

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



FAX

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:	12 (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:	November 19, 2021
		Phone:	(671) 475-0390 x. 204
		Fax:	(671) 472-7951

Re: OPA-PA-21-002 Decision

For Review
 Please Comment
 Please Reply
 Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

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



**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

1
2
3
4
5
6
7
8 In the Appeal of) **Appeal No: OPA-PA-21-002**
9)
10 Track Me Guam, LLC,) **DECISION**
11)
12 Appellant.)
13 _____)

I. INTRODUCTION

14 This is the Decision of the Public Auditor, pursuant to 2 G.A.R. § 12110, for Appeal No.
15 OPA-PA-21-002. Appellant TRACK ME GUAM, LLC (“Track Me”) filed its appeal on June 30,
16 2021, for review of the GUAM POWER AUTHORITY’s (the “GPA”) award of a contract under
17 GPA-IFB-024-21 for the procurement of Fleet and Fuel Management Software Services for the
18 Authority’s Fleet to PTI PACIFICA INC. dba IT&E (“IT&E”). The Appeal was heard on
19 September 7, 2021, before Public Auditor Benjamin J. F. Cruz. Joshua Walsh, Esq. appeared on
20 behalf of Appellant Track Me. D. Graham Botha, Esq. appeared for Respondent GPA.
21

22 The Public Auditor holds that the procurement record is materially incomplete that a
23 determination on whether GPA properly found IT&E’s bid to be responsive cannot be reached. The
24 award to IT&E shall be canceled, and GPA shall issue a new bid and properly maintain a complete
25 procurement record.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. JURISDICTION: STANDARD REVIEW

The decision of the Public Auditor under appeal is authorized by 5 G.C.A. § 5703. The determination of an issue, the findings of fact, and the decision of the Public Auditor are as stated in 5 G.C.A. § 5704.

a. FINDINGS OF FACT

The Public Auditor shall have the power to review and determine *de novo* any matter properly submitted. 5 G.C.A. § 5703 (a), and in reaching this Decision, has considered and incorporates herein the procurement record and all documents submitted by the parties, and has considered the testimony and arguments made during the hearing held on September 7, 2021. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1. On January 7, 2021, GPA issued Bid invitation GPA-024-21 seeking Fleet and Fuel Management Software Services for GPA’s fleet.
2. The procurement was established “to provide GPA’s Transportation Division with Fleet and Fuel Management Services for 200 vehicles to include web-based software, technical assistance, devices, installation, and replacement and/or removal of devices for GPA’s fleet.
3. GPA’s Transportation Division was responsible for developing the specifications for the IFB.
4. Pedro Sanchez, Management Analyst III, testified the bid specifications were developed from a previous IFB.
5. Two bidders, Track Me and IT&E, expressed interest in the IFB from January 7, 2021, to January 28, 2021, and both submitted bids in response to the IFB.

- 1 6. Prior to the submission of the bids, the bidders had an opportunity to submit questions
2 regarding the IFB. GPA issued Amendments I and II in response to these questions, and
3 other amendments to clarify the IFB.
4
- 5 7. On January 28, 2021, the bids were opened in the presence of company representatives,
6 who were also provided copies of the Abstract of Bids, which lists the two bids by Track
7 Me and IT&E indicating the following:
 - 8 a. Track Me: \$9,338.46 per month; and
 - 9 b. IT&E: \$5,628.00 per month
- 10 8. On February 9, 2021, the evaluation committee met and requested clarification from IT&E.
- 11 9. The evaluation committee requested further clarification on February 19, 2021.
- 12 10. On February 22, 2021, the evaluation committee met and determined that both bidders met
13 the required bid specifications, and recommended the lowest responsive and responsible
14 bidder be awarded.
- 15 11. The Bid Analysis dated March 8, 2021, recommended that Line Item No. 1.0 be awarded
16 to IT&E in the total amount of \$67,536.00 annually as being the lowest responsive and
17 responsible bidder.
- 18 12. On March 10, 2021, GPA signed the Certification of Procurement Record.
- 19 13. On March 12, 2021, Track Me filed an agency-level protest. In their protest, Track Me
20 alleged that the selection of IT&E under the IFB would mean that GPA would be selecting
21 a non-responsive and ultimately non-responsible bidder since IT&E proposed tracking
22 solutions for GPA that cannot comply with requirement C.1-17 (Fuel dispense tracking) as
23 specified in the IFB.
24
25
26
27
28

1 14. On April 6, 2021, Track Me filed a supplement to their March 12, 2021 protest after they
2 obtained additional information on March 29, 2021, following GPA's production of
3 documents to Track Me in response to their Sunshine Request submitted with their protest.
4 Track Me identified four additional issues with IT&E's bid that further rendered their bid
5 non-responsive and IT&E non-responsible: (1) inability to comply with requirements C.1-
6 17, B.6, C.1-13, and C.2 of the IFB.
7

8 15. On June 16, 2021, GPA denied Track Me's protest.

9 16. On June 30, 2021, Track Me filed a procurement appeal with the Office of Public
10 Accountability (OPA)
11

12 17. In the appeal, Track Me raised the following issues: 1.) GPA did not substantively engage
13 with the merits of TrackMe's protest, allowed IT&E to answer the question of
14 responsiveness for the agency, and allowed IT& E to supplement its bid response. 2.) GPA
15 incorrectly determined IT& E's bid as responsive as IT&E failed to comply with
16 Requirement C.1-17, B.6, C.1-13, and C.2.
17

18 IV. ANALYSIS

19 This appeal concerns two main issues in that Track Me contends (1) IT&E's bid was non-
20 responsive as it did not comply with IFB requirements C.1-17, B.6, C.1-13, and C.2, and therefore
21 GPA should not have awarded the IFB to IT&E, and (2) GPA failed to maintain a complete
22 procurement record.
23

24 **A. The Procurement Record is Materially Incomplete that the Public Auditor cannot**
25 **determine whether GPA properly found IT&E to be a responsive bidder.**
26
27
28

1 In its March 12, 2021 protest letter, Track Me first brought their allegation that IT&E's bid
2 was non-responsive to IFB Requirement C-1-17, which required bidders to "Provide fuel dispense
3 tracking report for Authority's Service Truck (Official 6463). Data to include date and time of fuel
4 dispense, amount of fuel dispensed in gallons, vehicle and/or equipment fueled, and personnel
5 who dispensed the fuel."

7 Track Me contends IT&E has offered to supply GPA with "DFM 500D CAN", a
8 differential fuel flow meter with associated software. Track Me contends that the DFM 500 D
9 CAN, however, does not have the capability of identifying what vehicle is being fueled and not
10 the personnel who dispenses the fuel from the vehicle as required by GPA. The IFB specifies a
11 system that can monitor fuel dispensing, but the Wialon branded technology offered by IT&E is
12 only for fuel consumption, not fuel dispensing. IT&E's solution can only fulfill the requirements
13 of the IFB by integrating the software proposed by IT&E with a Russian partner hardware solution
14 from a Russian partner unprepared to do work in the United States market.

16 Track Me's position is that the DFM 500D CAN cannot also identify the specific
17 individual who is dispensing the fuel. This system requires that the driver of the vehicle is the
18 same person that should fuel the vehicle – a requirement not specified by GPA and contrary to the
19 actual practice of the agency. Track Me contends IT&E is non-responsive because it requires steps
20 not identified in the IFB. Documents provided by the Agency also show that the "iButton Key
21 Fob" accessory offered by IT&E provides data on the person dispensing the fuel. The iButton,
22 however, only provides the identity of the driver operating the vehicle. It does not identify the
23 vehicle being fueled nor does it identify the personnel who specifically dispensed the fuel, both of
24 which are keys to successfully monitor the data points set out in C.1-17. Thus, this accessory will
25 not meet the C.1-17 requirement.
26
27
28

1 Additionally, Track Me contends the DFM 500D CAN only works with vehicles that have
2 diesel fuel engines, not gasoline engines. The manual for the item states the DFM only works for
3 diesel fuel, heating oil, burning oil, motor fuel, biofuel, and other liquid fuels, and mineral oils
4 with a kinematic viscosity of 1.5 to 6 mm²/s. GPA's vehicle listing identifies only vehicles that
5 use gasoline engines. Installing the DFM 500D CAN will lead to problems that make IT&E a non-
6 responsible Bidder. First, installing this onto GPA's gasoline vehicles may void the warranty for
7 the vehicles. Second, gasoline is highly flammable, and installing this device would be very
8 dangerous.
9

10 After receiving the notification from GPA regarding Track Me's protest, IT&E emailed
11 GPA on March 16, 2021, asking what the grounds of protest were. On April 6, 2021, IT&E
12 emailed GPA providing a response in rebuttal to Track Me's protest, which included the
13 attachment of a document dated March 27, 2021 from DCS, and entitled " Bid Protest Response
14 RE: Invitation for Bid GPA-024-21". In the document, DCS directly responds to Track Me's
15 protest regarding requirement C-1.17:
16

17 This is not an accurate complaint or assessment:

- 18 1. DCS uses hosted Platform environment/data for Mifleet/Wialon, that is housed in
19 the USA.
- 20 2. GPS Tracker hardware is from manufacturer CalAmp (USA)
- 21 3. Flowmeter hardware is from Technoton (Belarus, a country in Europe)
22 (<https://www.iv-technoton.com/products/dfm-d/>)
- 23 4. The Flowmeter is not integrated into MiFleet/Wialon. It is integrated with the
24 CalAmp hardware. The CalAmp hardware is integrated into MiFleet/Wialon.
- 25 5. DCS (USA) is performing the flowmeter integration work with CalAmp.
- 26 6. The Flowmeter + measuring with CalAmp has already passed testing, which has
27 been used in previous sales opportunities. We have provided data below from that
28 opportunity.

29 Evaluation Committee Member Pedro Sanchez testified that his recollection is they
30 received the protest letter from Track Me and then requested clarification from IT&E. However,
31

1 there is no documentation in the procurement record to show correspondence between GPA and
2 IT&E requesting clarification and that GPA reviewed the IT&E response and made the
3 determination that IT&E's bid was responsive to C.1-17.
4

5 On April 6, 2021, Track Me filed a Bid Protest supplement identifying four (4) more issues
6 with IT&E's bid that render their bid non-responsive and IT&E as non-responsible. In addition to
7 C.1-17, Track Me contends IT&E's bid does not comply with requirements B.6, C.1-13, and C.2.

8 IFB requirement B.6 stated, "Estimated installation, removals and/or replacement of a
9 single device shall be one (1) hour starting upon scheduled time of installation and/or
10 replacement." Track Me noted the DFM 500D CAN in IT&E's proposal has an installation time of
11 approximately four (4) hours. Track Me makes this determination based on a third-party fleet
12 management provider utilizing the DFM 500D CAN that indicated the DFM 500D CAN requires
13 at least four (4) hours to install the product and software. This is more than the one (1) hour
14 mandated by the IFB, which would make IT&E's bid non-responsive to requirement B.6.
15

16 Sanchez testified that the committee decided based on the specification that it is an
17 estimated time and if any of the devices go over the estimated time, The Fleet Services Manager
18 has the authority to extend the time. However, there is nothing in the procurement record to
19 indicate this decision regarding IFB requirement B.6.
20

21 IFB requirement C.1-13 requires the bidder to "Provide upon request customizable reports
22 to be saved and/or exported to MS EXCEL, MS Word, CSV, Adobe PDF file formats". Track Me
23 contends IT&E's offered software, however, can only export to HTML, PDF, EXCEL, XML, and
24 CSV. The exportable formats do not include MS Word. Therefore, IT& E does not comply with
25 C.1-13 as they are non-responsive to this requirement. Sanchez testified he doesn't remember how
26
27
28

1 they resolved this issue, and there is nothing indicated in the procurement record to show GPA's
2 decision regarding IFB requirement C.1-13.

3
4 IFB requirement C.2 requires the bidder to "Provide web-based vehicle interaction.
5 Enabling Technical assistance personnel and/or Authorized GPA personnel to remote disable
6 vehicles, unlock vehicle doors, and provide software updates." Track Me contends IT&E notified
7 GPA that it would comply, but GPA must "deliver the requirement i.e. older vehicle models may
8 not be able to support fleet tracking application. IT&E's further response stated, "Doing door
9 lock/unlock feature that is controllable through the Electronic Control Unit (ECU) will only be
10 possible with manufacturer's Programming Guide for the Lock/Unlock for the specific vehicle
11 models provided to IT&E by GPA". This is non-compliant with C.2 because IT&E is requesting
12 GPA provide an accommodation not specified in the IFB. Nowhere in the IFB does it state GPA
13 will provide access to the EDU if necessary. IT&E is non-responsive to this requirement because it
14 requires an extra step not identified in the IFB, and the Agency protest denial did not address this
15 issue.
16

17 Sanchez testified he remembers this being an issue but doesn't remember the result or how
18 they came about the result, and there is nothing in the procurement record indicating GPA's
19 decision related to IFB requirement C.2.
20

21 The procurement record did show that on April 8, 2021, the evaluation committee met.
22 Sanchez testified that a meeting was held and all three evaluation committee members were
23 present but could not recall when the meeting was held. On April 19, 2021, a Memorandum was
24 drafted indicating that the Evaluation Committee has reviewed Track Me's second protest and is
25 requesting IT&E to provide clarification on their requirements C.1-17, B.6, C.1-13, and C.2.
26 However, this memo remained unsigned by the evaluation committee members. The procurement
27
28

1 record shows that the memo was internally emailed within GPA on April 19, 2021, with follow-up
2 on April 27, 2021, May 14, 2021, and May 26, 2021. There is nothing in the procurement record
3 indicating any action regarding the memo.
4

5 In GPA's Denial of Procurement Protest Letter dated June 10, 2021, GPA indicated they
6 "have reviewed the responses provided by IT&E and has determined that it meets the bid
7 requirements. GPA requested that IT&E respond to each of the allegations raised that it did not
8 meet the bid specifications, and IT&E provided responses which were reviewed by the bid
9 evaluation committee, which determined that bid specifications were met by IT&E." However, in
10 the review of the procurement record, the Public Auditor could not find any corresponding
11 documents between IT&E and GPA besides the one related to requirement C.1-17. GPA provided
12 no contrary testimony regarding Track Me's allegations that IT&E was non-responsive to
13 requirements B.6, C.1-13, and C.2.
14

15 Guam law mandates that "each procurement officer shall maintain a complete record of
16 each procurement." 5 GCA § 5249; *Teleguam Holdings LLC v. Territory of Guam* 5, ¶ 22. The
17 law does not provide an exhaustive list of what a complete record contains, but instead provides a
18 non-exhaustive list of items "the record shall include." 5 GCA § 5249.
19

20 The Superior Court of Guam canceled a procurement in which the Government Agency
21 kept an incomplete procurement record. See *Teleguam Holdings LLC v. Government of Guam and*
22 *Pacific Data Systems*. The Court in *Teleguam Holdings* held that where the "procurement record
23 upon which IFB GSA 064-11 and the proposed awards were based is incomplete, [a] revision of
24 the consequent proposed awards cannot render the preceding procurement record complete and it
25 would remain in violation of the Procurement Law..." The court ordered the IFB and the proposed
26 awards canceled, noting specifically that "[i]f another invitation for bids regarding this matter is
27
28

1 issued, the agencies involved shall maintain a complete procurement record in compliance with
2 the Procurement Law.”

3
4 Track Me Contends that records of meetings held by GPA to address the contents of Track
5 Me’s April 2021 supplement protest were missing from the procurement record. GPA personnel
6 have testified to meetings about IT&E’s responsiveness, however there appears to be no record of
7 these meetings. Because GPA failed to maintain a complete procurement record as required under
8 5 GCA § 5249, the Notice of Award to IT&E must be set aside. Guam Law is clear that, in order
9 to protect the integrity of the bidding process, a procurement record must be kept and maintained.
10 5 G.C.A. § 5252 (a).

11
12 The Public Auditor agrees with Track Me, in that there is information that is material to
13 GPA’s determination that IT&E’s bid was responsive missing from the procurement record.
14 Therefore, the public auditor finds the procurement to be materially incomplete.

15 16 **CONCLUSION**

17 Based on the foregoing, the Public Auditor makes the following determinations:

- 18
19 A. The Procurement Record is materially incomplete for the Public Auditor to
20 determine whether GPA properly found IT&E’s bid as responsive.
- 21 B. The award to IT&E shall be canceled and GPA shall issue a new bid and properly
22 maintain a complete procurement record.
- 23 C. The parties shall bear their respective costs and attorney’s fees.

24 This is a Final Administrative Decision for Appeal No. OPA-PA-21-002. The Parties are
25 hereby informed of their right to appeal the Public Auditor’s Decision to the Superior Court of Guam
26 in accordance with Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt
27
28

1 of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties and their
2 respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on
3 the OPA website at www.opaguam.org.
4

5
6 **DATED this 19th day of November 2021.**

7
8 

9
10 **BENJAMIN J.F. CRUZ**
11 **Public Auditor of Guam**
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-002 Decision

Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Nov 19, 2021 at 3:17 PM

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

Cc: Vince Duenas <vduenas@guamopa.com>

Hafa Adai,

Please see attached Decision 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.

--

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

This e-mail transmission and accompanying attachment(s) may contain confidential or privileged information. If you are not the intended recipient of this e-mail, please inform the sender and delete it and any other electronic or hard copies immediately. Please do not distribute or disclose the contents to anyone. Thank you.

 **21-002 Decision.pdf**
68K