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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-18-004
)	
TELEGUAM HOLDINGS, LLC,)	
)	
Appellant,)	REPLY TO TELEGUAM HOLDINGS,
)	LLC'S OPPOSITION TO GENERAL
AND)	SERVICES AGENCY'S HEARING
)	BRIEF
GENERAL SERVICES AGENCY,)	
)	
Purchasing Agency.)	
)	
)	

Comes now the General Services Agency ("GSA") by and through its counsel and files its Reply to Teleguam Holdings, LLC ("GTA") Opposition to GSA's Hearing Brief.

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ORIGINAL

REPLY TO GTA'S OPPOSITION TO GSA'S HEARING BRIEF

GTA's protest is barred by basic jurisdictional principles.

POINTS AND AUTHORITIES

I. *Res Judicata*

In *res judicata* cases, “the inquiry about the ‘same transactional nucleus of facts’ is the same inquiry as whether the claim could have been brought in the previous action. If the harm arose at the same time, then there was no reason why the plaintiff could not have brought the claim in the first action.... In that context, it makes sense, when asking whether the claims involve the ‘same transactional nucleus of facts,’ to ask as a proxy whether the claims could have been brought in the original action.” *United States v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1151 (9th Cir. 2011). Here, GTA argues, “[T]he facts that form the thrust of the present protest were not part of any matter previously examined.” Opp. to Hearing Brief pp. 2-3. GSA highlights to the Public Auditor that the issue of an incomplete record was present when the Public Auditor issued her December 15, 2014 Decision on Remand and later in subsequent appeals to the Superior Court and Supreme Court. The facts regarding the incomplete record at issue here are the same facts at issue as those presented in GTA's first protest. More specifically, the harm that GTA is protesting was a harm that arose at the same time as the previous action, and there is no reason why GTA could not have brought that claim in the first protest — and in fact — brought this issue in its appeal to the Superior Court in CV0334-13. Opp. to Hearing Brief p. 7 (“[GTA] attempted to have the validity of all awards reviewed. . .”).

Additionally, the legal theory of *res judicata* is based on the “same transactional nucleus of facts” and this does not require the second claim to have the exact same facts. Again, GTA admits, “an appreciable amount of facts and issues in this protest and appeal are similar to those

in prior reviews. . . .” Opp. to Hearing Brief p. 2. In other words, this is the same transactional nucleus of facts.

More importantly, the public policy or intent of *res judicata* is the same public policy or intent of Guam procurement law, which encourages finality of the procurement process. *Teleguam Holdings, LLC v. Territory of Guam*, 2018 Guam 5 ¶ 32; *See also Cf. Allen v. McCurry*, 449 U.S. 90, 94 (1980). Dismissal of duplicative suits protects parties from vexatious and expensive litigation and benefits the societal interest in bringing an end to disputes. *Cf. Allen v. McCurry*, 449 U.S. 90, 94 (1980) (*res judicata* relieves parties of cost of multiple lawsuits, conserves judicial resources, and encourages reliance on adjudication); *Brown v. Felsen*, 442 U.S. 127, 131 (1979) (*Res judicata* “encourages reliance on judicial decisions, bars vexatious litigation, and frees the courts to resolve other disputes.”).

Based on the facts and the policy behind Guam’s procurement law, the Public Auditor should deny GTA’s current protest based on *res judicata* grounds.

II. Statute of limitations

GTA does not refute that it missed the statute of limitations to bring a valid appeal of the Public Auditor’s March 6, 2013 Decision for Parts A-D and Parts F-J of IFB GSA-064-11. Opp. to Hearing Brief p. 6. (“Teleguam missed the statute of limitations protest of Parts A-D and Parts F-J.”) GTA had the opportunity to bring the incomplete record issue to the Public Auditor in the first protest, in CV0333-13 and in CV0334-13, and on appeal to the Supreme Court in CVA16-017, but missed the statute of limitations on appeal. GTA is barred to bring this issue again in front of the Public Auditor. *See Teleguam*, 2018 Guam 5 ¶ 21 (“The Public Auditor’s decision became final over the other Parts when GTA did not timely commence an action in the Superior Court.”).

III. GTA refuses to allow the procurement process to go forward

The Supreme Court has opined, “There are two options for a disappointed bidder after the OPA issues a decision in dispute: (1) to seek judicial review of the OPA’s decision within the requisite fourteen days under 5 GCA § 5481(a), or (2) to refrain from seeking judicial review and allowing the procurement process to go forward upon expiration of the fourteen days.” *Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13 ¶ 31. In missing the statute of limitations for judicial review for Parts A-D and Parts F-J of IFB GSA-064-11, GTA now refuses to allow the procurement process to go forward by filing this current protest.

GSA’s decision and action to issue the revised bid status stems from the finality of the Supreme Court Opinion and previous Public Auditor Decisions. If, after the Public Auditor issues a decision and a protestor appeals to the Superior Court and to the Supreme Court — and there is no finality in such a protest — then the procurement process can never go forward. The Supreme Court has spoken and it is clear, Guam’s procurement law is against any attempt of endless litigation. *Teleguam*, 2018 Guam 5 ¶ 32.

GTA states that it “merely requests the Public Auditor to review GSA’s recent official action....” Opp. to Hearing Brief p. 3. In reality, GTA’s attempt to protest, sidesteps important jurisdictional bars both *res judicata* and the statute of limitations. This action is an attempt to disregard the finality of Public Auditor decisions and Supreme Court Opinions.

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CONCLUSION

In conclusion, the current matter before the Public Auditor is barred by *res judicata*. Since this protest arises out of the same transactional nucleus of facts presented in *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, no judicial act remains. Therefore, based on *res judicata* and statute of limitations, the Public Auditor should deny GTA's protest and affirm its previous December 15, 2014 Decision on Remand for IFB GSA-064-11. To quote the Supreme Court, "[F]actual findings made by the Public Auditor are ordinarily not to be relitigated." *Teleguam*, 2018 Guam 5 ¶ 32.

GSA requests attorney's fees and costs associated with this appeal.

Submitted this 28th day of December, 2018.

OFFICE OF THE ATTORNEY GENERAL
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By:



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