PACIFIC DATA SYSTEMS, INC. 185 Ilipog Drive HBC Building, Suite 204A Tamuning, Guam 96913 Telephone No.: (671) 300-0200 Facsimile No.: (671) 300-0265 IN THE APPEAL OF TELEGUAM HOLDINGS, LLC AND ITS WHOLLY OWNED SUBSIDIARIES, GTA TELECOM, LLC; GTA SERVICES, LLC; AND PULSE MOBILE LLC, Appellant. I.

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: Nov. 5, 2012

TIME: 4-000 DAM DPM BY: R. Field FILE NO OPA-PA: 12-016

# OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEALS

OPA Docket No. OPA PA 12-016

REPLY OF PACIFIC DATA SYSTEMS, INC. TO TELEGUAM HOLDINGS, LLC'S OPPOSITION TO PDS' OBJECTION TO APPEAL AND MOTION FOR DISMISSAL

Pacific Data Systems, Inc. ("PDS") replies as follows to the Opposition of Teleguam Holdings, LLC to the PDS Objection to Appeal and Motion for Dismissal.

### I. THE ISSUE OF TIMELINESS IS BEFORE THE OPA.

GTA argues that the Public Auditor may not consider the issue of whether GTA's original protest to GSA was timely filed. GTA argues this is so because GSA did not raise the issue of the timeliness of the GTA protest when it denied the GTA protest on October 5, 2012. GTA refers to *In Re: Town House Dept. Stores, Inc. dba Island Business Systems & Supplies*, OPA-PA-11-02. In that case, the Public Auditor stated that if neither the party protesting nor the agency raise an issue, the issue is not properly before the Public Auditor.

However, this ignores the fact it was GTA and not PDS that filed the protest. The role of PDS in this appeal is that of an Interested Party. This appeal is the first opportunity PDS has had to raise the timeliness issue.

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2	The first opportunity any Interested Party has to comment on the agency's
3	denial of a protest is after an appeal is taken. An Interested Party, as here, may well be
4	able to assert grounds for upholding the protest denial in addition to those stated by the
5	agency. If an Interested Party is only limited to second the agency's denial of the
6	protest, there would be little reason to allow comments by an Interested Party. The
7	issue of the timeliness of GSA's original protest is thus properly before the Public
8	Auditor. As stated at 5 GCA § 5703:
9	The Public Auditor shall have the power to review
10	and determine <i>de novo</i> any matter properly submitted to her or him Notwithstanding § 5245 of this
11	Chapter, no prior determination shall be final or conclusive on the Public Auditor or upon any appeal
12	from the Public Auditor
13	II. GTA'S ORIGINAL PROTEST WAS UNTIMELY.
14	In its Brief, GTA claims that it did not receive notice of GSA's Revised Bid
15	Status until May 4, 2012. This is not true. Attached as Exhibit "A" is the fax
16	transmission confirmation from GSA that shows that the Revised Bid Status was sent to
17	GTA on May 3, 2012 at 5:27pm. This is consistent with the same fax notifications for
18	this document that GSA sent to the other bidders in this procurement, as shown in
19	Exhibit "B". The following summarizes the GSA fax transmission confirmation dates
20	and times for the Revised Bid status for all bidders:
21	o GTA – sent by GSA on May 3, 2012 at 5:28pm, fax confirmation received
22	o PDS – sent by GSA on May 3, 2012 at 5:36pm, fax confirmation received
23	o IT&E - sent by GSA on May 3, 2012 at 5:31pm, fax confirmation received
24	o GT/MCV - sent by GSA on May 3, 2012 at 5:30pm, fax confirmation received
25	o Docomo Pacific - sent by GSA on May 3, 2012 at 5:37pm, fax confirmation received

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all bidders received the Revised Bid Status from GSA on May 3, 2012 at about the same

It is clear from the documentation that PDS has provided in Exhibit A and B, that

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2	time. This	documentation establishes May 3, 2012 as the date on which any protest of
3		ecision tolls and must be based. Therefore, the protest filed by GTA on May
4	18, 2012 wa	as not timely filed and this basis should also be considered by the OPA in the
5		ne GTA Protest by GSA.
6		III. <u>CONCLUSION</u> .
7		The issue of timeliness of GSA's original protest is properly before the
8	Public Aud	litor, and the record demonstrates that the original protest was untimely for
9		SA's denial of the GTA protest must be upheld for this reason also.
10		DATED this 5th day of November, 2012.
11		Respectfully submitted,
12		PACIFIC DATA SYSTEMS, INC.
13		Br.:
14		By: JOHN DAY, President
15		
16	Exhibit A:	GSA fax confirmation to GTA - May 3, 2012 5:28pm
17	Exhibit B:	GSA fax confirmation to PDS - May 3, 2012 5:36pm
18		GSA fax confirmation to IT&E - May 3, 2012 5:31pm
19		GSA fax confirmation to GT/MCV - May 3, 2012 5:30pm
20		GSA fax confirmation to Docomo Pacific - May 3, 2012 5:37pm
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\* Impartiality \* Competence \* Openness Accountability Value REVISED **BID STATUS** Date: 1843 03, 2012 TeleGuam Holdings, LLC Attn: Jennifer Szambelluri 624 North Marine Corps Drive Tomuning, Guam 96913 Tel: 644-0116 / Fax: 644-0103 BID INVITATION NO.: GSA-064-11 OPENING DATE: December 19, 2011 DESCRIPTION: TELECOMMUNICATION SERVICES The following is the result of the above-meraioned bid. Refer to the items checked below. [ ] Cancelled (in its entirety), or partially cancelled due to: Insufficient funds:
 Change of specifications; or
 issufficient number of bidders. [X] Rejected due to: Late submission of bid;
 No bid security or insufficient bid security amount submitted; as required by section 11 of the Concret Terms and Conditions;
Not meeting the delivery requirement as stated in the IPB;
Non-conformance with the specification offered on Bid Form 3 - Up to 8 line with Digital Inability to provide future maintenance and services to the equipment;
High Price: Bid Forms 2, 3, 5, 6, 12, 13, and 14 [X] Bid recommended for award: MULTIPLE AWARD Teleguam Holdings, LLC - See attached award Pacific Data Systems - See attached award PTI Pacific Inc. dbs: 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 bund/cashier check. NI - 0 M.A II for it haset scanned: 5 fotal Paget tent Ho. Doc. Femote station start line Euration Fages Mode Comment of the commen the second that the second the second BC: Broadcast UF: Molto Patting will benote ser ico BS: Relar Send BF: Bo. Fa. For any of Completes HS: Huto send the Torminated

## Exhibit B

Transmission Report

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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: Bit Forms 12 - Did not subserve to equal increments increments
Inability to provide future maintenance and services to the equipment,
High Price for Bid Forms: 10
Others: Submitted "No Quete" for Bid Forms 8, 8A, 9 and 15 [X] Bid recommended for award: MULTIPLE AWARD Teleguam Holdings, LLC - See attached award Pacific Data Systems - See attached award PTI Pacific Inc. dba: IT&E - Sec attached award Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashior check foral Page sanned: 5 foral Pages sent : 5 110. Loc. Senate Station Start Line Donation Pages Made

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#### REVISED BID STATUS

PTI Pacific inc. dbs: IT&E Atm: Arlene Taitingfong Business Account Menage: P.O. Box 24881 Barrigads, Guam 96921 Tel: 922-4478 / Fax: 922-4329 Date: MAY 03, 2012

BID INVITATION NO.: <u>GSA-964-11</u> OPENING DESCRIPTION: <u>TELECOMMUNICATION SERVICES</u>

OPENING DATE: December 19, 2011

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

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	ŧ	)	Late submission of bid;
	-{	)	No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions:
	ŧ	3	Not meeting the delivery requirement as stated in the IFB;
	£.	}	Non-conformance with the specification

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Inability to provide thus maintenance and services to the equipment;
(X) High Price for Bid Forms: 8, 9, and 14
(X) Others: No Submitted for Bid Forms: 2, 3, 5, 6, 10, 11, 12, 13, and 15

[X] Bid recommended for award: MULTIPLE AWARD
Telegoam 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.

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#### REVISED BID STATUS

Date: MAY 03, 2012 Guam Telecom LLC Attn: Craig R. Thompson, President/CEO 497 Harmon Loop Road Dededo, Guam 96929 Tel: 969-4003 / Fax: 632-6280 BID INVITATION NO.: GSA-064-11 OPENING DATE: Desember 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 hidders [X] Rejected due to: Late submission of bid; Late susmission of one;

No bid security or insufficient bid security amount submitted; as required by section 1 | 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 (X) Prometestion matter with the requirement on a rotal to and more money increments in the increments in the increments in the increments in the increment of the results of the component in the increment of the increment in the in [X] Bid recommended for award: MULTIPLE AWARD (See Attached) Teleguam Holdings, LLC - See attached award Pacific Data Systems - See attached award

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

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

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#### REVISED BID STATUS

Dute: MAY 03, 2012

Docomo Pacific Inc. Attn: Marilyn R. Borja, Sales Manager 219 S. Marine Drive Ste. 206 Tarnoning, Guam 96913 Tel: 688-5741 / Fax: 649-7247

BID INVITATION NO.: GSA-964-11

OPENING DATE: December 19, 2811

DESCRIPTION: TELECOMMUNICATION SERVICES

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	Insufficient funds:     Change of specifications; or     Insufficient number of bidders.
[X]	Rejected duc to:
	Late submission of bid; No bid security or insufficient bid security amount submitted; as required by section 11 of 6 General Terms and Conditions; Not meeting the delivery requirement as stated in the IFB; Non-conformance with the specifications; Inability to provide future maintenance and services to the equipment; High Price for Bid Forms: 8, 8A and 9  (X) Others: No Sahmittals for Bid Forms: 2, 3, 5, 6, 16, 11, 12, 13, 14, and 15
{X}	Bid recommended for award: MULTIPLE AWARD
	Teleguam Holdings, LLC - See attached award
	Pacific Data Systems - See attached award
	PTi Pacific Inc. dha: ITÆE - Sec attached award
REM	MARKS:
	Thank you for your participation with this bid. Please send your authorized personnel to pickup the original bid status and bid bond/cashier check.

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