

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

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|------------|--|---------------|---|
| To: | Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165 Email: jbenavente@gpagwa.com | From: | Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability |
| | Mr. D. Graham Botha, Esq General Counsel Guam Power Authority 688 Route 15, Suite 302 Mangilao, Guam, 96913 Phone: (671) 648-3203/3002 Fax: (671) 648-3290 Email: gbotha@gpagwa.com | Pages: | 13 (including cover page) |
| CC: | Mr. Joshua D. Walsh, Esq. Mr. Edwin J. Torres, Esq. Attorneys for Appellant Track Me Razzano Walsh & Torres, P.C. Suite 100, 139 Murray Blvd. Hagatna, Guam 96910 Phone: (671) 989-3009 Fax (671) 989-8750 Email: jdwalsh@rwtguam.com ; etorres@rwtguam.com | Date: | July 1, 2021 |
| | | Phone: | (671) 475-0390 x. 204 |
| | | Fax: | (671) 472-7951 |

Re: OPA-PA-21-002 Notice of Receipt of Appeal

For Review
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Comments:

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

July 1, 2021

John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977
Hagåtña, Guam 96932

VIA FACSIMILE: (671) 648-3165

Re: Notice of Receipt of Appeal – OPA-PA-21-002

Dear Mr. Benavente,

Please be advised that Track Me Guam, LLC (hereinafter referred to as “Track Me”) filed an appeal with the Office of Public Accountability (OPA) on June 30, 2021, regarding GPA’s denial of Track Me’s protest related to the procurement for Fleet and Fuel Management Software Services for GPA’s fleet (Invitation for Bid No. GPA-IFB-024-21). OPA has assigned this appeal case number OPA-PA-21-002.

Immediate action is required of GPA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first three pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Friday, July 9, 2021**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Division 4, Chapter 12, §12105, by **Friday, July 16, 2021**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to Track Me. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that GPA provide one original and one electronic file of the said record, which

will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Ten Pages of the Notice of Appeal – OPA-PA-21-002

Cc: Joshua D. Walsh, Esq. and Edwin J. Torres, Esq., Attorneys for Appellant Track Me

RAZZANO WALSH & TORRES, P.C.

JOSEPH C. RAZZANO
JOSHUA D. WALSH
SUITE 100, 139 MURRAY BLVD.
HAGÁTÑA, GUAM 96910
TELEPHONE: (671) 989-3009
FACSIMILE: (671) 989-8750

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

PART I.

In the Appeal of

Track Me Guam, LLC,

Appellant.

DOCKET NO. OPA-PA- 21-002

NOTICE OF APPEAL

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 6/30/2021

TIME: 5:40 AM/PM BY: [Signature]

FILE NO OPA-PA: 21-002

PART II: APPELLANT INFORMATION

| | |
|---|---|
| Appellant's Name | Track Me Guam, LLC |
| Appellant's Mailing Address | P.O. Box 218007, Barrigada Guam 96921 |
| Appellant's Business Address | Harmon Mini Storage, 311 East Harmon Industrial Park Road, Unit C, Tamuning, Guam 96913 |
| Appellant Representative's Direct Email Address | maps@trackmeguam.com |

Appellant is represented by legal counsel in this appeal. For purposes of this appeal, please direct correspondence to Track Me Guam's ("TrackMe") counsels, Joshua D. Walsh and Edwin J. Torres of Razzano Walsh & Torres, P.C.

| | |
|--------------------------------|--|
| Counsel's Mailing Address | 139 Murray Blvd. Ste. 100, Hagatna, Guam 96910 |
| Counsel's Telephone | 671-989-3009 |
| Counsel's Facsimile | 671-989-8750 |
| Counsel's Direct Email Address | jdwalsh@rwtguam.com etorres@rwtguam.com |

PART III: APPEAL INFORMATION

- A. Purchasing Agency: Guam Power Authority.
- B. Solicitation Number: GPA-IFB-024-21.
- C. The Decision being appealed was provided to the Appellant on March 8, 2021. The Decision was made by the Head of the Purchasing Agency, Mr. John M. Benavente, P.E.
- D. This Appeal is made from the Denial of Procurement Protest provided to TrackMe on June 16, 2021.
- E. The name of the only competing offeror known to Appellant is: PTI Pacifica, Inc. dba: IT&E ("IT&E").

PART IV: STATEMENT OF GROUNDS FOR APPEAL

A. THE GROUNDS FOR APPEAL

1. Relevant Procedural and Factual History

The Guam Power Authority issued Bid Invitation GPA-024-21 seeking Fleet and Fuel Management Software Services for GPA's fleet. Bids were opened on January 28, 2021, and TrackMe was informed on March 8, 2021, that an award was recommended for IT&E.¹ TrackMe initiated an agency level protest on March 12, 2021, as the selection of IT&E under the IFB would mean that GPA would be selecting a non-responsive and ultimately non-responsible bidder, since IT&E's proposed tracking solution for GPA cannot comply with requirement C.1-17 Fuel dispense tracking as specified in the IFB.²

Following that initial protest, TrackMe obtained new information discovered on March 29, 2021, following GPA's production of documents to TrackMe, pursuant to a Sunshine Request submitted to GPA with TrackMe's first protest. From the documents produced, TrackMe identified four (4) issues with IT&E's bid that render the bid non-responsive and IT&E non-responsible: (1) inability to comply with requirement C.1-17 of the IFB; (2) inability to comply with requirement B.6 of the IFB; (3) inability to comply with requirement C.1-13; and (4) inability to comply with requirement C.2. Those failures were identified to GPA in TrackMe's correspondence

¹ The Notice to TrackMe that it was not selected for Award is attached to this appeal as **Attachment A**.

² TrackMe's Original Protest of March 12, 2021, is attached to this appeal as **Attachment B**.

of April 6, 2021.³ On June 16, 2021, TrackMe received correspondence from GPA Denying its Protests of March 21 and April 6, 2021.⁴ This Notice of Appeal to the OPA followed.

2. **GPA's Protest Decision is Flawed, in that GPA did not substantively engage with the merits of TrackMe's protest, allowed IT&E to answer the question of responsiveness for the agency, and allowed IT&E to supplement its bid response.**

GPA's June 16, 2021, denial of TrackMe's protests did not substantively address the allegations that IT&E's was non-responsive to the IFB. Rather than conduct its own inquiry into the responsiveness of IT&E's submitted bid, GPA instead "requested that IT&E respond to each of the allegations raised" in the protests.⁵ GPA then accepted those responses, and denied the protest in a 1 ½ page letter that addressed none to the technical deficiencies raised by the protests. This constituted error by the agency, in that GPA (1) did not conduct its own examination of the merits of TrackMe's protests and instead simply asked IT&E to confirm if IT&E were indeed responsive, and (2) IT&E's supplemental responses to GPA to demonstrate responsiveness constituted an impermissible supplementation of its bid package opened on January 28, 2021.

³ That correspondence was sent to GPA on April 6, 2021, and is attached to this Notice of Appeal as **Attachment C**. TrackMe informed GPA in that correspondence that "To the extent that the Guam Power Authority considers these new matters not properly part of TrackMe's first protest submitted on March 12, 2021, GPA should consider this a second protest of Invitation for Bid GPA-024-21, Fleet and Fuel Management Software Services for the Authority's Fleet."

⁴ GPA's Protest Denial is attached to this Notice of Appeal as **Attachment D**.

⁵ Denial of Protest, pg. 1.

3. Despite IT&E's assurances to GPA, IT&E's bid is non-responsive to key requirements of the IFB.

GPA's anemic Protest Denial contained no substantive response to the material technical issues raised in TrackMe's protests. More, the post bid opening supplements by IT&E relied upon by GPA to determine IT&E's responsiveness — documents obtained on June 23, 2021, through Guam's freedom of information Sunshine Act — show that IT&E only addressed its failure to comply with IFB requirement C.1-17, and did not address the other material failings that formed the basis of TrackMe's April 6, 2021, Protest. GPA's failure to address those issues in its Protest decision violates procurement law, and leaves the technical failings of IT&E's submission as further grounds for appeal.

a. Failure to Comply with Requirement C.1-17.

IT&E is supplying GPA with "DFM 500D CAN," a differential fuel flow meter with associated software. Requirement C.1-17 mandates that the bidder provide a product that will supply data to include "date and time fuel dispense, amount of fuel dispensed in gallon, vehicle and/or equipment fueled, and personnel who dispensed the fuel." The DFM 500D CAN, however, does not have the capability of identifying what vehicle is being fueled nor the personnel who dispenses the fuel from the vehicle as required by GPA. GPA's IFB specifies a system that can monitor fuel dispensing, but the Wialon branded technology is only for fuel *consumption*, not fuel *dispensing*. More, the fact remains that IT&E's solution can only fulfill the requirements of the IFB by integrating the software proposed by IT&E with a Russian partner hardware solution from a Russian partner unprepared to do work in the United States market.

The DFM 500D CAN also cannot identify who the specific individual is dispensing the fuel. This system requires that the driver of the vehicle is the same person that should fuel the vehicle — a requirement not specified by GPA and contrary to actual practice. IT&E is non-responsive because it requires steps not identified in the IFB. Documents provided by the Agency also shows that the “iButton Key Fob” accessory offered by IT&E provides data on the person dispensing the fuel. The iButton, however, only provides the identity of the driver operating the vehicle. It does not identify the vehicle being fueled nor does it identify the personnel who specifically dispensed the fuel, both of which are key to successfully monitoring the data points set out in C.1-17. Thus, this accessory will not meet the C.1-17 requirement.

Additionally, the DFM 500D CAN only work with vehicles that have diesel fuel engines, not gasoline engines. The manual for the item states the DFM only works for diesel fuel, heating oil, burner oil, motor fuel, biofuel, and other liquid fuels and mineral oils with kinematic viscosity of 1.5 to 6 mm²/s.⁶ GPA’s vehicle listing identifies only vehicles that use gasoline engines. Installing the DFM 500D CAN will lead to problems that make IT&E a non-responsible bidder. First, installing this onto GPA’s gasoline vehicles may void the warranty for the vehicles. Second, gasoline is highly flammable, and installing this device would be very dangerous.

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⁶ The relevant page from the manual, page 14, is attached to this Notice of Appeal as **Attachment E**.

b. Failure to Comply with Requirement B.6

The IFB requires that the awardee be able to install the product within one (1) hour starting upon scheduled time of installation and/or replacement. TrackMe's investigation, however, of the DFM 500D CAN identified in GPA's sunshine response, has revealed that the installation time for the DFM 500D CAN is approximately four (4) hours. According to a third party fleet management provider utilizing the DFM 500D CAN, the DFM 500D CAN requires at least four (4) hours to install the product and software. This is clearly more than the one (1) hour mandated by GPA. IT&E's use of the DFM 500D CAN is non-responsive to the B.6 requirement, and the Agency protest denial does not address this issue.

c. Failure to Comply with Requirement C.1-13

C.1-13 requires that the bidder provide a system that can produce reports exportable to MX EXCEL, MS Word, CSV, and PDF file formats. MiFleet, IT&E's software, however, can only export to html, PDF, EXCEL, XML, and CSV.⁷ See attached picture of MiFleet's export page attached. The exportable formats do not include MS Word. Therefore, IT&E does not comply with C.1-13. IT&E is non-responsive to this requirement, and the Agency protest denial does not address this issue.

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⁷ The relevant picture of the MiFleet export page is attached to this Notice of Appeal as **Attachment F**.

d. Failure to Comply with Requirement C.2

C.2 requires the bidder provide a system that allows for remote disabling of a vehicle, unlocking of vehicle doors, and issuing of software updates. IT&E notified GPA that it would comply but GPA must “deliver the requirement i.e. older vehicle models may not be able to support fleet tracking application.”⁸ IT&E’s further response supplied by GPA’s sunshine request stated “Doing door lock/unlock feature that is controllable through the Electronic Control Unit (ECU) will only be possible with manufacturer’s Programming Guide for the Lock/Unlock for the specific vehicle models provided to IT&E by the Guam Power Authority.”⁹ This is not compliant with the C.2 requirement because IT&E is requesting GPA provide an accommodation not specified in the IFB. Nowhere in the IFB does it state GPA will provide access to the ECU if necessary. IT&E is simply non-responsive to this requirement because it requires an extra step not identified in the IFB, and the Agency protest denial does not address this issue.

B. RULING Requested

GlidePath respectfully requests that the Office of Public Accountability Order the following:

- (1) That GPA disqualify IT&E from eligibility for Award under this IFB, as IT&E’s proposal was non-responsive and did not materially comply with the technical requirements of the IFB established by GPA;
- (2) That GPA determine IT&E to be a non-responsible offeror given the

⁸ The relevant page from IT&E’s bid submission is attached to this Notice of Appeal as **Attachment G**.

⁹ IT&E’s letter dated February 11, 2021, is attached to this Notice of Appeal as **Attachment H**.

inability of its proposed solutions to the IFB to safely and efficiently perform as specified by GPA; and

- (3) That GPA award GPA-IFB-024-21, to TrackMe as the next lowest price responsive bidder to the IFB

C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

Submitted with this appeal are the following supporting exhibits, evidence, and documents:

- (1) The Notice to TrackMe that it was not selected for Award is attached as **Attachment A**.
- (2) TrackMe's Original Protest of March 12, 2021, is attached as **Attachment B**.
- (3) Correspondence sent to GPA on April 6, 2021, is attached as **Attachment C**.
- (4) GPA's Protest Denial is attached as **Attachment D**.
- (5) DFM Fuel Flow Meters Manual, page 14, is attached as **Attachment E**.
- (6) MiFleet export page is attached as **Attachment F**.
- (7) The relevant page from IT&E's bid submission is attached as **Attachment G**.
- (8) IT&E's letter dated February 11, 2021, is attached to this Notice of Appeal as **Attachment H**.

TrackMe anticipates providing further documentation, including independent expert engineering reports, to substantiate its claims as GPA submits the full contracting procurement record to the OPA, and allows TrackMe to review the procurement record in full.

PART V: DECLARATION RE COURT ACTION

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court. The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. The undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Respectfully submitted this 30th day of June, 2021.

RAZZANO WALSH & TORRES, P.C.

By: 

JOSHUA D. WALSH
EDWIN J. TORRES
Attorneys for Appellant
Track Me Guam, LLC



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-002 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Thu, Jul 1, 2021 at 8:30 AM

To: John M Benavente <jbenavente@gpagwa.com>, Graham Botha <gbotha@gpagwa.com>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-21-002. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA
Auditor
Office of Public Accountability – Guam
www.opaguam.org
Tel. (671) 475-0390 ext. 204
Fax (671) 472-7951

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