and Regulations prohibit GCC from accepting GTA's September 30, 2010 Major Shareholders affidavit because it is a late modification or correction of the bid after bid opening.
3. GCC's award of the contract to GTA is void because GTA was a non-responsive bidder which GCC should have disqualified and rejected at the time of bid opening.
4. PDS's Appeal is granted.
5. GCC's contract with GTA arising from the IFB for IFB Item Nos. 1.1 thru 7.1 is hereby terminated as of the date of this decision and although GTA is generally entitled to compensation for its actual expenses it reasonably incurred under the contract plus a reasonable profit for the period prior to the termination, the Public Auditor finds that GTA did not incur expenses and is not entitled to reasonable profits because GTA did not perform work under the contract due to GCC not issuing GTA a purchase order.
6. GCC shall consider the IFB's remaining bidders in accordance with Guam Procurement Law and Regulations.
7. PDS is hereby awarded, pursuant to 5 G.C.A. §5425(h)(2), PDS's reasonable costs incurred in connection with the solicitation and its August 3, 2010 protest, including PDS's reasonable bid preparation costs, excluding PDS's attorney's fees, because as PDS was the second highest scoring bidder, there is a reasonable likelihood that PDS would have been awarded the contract but for GCC's acceptance and attempted cure of GTA's non-responsive bid in violation of Guam Procurement Laws and Regulations as set forth above. GCC may object to PDS's cost demand by filing the appropriate motion with the Public Auditor no later than fifteen (15) days after PDS submits such cost demand to GCC.

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This is a Final Administrative Decision. The Parties are hereby informed of their right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative Decision. 5 G.C.A. §5481(a).

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website [www.guamopa.org](http://www.guamopa.org).

DATED this 12<sup>th</sup> day of January, 2011.



DORIS FLORES BROOKS, CPA, CGFM  
PUBLIC AUDITOR

## Exhibit 4

Teleguam acknowledges on p. 2 that its Affidavit Disclosing Ownership and Commissions was mistaken



624 North Marine Corps Drive  
Tamuning, Guam 96913  
Phone 644-1609  
Fax 644-2764  
squenga@gta.net

January 24, 2012

Claudia Acfalle  
Chief Procurement Officer  
Government of Guam General Services Agency  
148 Marine Corps Drive  
Piti, Guam 96915

Subject: Protests by Pacific Data Systems and Docomo Pacific; IFB GSA 064-11

Dear Ms Acfalle:

This letter is in response to the protests submitted by PDS and Docomo, both dated December 23, 2011, related to Invitation for Bids No. GSA064-11.

**PDS and Docomo Are Not Aggrieved And The Protests Must Be Denied**

Both protests must be denied by GSA as neither PDS nor Docomo are "aggrieved" bidders pursuant to the Guam Procurement Law and the Guam Procurement Rules and Regulations because both protests are based entirely upon the bid submitted by GTA. The procurement law provides:

Right to Protest. Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer . . . .<sup>1</sup>

Moreover, the procurement regulations provide:

Subject of Protest. Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.<sup>2</sup>

Neither protest is based upon any act of GSA in this procurement process or upon any alleged shortcoming in GSA064-11. Also, of the date of this letter, no award has been made. Thus, PDS and Docomo are not aggrieved bidders and their protests must be denied. Moreover, *all* bids should be fairly and objectively evaluated pursuant to procurement laws and regulations before any bid is awarded or disqualified.

<sup>1</sup> 5 GCA § 5424 (a).

<sup>2</sup> 2 GAR § 9101(c)(2).

## **The Procurement Regulations Allow Corrections After Bid Opening**

GTA admits the mistakes in the Affidavit Disclosing Ownership and Commissions, the erroneous business licenses, the erroneous certificate of authority and the mistaken insertion of the additional terms and conditions. However, these were mere oversights on GTA's part and the correction of these mistakes is well within the authority of GSA to allow pursuant to the express language and intent of the procurement laws and regulations.

With regard to the Affidavit Disclosing Ownership, the information inserted therein is not false but merely incomplete. GTA inadvertently failed to include information on shareholders prior to the purchase of the company by AP Teleguam Holdings, Inc. in June of 2011. The change in ownership of GTA was widely publicized in Guam and the purchase of GTA was approved by the FCC and by the Guam Public Utilities Commission. The inadvertent failure to include prior owners was simple human oversight and nothing more. GTA is ready to provide a correct affidavit to GSA.

GTA also provided expired business licenses for Teleguam Holdings, LLC's dbas and the 2005 Certificate of Authority for Teleguam Holdings, LLC, which was subsequently transferred to GTA Telecom, LLC. Notwithstanding, these oversights, GTA has always held current business licenses for the Teleguam Holdings, LLC dbas (all current through June 30, 2012) and a current Certificate of Authority for GTA Telecom, LLC and is ready to provide these to GSA. GTA has always been appropriately licensed and certified to operate in Guam and the failure to provide the correct documents does not affect GTA's legal ability to provide services.

With respect to the mistaken insertion of additional terms and conditions, this was a simple clerical and non-judgmental mistake. By submitting its bid, GTA conceded to all terms and conditions contained in the Invitation for Bids. The terms and conditions that were mistakenly inserted are intended only for individual or business accounts and in no way intended for submission in Government of Guam IFBs.

The procurement regulations expressly allow correction of "minor informalities" after opening of bids:

### **(4) Mistakes Discovered After Opening but Before Award.**

(A) This Subsection sets forth procedures to be applied in three (3) situations described in Subsections 3109(m)(4)(A) through 3109(m)(4)(C) of this Subsection in which mistakes in bids are discovered after the time and date set for bid opening but before award.

(B) **Minor Informalities.** Minor informalities are matters of form, rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the territory. . . .

.....

(6) **Determination Required.** When a bid is corrected or withdrawn, or correction or withdrawal is denied, under Subsection 3109(m)(5) of this Section, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations, except that the Procurement Officer shall prepare the determination required in Subsection 3109(m)(4)(A) of this Section.<sup>3</sup>

The aforementioned section, 2 GAR § 3109(m), was promulgated by the GSA pursuant to the Procurement Law at 5 GCA § 5211, which provides in part:

(f) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, *shall be permitted in accordance with regulations promulgated by the Policy Office*. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Territory or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer, the Director of Public Works or head of a purchasing agency.<sup>4</sup> [emphasis added].

This law was adopted by the Guam Legislature from the American Bar Association 1979 Model Procurement Code for State and Local Governments.<sup>5</sup> The intent of allowing corrections to bids, so long as the correction do not cause the bidder to have the low bid, is clear from the commentary within the model code<sup>6</sup>:

**COMMENTARY:**

(1) Correction or withdrawal of bids before or after contract award requires careful consideration to maintain the integrity of the competitive bidding system, to assure fairness, and to avoid delays or poor contract performance. While bidders should be expected to be bound by their bids, circumstances frequently arise where correction or withdrawal of bids is proper and should be permitted.

(2) To maintain the integrity of the competitive sealed bidding system, a bidder should not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

(3) An otherwise low bidder should be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder should not be permitted to correct a bid for mistakes or errors in judgment.

(4) In lieu of bid correction, the [State] should permit a low bidder alleging a material mistake of fact to withdraw its bid when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty.

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<sup>3</sup> 2 GAR § 3109(m).

<sup>4</sup> 5 GCA § 5211(f).

<sup>5</sup> See 5 GCA Chapter 5 Compiler notes and comments.

<sup>6</sup> See American Bar Association Model Procurement Code for State and Local Governments 1979, p. 20.



(5) After bid opening an otherwise low bidder should not be permitted to delete exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

(6) A suspected bid mistake can give rise to a duty on the part of the [State] to request confirmation of a bid, and failure to do so can result in a nonbinding award. Where there is an appearance of mistake, therefore, the bidder should be asked to reconfirm the bid before award. In such instance, a bidder should be permitted to correct the bid or to withdraw it when the bidder acknowledges that a mistake was made.

(7) Correction of bid mistakes after award should be subject to the same proof as corrections before award with a further requirement that no correction be permitted that would cause the contract price to exceed the next low bid.

(8) Nothing in this Section is intended to prohibit the [State] from accepting a voluntary reduction in price from a low bidder after bid opening; provided that such reduction is not conditioned on, or results in, the modification or deletion of any conditions contained in the Invitation for Bids.

This makes clear that the Guam procurement laws and regulations foresee mistakes being made in bid submissions and actually require corrections to be made pursuant to duly adopted regulations and so long as the integrity of the competitive bidding system is not compromised. As will be discussed below, none of the mistakes impact the responsiveness of GTA's bid. Equally important, corrections to GTA's bid would in no way affect the bid prices offered by GTA.

We emphasize that the IFB GSA064-11 does not on its face require automatic disqualification of a bid for a failure to explicitly follow bid requirements. Page 2 of 56 of the IFB, Special Reminder to Prospective Bidders, reminds bidders to read the instructions and general terms and conditions and ascertain that certain check-marked requirements are submitted with the bid. This reminder states: "Failure to comply with the above requirements *may* be cause for disqualification and rejection of the bid." [emphasis added]. The discretion allowed to GSA by the word "may" to determine if disqualification is justified is entirely consistent with the express language and intent of the Procurement Law and Regulations.

### **GTA's Mistakes Are Minor Informalities**

The mistakes in GTA's bid are entirely matters of form and are not at all matters of substance. These minor informalities do not affect "price, quantity, quality, delivery or contractual conditions".<sup>7</sup> Therefore, pursuant to 2 GAR § 3109(m)(4)(B), GTA's correction of the minor informalities will not prejudice other bidders.

GTA has provided consistent and reliable telecommunications services to the Government of Guam for decades. GTA has continually provided services to the government during times of fiscal austerity and has worked with the government to avoid disconnection of services for unpaid invoices. Allowing correction of the mistakes is in the best interests of the government.

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<sup>7</sup> See 2 GAR § 3109(m)(4)(B).

PDS and Docomo point to a decision of the Office of the Public Auditor for strict enforcement of the Affidavit Disclosing Ownership.<sup>8</sup> That case involved an invitation for bids issued by the Guam Community College. The OPA decision found that GTA submitted a false major shareholders disclosure affidavit in its bid to GCC and that GTA's bid was therefore non-responsive.<sup>9</sup> Specifically, the OPA stated: "GTA's original affidavit disclosed that 100% of its interest was owned by itself and the substance of this disclosure was false. The false substance of GTA's original Major Shareholders Disclosure Affidavit far exceeds a matter of form . . . ."<sup>10</sup> Along this line, the OPA appears to have relied heavily upon language in GCC IFB which made non-compliance subject to automatic disqualification. However, there is a significant difference between the GCC IFB language and the language in the GSA IFB in this case. The GCC Special Reminder to Prospective Bidders form provides that "[f]ailure to comply with the above requirements *will mean* a disqualification and rejection of the bid." [emphasis added]. As noted above, the similar GSA form contains permissive language. Thus, the GCC form relied upon by the OPA is different and distinguishable from the form in IFB GSA064-11

Also with respect to the OPA decision relied upon by PDS and Docomo, the Affidavit Disclosing Ownership submitted by GTA in GSA064-11 was not false. It was simply incomplete. GTA stated correctly that it was owned by AP Teleguam Holdings, Inc. and that the subsidiary LLCs were owned by Teleguam Holdings, LLC. GTA inadvertently omitted information that the company was owned by others prior to the sale of the company in June of 2011. The mistake was a simple, unfortunate oversight. There was no attempt here to provide misleading information. The sale was widely publicized in the Guam media and the identities of the selling and purchasing entities were widely disclosed. Thus, the facts of the GCC case are distinguishable from the facts here. Moreover, the OPA noted that the GCC Procurement Officer made no written determination pursuant to 2 GAR § 3109(m)(6) granting correction of the minor informality.<sup>11</sup> This regulation provides:

**Determination Required.** When a bid is corrected or withdrawn, or correction or withdrawal is denied, under Subsection 3109(m)(5) of this Section, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations, except that the Procurement Officer shall prepare the determination required in Subsection 3109(m)(4)(A) of this Section.<sup>12</sup>

Thus, it is within the discretion and authority of the Chief Procurement Officer to make a written determination allowing correction of minor informalities. The purpose of this authority is clear: to allow corrections of non-material issues. As discussed below, so-called bidding conditions required by the IFB will not convert bidder qualifications reflecting on responsibility into matters of responsiveness. The OPA itself has issued conflicting decisions on this issue. It is in the interests of the government for the GSA to follow the purposes and intent of the procurement laws and regulations and grant a correction of the minor informalities.

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<sup>8</sup> The protests cite to *In the Appeal of Pacific Data Systems, Inc.* Appeal No. OPA-PA-10-005, Decision (Jan. 12, 2011).

<sup>9</sup> *Id.* at p. 20, lines 4-6.

<sup>10</sup> *Id.* at p. 14, lines 5-8.

<sup>11</sup> *Id.* at p. 14, lines 17-22.

<sup>12</sup> 2 GAR § 3109(m)(6)

For the foregoing reasons, GTA hereby respectfully requests the Chief Procurement Officer to make a written determination granting correction of the minor informalities in GTA's bid.

**GTA's Bid Is Not Non-Responsive**

Responsiveness of a bid is defined in the Guam Procurement Law as: "a bid which conforms in all material respects to the Invitation for Bids."<sup>13</sup> The procurement regulations regarding corrections of minor informalities, provided above, allow correction of minor or immaterial mistakes. Thus, if a mistake is not material, it does not render a bid non-responsive.<sup>14</sup> 2 GAR § 3109(m)(4)(B) describes material and prejudicial conditions as issues involving price, quantity, quality, delivery, or contractual conditions. None of the mistakes in GTA's bid involve any of these enumerated conditions. The mistakes are not material and they do not render the GTA bid non-responsive.

**Issues of The Affidavit of Ownership, Business Licensing and Certificate of Authority Are Not Issues of Responsiveness**

The Procurement Regulations enumerate the standards of a bidder's responsibility as follows:

1. the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
2. a satisfactory record of performance;
3. a satisfactory record of integrity;
4. qualified legally to contract with the territory; and
5. supplied all necessary information in connection with the inquiry concerning responsibility.<sup>15</sup>

Issues of licensing and certification to engage in telecommunications business in Guam clearly go to the standard above related to the bidder being qualified legally to contract with the government.

Shareholder disclosure allows the government to know the identity of the bidder or the bidder's owners. The same affidavit form requires disclosure of the identity of persons entitled to receive a commission, gratuity or other compensation for assisting in obtaining business related to the bid. Moreover, the statute requiring disclosure of major shareholders, 5 GCA § 5233, was placed in Part D, Qualifications and Duties, of the Guam Procurement Law. Thus, the purpose of disclosure of ownership relates most closely to the standard related to the bidder's record of integrity. It clearly follows that the issues of shareholder disclosure, licensing and certification go directly to a bidder's responsibility, not responsiveness of the bid.

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<sup>13</sup> 5 GCA § 5201(g).

<sup>14</sup> See John Thos. Brown, *A Guam Procurement Process Primer, Ver. 2.1*, § VI(J)(2), p. 97 (2011).

<sup>15</sup> 2 GAR § 3116(b)(2)(A).

With respect to responsibility determinations, an OPA procurement decision noted:

These concepts are often confused, particularly when the IFB contains specific requirements concerning bidders' responsibility characteristics such as the requirement for submission of information relating to responsibility. As a general rule, matters that deal with bidder responsibility cannot be converted into matters of responsiveness merely by inserting a provision in [sic] into the IFB requiring rejection of bids that do not comply.<sup>16</sup>

Thus, the fact that GSA064-11 contains these specific responsibility requirements does not convert them into matters of responsiveness and the inadvertent omission of such information cannot in and of itself render the bid non-responsive.

In fact, the Procurement regulations require GSA and the Chief Procurement Officer to base "on any available information":

**(B) Information Pertaining to Responsibility.** The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.<sup>17</sup>

The determination of whether a bidder's failure to provide the information is unreasonable first requires GSA to conduct an "inquiry with respect to responsibility."<sup>18</sup> Failure of a bidder to promptly supply information in connection with such an inquiry is a ground for a determination of nonresponsibility.<sup>19</sup>

### **Other Grounds in PDS' Protest Are Unsupported and Irrelevant**

The submission of GTA's bid in the collective name of Teleguam Holdings, LLC, and its wholly owned subsidiaries is permissible. PDS points to no specific IFB requirement or any statute or regulation that prohibits this because none exist. The subsidiaries are appropriately licensed and certified to operate. The subsidiaries are entirely owned by Teleguam Holdings, LLC, and operate only to support their parent corporation. PDS offers no support for its position and it should be disregarded.

GTA has specified the SPINs and SPACs that it holds under its various subsidiaries. These designations have been available to the Government of Guam since the privatization of the Guam Telephone Authority and the federal benefits have continued uninterrupted since then. PDS offers no support for its position and it should be disregarded.

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<sup>16</sup> *In the Appeal of Jones and Guerrero Co., Inc.*, Appeal No. OPA-PA-07-005. Decision pp. 6-7 (2008) (citing Cibinic & Nash, *Formation of Government Contracts* 3<sup>rd</sup> pp. 545-546.

<sup>17</sup> 2 GAR § 3116(b)(2)(B).

<sup>18</sup> 2 GAR § 3116(a).

<sup>19</sup> *Id.*

**Conclusion**

Based upon the foregoing, it is incumbent upon GSA to follow intent and purposes of the procurement law and regulations. GTA hereby respectfully requests GSA to allow correction of the mistakes in its bid or, in the alternative, to conduct an inquiry with respect to GTA's responsibility. GTA stands ready to provide all information necessary to show our responsibility.

Sincerely,

A handwritten signature in black ink, appearing to read 'ASQ', with a long horizontal flourish extending to the right.

Andrew S. Quenga  
GTA General Counsel

# Exhibit 5

GSA's letter to Teleguam dated April 18, 2012

**Eddie Baza Calvo**  
Governor



**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration  
148 Route 1 Marine Drive, Piti, Guam 96915  
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

**Ray Tenorio**  
Lieutenant Governor

**Benita A. Manglona**  
Director

**Anthony C. Blaz**  
Deputy Director

April 18, 2012

Memorandum

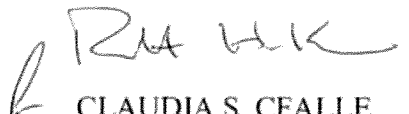
GTA  
Attn: Ms. Jennifer Sgambelluri  
624 N. Marine Corps Drive  
Tamuning, Guam 96913

Re: Major Shareholder Affidavit and Commission

Dear Ms. Sgambelluri:

Please provide an updated "Major Shareholder and Commission" affidavit for Bid No. GSA No. 064-11 by 2 pm on Thursday, April 19, 2012. Your prompt response will allow GSA to move toward closure of this bid evaluation.

If you have any questions, please feel free to contact GSA at 475-1710.

  
CLAUDIA S. CFALLE  
Chief Procurement Officer

# Exhibit 6

Teleguam letter dated April 19, 2012





624 North Marine Corps Drive  
Tamuning, Guam 96913

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April 19, 2012

Claudia Acfalle  
Chief Procurement Officer  
Government of Guam General Services Agency  
148 Marine Corps Drive  
Piti, Guam 96915



Subject: Updated Major Shareholder and Commission Affidavit; Invitation for Bids No.  
GSA 064-11

Dear Ms. Acfalle:

Pursuant to your request of April 18, 2012, attached here is an updated "Major Shareholder and Commission" affidavit for Bid No. GSA 064-11. Please note that on March 26, 2012, the Guam Public Utilities Commission, in Docket 11-14, issued an Order approving the transfer of Certificate of Authority and Eligible Telecommunications Carrier Certificate from GTA Telecom LLC to Teleguam Holdings LLC. Under this order, Teleguam Holdings, LLC is now the sole entity providing telecommunications services under these certificates.

Sincerely,

A handwritten signature in black ink, appearing to read "ASQ" with a large, sweeping flourish extending to the right.

Andrew S. Quenga  
GTA Legal Counsel  
Phone 644-1609  
[squenga@gta.net](mailto:squenga@gta.net)

Attachment (1)

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**Affidavit Disclosing Ownership and Commission**

Territory of Guam )  
 ) ss.  
 Hagatna, Guam )

A. I, the undersigned, **JOHN J. KIM**, being first duly sworn, deposes and say that I am an authorized representative of the offeror and that (please check only one):

( ) The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

(X) The offeror is a corporation, partnership, joint venture, or association known as Teleguam Holdings, LLC, and its wholly owned subsidiaries GTA Telecom, LLC, GTA Services, LLC, Pulse Mobile, LLC. (please state name of offeror company), and the persons, companies, partners, or joint venturers who have held more than 10% of the shares of interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows (if none, please so state).


Name	Address	% of Interest
Shamrock Capital Advisors Will Wynperle	4444 W. Lakeside Drive Burbank, CA 91505	60% of Teleguam Holdings, LLC
GE Asset Management, Inc Dan Furman	3001 Sunset St. Stamford, CT 06905	29% of Teleguam Holdings, LLC
Teleguam Holdings, LLC	624 N. Marine Corps Drive Tamuning, Guam 96913	100% of GTA Telecom, LLC, GTA Services, LLC, and Pulse Mobile, LLC
Ownership of Teleguam Holdings LLC changed on or about June of 2011 to:		
AP Teleguam Holdings, Inc	c/o National Registered Agents, Inc. 160 Greentree Drive, Suite 101, City of Dover County of Kent, DE 19904	100% of Teleguam Holdings, LLC

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows (if none, please so state):

Name	Address	Compensation
NONE		

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, than I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the Government.

Date: 4-19-2012

  
 \_\_\_\_\_  
 John J. Kim, Vice President, Controller  
 Signature of individual if bidder is a sole proprietorship;  
 Partner, if the bidder is a partnership;  
 Officer, the bidder is a corporation.

Subscribed and sworn to before me this 19<sup>th</sup> day of April, 2012

By: 

Notary Public  
 In and for the Territory of Guam  
 My Commission Expires: \_\_\_\_\_

<b>MARIA TISHA M. MAKIO</b> NOTARY PUBLIC In and for Guam, U.S.A. My Commission Expires: <b>Dec. 21, 2015</b> 624 North Marine Corps Dr., Tamuning 96913
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# Exhibit 7

Teleguam's Terms and Conditions

## TERMS AND CONDITIONS

PLEASE READ THE TERMS AND CONDITIONS CAREFULLY. For the purposes of this document, the term "GTA" refers to GTA TeleGuam LLC and its affiliates (GTA Telecom LLC, GTA Services LLC and Pulse Mobile LLC dba MPULSE) and the words "you" and "your" refer to the entity that has signed this Agreement. The word "Services" includes and incorporates wireless, broadband, digital television, and/or other services ordered on the Customer Application and any additional services you may order or obtain from GTA at any time that are not expressly governed by another agreement you sign with us. The word "Agreement" includes and incorporates the Customer Application, the Terms and Conditions, the GTA rules and policies applying to the use of the Services, and any GTA addendums that you may sign at any time.

By signing this Agreement:

- (1) You acknowledge that you are an adult, eighteen (18) years or older. If this is a business account, you acknowledge that you are authorized to act as an agent for your company, corporation, partnership, or other business entity.
- (2) You have read, understood, and agreed to be bound by this Agreement.
- (3) GTA will provide the Services as indicated in the Customer Application to you for the period stipulated relevant to the Services ordered. If you cancel this order at any time prior to the expiration of the initial term, you may be charged a termination charge as described below, relevant to the Services ordered.

### General Terms & Conditions

- I. **Acceptance of Agreement.** You acknowledge and accept this Agreement by (a) activating or using the Service; (b) signing the Agreement; (c) orally or electronically accepting the Agreement. If you do not accept this Agreement, GTA will be under no obligation to provide you with these Services.
- II. **New and Existing Customers.** A New Customer is defined as an individual or business entity that has NOT had ACTIVE Services with GTA for ninety (90) days and does not have any outstanding balances. If a customer does not meet the above criteria, then they will be defined as an Existing Customer. If a former Customer attempts to activate terminated services within 90 days, this account will NOT be considered a new Customer but rather a reactivation of an existing Customer and/or Services. Customers are identified by (but not limited to): Name, Business Name, DBA, Mailing or Physical Address, Social Security Number, Federal Tax ID or EIN.
- III. **Eligibility Requirements.** GTA may have eligibility requirements, terms and conditions that are in addition to the Terms and Conditions described herein.
- IV. **Authorized User(s).** You, as the primary account holder, can add one (1) authorized user to your account by turning in a written document to GTA confirming the appointed authorized user. You and any Authorized User on your account will have access to account information and will have the ability to make changes to the account. Authorized Users cannot add or terminate end users, lines, subscribers, or Services on the account. If you add an Authorized User to your account, they will be able to access and make changes to your account. These changes will be binding on you. You or the Authorized User may request to switch to another Rate Plan, and if we authorize the change, fees may apply. Authorized changes may require your agreement to a new minimum term and/or new Terms & Conditions. You agree to hold GTA, its employees, staff and management harmless from any litigation or legal action if account information is provided to your Authorized User.
- V. **Services.** You request Services and agree to pay all charges for the Services at the applicable service rates for the selected service plan(s) by the due date indicated on your invoice. The rates for Services provided will be billed to you as outlined in the Customer Application and are subject to change without notice. Charges may include, but are not limited to: the monthly charges, applicable taxes, and any other recurring or nonrecurring charges established by GTA. If you do not pay in a timely manner, upon appropriate notice, the Services will be disconnected. GTA may suspend, modify or terminate your service for any reason or no reason upon 30 days notice.
- VI. **Misuse of Services, Network, or Devices.** You agree not to use the Services in a manner prohibited by any Federal or Guam law or Regulation. You agree not to misuse GTA Services, the GTA network, or any devices which may adversely impact, affect or interfere with the GTA network, service levels, operations, reputation, or ability to provide quality service to all subscribers as a whole. GTA reserves the right to protect its network from misuse, harm, compromised capacity or degradation in performance which may impact network performance for all Customers. WE MAY LIMIT, SUSPEND OR TERMINATE YOUR SERVICES OR AGREEMENT WITHOUT NOTICE FOR ANY REASON, if you, any user of your subscribed Services, or any user on your account are found in violation of this Agreement. Misuse can be defined as (but not limited to): (1) using devices or the Services to engage in unlawful activity, or engaging in conduct that adversely affects our customers, employees, business, or any other person(s); (2) by "spamming" or engaging in other abusive or unsolicited communications; (3) excessive data usage through server devices or host computer applications, including (but not limited to) web camera posts or broadcasts, automatic data feeds, automated machine to machine connections or peer to peer file sharing, lines for full time or dedicated data connections. Tampering, modifying, or reprogramming devices used to access Services is prohibited. Rebilling or reselling our Services without authorization is prohibited.
- VII. **Bills and Payments/Late Charges.** Billing will commence on the date your Services are activated. With this Agreement, you have consented to responsibly pay in full each month in a timely manner all charges relating to: (1) subscription of Services; (2) any usage based Services; (3) installation or activation, change and disconnection of Services; (4) all applicable local and federal taxes and surcharges; (5) any additional charges and fees associated with the Services. You may be required to pay a security deposit or advance payment for Services as a requirement at the time of application, to offset against any unpaid balance on your account, or as otherwise set forth in these TOS or permitted by law. Interest will not be paid on advance payments or deposits unless required by law. We may require additional advance payments or deposits if we determine that the initial payment was inadequate. Based on your creditworthiness or for other reasons, we may establish limits and restrict service or features we deem appropriate. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend service until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. Upon determination solely by GTA of satisfactory payment history or as required by law, GTA may begin refunding of the deposit or advance payment through bill credits, cash payments, or as otherwise determined solely by GTA. Regular recurring charges are billed in advance and charges incurred on a per-use basis are billed in arrears. A partial month or prorated charge may be generated on your initial bill and whenever you make a change to your Services. Charges for service will be billed monthly and all amounts owed by you must be paid by the date indicated on the bill. Failure to make a full payment for the total amount due on or before the due date will result in a late payment charge equivalent to 1.5% of the outstanding balance or the maximum rate permitted by law. To avoid a temporary suspension of Services, payments for any amounts in arrears must be received by the 15<sup>th</sup> day of the following billing cycle. If payment is not received, your account will be subject to suspension without further notice. In the event your service has been suspended, you will be required to pay all charges including outstanding balances, reconnection fees, late payment fees and any outstanding balances for old accounts before service is reconnected. A termination order will be issued forty-five (45) after service has been suspended. To re-re-establish service, you will be required to pay all outstanding charges and any fees associated with new service activation before service is restored. A fee of \$25.00 will be applied to your account if your check or other payment instrument is not honored by a financial institution. GTA reserves the right to investigate and review your credit history. In the event of a bill dispute for any telecommunication services provided, you must file the dispute with Customer Service within fifteen (15) days from the date of the disputed invoice. GTA will have thirty (30) days from the date you file the dispute to investigate the dispute. If the dispute is in your favor, a credit adjustment will be made to your account. If the dispute is in GTA's favor, you must pay the disputed amount to include any outstanding balance to bring the account to current.
- VIII. **Terminations.** Unless otherwise stipulated, the minimum contract period is one month service. You may terminate Services upon written notice received by GTA at least thirty (30) days prior to the actual date of termination. If you terminate Services or Services are terminated by GTA for any reason and you are a participant of a Service that covers a specified period of time via a term agreement or contract, Early Termination Fees (ETF) may apply. Please read below for detailed descriptions of early termination fees. Any usage charges incurred will be billed up to the date of actual termination. If you have a credit balance on your final bill, GTA will issue you a refund. GTA will not issue you a refund if your credit balance is less than \$1.00 unless a written request from you is received by GTA. If a written request is not received within a year, your account will be set to zero.
- IX. **Termination of Voice Service.** If you change or terminate your GTA local wireline voice service ("Voice Service"), we may in our discretion terminate other Services or continue to provide it at the then-current rates, terms and conditions applicable for Services without voice. You agree to pay any new or higher monthly fees that may apply to your new Service after termination of the wireline voice service. If GTA elects to terminate your Service, we reserve the right to charge any applicable early termination fees.
- X. **Pricing – Term Plans, Bundle Discounts.** When you purchase the Service, you agreed to specific price and plan, which may have included a term of 6 months, one year or two years ("Term Plan"). Similarly, some plans may offer a discount on the Service if you sign up for other Services ("Bundle Discount"). You agree to maintain your Service and the other bundled services for the applicable term. If you sign up for a Term Plan or a Bundle Discount, the price available with those plans is valid until one of the following occurs: (1) the term expires; (2) you move from your current service address to another service address; or (3) you drop one of the Services you were required to purchase to receive the special rate.
- XI. **Special Discounts.** You may be eligible for a discount on your monthly access charges based on your affiliation with an organization that has an agreement with GTA. You may be required to provide proof of your affiliation with the organization upon activation of service or when you make changes to your account. GTA may share certain information relating to the Services, such as (but not limited to): Name, Telephone Number, Mailing or Physical Address, and Total Monthly Charges with the organization to verify your affiliation. GTA may adjust the discount in accordance with the organization's agreement with GTA and remove your discount after the minimum term expires or if you end or change your affiliation with

the organization. You agree that any change or removal of your discount, based on your affiliation with the organization or the organization's agreement with GTA, shall not be considered to have a material adverse effect on you.

- XII. **Minimum Contract Period.** GTA offers a variety of price plans, programs, and promotions ("Plans") in which a longer minimum contract period is required. In these cases, the minimum contract period varies depending on what type of Service you are applying for. Please read below for more information.
- XIII. **Customer Premises.** You agree to grant GTA a right of way by the shortest practical route over your Premises for the purpose of installing, removing, connecting, disconnecting, maintaining, troubleshooting, replacing, servicing, and auditing applicable Services and equipment necessary to provide you that service. You also represent that such grant has been obtained in writing from the premises owner. GTA may request from you additional documents, including right-of-way agreements, in order to maintain access in the future. Our employees and designees will show their company identification upon request and in most cases have GTA signage on their vehicles. You are responsible for making the premises available, by appointment, for inspection, audit, repair, replacement and/or removal of the cable facilities. If you continuously fail or refuse access to the equipment, GTA may terminate your service. All installations, removals, and other work done by GTA on your premises shall be done in a good and workman-like manner. However, due to the effects of normal workmanship which may remain after the removal of GTA equipment, the following conditions must apply: (a) GTA shall not be held liable for any damage, such as holes, in walls, ceilings, floors, or any other locations necessary to provide Services; (b) GTA and/or our agents are not permitted to move furniture or appliances.
- XIV. **Cable Facilities.** All outside cable facilities installed pursuant to this Agreement on your premises are and shall remain the property of GTA. You will not and shall not permit others to move or tamper with the outside cable facilities or use it contrary to this Agreement. You are responsible for any damage, other than normal wear, done on the outside cable facilities. If the Services are terminated for any reason, at GTA's option and direction, you shall make the premises available for the removal of the cable facility. GTA does not guarantee that repairs on cable facilities will be made within a specific time frame or after normal business hours, on weekends, or on holidays.
- XV. **Equipment.** GTA will provide you certain equipment, such as a modem, gateway, or Optical Network Terminal (ONT) (all of which is herein collectively referred to as "Customer Premise Equipment," or CPE) which may be required for broadband and digital television services. All GTA equipment will remain the property of GTA and must be returned to GTA upon termination of this Agreement for any reason. Any CPE will be either a new or a fully inspected and tested refurbished unit. Neither you nor a third party may change, interfere with, or block access to equipment data or settings. If you make modifications that make the CPE inaccessible remotely to GTA technicians, you will be billed for the repair and re-configuration of the CPE. If any equipment you lease from GTA are stolen, lost, or become damaged (except for normal wear-and-tear), then you will be responsible for the full cost of replacement. Other than the CPE provided to you by GTA for use with the service, you must provide all equipment, devices, and software necessary to receive the service. GTA cannot guarantee the ability to support non-GTA provided hardware or its compatibility with our Services. If a GTA technician's visit is required to reconfigure pre-owned or non-GTA provided hardware, an additional charge may be applied. Regardless of whether the equipment used to access your service is owned by you or GTA, GTA reserves the right to manage such equipment for the duration of your service. You are responsible for returning all CPE in "like new" condition within 14 days of cancellation of your service, either by you or by GTA. "Like new" condition means the equipment and/or accessories appears unused without scratches or unnatural marks, in its original container, with all original contents. Failure to return the CPE to GTA in "like new" condition within the allotted time frame after cancellation of broadband service will result in a charge to your account equal to the replacement price of the CPE. The charge may be deducted from your deposit or any amounts prepaid by you, charged to your card or billed to your account. The value of the CPE is determined by GTA at its sole discretion.
- XVI. **US Military.** GTA is a supporter of the US Military and makes every effort to assist active duty military customers in managing their Services. If you, as an active member of the US Military are given permanent relocation orders off of Guam, GTA will waive the Early Termination Fee(s) associated with breaching the term agreement or contract if any, provided that you furnish proof of these new relocation orders. Please read below for more information of what equipment and/or accessories you may be charged or billed for.
- XVII. **Communication and Notices.** Notices, updates, new products and/or Services may be sent to you by written notice, which may be on or included with your bill. GTA may also send notifications to you by posting the notification on [www.gta.net](http://www.gta.net), email, voicemail or by text messages.
- XVIII. **Attorney's Fees.** You shall be liable for all reasonable costs incurred by GTA in enforcing its rights against you under this Agreement, including reasonable costs of collecting unpaid charges and (in the case of any action in which GTA is the prevailing party) reasonable attorney's fees and expenses of litigation.
- XIX. **Default/Termination or Discontinuance by GTA.** GTA may, without notice, terminate or temporarily discontinue your service if you are in default of this Agreement. Default shall include: (1) any failure by you to pay any undisputed amounts as provided in this Agreement; (2) any breach by you of any material provision of this Agreement; (3) any unlawful use of GTA Services or use the Services in a manner that may interfere unreasonably with the Services used by other Customers or interfere with GTA's ability to provide Services to others, whether unlawful use or interference is by you or any other user of the Services. Termination or temporary discontinuance of Services shall be in addition to any and all other remedies provided in the Agreement, or that may be available at law and in equity. In addition to the foregoing, GTA may terminate or discontinue Services without liability in the case of any governmental prohibition or required alteration of the Services.
- XX. **Force Majeure.** GTA shall not be liable for any delay or failure in performance of this Agreement, to the extent such delay or failure is caused by an event of Force Majeure, including (but not limited to) fire, flood, war, strike, orders of civil or military authorities, omissions of common carriers, warehousemen or suppliers, or other cause beyond its reasonable control. Any such delay or failure shall suspend the Agreement until the Force Majeure condition ceases, and the term shall be extended by the length of the suspension.
- XXI. **DISCLAIMER OF WARRANTIES.** GTA CANNOT GUARANTEE ITS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT YOUR MESSAGES OR DATA TRANSMISSIONS WILL NOT BE LOST. ALL SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME ALL RISK OF USING THE SERVICES AND EQUIPMENT. GTA DOES NOT AUTHORIZE ANYONE TO MAKE WARRANTIES ON ITS BEHALF, AND ANY PURPORTED EXPRESSION OF WARRANTY IS HEREBY DISCLAIMED. ANY STATEMENTS MADE BY GTA AGENTS OR IN PACKAGING, MANUALS OR OTHER DOCUMENTS ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND SHALL NOT BE CONSTRUED AS WARRANTIES BY GTA.
- XXII. **Technology.** Telecom Technology rapidly evolves and advances. For the latest information on GTA's network and Technology, refer to [www.gta.net](http://www.gta.net).
- XXIII. **Assignment.** You may not assign this agreement or any interest in the Services without the prior written consent of GTA.
- XXIV. **Password Protection.** You are solely responsible for maintaining the confidentiality of any password or user name required to utilize the Services. You shall be liable for payment of charges to your account made by any person using your password or user name until GTA is notified that the confidentiality of a password or user name has been compromised.
- XXV. **Use of Customer Identifiable Information.** GTA will collect and use customer identifiable information for billing, credit references, provisioning of service, to solve problems associated with service, and to inform you of new products or Services that will better meet their needs. GTA may also use customer identifiable information to market products and services, but will not disclose or make available any customer identifiable information to any third parties seeking to market products. If you choose not to participate in direct marketing of new products and services from GTA, your information will not be used for the purpose of marketing new products. GTA will not trade, sell, or disclose to any third party any form of your identifiable information without the consent of you (except as required by subpoena, search warrant or other legal process or in the case where failure to disclose information will lead to imminent harm to you or others). GTA may use your identifiable information to investigate and help prevent potentially unlawful activity or activities that threaten the integrity of service or network integrity, to protect itself against fraud, or to defend its rights in legal or administrative proceedings.
- XXVI. **Limitation of Liabilities and Services.** In no event shall GTA, its employees, officers, representatives, suppliers, and authorized agents be liable to you or any other party for any direct, indirect, special, incidental, consequential or punitive damages, or any other damages or losses whatsoever arising directly or indirectly from your use of the Services, regardless of the cause of action, including negligence, and even if GTA has been advised of, or could reasonably have foreseen, the possibility of such damages or losses, GTA's sole and exclusive liability to you and your sole and exclusive remedy for any breach by GTA or any interruption or failure of services shall be a credit of such charges for Services as would have accrued but for such interruption or failure based on a prorated basis. Without limiting the generality of the foregoing, GTA is not liable for (1) the delay or failure in performance or Services resulting from an act of force majeure, including without limitation: acts of God, natural disasters, typhoons, communications failure, governmental actions, shortage of labor or materials, vandalism, terrorism, wars, strikes, or any reason beyond reasonable control; (2) any act or omission of a telecommunications carrier whose network facilities are used in establishing connections to points which GTA does not directly serve; (3) defamation or copyright infringement arising from material transmitted or received over GTA's network facilities; (4) infringement of patents arising from combining or using your facilities or equipment with GTA's network facilities.
- XXVII. **Terms and Conditions are subject to change.** We may give you notice of a change by posting the change on [www.gta.net](http://www.gta.net), by email, or by written notice which may be on or included with your bill. Such notices will be considered given and effective on the date posted.

#### MPULSE™ Section

- I. **Credit Approval and Deposits.** Acceptance of this Agreement by GTA is dependent on approval of your credit. GTA has the right to investigate and review your credit history and/or payment record if you have an existing account. On the basis of that investigation and review, GTA may require you to make a suitable deposit to guarantee payment of charges for services. A credit card will be requested from you and will be kept in the System as non-recurring if you are not enrolled in AUTOPAY. If you do not have a credit card, then the minimum deposit is \$100 regardless of an approved credit score. Upon termination of your wireless service, or upon the first billing cycle after the twenty-fourth month of wireless

service, whichever comes first, GTA has the right to apply the deposit against any outstanding wireless service charges or any other amount owed to GTA. If you are terminating the Agreement, any remaining balance of the deposit will be released to you at the last known address within approximately 90 days. If you continue receiving wireless services under the Agreement, any credit balance remaining after the deposit is applied will be applied to any amounts that may be owing to GTA in the future. GTA will issue a refund upon request to any customer whose account is in good standing after the satisfaction and completion of the contractual term.

- II. Charges Associated with Wireless Services. As stated in Section VII. of the General Terms and Conditions, you are responsible for paying all charges and fees associated with the Services. Charges associated with GTA's wireless services include but without limit to: monthly recurring service charges, airtime, roaming, long distance, toll charges, SMS messages whether read or unread, images, sound files, data, features such as Internet access and voicemail, calling services such as directory assistance and calling card use. You will be charged for more than one call when you use certain features resulting in multiple inbound or outbound calls such as call forwarding, call waiting, voicemail retrieval, and conference calling. Except to the extent prohibited by law, billing of roaming charges or services used may be delayed or applied against your service. Roaming and other call rating times are dependent on the location and time of the network equipment providing the service for a particular call. Usage charges will apply as required for services such as directory assistance, roaming charges incurred outside of GTA's wireless home network, long distance charges, and per minute of use charges. Airtime usage is billed in full minute increments, fractional and partial increments are rounded up to the next full minute increment at the end of each call for billing purposes.
- III. Nights and Weekends. Nights are 7:00 p.m. to 6:59 a.m. Weekends are Friday 7:00 p.m. to Monday 6:59 a.m.
- IV. Mobile to Mobile. GTA mobile to mobile minutes are minutes used between GTA wireless subscribers while on the GTA wireless network (and not roaming.) Mobile to mobile applies to the account or phone number when directly dialing or receiving calls from any other GTA mobile phone number within the GTA network. Calls to GTA Voicemail are not considered mobile to mobile minutes.
- V. Data Usage and Billing. GPRS/EDGE/3G data usage will be charged as specified in your Rate Plan. Data transfer is billed in full kilobyte increments. Actual data transport is rounded up to the next full kilobyte increment at the end of each data session for billing purposes. Overages will be billed by the kilobyte or as specified in your Rate Plan. Some devices such as Smartphones, Blackberrys and iPhones can generate data usage without user intervention. This can generate unexpected charges when roaming outside GTA's home network.
- VI. Minimum Contract Period. As stated in Section XII. of the General Terms and Conditions, GTA offers Plans in which a longer minimum contract period is required. Unless otherwise indicated, if you opt into a Plan, a two-year minimum contract period will apply. At the end of the minimum term, this Agreement shall be renewed automatically thereafter on a month-to-month basis (that is still subject to this Agreement as modified) or until terminated by either party. If you terminate the service before expiration of the minimum term for any reason, you agree to pay an ETF of \$150 for each phone number per contract year. Blackberrys, iPhones, netbooks and selected "Advanced Data Devices" that require a two-year minimum contract on voice and data services are subject to an Advanced Data Device ETF of \$180 for each phone number per contract year in addition to the standard ETF terms and conditions. These termination fees may be deducted from your deposit or any amounts prepaid by you, charged to your card or billed to your account. If you opt into a new Plan, you must fulfill the Terms and Conditions of the current plan unless expressly waived by GTA.
- VII. Trial Period and Return Policy. When you initiate a new wireless service with GTA, you are given a period of 14 calendar days from the date of service activation (the "Trial Period") in which to cancel the service without incurring any early termination fee, subject to the following conditions: (a) You must pay for all wireless services received and other charges incurred prior to cancellation which includes but not limited to, a non-refundable, one time activation fee of \$25 per phone number; (b) The 14 calendar days or the "Trial Period" refers only towards the service and not towards equipment. Equipment exchanges must be made within 3 calendar days of the activation date. If you purchased a subsidized equipment and/or accessories in connection with any new service, and the promotional price of the equipment and/or accessories was less than the replacement/no contract price at the time of service activation, the equipment and/or accessories must be returned to GTA in "like new" condition within the Trial Period with proof of purchase, or you will be charged for the difference between the subsidized promotional price and the replacement/no contract price of the equipment and/or accessories. If the equipment and/or accessories are returned in "like new" condition, you will receive a refund in the amount of the purchased price. "Like new" condition means the equipment and/or accessories appears unused without scratches or unnatural marks, in its original container, with all original contents. For GTA wireless devices, the unit must have no more than 60 minutes of call time as indicated by the call timer. A restocking fee of \$25 will apply with or without a service purchase. Out of Box Failure (OBF) – If equipment and/or accessories are returned and have been determined by an approved technician to be an OBF, the equipment and/or accessories shall in the discretion of GTA either be replaced, with the approval of authorized management, or repaired with loaner equipment provided to you. All OBF returns must be made within 3 days of original purchase. If the OBF returned can be repaired by a GTA technician, no penalty shall be assessed to you. If you return the equipment and/or accessories and the damage is determined to be a result of misuse or abuse and can be repaired by a GTA technician, the going rate of repair shall be assessed. If you waive repair, the equipment and/or accessories will be returned to you. All damaged equipment and/or accessories where repair has been declined, do not comply with OBF requirements, or returned after the first 3 days from initial purchase shall be your sole responsibility.
- VIII. US Military. If you purchased any subsidized equipment and/or accessories in connection with any service contract and the promotional price of the equipment and/or accessories was less than the replacement/no contract price at the time of service activation, you may be charged the difference between the subsidized promotional price and the replacement/no contract price of the equipment and/or accessories if you are within the first year of the service contract. If you are within the second year of the service contract, you will be charged 50% of the difference between the subsidized promotional price and the replacement/no contract price of the equipment and/or accessories. This is not a penalty fee; rather this is a means for GTA to recover associated costs, such as labor, advertising, equipment subsidies and all other associated costs in acquiring a new Customer.
- IX. Numbers. Except as provided by law, you have no proprietary or ownership rights to or interests in a specific telephone number assigned to your equipment or account. GTA may change the access number assigned to you and may require you to modify wireless telephone equipment accordingly at GTA's expense. Except as permitted by law, you may not assign a telephone number to any other equipment, and shall not program any other number into equipment provided for use with GTA services. GTA may deactivate or suspend service to any number without prior notice if unlawful or fraudulent use of a number is suspected.
- X. GSM Phones/Devices and Other Carrier Networks/Phones. You may purchase a phone from someone other than GTA, provided that it must be 850/1900MHz GSM/GPRS/EDGE wireless device that is compatible with GTA's GSM network. GSM phones/devices do not all use the same technologies. GTA does not guarantee that all services and features will be available with such equipment. GTA GSM Phones/devices may be programmed to accept only a GTA SIM card.
- XI. Lost or Stolen Phones. If your wireless telephone or other wireless device is lost or stolen, you will remain liable for all charges in connection with usage of the wireless device until the theft or loss is reported to GTA and to the police. A copy of the police report must be filed with GTA. After reporting the theft or loss to GTA, you will remain liable for all non-usage based charges, as provided in this Agreement.
- XII. Call Privacy. The GTA system uses radio channels to transmit communications. Customer's calls may be monitored by third persons acting within the law, and GTA will cooperate with intercepting and disclosing calling records, voice and data transmissions, accounts and other information, pursuant to lawful subpoenas, court orders and the like. Your transmissions may also be monitored by persons acting outside of the law. Call privacy cannot be guaranteed, and GTA will not be liable for any lack of privacy while using GTA equipment or systems.
- XIII. Wireless Local Number Portability. You may have the capability to transfer your wireless number to another wireless carrier or have the ability to bring your wireless number to us. For detailed information about Local Number Portability, please contact GTA Customer service at (671) 644-4GTA (4482). You will not be able to transfer your number if your account has been disconnected for any reason. If you are porting a prepaid account, your prepaid account must not be expired. You still remain liable for all charges incurred resulting from your wireless service with us or your wireless service with your former wireless carrier; this includes but not limited to cancellation fees, monthly access fees, overages, long distance and all other expenses associated with your wireless service. GTA reserves the right to charge a one-time \$50 port out fee to recover costs incurred with Wireless Local Number Portability.

#### MPULSE™ Prepaid Section

- I. You accept these terms and conditions and agree to be bound by them at the point of sale of a Card.
- II. The number printed on each Card (comprising the PIN or PUK Number) is unique to that Card and you shall be solely responsible for safeguarding such number or any other access number or password from any unauthorized use. GTA shall not be liable to you for any losses, damages, claims, liabilities, costs or expenses suffered or incurred by you resulting from the theft, misuse or unauthorized usage of the number printed on the Card or other related services such as web access.
- III. Every Card, once purchased, is not refundable and has no surrender value. GTA is not obligated to refund any unused portion of the Card value whether before or after its expiration date.
- IV. Each Card has an expiration date after deposit into your account. A \$5 card expires 15 days after deposit into an account. A \$10 card expires 30 days after deposit into an account. Both \$20 and \$50 cards expire 60 days after deposit into an account. When depositing a Qwik Charge card into an account with a valid balance, the greater of expiration dates shall apply. In the case of a Qwik Share, the greater of expiration dates shall apply. When purchasing a deposit using a credit card, the expiration date shall be 60 days from deposit regardless of the amount purchased. Unused airtime will be forfeited unless used by expiration date.

- V. Charging commences as soon as the call, data, or text message is processed or received by you.
- VI. You shall use the Card and the Services in accordance with local and federal law. GTA shall not be liable for any losses, damages, liabilities, costs or expenses suffered or incurred by you resulting from the failure by you to do so. You shall indemnify GTA from any losses, damages, claims, liabilities, costs (including legal costs on a full indemnity basis) and expenses suffered or incurred by GTA as a result of or arising from the misuse or wrongful usage of the Card.
- VII. Without prejudice to MPULSE Prepaid clauses 2 to 4 above, the liability of GTA to you, whether in contract, tort or otherwise, in relation to the Card shall be limited to the price of the Card.

#### SPYDER™ Section

- I. National Exchange Carriers Association Tariff. Broadband services are provided by GTA under Sections 8 and 17 of the National Exchange Carriers Association (NECA) Tariff FCC No. 5, which is made part of this Agreement. The terms and conditions stated in this Agreement are subject to revisions in the NECA Tariff and/or mandated by the Federal Communications Commission (FCC).
- II. Local Exchange Service Lines. Broadband services will be provided over existing GTA local exchange service lines. Thus, rates and regulations for broadband services are in addition to the rates and regulations for local exchange services. If you apply for Data-Only broadband services, GTA may provide the broadband service over the physical local loop connection capable of simultaneous voice and data communications to your premise. If you decide to terminate and then reconnect your broadband service, the reconnection of your broadband service will be considered a new installation subject to the rates and regulations for broadband service and local exchange service where required.
- III. Inside Wiring & Installations. You have the option to have GTA install any inside wire required or to have a third-party contractor do the installation. However, if you choose to hire a third-party contractor, other terms and conditions may apply. GTA does not represent, warrant or covenant an installation by you or a third party chosen by you will enable you to successfully access, operate, or use the broadband services, nor that such installation will not cause damage to your computer, data, software, files or peripherals. In addition, GTA and its agents and contractors shall have no liability whatsoever for any damage, or for the failure to properly install, access, use or operate the equipment or broadband services by you who chooses this method of installation. The foregoing limitation of liability is in addition to and shall in no way be construed to limit any and all limitations of liability set forth elsewhere in this Agreement.
- IV. Broadband Service Speeds. Because broadband is distance sensitive, you must be located within a serviceable loop distance from a GTA serving wire center. Broadband peak speeds are not guaranteed by GTA due to the factors that may affect the actual speeds delivered including loop distance, condition of the cable facilities, limitations in GTA's network design, and limitations in any CPE. Due to this, GTA provides broadband services as a best effort service, and cannot guarantee upload or download speeds. If it has been determined by GTA that your premises has exceeded the loop distance and broadband service is not available, you will not be charged any early termination fees for cancelling your broadband service request.
- V. Minimum Contract Period. As stated in Section XII. of the General Terms and Conditions, GTA offers Plans in which a longer minimum contract period is required. Unless otherwise indicated, if you opt into a Plan, a one-year minimum contract period will apply. At the end of the minimum term, this Agreement shall be renewed automatically thereafter on a month-to-month basis (that is still subject to this Agreement as modified) or until terminated by either party. If you terminate the Plan before expiration of the minimum term for any reason, you agree to pay an ETF of \$180 per contract year. These termination fees may be deducted from your deposit or any amounts prepaid by you, charged to your card or billed to your account. If you opt into a new Plan, you must fulfill the Terms and Conditions of the current plan unless expressly waived by GTA.
- VI. Trial Period. When you initiate a new broadband service with GTA, you are given a period of 14 calendar days from which the date of service activation (the "Trial Period") in which to cancel the service without incurring any early termination fees. The Trial Period refers only towards the service and not towards equipment. You are required to return all CPE in "like new" condition, which means the CPE appears unused without scratches or unnatural marks, in its original container, with all original contents. Failure to return the CPE to GTA in "like new" condition will result in a charge to your account equal to the replacement price of the CPE.
- VII. Relocation of Services. You may transfer your broadband service location to a different location if your new location is within our serving area. If you relocate the broadband service before expiring a minimum term of one year for any reason, you agree to pay a relocation fee of \$100. If you have completed a minimum term of one year, you will not be charged any relocation fee for the broadband service. If you are relocating broadband and digital television services, you agree to pay a relocation fee of \$59.95. These relocation fees may be deducted from your deposit or any amounts prepaid by you, charged to your card or billed to your account.
- VIII. US Military. You are required to return all CPE in "like new" condition within 14 days of cancellation of your broadband service. Failure to return the CPE to GTA in "like new" condition will result in a charge to your account equal to the replacement price of the CPE.

#### GUdTV™ Section

- I. Digital Television (TV) Services. The terms and conditions apply to your use of the video and audio programming services and associated telecommunication services that GTA provides and any equipment provided to you for use with the service. Digital TV services provided under this Agreement is contingent upon you having telephone service with GTA. The digital TV services may include video-on-demand, interactive programming and other enhanced video services. Failure to maintain telephone service constitutes a breach of this Agreement.
- II. Redistribution Policy. Some programming may not be available in certain areas due to legal, regulatory, and contractual prohibitions, including restrictions of the Federal Communications Commission and sports blackouts. GTA may recover from you any damages provided by television laws for tampering with any of our equipment, our television system or for receiving or distributing unauthorized services. GTA has a zero tolerance policy for any infraction of the above items. If you also purchase GTA Voice Service, Caller ID information for GTA Voice calls can be displayed on your TV screen. In addition, call history information for all missed and answered calls can be displayed on your TV screen and cannot be PIN protected. Call history for dialed calls cannot be displayed on your TV screen. As permitted under applicable law, in addition to other rights provided for in this Terms of Service, in the event a payment is past due, GTA may restrict your account to prevent access to video on demand, pay-per view, and other usage-based services and content.
- III. Charges Associated with Digital TV Services. As stated in Section VII. of the General Terms and Conditions, you are responsible for paying all charges and fees associated with the Services. You will be charged for the use of the digital TV services by any person, including but not limited to, Video on Demand and Pay Per View, and other enhanced video services ordered from any set top box providing access to the digital TV services, regardless of who ordered such programming. You are responsible for setting and securing a password on your set top box to prevent unauthorized use of Services. As long as payments are current, you will have a limit (up to a maximum of \$150) per month on such one-time orders billed to your account. This limit will vary based on creditworthiness or for other reasons. A downgrade fee may apply if you make changes to your Service within thirty (30) days of Service provisioning or later programming orders.
- IV. Programming. GTA reserves the right to add, change, or remove any video and audio channel included in any program tier or package upon 30 days notice.
- V. Customer Premises. In order to provide you with digital TV services, you agree to give GTA and/or our agents permission to enter your premises for the purpose of installing, removing, connecting, disconnecting, maintaining, troubleshooting, replacing, servicing, and auditing the equipment and service. Your permission includes the premises outside your home at times when you may not be there. Our employees and designees will show their company identification upon request and in most cases have GTA signage on their vehicles. If you are not the owner of your home, we will require you to obtain permission from the landlord/owner for us to enter the premises and install digital TV and all associated wiring.
- VI. Credit Approval and Deposits. In order to establish an account with us, you authorize GTA to inquire into your credit worthiness by checking with credit reporting agencies. If you are delinquent in any payment to GTA, you authorize GTA to report any late payments or nonpayment to credit reporting agencies. GTA may require a security deposit from you (a) before digital TV services are provided, if you do not have a satisfactory credit history with GTA or do not provide other proof of credit worthiness, or (b) at any time during this Agreement, if you have an unsatisfactory credit rating with GTA as a result of your payment practices, or (c) if you clearly present an abnormal risk of loss. GTA may apply any portion of the security deposit against unpaid charges on your account at any time and, upon termination of service or where the conditions justifying the security deposit no longer apply, will refund any outstanding security deposit retaining only the amount you owe on your account.

# Exhibit 8

Specific examples of Teleguam's improper conditions



GSA 064-1.1 TERMS AND CONDITIONS CONFLICT WORKSHEET

EXHIBIT \_\_\_\_\_

GTA Terms & Conditions Section	GTA Terms and Conditions Bid Conditions	IFB Specification and/or Guam Law
I	DISCLAIMER OF WARRANTIES. GTA CANNOT GUARANTEE ITS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT YOUR MESSAGES OR DATA TRANSMISSIONS WILL NOT BE LOST. ALL SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER	<p><b>RBF0</b></p> <p><b>IV A. GOVERNMENT OF GUAM GENERAL TERMS AND CONDITIONS FOR SEALED BIDS - The Bidder shall comply with all terms and condition of this IFB, the Government of Guam General Terms and Conditions for Sealed Bids, and any Specifications and Special Conditions for this Part of the Multi-Step Invitation for Bid.</b></p>
III	Eligibility Requirements. GTA may have eligibility requirements, terms and conditions that are in addition to the Terms and Conditions described herein.	<p><b>RBF0</b></p> <p><b>IV A. GOVERNMENT OF GUAM GENERAL TERMS AND CONDITIONS FOR SEALED BIDS - The Bidder shall comply with all terms and condition of this IFB, the Government of Guam General Terms and Conditions for Sealed Bids, and any Specifications and Special Conditions for this Part of the Multi-Part, Multi-Step Invitation for Bid.</b></p>
VI	<p>Misuse of Services, Network, or Devices. You agree not to use the Services in a manner prohibited by any Federal or Guam law or Regulation. You agree not to misuse GTA Services, the GTA network, or any devices which may adversely impact, affect or interfere with the GTA network, operations, reputation, or ability to provide quality service to all subscribers as a whole. GTA reserves the right to protect its network from misuse, harm, compromised capacity or degradation in performance which may impact network performance for all Customers. WE MAY LIMIT, SUSPEND OR TERMINATE YOUR SERVICES OR AGREEMENT WITHOUT NOTICE FOR ANY REASON, if you, any user of your subscribed Services, or any user on your account are found in violation of this Agreement. Misuse can be defined as (but not limited to): (1) using devices or the Services to engage in unlawful activity, or engaging in conduct that adversely affects our customers, employees, business, or any other persons); (2) "spamming" or engaging in conduct that adversely affects our customers, employees, business, or any other persons); (3) excessive data usage through server devices or host computer applications, including (but not limited to) web camera posts or broadcasts; automatic data feeds, automated machine to machine connections or peer to peer file sharing, lines for full time or dedicated data connections. Tampering, modifying, or reprogramming devices used to access Services is prohibited. Rebilling or reselling our Services without authorization is prohibited.</p>	<p><b>RBF0</b></p> <p><b>IV A. GOVERNMENT OF GUAM GENERAL TERMS AND CONDITIONS FOR SEALED BIDS - The Bidder shall comply with all terms and condition of this IFB, the Government of Guam General Terms and Conditions for Sealed Bids, and any Specifications and Special Conditions for this Part of the Multi-Part, Multi-Step Invitation for Bid.</b></p>

**EXHIBIT** 8

EXHIBIT \_\_\_\_\_  
GSA 064-11 TERMS AND CONDITIONS CONFLICT WORKSHEET

GTA Terms & Conditions Section	GTA Terms and Conditions Bid Conditions	IFB Specification and/or Guam Law
VII	<p><b>Bills and Payments/Late Charges.</b> Billing will commence on the date your Services are activated. With this Agreement, you have consented to responsibly pay in full each month in a timely manner all charges relating to: (1) subscription of Services; (2) any usage based Services; (3) installation or activation, change and disconnection of Services; (4) all applicable local and federal taxes and surcharges; (5) any additional charges and fees associated with the Services. You may be required to pay a security deposit or advance payment for Services as a requirement at the time of application, to offset against any unpaid balances on your account, or as otherwise set forth in these TCS or permitted by law. Interest will not be paid on advance payments or deposits unless required by law. We may require additional advance payments or deposits if we determine that the initial payment was inadequate. Based on your creditworthiness or for other reasons, we may establish limits and restrict service or features we deem appropriate. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend service until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. Upon determination solely by GTA of satisfactory payment history or as required by law, GTA may begin refunding of the deposit or advance payment through bill credits, cash payments, or as otherwise determined solely by GTA. Regular recurring charges are billed in advance and charges incurred on a per-use basis are billed in arrears. A partial month or prorated charge may be generated on your initial bill and whenever you make a change to your Services. Charges for service will be billed monthly and all amounts owed by you must be paid by the date indicated on the bill. Failure to make a full payment for the total amount due on or before the due date will result in a late payment charge equivalent to 1.5% of the outstanding balance or the maximum rate permitted by law. To avoid a temporary suspension of Services, payments for any amounts in arrears must be received by the 15th day of the following billing cycle. If payment is not received, your account will be subject to suspension without further notice. In the event your service has been suspended, you will be required to pay all charges including outstanding balances, reconnection fees, late payment fees and any outstanding balances for old accounts before service is reconnected. A termination order will be issued forty-five (45) after service has been suspended. To re-establish service, you will be required to pay all outstanding charges and any fees associated with new service activation before service is restored. A fee of \$25.00 will be applied to your account if your check or other payment instrument is not honored by a financial institution. GTA reserves the right to investigate and review your credit history in the event of a bill dispute for any telecommunication services provided; you must file the dispute with Customer Service within fifteen (15) days from the date of the disputed invoice. GTA will have thirty (30) days from the date you file the dispute to investigate the dispute. If the dispute is in your favor, a credit adjustment will be made to your account. If the dispute is in GTA's favor, you must pay the disputed amount to include any outstanding balance to bring the account to current.</p>	<p><b>IV D. BID PREPARATION</b></p> <p><b>7. Pricing of Service – The IFB pricing of Monthly Recurring Costs shall be a firm fixed price. The Bidder shall not apply any surcharges or other fees to the service which are not identified in the Bidder's price submission.</b></p> <p><b>Guam Procurement Law prohibiting deposits and advance payments for services. 5 GCA § 5007, Policy Against Advance Payments. "With the exception of off-island orders of the Department of Education, no procurement shall be made under this Chapter which shall require advance payment."</b></p>
VIII	<p><b>Terminations.</b> Unless otherwise stipulated, the minimum contract period is one month service. You may terminate Services upon written notice received by GTA, at least thirty (30) days prior to the actual date of termination. If you terminate Services or Services are terminated by GTA for any reason and you are a participant of a Service that covers a specified period of time via a term agreement or contract, Early Termination Fees (ETF) may apply. Please read below for detailed descriptions of early termination fees. Any usage charges incurred will be billed up to the date of actual termination. If you have a credit balance on your final bill, GTA will issue you a refund. GTA will not issue you a refund if your credit balance is less than \$1.00 unless a written request from you is received by GTA. If a written request is not received within a year, your account will be set to zero.</p>	<p><b>RBF 0</b></p> <p><b>IV T. NO TERMINATION LIABILITY</b></p> <p><b>Any GovGuam department, agency, or office using this Price List for Telecommunication Services may terminate the service with No Termination Liability (NTL). The GovGuam entity shall be responsible for the prorated monthly service cost prior to the effective date of a termination. Any termination shall be effective 30 days after a Notice of Termination is provided to the contractor in writing.</b></p>
IX	<p><b>Termination of Voice Service.</b> If you change or terminate your GTA local wireline voice service ("Voice Service"), we may in our discretion terminate other Services or continue to provide it at the then-current rates, terms and conditions applicable for Services without voice. You agree to pay any new or higher monthly fees that may apply to your new Service after termination of the wireline voice service. If GTA elects to terminate your Service, we reserve the right to change any applicable early termination fees.</p>	<p><b>RBF 0</b></p> <p><b>IV T. NO TERMINATION LIABILITY</b></p> <p><b>Any GovGuam department, agency, or office using this Price List for Telecommunication Services may terminate the service with No Termination Liability (NTL). The GovGuam entity shall be responsible for the prorated monthly service cost prior to the effective date of a termination. Any termination shall be effective 30 days after a Notice of Termination is provided to the contractor in writing.</b></p>

General Terms & Conditions

EXHIBIT \_\_\_\_\_  
GSA 064-11 TERMS AND CONDITIONS CONFLICT WORKSHEET

GTA Terms & Conditions Section	GTA Terms and Conditions Bid Conditions	IFB Specification and/or Guam Law
<p>XIV</p>	<p>Cable Facilities: All outside cable facilities installed pursuant to this Agreement on your premises are and shall remain the property of GTA. You will not and shall not permit others to move or tamper with the outside cable facilities or use if contrary to this Agreement. You are responsible for any damage, other than normal wear, done on the outside cable facilities, if the Services are terminated for any reason, at GTA's option and direction, you shall make the premises available for the removal of the cable facility. GTA does not guarantee that repairs on cable facilities will be made within a specific time frame or after normal business hours, on weekends, or on holidays.</p>	<p>Repair timelines, service update requirements.</p> <p><b>RBF0</b></p> <p><b>IV P. SERVICE LEVEL REQUIREMENTS AND LIQUIDATED DAMAGES</b></p> <p>All services shall have a 99.999% uptime. Failure to meet the uptime on a daily basis shall result in a daily liquidated damage of 1/4 of 1% of the monthly recurring cost for each day the service is unavailable following the first 8 hour working period that service is unavailable.</p> <p><b>RFB 1.17.</b></p> <p>The Bidder shall be responsible for the maintenance of all Inside Wire (IW) where services are provided.</p> <p><b>Response to Questions 09.17.11 Page 18 #19</b></p> <p><b>Question: Clarify Inside wiring requirements?</b></p> <p><b>Answer: The Bidder shall be responsible for the internal wiring from the MDF and/or IDF's to a user location.</b></p> <p><b>RFB 1.17.a.</b></p> <p>The Bidder shall be responsible for inside wire maintenance and shall reflect the charge for any inside wire in the line charge. IW maintenance shall include replacement due to pests that may eat through IW.</p> <p><b>RFB 1.17.b.</b></p> <p>Should new Inside Wire (IW) be required for new phone service, the Bidder shall be required to provide for the new Inside Wire at no additional charge. All IW will terminate at standard jacks and equipment and shall be installed in accordance with the standards of the National Electric Code, the National Electric Safety Codes, Part 68 of the FCC Regulations, equipment manufacturers and other applicable codes. The wiring to the jacks shall be in comparable enclosures based on the condition of the building and office.</p>

EXHIBIT \_\_\_\_\_  
GSA 064-1.1 TERMS AND CONDITIONS CONFLICT WORKSHEET

GTA Terms & Conditions Section	GTA Terms and Conditions Bid Conditions	IFB Specification and/or Guam Law
XXI	<p>DISCLAIMER OF WARRANTIES: GTA CANNOT GUARANTEE ITS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT YOUR MESSAGES OR DATA TRANSMISSIONS WILL NOT BE LOST. ALL SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME ALL RISK OF USING THE SERVICES AND EQUIPMENT. GTA DOES NOT AUTHORIZE ANYONE TO MAKE WARRANTIES ON ITS BEHALF AND ANY PURPORTED EXPRESSION OF WARRANTY IS HEREBY DISCLAIMED. ANY STATEMENTS MADE BY GTA AGENTS OR IN PACKAGING, MANUALS OR OTHER DOCUMENTS ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND SHALL NOT BE CONSTRUED AS WARRANTIES BY GTA.</p>	<p><b>RBF0</b> <b>IV P. SERVICE LEVEL REQUIREMENTS AND LIQUIDATED DAMAGES</b> All services shall have a 99.999% uptime. Failure to meet the uptime on a daily basis shall result in a daily liquidated damage of 1/4 of 1% of the monthly recurring cost for each day the service is unavailable following the first 8 hour working period that service is unavailable.</p>
XXVI	<p>Limitation of Liabilities and Services: In no event shall GTA, its employees, officers, representatives, suppliers, and authorized agents be liable to you or any other party for any direct, indirect, special, incidental, consequential or punitive damages, or any other damages or losses whatsoever arising directly or indirectly from your use of the Services, regardless of the cause of action, including negligence, and even if GTA has been advised of, or could reasonably have foreseen, the possibility of such damages or losses. GTA's sole and exclusive liability to you and your sole and exclusive remedy for any breach by GTA or any interruption or failure of services shall be a credit of such amount as would have accrued but for such interruption or failure of services based on a pro-rata basis. Without limiting the generality of the foregoing, GTA is not liable for (1) the delay or failure in performance of Services resulting from an act of force majeure, including without limitation: acts of God, natural disasters, terrorism, wars, strikes, or any reason beyond your control; (2) any act or omission of a telecommunications carrier whose network facilities are used in establishing connections to points which GTA does not directly serve; (3) defamation or copyright infringement arising from material transmitted or received over GTA's network facilities; (4) infringement of patents arising from combining or using your facilities or equipment with GTA's network facilities.</p>	<p><b>RBF0</b> <b>IV P. SERVICE LEVEL REQUIREMENTS AND LIQUIDATED DAMAGES</b> All services shall have a 99.999% uptime. Failure to meet the uptime on a daily basis shall result in a daily liquidated damage of 1/4 of 1% of the monthly recurring cost for each day the service is unavailable following the first 8 hour working period that service is unavailable.</p>
XXVII	<p>Terms and Conditions are subject to change. We may give you notice of a change by posting the change on <a href="http://www.gta.net">www.gta.net</a> by email, or by written notice which may be on or included with your bill. Such notices will be considered given and effective on the date posted.</p>	<p><b>RBF0</b> <b>IV A. GOVERNMENT OF GUAM GENERAL TERMS AND CONDITIONS FOR SEALED BIDS - The Bidder shall comply with all terms and conditions of this IFB, the Government of Guam General Terms and Conditions for Sealed Bids, and any Specifications and Special Conditions for this Part of the Multi-Part, Multi-Step Invitation for Bid.</b></p>
I	<p>Credit Approval and Deposits: Acceptance of this Agreement by GTA is dependent on approval of your credit. GTA has the right to investigate and review your credit history and/or payment record if you have an existing account. On the basis of that investigation and review, <b>GTA may require you to make a suitable deposit to guarantee payment of charges for services.</b> A credit card will be requested from you and will be kept in the System as non-recurring if you are not enrolled in AUTOPAY. If you do not have a credit card, then the minimum deposit is \$100 regardless of an approved credit score. Upon termination of your wireless service, or upon the first billing cycle after the twenty-fourth month of wireless service, whichever comes first, GTA has the right to apply the deposit against any outstanding wireless service charges or any other amount owed to GTA. If you are terminating the Agreement, any remaining balance of the deposit will be released to you at the last known address within approximately 60 days. If you continue receiving wireless services under the Agreement, any credit balance remaining after the deposit is applied will be applied to any amounts that may be owing to GTA in the future. GTA will issue a refund upon request to any customer whose account is in good standing after the satisfaction and completion of the contractual term.</p>	<p>Guam Procurement Law prohibiting deposits and advance payments for services. 5 GCA § 5007. Policy Against Advance Payments. "With the exception of off-island orders of the Department of Education, no procurement shall be made under this Chapter which shall require advance payment."</p>

EXHIBIT  
GSA 064-11 TERMS AND CONDITIONS CONFLICT WORKSHEET

GTA Terms & Conditions Section	GTA Terms and Conditions Bid Conditions	IFB Specification and/or Guam Law
<p>Minimum Contract Period: As stated in Section XII of the General Terms and Conditions, GTA offers Plans in which a longer minimum contract period is required. Unless otherwise indicated, if you opt into a Plan, a two-year minimum contract period will apply. At the end of the minimum term, this Agreement shall be renewed automatically thereafter on a month-to-month basis (that is still subject to this Agreement as modified) or until terminated by either party. If you terminate the service before expiration of the minimum term for any reason, you agree to pay an ETF of \$150 for each phone number per contract year. Blackberry, iPhones, notebooks and selected "Advanced Data Devices" that require a two-year minimum contract on voice and data services are subject to an Advanced Data Device ETF of \$160 for each phone number per contract year in addition to the standard ETF terms and conditions. These termination fees may be deducted from your deposit or any amounts prepaid by you, charged to your card or billed to your account. If you opt into a new Plan, you must fulfill the Terms and Conditions of the current plan unless expressly waived by GTA.</p>	<p><b>RBF0</b> <b>IV R. LENGTH OF TERM</b> The Price List established by this IFB will be for a term of five (5) years upon availability of funds, with two (2) additional one-year extension terms upon availability of funds at the sole election by the Government of Guam.</p> <p><b>RFB 0 IV. T. NO TERMINATION/LIABILITY</b> Any GovGuam department, agency, or office using this Price List for Telecommunication Services may terminate the service with No Termination Liability (NTL). The GovGuam entity shall be responsible for the prorated monthly service cost prior to the effective date of a termination. Any termination shall be effective 30 days after a Notice of Termination is provided to the contractor in writing.</p>	<p>Page 26 of 56 Part C — Mobile Telephone Services The GovGuam currently uses mobile telephone services. There are over 80 GSM accounts with GTA. The GovGuam will be seeking a corporate plan for these mobile services. The corporate plan will include shared minutes, unlimited texting, no—cost nights and weekends, and other plan features comparable to plans offered throughout the United States. An optional data plan will also be required as part of this IFB. The GovGuam plans to use at least 50 of these mobile services in a corporate GovGuam plan.</p> <p>Bidder shall port the current mobile phone to new service</p>
<p>IX</p>	<p>Numbers. Except as provided by law, you have no proprietary or ownership rights to or interests in a specific telephone number assigned to your equipment or account. GTA may change the access number assigned to you and may require you to modify wireless telephone equipment accordingly at GTA's expense. Except as permitted by law, you may not assign a telephone number to any other equipment, and shall not program any other number into equipment provided for use with GTA services. GTA may deactivate or suspend services to any number without prior notice if unlawful or fraudulent use of a number is suspected</p>	<p>Page 26 of 56 Part C — Mobile Telephone Services The GovGuam currently uses mobile telephone services. There are over 80 GSM accounts with GTA. The GovGuam will be seeking a corporate plan for these mobile services. The corporate plan will include shared minutes, unlimited texting, no—cost nights and weekends, and other plan features comparable to plans offered throughout the United States. An optional data plan will also be required as part of this IFB. The GovGuam plans to use at least 50 of these mobile services in a corporate GovGuam plan.</p> <p>Bidder shall port the current mobile phone to new service</p>
<p>XIII</p>	<p>Wireless Local Number Portability. You may have the capability to transfer your wireless number to another wireless carrier or have the ability to bring your wireless number to us. For detailed information about Local Number Portability, please contact GTA Customer services at (871) 644-4GTA (4482). You will not be able to transfer your number if your account has been disconnected for any reason. If you are porting a prepaid account, your prepaid account must not be expired. You still remain liable for all charges incurred resulting from your wireless service with us or your wireless services with your former wireless carrier; this includes but not limited to cancellation fees, monthly access fees, overages, long distance and all other expenses associated with your wireless service. GTA reserves the right to charge a one-time \$50 port out fee to recover costs incurred with Wireless Local Number Portability.</p>	<p>Page 26 of 56 Part C — Mobile Telephone Services The GovGuam currently uses mobile telephone services. There are over 80 GSM accounts with GTA. The GovGuam will be seeking a corporate plan for these mobile services. The corporate plan will include shared minutes, unlimited texting, no—cost nights and weekends, and other plan features comparable to plans offered throughout the United States. An optional data plan will also be required as part of this IFB. The GovGuam plans to use at least 50 of these mobile services in a corporate GovGuam plan.</p> <p>Bidder shall port the current mobile phone to new service</p>

EXHIBIT  
GSA 064-11 TERMS AND CONDITIONS CONFLICT WORKSHEET

GTA Terms & Conditions Section	GTA Terms and Conditions Bid Conditions	IFB Specification and/or Guam Law
I	<p>National Exchange Carriers Association Tariff Broadband services are provided by GTA under Sections 6 and 17 of the National Exchange Carriers Association (NECA) Tariff FCC No. 5, which is made part of this Agreement. The terms and conditions stated in this Agreement are subject to revisions in the NECA Tariff and/or mandated by the Federal Communications Commission (FCC).</p>	<p><b>RFB0</b> <b>IV D. BID PREPARATION</b> <b>7. Pricing of Service</b> – The IFB pricing of Monthly Recurring Costs shall be a firm fixed price. The Bidder shall not apply any surcharges or other fees to the service which are not identified in the Bidder's price submission.</p>
Sydler Section V	<p>Minimum Contract Period: As stated in Section XII of the General Terms and Conditions, GTA offers Plans in which a longer minimum contract period is required. Unless otherwise indicated, if you opt into a Plan, a one-year minimum contract period will apply. At the end of the minimum term, this Agreement shall be renewed automatically thereafter on a month-to-month basis (that is still subject to this Agreement as modified) or until terminated by either party. If you terminate the Plan before expiration of the minimum term for any reason, you agree to pay an ETF of \$180 per contract year. These termination fees may be deducted from your deposit or any amounts prepaid by you, charged to your card or billed to your account. If you opt into a new Plan, you must fulfill the Terms and Conditions of the current plan unless expressly waived by GTA.</p>	<p><b>RFB 0 IV. T. NO TERMINATION LIABILITY</b> Any GovGuam department, agency, or office using this Price List for Telecommunication Services may terminate the service with No Termination Liability (NTL). The GovGuam entity shall be responsible for the prorated monthly service cost prior to the effective date of a termination. Any termination shall be effective 30 days after a Notice of Termination is provided to the contractor in writing.</p>

# Exhibit 9

GTA Telecom LLC license

# BUSINESS LICENSE

DEPARTMENT OF REVENUE AND TAXATION  
 GOVERNMENT OF GUAM  
 P.O. Box 23807  
 Barrigada, Guam 96921  
 www.guamtax.com  
 LEO LIBERTY COMPANY  
 JUNE 30, 2012



FILE NO: 1128024

ACCOUNT NO. 13-200401265-002

FEE	37 50
PENALTY	00
	37 50

ISSUED TO: GUA TELECOM, LLC

DOING BUSINESS AS: GUA TELECOM, LLC

TYPE OF LICENSE: TELECOM & INTERNET SERVICES

BUSINESS LOCATION: LOT 5120-4 NEW RINER #024 N MARINE CORPS

MAILING ADDRESS: DR. TAMUNING GUSM  
 624 N MARINE CORPS DR  
 TAMUNING, GUAM

TELEPHONE: HOME BUSINESS 12/06/11

**PAID**  
 DEC 06 2011  
 TREASURER OF GUAM  
 \$10

*John J. Caballero*

KEEP POSTED IN A CONSPICUOUS PLACE.  
 LICENSE MUST BE PRODUCED UPON  
 DEMAND TO ANY AUTHORIZED GOV'T  
 OFFICIAL.

DIRECTOR OF REVENUE AND TAXATION

EXHIBIT 6



# Exhibit 10

GTA Services LLC, license



DEPARTMENT OF REVENUE AND TAXATION  
GOVERNMENT OF GUAM

P.O. Box 23807  
Barrigada, Guam 96921  
www.guamtax.com

ISSUED TO: LTA SERVICES, LLC  
DOING BUSINESS AS: LTA SERVICES, LLC  
TYPE OF LICENSE: LONG DISTANCE INTERNET & VIDEO SERVICES

Service

ACCOUNT NO. 13-20101691-001

**BUSINESS LICENSE**

SWL NO: 1222028

FEE	37.50
PENALTY	0.00
	37.50

**PAID**  
DEC 06 2011  
TREASURER OF GUAM #10

BUSINESS LOCATION: LOT 5120-4 NEW BIRNEN #024 N MARINE CORPS

MAILING ADDRESS: DR TAMUNING GUAM

624 N MARINE CORPS DR

TAMUNING GUAM

CITY: 96913

BUSINESS 644-1658

12/05/11

KEEP POSTED IN A CONSPICUOUS PLACE.  
LICENSE MUST BE PRODUCED UPON  
DEMAND TO ANY AUTHORIZED GOVT  
OFFICIAL.

*Adolph P. Carachero*  
DIRECTOR OF REVENUE AND TAXATION

EXHIBIT 7

# Exhibit 11

Pulse Mobile LLC license



**DEPARTMENT OF REVENUE AND TAXATION**  
 GOVERNMENT OF GUAM  
 P.O. Box 23607  
 Barrigada, Guam 96821  
 www.guamtax.com  
 Ltd LIABILITY COMPANY  
 EXPIRES: JUNE 30, 2013

**BUSINESS LICENSE**

S.S.L. NO: 1222032

N

SERVICE ACCOUNT NO. 13-201101992-001

ISSUED TO:	PULSE MOBILE, LLC	FEE	27 50
DOING BUSINESS AS:	PULSE MOBILE, LLC	PENALTY	00
TYPE OF LICENSE:	CELLULAR & INTERNET SERVICES		37 50
BUSINESS LOCATION:	LOT 5110 - NEW RINIEW #224 N MARINE CORPS	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>PAID</b>            DEC 06 2011            TREASURER OF GUAM            #10         </div>	
	PR TAMUNING GUAM		
MAILING ADDRESS:	614 N MARINE CORPS DR		
TELEPHONE: HOME	TAMUNING GUAM		
	BUSINESS		12/06/11

TIP: 99918  
 644-1558

BUSINESS

12/06/11

*[Signature]*  
 JOHN P. CAMACHO

DIRECTOR OF REVENUE AND TAXATION

KEEP POSTED IN A CONSPICUOUS PLACE.  
 LICENSE MUST BE PRODUCED UPON  
 DEMAND TO ANY AUTHORIZED GOVT  
 OFFICIAL.

EXHIBIT 8

# Exhibit 12

Teleguam's Certificate of Authority dated July 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION  
TERRITORY OF GUAM



IN THE MATTER OF APPLICATION OF  
TELEGUAM HOLDINGS, LLC AND  
GTA TELECOM, LLC TO TRANSFER  
CERTIFICATE OF AUTHORITY

DOCKET 05-03

ORDER

By this Order, the Guam Public Utilities Commission [PUC] considers the application of GTA Telecom, LLC (GTA Telecom) for a certificate of authority, which would be transferred by TeleGuam Holdings, LLC [TeleGuam] pursuant to Section 12103(g) of the Guam Telecommunications Act of 2004 [Act].

**Findings of Fact:**

PUC hereby makes the following findings of fact:

A. TeleGuam is the dominant telecommunications company on Guam and was issued a certificate of authority by PUC on February 28, 2005.

B. On March 7, 2005, TeleGuam and GTA Telecom petitioned PUC to transfer TeleGuam's existing certificate of authority to GTA Telecom [Petition].

C. In furtherance of the Petition, GTA Telecom submitted an application to PUC on March 29, 2005 to demonstrate GTA Telecom's managerial, technical and financial resources in satisfaction of Section 12103(c) of the Act.

D. By letter dated May 3, 2005, PUC's Administrative Law Judge concluded that the transfer of TeleGuam's certificate of authority to GTA Telecom was in the public interest in accordance with Section 12103(c)(2) of the Act.

E. TeleGuam, GTA Telecom and Georgetown Consulting Group [GCG] have entered into a Stipulation dated July 22, 2005 [Stipulation], a copy of which is attached to this Order as *Exhibit 1*, pursuant to which (i) TeleGuam and GTA Telecom agreed to the imposition of certain conditions on the transfer of TeleGuam's certificate of authority to GTA Telecom and (ii) GCG agreed not to oppose the Petition, subject in each case to the resolution by PUC of the dispute between the parties referenced in paragraph F below.

**EXHIBIT** 12

F. GCG asserts that TeleGuam should indemnify GTA Telecom for any and all claims, liabilities, losses and expenses arising out the Credit Agreement, dated as of December 29, 2004 and as amended from time to time, among TeleGuam, GTA Services, GTA Telecom, GTA Wireless, CoBank, ACB and Bank of Hawaii [Credit Agreement] to the extent such claims, liabilities, losses and expenses arise from the actions or omissions of TeleGuam or its subsidiaries other than GTA Telecom. TeleGuam objects to the imposition of such condition. PUC agrees with the TeleGuam position on this issue.

G. The conditions identified in the Stipulation for the transfer of TeleGuam's certificate of authority are just and reasonable and are relevant to the managerial, technical and financial resources of GTA Telecom.

H. TeleGuam has submitted to PUC an officer's certificate, a copy of which is set forth in *Exhibit 2* of this Order, certifying that (a) GTA Telecom is a wholly-owned subsidiary of TeleGuam and providing a true and correct organizational chart for TeleGuam and its subsidiaries and (b) all of the assets of TeleGuam that are reasonably necessary to enable GTA Telecom to comply with the legal, regulatory, and contractual duties that apply to it under the Asset Purchase Agreement between TeleGuam and the former Guam Telephone Authority [APA], the Act, and applicable regulations, rules, and orders were assigned to GTA Telecom pursuant to the Contribution Agreement, dated as of January 10, 2005, by and among TeleGuam, GTA Telecom, GTA Services, LLC and GTA Wireless, LLC [Contribution Agreement] and providing a true and correct copy of the Contribution Agreement.

I. Claims, liabilities, losses and expenses arising out the Credit Agreement may adversely affect the financial condition of GTA Telecom, and GTA Telecom should be indemnified by TeleGuam to the extent such claims, liabilities, losses and expenses arise from the actions or omissions of TeleGuam or its subsidiaries other than GTA Telecom.

J. Subject to the satisfaction of the conditions provided in this Order, GTA Telecom possess the manager, technical and financial resources required under Section 12103(c) of the Act to justify the transfer of TeleGuam's certificate of authority to GTA Telecom.

#### Order

**BASED ON THE FOREGOING FINDINGS OF FACT AND THE UNDERLYING RECORD IN THIS PROCEEDING, THE GUAM PUBLIC UTILITIES COMMISSION ORDERS:**

A. Pursuant to Section 12103(g) of the Act, PUC hereby approves the Petition and the transfer of TeleGuam's certificate of authority to GTA Telecom subject to the following conditions:

1. To the extent that any assets reasonably necessary to enable GTA Telecom to comply with its legal, regulatory, and contractual duties were not assigned to GTA Telecom pursuant to the Contribution Agreement, TeleGuam shall make such assets available to GTA Telecom on commercially reasonable terms.

2. TeleGuam shall provide or to otherwise make available to GTA Telecom under commercially reasonable terms such funds as may reasonably be required by GTA Telecom to discharge its contractual, statutory and regulatory duties.

3. TeleGuam shall take necessary actions to ensure that GTA Telecom discharges its legal, regulatory, and contractual duties in a reasonable and timely manner.

4. GTA Telecom's assets will not be transferred, pledged or encumbered for any purpose other than the provision of regulated telecommunications services by GTA Telecom without prior PUC approval.

5. GTA Telecom shall not increase its rates or other charges, and shall not file any tariff or otherwise petition PUC for the increase of any existing or the imposition of any new rates or charges, for certificated services due to TeleGuam's internal restructuring and transfer of assets to its subsidiaries prior to the date of this Order, including by means of the Contribution Agreement. The foregoing shall apply notwithstanding the reasonableness of the terms and conditions pursuant to which any assets are leased or otherwise made available to GTA Telecom by TeleGuam and its other affiliates.

6. TeleGuam shall provide to PUC audited financial statements and consolidated tax returns for TeleGuam and its subsidiaries for each of the next three (3) years and unaudited financial statements for each quarter during such period.

7. TeleGuam shall cooperate with PUC and respond to all PUC requests seeking information or documents from TeleGuam or its affiliates, provided such requests are relevant to PUC's regulation of GTA Telecom and its telecommunications services.

8. TeleGuam shall indemnify GTA Telecom for any and all claims, liabilities, losses and expenses arising out the Credit Agreement to the extent such claims, liabilities, losses and expenses arise from the actions or omissions of TeleGuam or its subsidiaries other than GTA Telecom.

9. TeleGuam shall submit itself to PUC's regulatory authority in connection with the implementation and enforcement of the conditions imposed in this Order.

B. PUC has the authority under the Act to impose conditions upon the issuance or transfer of any certificate of authority.



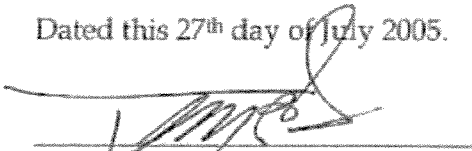
C. PUC has authority under the Act to review and consider the business terms under which GTA Telecom utilizes intrastate telecommunications assets and services provided by third parties, including TeleGuam and its subsidiaries, in assessing whether to approve rate changes requested by GTA Telecom.

E. In order to implement and enforce the conditions imposed in this Order, TeleGuam shall be subject to PUC's regulatory authority, including without limitation, PUC's enforcement and investigative authority.

E. The grant of the Petition and the ongoing validity of GTA Telecom's certificate is subject to (1) GTA Telecom's continuing possession of adequate technical, financial and managerial resources to provide telecommunications services in Guam and the continuing accuracy of the representations made both in the application for the assignment of TeleGuam's certificate of authority to GTA Telecom and in the Stipulation; (2) TeleGuam's and GTA Telecom's full and timely compliance with the commitments made in the Stipulation and with their respective contractual, statutory, and regulatory duties

F. Upon PUC's finding that either GTA Telecom or TeleGuam has violated any law, rule, regulation or regulatory order, after notice and opportunity for hearing by GTA Telecom and TeleGuam, PUC may restore the status quo by withdrawing the approval granted herein and re-assigning GTA Telecom's certificate of authority to TeleGuam. Such enforcement option shall not limit PUC's other enforcement options under 12 GCA 12103(f) or 12 GCA 12108.

Dated this 27<sup>th</sup> day of July 2005.

  
\_\_\_\_\_  
Terrence M. Brooks

  
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Joseph M. McDonald

  
\_\_\_\_\_  
Edward C. Crisostomo

  
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Rowena E. Perez

\_\_\_\_\_  
Richie T. Lim

*Appendix A: Notice of Appeal Form*  
**PROCUREMENT APPEAL**

Exhibit 4  
OPA Appeal OPA-PA-08-003 Findings and  
Recommendations of Hearing Officer



OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

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IN THE APPEAL OF,  
TOWN HOUSE DEPARTMENT STORES,  
INC., dba ISLAND BUSINESS SYSTEMS &  
SUPPLIES,

Appellant

APPEAL NO: OPA-PA-08-003

FINDING AND RECOMMENDATIONS  
OF HEARING OFFICER

I. INTRODUCTION

This is the Finding of the Hearing Officer, ANTHONY R. CAMACHO, ESQ. on an appeal filed on February 7, 2008, by TOWN HOUSE DEPARTMENT STORES, INC., dba ISLAND BUSINESS SYSTEMS & SUPPLIES, (Hereafter "IBSS") regarding the GUAM PUBLIC SCHOOL SYSTEMS' (Hereafter "GPSS") receipt of copier equipment and related services from XEROX CORPORATION (Hereafter "XEROX").

The Hearing Officer recommends that the Public Auditor find that she does not have the jurisdiction to hear IBSS' appeal at this time because GPSS has failed to produce a decision on IBSS' December 4, 2007 protest. The Hearing Officer recommends that the Public Auditor hold that GPSS' failure to produce a decision on IBSS' December 4, 2007 protest is a violation of 5 G.C.A. §5425(c) and (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g) and a bad faith act that violates 5 G.C.A. §5003 and undermines the integrity of the procurement process and that the Public Auditor has the authority to compel the Superintendent of GPSS to produce the decision. Accordingly, the Hearing Officer recommends that IBSS' February 7, 2008 appeal be denied at this time and that the Public Auditor order the Superintendent of GPSS to produce the decision required by 5 G.C.A. §5425(c) and (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g) on IBSS' December 4, 2007 protest, no later than seven (7) days after the date of this decision and that said decision be immediately delivered to IBSS and the Public Auditor.

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## II. FINDINGS OF FACT

These findings are based on the Procurement Record and all documents submitted by the parties in the appeal pursuant to IBSS' February 27, 2008 Waiver of Hearing, IBSS' March 6, 2008 Request for a Decision on the Record, and GPSS' March 7, 2008 non-objection to IBSS' waiver of hearing request and concurrence that this matter be decided based on the records submitted.

1. On or about December 18, 2000, GPSS<sup>1</sup>, executed Document Services Agreement No. 7002364 (Hereafter "DSA") with XEROX. The DSA required, in relevant part, XEROX to provide for document production services and various copying equipment and software to GPSS in exchange for GPSS' minimum monthly payment of \$128,365, for the period beginning January 1, 2001 to December 31, 2005. There is no record of GPSS (or its predecessor the Department of Education) soliciting the document production services and equipment required by the DSA, and there is no record of XEROX being awarded the DSA as the result of such a solicitation.<sup>2</sup>

2. On or about April 17, 2001, GPSS and XEROX executed Amendment No. 1 to the DSA which, in relevant part, added additional equipment to the DSA and extended the DSA's term to April 1, 2001 to March 31, 2006 for the additional equipment.<sup>3</sup>

3. On December 16, 2004, GPSS and XEROX entered into Amendment No. 17 to the DSA which, in relevant part, extended the entire agreement from January 1, 2005 to December 31, 2009.<sup>4</sup>

4. On or about December 4, 2007, IBSS filed a protest with GPSS alleging improper procurement of copier machine products and related services by GPSS and requesting that

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<sup>1</sup> GPSS was known as the "Department of Education" or "DOE" prior to June 6, 2005. On that date, P.L. 28-045:10 became effective and changed the Department of Education or DOE to GPSS.

<sup>2</sup> DSA No. 7002365, Page 1, GPSS Procurement Record, Tab 3.

<sup>3</sup> Amendment No. 1 to DSA, Page 1, GPSS Procurement Record, Tab 3.

<sup>4</sup> Amendment No. 17 to DSA, Page 1, GPSS Procurement Record, Tab 7.

1 GPSS' award of the DSA to XEROX be terminated, and that the DSA be declared null and  
2 void.<sup>5</sup>

3 5. On or about January 10, 2008, IBSS requested GPSS provide them a final decision on  
4 their December 4, 2007 protest.<sup>6</sup>

5 6. On or about January 31, 2008, GPSS issued Purchase Order No. 200800507 to  
6 XEROX for the amount of \$399,111 to cover various DSA costs for the period January 1, 2008  
7 thru March 31, 2008.<sup>7</sup>

8 7. There is no record that GPSS issued a decision on IBSS December 4, 2007 protest.

9 8. Approximately sixty-five (65) days after filing its protest, on or about February 7,  
10 2008, IBSS filed this appeal stating that the decision being appealed is a decision not to decide or  
11 communicate due to the fact that GPSS did not issue a decision and IBSS was appealing GPSS'  
12 failure to respond to their protest.<sup>8</sup> In addition, IBSS requested: (1) A public examination of the  
13 GPSS procurement files to determine if or by what proper method GPSS is procuring copiers;  
14 and (2) A determination of whether GPSS has maintained an appropriate procurement record;  
15 and (3) Termination of the award to XEROX and the DSA; and (4) An order that, in relevant  
16 part, would terminate the DSA and require GPSS to solicit for a new copier leasing or  
17 purchasing services.<sup>9</sup>

18 9. On February 21, 2008, GPSS filed its Agency Report admitting that it did not issue a  
19 decision on IBSS' December 4, 2007 protest but denying any allegation of improperly procuring  
20 copier services.<sup>10</sup> GPSS also argued that IBSS' protest was untimely.<sup>11</sup>

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22 <sup>5</sup> IBSS Notice of Protest, Attachment 8, IBSS Notice of Appeal.

23 <sup>6</sup> IBSS Request for Final Decision on Notice of Protest dated January 10, 2008, IBSS Notice of Appeal,  
24 Attachment 9.

25 <sup>7</sup> Purchase Order No. 200800507, GPSS Procurement Record, Tab 14.

26 <sup>8</sup> IBSS Notice of Appeal, Pages 1-2.

27 <sup>9</sup> IBSS Notice of Appeal, Page 12.

28 <sup>10</sup> GPSS Agency Report, Page 1.

<sup>11</sup> *Id.*, Page 2.

1 10. On February 27, 2008, IBSS filed its comment on GPSS' Agency Report and argued  
2 that the DSA was an illegal contract that was improperly renewed.<sup>12</sup>

3 11. On April 11, 2008, XEROX filed an entry of appearance in this matter and a request  
4 for notice of any and all proceedings or hearings thereon.

5 12. On April 14, 2008, IBSS filed its opposition to XEROX's entry of appearance.  
6

### 7 III. ANALYSIS

#### 8 A. The Public Auditor does not have the jurisdiction to hear IBSS' appeal at this time.

9 This matter is not ripe for the Public Auditor's review because GPSS has not rendered a  
10 decision on IBSS' December 4, 2007 protest. The Public Auditor has the power to review and  
11 determine *de novo* any matter properly submitted to her. 5 G.C.A. §5703 and 2 G.A.R., Div. 4,  
12 Chap. 12, §12103(a). The Public Auditor has the jurisdiction to hear an appeal of a purchasing  
13 agency's written decision on a protest concerning the purchasing agency's method of source  
14 selection, solicitation, or award of a contract. 5 G.C.A. §5425(e), and 2 G.A.R., Div. 4, Chap.  
15 12, §12201(a). Here, both IBSS and GPSS admit that there is no decision on IBSS' December 4,  
16 2007 appeal.<sup>13</sup> Thus, without a GPSS decision on IBSS' December 4, 2007 protest, this matter is  
17 not properly before the Public Auditor and the Public Auditor does not have the jurisdiction to  
18 hear it.

19 The Hearing Officer recommends that the Public Auditor not be convinced by IBSS'  
20 argument that it is appealing GPSS' decision not to decide IBSS' December 4, 2007 protest. The  
21 Public Auditor's jurisdiction, in relevant part, is limited to reviewing protest decisions as set  
22 forth in 5 G.C.A. §5425(c). 5 G.C.A. §5425(e). Such decisions are required if the protest is not  
23 resolved by mutual agreement, are made in writing, state the reasons for the action taken, and  
24 inform the protestant of its right to administrative and judicial relief. 5 G.C.A. §5425(c). Here,  
25 GPSS' failure to decide IBSS' protest promptly is not the same as the decision set forth in 5  
26 G.C.A. §5425(c) as it is not in writing and does not contain the reasons for GPSS' actions.

27  
28 <sup>12</sup> IBSS Comment on Agency Report.

<sup>13</sup> See IBSS Notice of Appeal, Page 1 and GPSS Agency Report, Page 1.

1 GPSS' failure to promptly issue the decision required by 5 G.C.A. §5425(c) is not a decision that  
2 the Public Auditor has the jurisdiction to review.

3  
4 **B. The Public Auditor has the authority to compel the Superintendent of GPSS to**  
5 **produce the Decision on IBSS' December 4, 2007 Protest**

6 The Hearing Officer recommends that the Public Auditor find that she has the authority  
7 to compel GPSS to produce the Decision on IBSS' December 4, 2007 Protest because GPSS'  
8 sixty-five (65) day delay in issuing the decision is an act of bad faith and threatens the integrity  
9 of the procurement process. The Public Auditor shall have the power to compel the production of  
10 documents by any employee of the Government of Guam. 5 G.C.A. §5703 and 2 G.A.R., Div. 4,  
11 Chap. 12, §12103(a). Further, the Public Auditor shall use this authority to promote the integrity  
12 of the procurement process and purposes of 5 G.C.A. Chapter 5. Id. Here, compelling GPSS to  
13 produce the decision on IBSS' protest is necessary to preserve the integrity of the procurement  
14 process because GPSS' further delay in rendering the decision will result in a violation of IBSS'  
15 substantive due process rights and undermine the integrity of the procurement process.

16 The Hearing Officer recommends that the Public Auditor find that GPSS' decision on  
17 IBSS' December 4, 2007 protest is required by Guam Procurement Law and Regulations. If a  
18 protest is not resolved by mutual agreement, the head of a purchasing agency, or his or her  
19 designee shall **promptly and expeditiously** (bold emphasis added) issue a decision in writing  
20 stating the reasons for the action taken, informing the protestant of its right to administrative and  
21 judicial review, and a copy of such decision shall be mailed or otherwise furnished immediately  
22 to the protestant, and any other party intervening. 5 G.C.A. §5425(c) and (d) and 2 G.A.R., Div.  
23 4, Chap. 9, §9101(g). Here, based on the record submitted in this matter, there is no reason  
24 justifying GPSS' delay in producing the decision during the sixty-five (65) day period between  
25 the protest and the appeal in this matter. Thus, GPSS is required to issue a decision on IBSS'  
26 December 4, 2007 protest promptly and expeditiously and must submit such decision  
27 immediately to IBSS.

28 The Hearing Officer recommends that the Public Auditor find that GPSS' failure to  
produce the decision in the sixty-five (65) day period between the protest and the appeal in this

1 matter is an act of bad faith, and that any more delay in issuing the decision would undermine the  
2 integrity of the procurement process. Guam Procurement Law requires all parties involved in the  
3 negotiation, performance, or administration of government contracts to act in good faith. 5  
4 G.C.A. §5003. IBSS correctly argues that it is being denied its substantive due process rights to  
5 appeal if GPSS simply continues to refuse to render the decision on IBSS' protest required by  
6 Guam's Procurement Law and Regulations.<sup>14</sup> Here, GPSS's conduct is particularly oppressive  
7 because the DSA is highly suspect. There is no evidence, based on the procurement record and  
8 its supplements submitted by GPSS, that GPSS properly solicited the copying equipment and  
9 services contract via an Invitation for Bid, or a Request for Proposal. Likewise, no evidence was  
10 submitted by GPSS showing that it properly procured the DSA using sole source procurement.  
11 Based on such a record it is reasonable to conclude that the DSA is most likely an illegal contact  
12 and GPSS' failure to render the statutorily required prompt and expeditious decision on IBSS'  
13 protest is intended to prevent review of the DSA on appeal. Thus, GPSS failure to render a  
14 prompt and expeditious decision on IBSS' protest is an act of bad faith.

15 The Hearing Officer recommends that the Public Auditor find that by not exercising her  
16 power to compel the production of documents in this matter, GPSS's bad faith act of refusing to  
17 render the prompt and expeditious decision on IBSS protest required by Guam's Procurement  
18 Law and Regulations will not be cured. Further, the Hearing Officer recommends that the Public  
19 Auditor find that by not exercising her power to compel the production of documents in this  
20 matter, GPSS will simply continue to ignore IBSS' protest and prevent IBSS' exercise of its  
21 procedural due process rights and the review of the DSA on appeal. Thus, the Public Auditor's  
22 exercise of her authority to compel GPSS to produce a decision on IBSS' December 4, 2007  
23 protest is necessary to preserve the integrity of the procurement process.

#### 24 25 IV. CONCLUSION

26 Based on the foregoing, the Hearing Officer recommends that the Public Auditor  
27 determine the following:  
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<sup>14</sup> IBSS Notice of Appeal, Page 11.



1 1. The Public Auditor does not have the jurisdiction to hear IBSS' appeal at this time  
2 because GPSS has failed to produce a decision on IBSS' December 4, 2007 protest.

3 2. GPSS' failure to produce a decision on IBSS' December 4, 2007 protest is a  
4 violation of 5 G.C.A. §5425(c) and (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g) and a bad faith  
5 act that violates 5 G.C.A. §5003 and undermines the integrity of the procurement process.

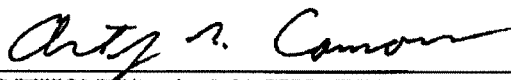
6 3. Pursuant to 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a), the Public  
7 Auditor order the Superintendent of GPSS, whether such person is holding the actual position or  
8 serving in an acting capacity in such position, to produce the decision required by 5 G.C.A.  
9 §5425(c) and (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g) on IBSS' December 4, 2007 protest,  
10 no later than seven (7) days after the date of this decision and GPSS' decision must be  
11 immediately delivered to IBSS and the Public Auditor.

12 4. Pursuant to 5 G.C.A. §5425(e), IBSS may appeal GPSS' decision on IBSS' December  
13 4, 2007 protest to the Public Auditor within fifteen (15) days after IBSS' receipt of the decision.

14 5. IBSS' Opposition to Xerox's Entry of Appearance is moot due to the Public Auditor  
15 not having jurisdiction over IBSS' appeal at this time.

16 A copy of this Finding shall be provided to the parties and their respective attorneys, in  
17 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website  
18 [www.guamopa.org](http://www.guamopa.org).

19 DATED this 11<sup>th</sup> day of July, 2008.

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21   
22 ANTHONY R. CAMACHO, ESQ.  
23 Hearing Officer  
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