1 2 3 4	BERMAN O'CONNOR & MANN Suite 503, Bank of Guam Bldg. 111 Chalan Santo Papa Hagåtña, Guam 96910 Telephone No.: (671) 477-2778 Facsimile No.: (671) 477-4366	OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEALS DATE:
5	Attorneys for: PACIFIC DATA SYSTEMS, INC.	
6	OFFICE OF PUBLIC ACCOUNTABILITY	
7	PROCUREMENT APPEALS	
8	IN THE APPEAL OF	OPA Docket No. OPA PA 12-016
9 10	TELEGUAM HOLDINGS, LLC AND ITS WHOLLY OWNED SUBSIDIARIES, GTA TELECOM, LLC; GTA SERVICES, LLC; AND PULSE MOBILE LLC,	HEARING BRIEF OF PACIFIC DATA SYSTEMS, INC.
11 12	Appellants.	
13	Per the OPA's order in this matter, Interested Party Pacific Data Systems	
14	Inc. ("PDS") provides the following Hearing Brief as instructed by the Hearing Officer:	
15	WITNESSES	
16	1. John Day, President of PDS.	
17	2. Ed Cruz, Chief Inform	ation Officer for the Government of Guam.
18	3. John Kim, GTA Contro	oller.
19	4. Jennifer Sgambelluri, (GTA Senior Account Manager.
20	5. Rebuttal witnesses as a	needed.
21	EXHIBITS	
22	Other than the documents which are already part of the Procurement	
23	Record, PDS will introduce the following exhibits at the hearing:	
24	1. Attached photograph	of Cisco SPA501G telephone (physical phone
25	will be lodged at hearing).	
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2. Blow up of chart attached to PDS Comments on Agency Report filed on November 5, 2012. This document is already part of the Appeal record and the exhibit to be presented at the hearing is an enlarged version of the original document.

3. Blow up of GTA Bid Form #3. This document is already part of the Procurement record and the exhibit to be presented at the hearing is an enlarged version of the original document.

SUMMARY OF APPEAL

GTA's appeal is from GSA's denial of a protest regarding Bid Form 2 and 3 of GSA procurement IFB GSA-064-11. PDS has requested a hearing in this matter and expects to cover the following the points during its presentation to the Hearing Officer.

- 1. The award decision made by GSA was proper and should be sustained by the OPA. PDS will review the evaluation criteria for Bid Forms 2 and 3 to show that the GSA evaluation was true and correct. The PDS submission was the lowest responsive and responsible bid submission.
- 2. PDS will review the GTA's arguments that it provided the lowest responsive and responsible bid for Bid Forms 2 &3 and show that these claims are not true.
- 3. PDS will introduce the actual telephone that GTA offered (Cisco SPA501G) at the hearing so that the Hearing Officer can easily see for himself that it does not comply with the IFB requirements.

LEGAL ISSUES

PDS has moved to dismiss GTA's appeal on the grounds that its protest was not timely filed. This issue has been fully briefed. PDS requests that the Hearing Officer rule first on its Motion to Dismiss before taking further action on this appeal, since a ruling in favor of PDS will result in the dismissal of this appeal and eliminate the need for a hearing on the merits.

GTA has also argued that PDS should be denied its right to a hearing on this appeal. In summary, on November 19, 2012, undersigned counsel entered his appearance in this appeal. This was because a pre-hearing conference had been scheduled on this appeal for November 20, 2012 and John Day, the President of PDS, was off-island. At that time, GTA had already requested a hearing on this appeal, so there was no reason for PDS to separately request a hearing.

At the Pre-hearing Conference on November 20, the Public Auditor announced that the three pending appeals would be consolidated. The question was also raised whether the parties would waive the hearing in the appeals. Undersigned counsel was aware that PDS was willing to waive hearings on the appeals in OPA-PA-12-017 and 018 in order to expedite decisions in those appeals. However, since GTA had requested a hearing in 016 (and in fact the November 20 Conference itself was a Pre-hearing Conference in 016), undersigned counsel had not discussed with John Day whether PDS would waive the hearing in 016. There was no reason for the issue to come up since GTA had already requested a hearing.

Undersigned counsel then mistakenly assumed that since PDS would waive the hearing in 017 and 018, it would likewise be willing to do so in 016. This was incorrect. In 016, it will be important for witnesses to explain why GSA made a correct evaluation of the PDS and GTA bids. Technical witnesses will be necessary for that purpose. In addition, at the hearing, PDS intends to introduce into evidence the actual telephone that GTA intended to provide under the IFB. PDS believes the Hearing Officer will be able to immediately recognize, as GSA did, that the phone did not comply with the IFB requirements.

Undersigned counsel quickly corrected this error by a filing on November 26, 2012, and there is no prejudice to GTA. It would be most unfair to deny PDS a hearing in 016, which would also deny the Hearing Officer the opportunity to hear

	In the Appeal of Teleguam Holdings, LLC et al.; OPA PA 12-016 Hearing Brief of Pacific Data Systems, Inc.	
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2	evidence which will be very beneficial in making the correct decision on this appeal.	
3	PDS notes that the OPA Procurement Appeal website for 016 has consistently reflected	
4	that a hearing is scheduled in this appeal for January 29, 2013, and PDS requests that the	
5	Hearing Officer now confirm that there will be a hearing in 016.	
6	DATED this day of January 2013.	
7	Respectfully submitted,	
8	BERMAN O'CONNOR & MANN	
9	Attorneys for PACIFIC DATA SYSTEMS, INC.	
10	By: See a Mann	
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