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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
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Attorneys for Party in Interest
Teleguam Holdings, LLC and its wholly owned subsidiaries

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

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

Docket No. OPA-PA-12-011
**TELEGUAM HOLDINGS, LLC'S
MOTION TO DISMISS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Teleguam Holdings, LLC and its wholly owned subsidiaries ("GTA") move to dismiss this action on the grounds that PDS did not bring a timely protest. GTA waives a hearing on this motion.

DATED: Hagåtña, Guam, 12 July, 2012.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A bidder must submit a protest within 14 days from when it knows or should know of the

facts giving rise to the protest. In this case, PDS waited about ten months to protest GSA's failure to require bidders to submit a local procurement preference application. Its protest is not timely and must be dismissed.

II. BACKGROUND

GSA issued GSA-064-11 on June 22, 2011.¹ Agency Rep., Tab 6 at 1. In the solicitation, GSA noted that "All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations." Agency Rep., Tab 6 at 19. Other than that language, the IFB made no mention of any requirements for any bidder to submit information specifically addressing the local procurement preference, or certifying the bidder's qualifications. The IFB also did not specify that bidders were to submit a local procurement preference application.

GSA has admitted in this action that in certain solicitations it uses a local procurement preference application form, but did not do so in this case because all bidders qualified for the preference.

On April 30, 2012, PDS protested GSA's failure to apply the local procurement preference. PDS claimed that it was entitled to the preference over GTA because it submitted a DOE local procurement preference application form, and GTA did not. PDS protests the award of Bid Form 10 of GSA-064-11 to GTA.

III. PDS' PROTEST IS UNTIMELY

PDS claims that GSA should have applied the local procurement preference to PDS only, because it and not GTA submitted a local procurement preference application. Whether or not the parties were required to submit a local procurement preference application is therefore

pivotal to the OPA's analysis in this proceeding.

When PDS did not find the Local Procurement Preference Application in the bid package, it then had grounds to protest that GSA could not properly evaluate the bids or apply the local procurement preference. In fact, PDS claims that GSA should have used the Application to implement 5 G.C.A. § 5008. *See* PDS Comments, filed June 12, 2012, at pp. 1-2. PDS also claims that because the Application requires a bidder to select the criteria qualifying it as a local business, GSA erred in not requiring that the bidders fill out an application form.

To be timely, PDS must have submitted its protest in writing within 14 days after it knew or should have known of the facts giving rise thereto. 5 G.C.A. § 5425. The very first instance in which PDS knew or should have known that GSA was not using the Local Procurement Preference Application occurred back when the IFB was first issued - June 22, 2011. At that point, PDS had possession of the facts purportedly supporting its claim that GSA did not utilize its own Local Procurement Preference Application, and then, could not have properly evaluated the bids. Thus, PDS had 14 days from the date the IFB was released to file a timely protest. Its protest dated April 30, 2012, was therefore about ten months late.

The time for PDS to protest did not become renewed after GSA awarded Bid Form 10 to GTA. PDS' complaints over GSA's process of applying and utilizing the local procurement preference begin at the solicitation. At the time of the issuance of the solicitation, PDS knew or should have known that GSA did not intend to utilize the local procurement preference application and then could not have made a proper evaluation of which bidders qualified for the preference. If PDS had submitted a protest back in June or early July 2011, PDS' allegation of a deficiency in the procurement process would have been timely addressed and, if necessary, rectified. Instead, PDS did not protest and sat on its rights to claim that GSA mishandled the

¹ PDS' protest concerns only Bid Form 10 of GSA-064-11.

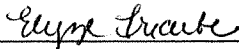
application of the local procurement preference. PDS' claims arose at the date of solicitation, and not at the date of award.

IV. **CONCLUSION**

PDS knew or should have known of its claims that GSA did not properly apply the local procurement preference when GSA issued the solicitation and failed to include the local procurement preference application in the bid packet. PDS waited beyond 14 days to protest, thereby making its protest time-barred. The OPA should dismiss this appeal on the basis of untimeliness.

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