



Testimony and Chronology of Guam Telephone Authority Privatization Evaluation

Legislative Mandate

**OPA Report No. 04-10
September 2004**

Distribution:

Governor of Guam
Speaker, 27th Guam Legislature
Senators, 27th Guam Legislature
General Manager, Guam Telephone Authority
Chairman of the Board, Guam Telephone Authority
Guam Media via E-Mail



September 28, 2004

Honorable Vicente C. Pangelinan
Speaker and Chairman on Utilities and Land
27th Guam Legislature
155 Hesler Place
Hagatna, Guam 96910

Re: GTA Privatization

Dear Mr. Speaker and Senators:

I am here today to recommend approval of the privatization of the Guam Telephone Authority. As you know, this process has taken over six years, has spanned two administrations and GTA has invested over \$7 million thus far. It does not include the countless hours that GTA management and employees invested in privatization. Another \$1 million is expected to be paid before the process is completed, whether or not the Guam Legislature approves the privatization.

This is an historic time for the Government of Guam. It represents the first time that our government is poised to privatize a complete and total operation that heretofore had been performed exclusively by a government entity. While the Government of Guam in the past has privatized certain services, it has not privatized an entire government entity. We have come to a fork in the road: having decided by statute to privatize GTA, should this privatization agreement be approved or disapproved?

Among the questions you may be considering is whether the evaluation of the bids was done in a fair and reasonable manner, consistent with the privatization objectives and statutes. Was the TeleGuam Holdings' offer the best of the three proposals submitted?

As the observer of the evaluation process, I can say without hesitation or qualification that the evaluations were fair, deliberative and independently conducted. As dictated by law, there was no influence from GTA management or the GTA Board. I am confident that any reasonably knowledgeable person, who is provided access to all the bid documents from the three bidders, would come to the same conclusion. That conclusion is that TeleGuam Holdings met all six of the evaluation criteria and in some cases exceeded the criteria. Of the three bidders, TeleGuam Holdings submitted the best offer.

For a more detailed discussion of my observations of the evaluation, see the attached OPA separate report.

The Asset Purchase Agreement (APA) is the memorialization of TeleGuam's bid proposals into legal form. The initial APA was made a part of Public Law 26-70. The

negotiations of the APA for all intents and purposes were done exclusively by the procurement advisors Robert Hager and Richard Stolbach of Patton Boggs.

GTA's local legal counsel, John Unpingco of Lujan Unpingco Aguigui & Perez, was brought in to assist in local procurement issues, ground leases and other relevant areas. Mr. Unpingco was particularly helpful in those closing ten days of the negotiations when he repeatedly raised relevant questions to assure that the deal being structured would provide the greatest benefit for all of Guam. Mr. Unpingco's involvement was critical in gaining an understanding of the detailed and complex Asset Purchase Agreement. Overall, in my view, the negotiations were handled professionally, effectively and resulted in a final agreement that exceeded TeleGuam's original offer.

If the Legislature approves the privatization of GTA, our government will have reached a milestone in its maturation and development. I believe that Guam will benefit economically and technologically and that a vast array of new highly skilled service-oriented employment opportunities will be opened to our community if the sale of GTA is ratified. I am also confident that the Public Utilities Commission will play its role in keeping rates and service availability within the means of the people of Guam.

We also wish to express our deep gratitude to the Guam Legislature for the trust and confidence they bestowed upon the Office of the Public Auditor as the Negotiations Observer. The proposed privatization of the Guam Telephone Authority is an historic event for the people of Guam. We are privileged to have been a participant.

Senseramente,

A handwritten signature in dark ink, appearing to read 'Dor Brooks', written in a cursive style.

Doris Flores Brooks, CPA, CGFM
Public Auditor

Attachment: OPA Report 04-10



Chronology of Guam Telephone Authority Privatization Evaluation

Pursuant to Public Law 26-70, Section four, the Public Auditor was designated the Negotiations Observer of the Guam Telephone Authority (GTA) privatization. The Negotiations Observer shall monitor GTA's evaluation of the privatization proposals and GTA's privatization negotiations. The following is a chronology of my observations.

Bid opening on Guam

On Monday, June 7, 2004, the bid opening, which the general public was permitted to witness, was held in the GTA conference room. The three bidders were:

- The Carlyle Group
- Tele-Guam Holdings, LLC
- Tele-Media Communications of Guam, LLC

Subsequently, the bids were transmitted to the evaluation team in Honolulu by Rob Hager, who e-mailed electronic versions of the bids and hand carried actual bid documents.

Bid evaluations in Honolulu

The evaluation team members met in Honolulu, Hawaii to evaluate the GTA privatization proposals. The evaluation team members were:

- GTA procurement advisors, Patton Boggs LLP represented by Robert Hager and Richard M. Stolbach.
- Financial consultants, IBM Consulting represented by Andrea Pappas.
- Madison Park Associates (formerly Price Waterhouse Consulting) was subcontracted by IBM Consulting and represented by Carl O Thorsen, Gerard J. Mulcahy, and Walter L. Schweikert.
- GTA employees' advisor, Bearing Point (formerly KPMG Consulting) represented by Joel F. Steadley and Frank Kim.
- GTA employees' representative, Ray Sayas.
- Negotiations Observer, Office of the Public Auditor represented by Public Auditor Doris Flores Brooks.

The GTA privatization legislation did not allow the GTA Manager or Board to be involved in the evaluation process therefore, neither Larry Perez nor any Board member participated.

In my initial reading of the three bids, I found that two of the bidders were generally more substantive in their proposals, and between the two, one bidder had a slightly more detailed proposal. From the employee perspective, that same bidder appeared to also have a better compensation package.

The criteria to evaluate the proposals as enumerated in P.L. 25-126 are:

- Address GTA Employee Issues
- Contain Rates and Improve Services
- Retain Local Identification
- Assure GTA's Future Viability
- Sustain Telecommunications Growth on Guam
- Minimize Financial Exposure to the Government of Guam with a minimum bid of \$130 million

Proposals are to be evaluated based on a numeric score, on an absolute and comparative basis, outlined in P.L. 25-126:

- 0 - Offer does not meet Mandatory Requirement
- 1 - Offer meets but does not materially exceed Mandatory Requirement
- 2 - Offer materially exceeds the Mandatory Requirement
- 3 - Offer significantly exceeds the Mandatory Requirement

It should be pointed out that with such a small range in the scoring, the differentiation between companies could be as small as one or two points.

Two groups, the Madison Park consultants (Carl, Gerard, and Walter) and the GTA employee evaluation team, Bearing Point (Joel and Frank), were designated to score the three bidders. Each group reviewed the proposals in separate locations and each group member made individual evaluations.

On Monday Honolulu time, June 7, each of the three Madison Park consultants presented their scores for each bidder based on the mandated criteria. The preliminary scores for each bidder were posted and color-coded for everyone to see. The rationale for the score each bidder received was discussed at length until a consensus was reached by the group. Other members of the evaluation team from Patton Boggs and myself, participated in these discussions by asking questions and providing comments on the scores. Andrea of IBM was the scribe during the evaluation. Highlights of these discussions follow:

- When all the scores were tallied, the initial raw scores for two of the companies were nearly the same in four categories; differentiation in scores came in the areas of contain rates and bid price.

- In the criterion of contain rates, one company stated it would hold rates for five years, whereas the other company stated it would increase rates the first, third and fifth year. The third bidder did not specifically address the issue of rates so a clarifying question was to be raised.
- The minimum bid under law is \$130 million. All three bidders met the minimum bid but each bidder offered a different price. However, upon further review, one bidder by its conditions may have inadvertently adjusted its price downward, so a clarifying question would be raised with that bidder. Similarly, another bidder by its condition for payment above the minimum, in turn generated more questions.
- The third company's proposal appeared to lack information in several areas raising more questions for this company therefore, receiving the lowest score of the three bidders.
- There were questions to be asked of all bidders with the most questions for the third company. Because of the number of questions, concern was raised about the third company's responses as they may be given the opportunity to present, in essence, a more comprehensive proposal. However in the end, just as Tele Blue was given an opportunity to respond to questions that arose from its proposals, this company would also be given the opportunity to respond to questions. In the end, questions would be e-mailed to all three bidders for clarification on their respective bids.

At the end of the day, there was a general consensus from the entire evaluation team including the Patton Boggs attorneys and myself, as to the preliminary scores assigned to each of the bidders thus far. This initial evaluation of the scores was consistent with my own reading of the bid documents.

From this initial rough score, a short list of two bidders was determined, but further evaluation would be done upon receipt of answers to questions posed to the bidders. At this stage, it could not be determined if the third company was a qualified bidder.

On the second day, June 8, the Bearing Point consultants gave their analysis of the employment compensation. The GTA employees' representative, Ray Sayas, was subsequently briefed by Joel and Frank. Ray had access to only those portions of the bids pertaining to employee benefits and related issues. The names of the bidders were not disclosed to Ray and he was not present at any of the evaluation meetings due to confidentiality issues.

The Bearing Point scoring seemed consistent with the Madison Park consultants' scoring. Although they again found one company's proposal deficient, there were questions for all three bidders regarding employee issues. Andrea was again the scribe for these discussions.

Based on the information provided, the company that was rated the highest by Madison Park was also rated the highest by the Bearing Point consultants in the various employee issues. Likewise, the rankings of the other bidders remained at second and third. These scores were also consistent with my own initial evaluation of the three proposals.

The Madison Park consultants presented their *PowerPoint* scoring evaluation to everyone, including Joel and Frank of Bearing Point who had not yet seen the Madison Park preliminary evaluation. This afforded the Bearing Point consultants the opportunity to ask questions about the evaluation. In the end, both Joel and Frank were in general agreement of the scoring and evaluation.

When the scores of both Madison Park and Bearing Point were added together, the same company was still in the lead, with the same results for the other two bidders. Many questions needed to be asked of this third company in order to determine if any points could be assigned.

I requested more information on each category to clarify why each company received their respective scores. This was so that a reasonably knowledgeable person would be able to come to the same conclusion as the consultants did in the overall rankings of the three companies.

The third day, June 9, focused on refinement of the questions for the bidders. Rob Hager would e-mail the respective questions to the bidders and forward the responses to all the consultants. The responses would be reviewed to determine if the scores that were assigned in the initial evaluation would change.

At the end of the day, a conference call was placed to Larry Perez of GTA, to provide him with an overview of the process. No mention was made as to which company was first, second, or third.

On Thursday, June 10, the evaluation team met to finalize the list of questions to the respective bidders and determine due dates. The questions would be e-mailed to the bidders by the close of business that day. Responses were due by Friday, June 18th. The evaluation team was expected to finalize the scoring the week of June 21, based on the responses.

As observer, I would be contacted via e-mail as to when the conference call would take place for the second evaluation and what adjustment of scores would be made based on the responses of the bidders.

Subsequent update on evaluation

The conference call took place Monday, June 21st. During the two-hour call, discussion centered on the responses from the bidders and the adjusted scores assigned to each bidder based on their responses. At this juncture, the initial lead bidder still ranked first, with the remaining bidders holding their respective positions. However, the lowest ranked bidder received more points based on their responses therefore, this company was not the distant third as before and was now determined to be a qualified bidder.

Negotiations with bidders, best and final offer

During the next several weeks, negotiations followed with each of the bidders to enhance their respective offers to come to their best and final offer. Each bidder did indeed enhance various aspects of their initial offers in areas such as price and employee benefits. These negotiations

were handled exclusively by Rob Hager and Richard Stolbach. While I was kept apprised of the process and certain aspects of the negotiations, I did not participate in the negotiations. I was present for two conference calls, one with the second lead bidder and the other call with the lead bidder in July.

At the beginning of July, Rob Hager later informed me that they would be meeting in California with the lead bidder to begin detailed negotiations. I inquired whether Larry would be attending the California negotiations. Rob indicated no, on the premise that it would be better if the client was not present so that they (Patton Boggs) could have greater leverage in the negotiations.

During this time, e-mails were going back and forth between Patton Boggs, the bidders, and Larry. I believe I was copied on the majority of these e-mails. In the interest of disclosure, there was an incident when Larry inadvertently sent one of the e-mails to the lead bidder as the negotiations were narrowing. The e-mail indicated that the lead bidder was in the lead and that Larry was anxious to close the deal.

Rob Hager immediately phoned me to advise me of what happened. The explanation of what happened sounded reasonable. When you begin to type in a name for e-mail correspondence, *Outlook* will automatically select the first name from your address book. If similar names exist, you have to be specific about which name from the address book you are sending the e-mail to, otherwise *Outlook* will default to the first name. I experienced a similar incident when I sent an e-mail to Lou Perez, when it should have gone to a Lourdes Perez. I concluded that there was nothing that could be done at this stage but to continue with the negotiations.

In the first week of August, I learned that negotiations were in earnest with the lead bidder. Rob called me to brief me on the progress of the negotiations, indicating that they were successful in increasing the total bid price. Rob also informed me that he, together with an associate, Mike, would be in Guam the second week of August to complete much of the due diligence issues with regard to the Asset Purchase Agreement. Rick Stolbach would remain in Washington D.C. to continue negotiations with the lead bidder's attorney team.

Final negotiations

On August 25, 2004, Rob Hager called me to discuss Larry's desire to postpone the GTA board meeting scheduled for Thursday, August 26th. Rob asked for my assistance to allay any of Larry's concerns. In discussing the matter further with Rob, I stated that I could appreciate Larry's reluctance to approve and sign off on a document unless he was comfortable and understood the terms.

In his e-mail of August 25, Larry said that although he was briefed on general areas of the Asset Purchase Agreement (APA), he had just received the latest version of the APA and related documents. Because of its complexity, he had not had sufficient review time to educate himself on the specifics of the APA in time for the GTA Board meeting of Thursday, August 26.

A meeting was then held with Larry Perez, local counsel John Unpingco, and myself to determine the next steps. From this meeting it became clear that Larry needed more time to review the agreement before a final decision could be made. Local counsel also expressed concern that his firm was brought in at the tail end to provide assurance to GTA. It was decided that in the interest of moving forward, a review of the documents would take place and Patton Boggs attorneys would brief us on what happened during the negotiations with respect to essential parts of the APA and other privatization issues.

On Wednesday afternoon, August 25, an extensive conference call took place with Rick Stolbach, Rob Hager, Larry Perez, John Unpingco and myself to discuss the salient points of the APA.

The involvement of local counsel John Unpingco was a welcome addition and very helpful for me as well as for Larry. John took the lead in seeking clarification on a variety of issues as he had already begun the review of the APA and had many questions. My review of the APA was limited to the initial APA that was submitted with the bid documents back in June. I had not seen the latest version of the APA until that day.

While I was able to review the APA, as a non-legal person, there were many technical areas that were not clear to me. At the conclusion of this conference call with Rick Stolbach, the background and nuances as to why certain things were in the agreement became more lucid.

Time line urgency

Thursday afternoon, August 26, another conference call took place with Rick Stolbach in Washington and on Guam; Rob, Larry, legal counsel John Unpingco and staff attorney Delia Lujan, and myself to discuss the urgency of the time lines. The buyer had stipulated that if the approval of the Legislature was not concluded by November 1, 2004, the buyer had the right to walk away. The urgency of the September 1, 2004, date now became apparent. Submission of all documents by September 1, 2004, would give the Legislature 60 days to review and act on the approval. Local counsel John Unpingco continued to seek resolution and clarification of various issues. After this call, I felt reasonably informed as to the general contents of the APA.

One area I requested be included in the APA was that the closing date numbers be audited immediately rather than wait for GTA to review and then subsequently request an audit. The rationale for this request was that there would be no more GTA employees and who would be tasked to review the closing numbers to determine reasonableness and acceptance. The OPA could review the audited numbers but does not have the resources to conduct the audit of the final closing numbers.

Briefings and negotiations with the lead bidder on the APA, which included issues raised by local counsel, continued Friday and over the weekend with Rob, Larry, and John. I did not participate in those briefings and negotiations.

Briefings to GTA employees

GTA employees' consultants Joel Steadley and Frank Kim of Bearing Point, arrived the week of August 23rd to brief the employees on the details of the winning bid. Although the winning bidder was not identified, it appeared many of the employees had already surmised the identity of the winning company.

Briefings to the GTA Board

Madison Park consultant Gerard Mulcahy, also arrived to brief the GTA Board. A scheduled work session was held the evening of August 25, to brief the Board on how the winning bidder was selected and to apprise them of the general conditions of the winning bid. Gerard was joined by Rob Hager, Joel Steadley and Frank Kim for these presentations. Unlike the GTA employees, the winning bidder was identified to the Board.

At the work session, Larry and Rob informed the Board that Larry was not ready to present the signed Asset Purchase Agreement for the Board's ratification at the scheduled Board meeting of Thursday August 26, 2004. This was primarily due to the fact that negotiations were still on going. Because of the requirements of P.L. 26-70, Board members, however, were not apprised of the details of the negotiations or what areas still remained to be negotiated. Board members questioned their role on the ratification of the agreement; that they were being forced to be a "rubber stamp" to the process. I could appreciate and empathize with the Board members' apprehension and concerns.

Discussions followed as to why and what would be done at the Thursday Board meeting. Consensus was reached that the Board would meet as scheduled to announce that GTA was still in final negotiations with the winning bidder. As planned, Larry Perez announced at the Board meeting, that they were not ready to reveal the winning bidder and a formal press release was issued to this effect. Chairman Carl Peterson announced that the Board would reconvene on Tuesday August 31, 2004 at 10 a.m. to announce the winning bidder.

Announcement of winning bidder

On Monday evening, August 30, another work session was held to brief the Board on the progress of the negotiations. At this time a presentation of the salient points of the Asset Purchase Agreement with the lead bidder was given by Patton Boggs.

At this juncture, there were still one or two items that had not been resolved but plans were still on for Larry to sign the Asset Purchase Agreement and for the Board to ratify the agreement at the August 31st board meeting.

On Tuesday August 31, at the GTA board meeting, the winning bidder was announced—TeleGuam Holdings LLC.

There were still other loose ends to tie up, resolution of the Escrow Agreement, the level playing field legislation for the Public Utilities Commission, clarifying legislation on the sale, some GTA employee legislation, and other related issues. These matters were to be handled by Patton Boggs, Nixon Peabody (GTA's FCC counsel) John Unpingco, and Larry Perez.

On September 7, 2004, this Office received the final Asset Purchase Agreement and relevant documents that had been transmitted to Governor Felix Camacho on September 1, 2004.

The Legislative Public Hearing on the GTA privatizations is scheduled for September 28, 2004.

Conclusion

I have concluded that given the requirements of law, there has been a very deliberative review of the three proposals. The proposals and the scores have been duly vetted and there has been opportunity for all players to ask questions and participate in the discussions. Consultants did various analyses such as present value calculations, rate of return, cash flows, and price and line comparisons. All this was done without the involvement of GTA Management or the GTA Board. The leading company was independently rated and received the highest score without any influence by GTA management or the GTA Board.

As the observer of the evaluation process, I can say unequivocally the evaluations were fair and deliberative and independently conducted. There was no influence from GTA management or the GTA Board as dictated by law. I am confident that any reasonably knowledgeable person, who is provided access to all the bid documents from the three bidders would come to the same conclusion. That conclusion is that TeleGuam Holdings had the best overall bid meeting all six of the evaluation criteria and in some cases exceeded the specific criteria.

Also, in my view, the negotiations were handled professionally and effectively and resulted in a finalized agreement that exceeded the terms that TeleGuam Holdings originally offered.

Suggestions for future privatizations

For future privatizations, I would like to suggest that the Legislature:

- Include agency management and at least one member of the agency board to be present during the evaluation process. GTA management could have contributed greatly to the evaluation process particularly in the criteria of *Assure GTA's Future Viability* and *Sustain Telecommunications Growth*.
- Include agency local legal counsel in the negotiations of the privatization agreement. After outside experts have come and gone, it will be local legal counsel who will be left to answer questions and resolve disputes in interpretations.

- Expand the scoring criteria beyond 0, 1, 2 and 3. This would allow evaluators greater latitude for differentiation in scoring of bid proposals.

We also wish to express our deep gratitude to the Guam Legislature for the trust and confidence they bestowed upon the Office of the Public Auditor as the Negotiations Observer. The proposed privatization of the Guam Telephone Authority is an historic event for the Government of Guam and the people of Guam. We are privileged to have been a participant.

OFFICE OF THE PUBLIC AUDITOR

A handwritten signature in black ink, appearing to read 'Dor Brooks'.

Doris Flores Brooks, CPA, CGFM
Public Auditor