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RECEIVED
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PROCUREMENT APPEALS
DATE: 08/22/14
TIME: 3:28 AM PM BY: C. Roque
FILE NO OPA-PA: 14-008

Attorney for Appellant
IP&E Holdings, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of) NOTICE OF PROCUREMENT APPEAL
)
IP&E HOLDINGS, LLC.,) Docket No. OPA-PA-14-008
)
Appellant.)

Appellant Information:

IP&E Holdings, LLC. (IP&E)
646 Chalan San Antonio
Tamuning Guam 96913-3644

Tel: 647-0123
Fax: 649-4353

Appeal Information:

- A) Guam Power Authority (“GPA”), Consolidated Commission on Utilities (“CCU”).
- B) Invitation for Bid NO. GPA 029-14 for the Supply of Diesel Fuel Oil No. 2 for Baseloads and Peeking Units.
- C) Decision being appealed is the GPA Denial of Protest, dated August 15, 2014.
- D) Appeal is made from a decision on protest of notice of award.
- E) Names of Competing Bidders: Mobil Oil Guam, Inc.

Form and Filing:

On or about March 13, 2014, GPA issued invitation for bid GPA -029-14 for the procurement of diesel fuel for various GPA power plants. Bid opening occurred on July 8, 2014.

Section 4.3 of the IFB addressing award provides that "GPA will award the Contract to the BIDDER whose proposal yields the lowest overall Contract price for the contract base year period." The relevant portions of the IFB are attached as Exhibit A. .

Based on the Bid Abstract it appears that bids were submitted by Mobil Oil Guam Inc. and IP&E. A copy of the bid abstract is attached as Exhibit B. On or about August 15th, GPA provided IP&E a Notice of Intent to Award to IP&E for the Tenjo Site (Exhibit C). GPA also provided IP&E its Rejection of Bid concerning the Dededo Diesel and CT Plants. (Exhibit D).

In a letter sent by email to GPA on August 12, 2014, IP&E filed an agency protest with GPA challenging the award methodology since IPE submitted the overall lower cost but was only awarded the contract for the Tenjo location. (Exhibit E) GPA denied the protest via letter dated August 15, 2014. (Exhibit F).

It is IP&E position that GPA's denial of its protest is incorrect and that the OPA should direct award of the overall contract to IP&E. Section 4.3 Proposal Evaluation clearly provides that "GPA will award **the** Contract to **the** BIDDER who proposal yields the lowest overall CONTRACT base year period." Emphasis supplied.

In its response to the IP&E protest GPA argues that it may make multiple awards based on Section 2.13 which states that the "Contract will be awarded in whole or in per plant location to the BIDDER evaluated as being qualified and with the best-price proposal." The balance of Section 2.13, as well as Section 4.3 only references award to a single Bidder and does not provide for multiple awards.

Based on GPA's bid abstract, the IP&E Bid for all sites was \$16,949,400 and other bid amount was \$17,097,00. Thus, IP&E's overall contract price was \$147,600 lower than the other bidder per year and \$442,800 lower over the term of the contract.

As the IFB did not provided for the award of multiple contacts and stated that award would be made to " **the** Bidder whose proposal yields the lowest overall Contract base year period" GPA should have made contract award to IP&E for the entire contract and for this reason the proposed award should be suspended until the protest is resolved. Had GPA intended to make multiple awards it should have explicitly provided for in the IFB as it would have impacted bidders' pricing strategy.

Declaration regarding court action:

IP&E confirms that an action in court has not been commenced.

Dated this 22nd day of August, 2014.

IP&E HOLDINGS LLC.

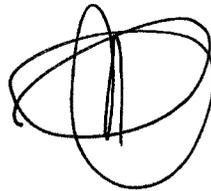
By: 

Steven Carrara
General Counsel

VERIFICATION

I Brian J. Bamba, Managing Director, for IP&E Holdings LLC, hereby declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct of my own knowledge, except as to those matter alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 22nd day of August 2014



2.12.5. Evaluation Criteria and Comparison of Priced Offers

GPA will evaluate and compare the Priced Offers for Bidder's Technical Proposals that were determined during Step One to be responsive to the tender document requirements. The Scoring Mechanism is further explained in Section Four.

2.13. Award of Contract

The contract will be awarded in whole or per plant location to the BIDDER evaluated as being qualified and with the best-priced proposal.

The successful BIDDER will be notified by GPA through official written correspondence of the intent to award the contract (Notice of Intent to Award). The written correspondence may be sent by GPA via official letter, e-mail and fax.

The BIDDER will be required to send to Guam, within fourteen (14) days of the date of receipt of such notice, a representative or representatives with proper Power-of-Attorney for the purpose of executing a contract with such alterations or additions thereto as may be required to adopt such contract to the circumstances of the proposal. The successful BIDDER shall provide the required Performance Bond within fourteen (14) working days of receipt of the GPA Notice of Intent to Award.

Failure on the part of the successful BIDDER to provide a Performance Bond and/or to enter into a contract with GPA shall be sufficient grounds for the annulment of the award. GPA may determine the bidder to be non-responsive to the bid, and may proceed with sending a Notice of Intent to Award to the next most qualified BIDDER.

2.14. Bid Bond and Performance Bond Requirements

2.14.1. Performance Bond Form, Amount and Duration

The required performance bond shall be in the form as prescribed in Appendix B. At the beginning of the CONTRACT and at the beginning of each GPA Fiscal Year during which the CONTRACT is in effect, the CONTRACTOR shall provide and maintain a performance bond in the amount **equivalent to one hundred percent (100%) of the annual contract cost** for that full or partial fiscal year within the term of the contract. If the CONTRACTOR is declared by GPA to be in default under the CONTRACT, GPA may exercise

- Acceptable
- Potentially Acceptable
- Unacceptable.

The Procurement Officer or his designee may initiate Step Two if there are sufficient acceptable Unpriced Technical Proposals to assure effective price competition in the second phase without technical discussions. If the majority of the GPA evaluators rate the BIDDER as Acceptable , that BIDDER is determined to be Qualified and will be allowed to participate in Step 2– Price Proposal.

If the Procurement Officer or his designee finds that such is not the case, the Procurement Officer or his designee shall issue an amendment to this Invitation for Bid or engage in technical discussions with BIDDERS who are rated by a majority of the GPA evaluators as Acceptable or Potentially Acceptable. During the course of such discussions, the Procurement Officer or his designee shall not disclose any information derived from one Technical Proposal to any other BIDDER.

Once discussions are begun, any BIDDER who has been notified that its Offer has been finally found acceptable may submit supplemental information amending its Technical Proposal at any time. Such submission may be made at the request of the Procurement Officer or upon the BIDDER’s own initiative.

BIDDERS who are rated by the majority of the GPA evaluators as Unacceptable is determined to be Not Qualified and will not be allowed to participate in Step 2– Price Proposal. The Procurement Officer shall record in writing the basis for finding a Bidder Not Qualified and make it part of the procurement file.

Table 1. Final Evaluation of Bidder Qualification

GPA Evaluator	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5
1					
2					
3					
4					
5					

4.3. Price Proposal Evaluation

GPA will award the Contract to the BIDDER whose proposal yields the lowest overall CONTRACT price for the contract base year period.

5. CONDITIONS OF CONTRACT

5.1. Definitions

Wherever used in these General Conditions or in the other Contract Documents, the terms used have the meanings indicated which are applicable to both the singular and plural thereof.

5.2. Accounting

For accounting purposes and for use in establishing property records, GPA may require CONTRACTOR to provide a reasonable price breakdown of the total price into separate prices applying to the individual items supplied under the Agreement.

5.3. Documentation

GPA shall have the right to reproduce any prints, or other data or documents received from CONTRACTOR.

5.4. Language and Trade Terms

All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language. INCOTERMS (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 1980 and any subsequent revisions thereto shall govern interpretation of trade terms in the Contract Documents

5.5. Release of Information

The CONTRACTOR shall not release any information including the contract price concerning this project or any part thereof in any form, including advertising, news releases, or professional articles, without written permission of GPA.

5.6. Limitations of Clause

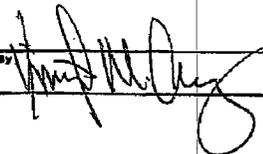
Nothing herein contained shall excuse the CONTRACTOR from compliance with any rules of law precluding GPA and its officers and any CONTRACTORS from acting in collusion or bad faith in issuing or performing change orders that are clearly not within the scope of the contract.

Phase II

Number of Invitations Issued: 2	PURCHASES & STORES DIVISION GUAM POWER AUTHORITY ABSTRACT OF BIDS	Invitation Number: MS GAA-029-14 Opening Date: 07/08/14 Opening Time: 10:00 AM
Number of Bids Received: 2		

BIDDER	Acceptance Time (Days)	DISCOUNT	ITEM NO.	Manufacturing	Manufacturing	Manufacturing	Manufacturing	Manufacturing
			QTY	3-yr. Base	3-yr. Base	3-yr. Base	2-yr. EXT	2-yr. EXT
			UNIT	1st Yr.	2nd Yr.	3rd Yr.	1st Yr.	2nd Yr.
			DELIVERY					
			MFG					
Mobil Oil Guam, Inc.		BaseLoad		3.190	3.190	3.190	3.190	3.190
		Desel/CT		3.170	3.170	3.170	3.170	3.170
		FootTrack		3.170	3.170	3.170	3.170	3.170
		Temer/CT		3.190	3.190	3.190	3.190	3.190
		Temp		3.310	3.310	3.310	3.310	3.310
IP&B			Optional Bid	Optional Bid	Optional Bid	Optional Bid	Optional Bid	Optional Bid
				3-yr. Base	3-yr. Base	3-yr. Base	2-yr. EXT	2-yr. EXT
				1st Yr.	2nd Yr.	3rd Yr.	1st Yr.	1st Year
		BaseLoad		3.198	3.198	3.198	3.198	3.198
		Desel/CT		3.198	3.198	3.198	3.198	3.198
	FootTrack		3.198	3.198	3.198	3.198	3.198	
	Temer		3.198	3.198	3.198	3.198	3.198	
	Temp		3.198	3.198	3.198	3.198	3.198	

I certify that all bids received in response to this invitation were opened under my personal supervision, and that the names of all bidders are listed herein.

Tabulated By:  / 
 Date: 07/08/2014

APPROVAL OF AWARDS (Bidders and Principal should sign)	
BASIS FOR AWARD <input type="checkbox"/> Lowest Responsive Bidder <input type="checkbox"/> Tie Bid <input type="checkbox"/> Only Bid <input type="checkbox"/> Other Than Lowest Responsive Bidder (See explanation on reverse hereof or attached)	
Number of Awards (Contractors)	



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

August 15, 2014

Fred Keller
Director of Sales
IP&E Holdings, LLC
Dba: IP&E Guam
Suite 100, 643 Chalan San Antonio
T: 647-0000
F: 649-4353

**RE: NOTICE OF INTENT OF POSSIBLE AWARD ON INVITATION FOR MULTI-STEP
BID NO.: GPA-029-14 for Supply of Diesel Fuel Oil No. 2 for Baseloads and Peaking Units**

Dear Mr. Keller,

As a result of Invitation for Multi-Step Bid No.: GPA-029-14, your bid for Supply of Diesel Fuel Oil No. 2 for Baseloads and Peaking Units for the following location: Tenjo Vista Plant, in the total amount of \$19,188,000.00 for a period of 3-Year Base Contract, commencing December 01, 2014 is being considered for possible award.

However, you are required to provide a PERFORMANCE BOND in the total amount of \$2,878,200.00 (15% Annual Contract Cost- Amd.: IV) as specified in Section 12 of the General Terms and Conditions.

You are hereby advised that this Notice of Intent of possible award should not be construed as an award by Guam Power Authority. However, you are requested to submit your Performance Bond on or before fourteen (14) days after receipt of this letter so that consideration of possible award and release of purchase order may be issued. Enclosed is a Performance Bond Form for your perusal.

Your failure to submit the performance guarantee bond by the established deadline will result in delay of the award.

Your prompt response to this matter is requested.

Sincerely,

JOAQUIN C. FLORES, P.E.
General Manager

Exhibit C



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

August 15, 2014

BID STATUS

Fred Keller
Director of Sales
IP&E Holdings, LLC
Dba: IP&E Guam
Suite 100, 643 Chalan San Antonio
T: 647-0000
F: 649-4353

MULTI-STEP BID INVITATION: GPA-029-14

OPENED: July 08, 2014

DESCRIPTION: Supply of Diesel Fuel Oil No. 2 for Baseloads and Peaking Units

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

- Cancelled (in its entirety), or partially canceled due to:**
 - () Insufficient funds;
 - () Change of specifications;
 - () Best interest of the Government

- Rejected due to:**
 - () Late submission of bid;
 - () No bid security or insufficient bid security amount submitted: as required by Section 11 of the General Terms and Conditions;
 - () Not meeting the delivery requirements as stated in the IFB;
 - () Non-conformance with the specifications;
 - () Inability to provide future maintenance and services to the equipment;
 - (XX) High price; Baseload Plants – Contract Year 1 thru 3: 3.198/gallon, Dededo Diesel & CT Plants – Contract Year 1 thru 3: \$3.198/gallon, Fast Track Diesel Plants – Contract Year 1 thru 3: \$3.198/gallon and TEMES CT – Contract Year 1 thru 3: \$3.198/gallon
 - () Others:

Bid is recommended for award to: **Mobil Oil Guam** - Baseload Plants, Dededo Diesel & CT Plants, Fast Track Diesel Plants and TEMES CT, \$31,431,000.00 (3-Year Base Contract, commencing December 01, 2014) and **IP&E Guam**- Tenjo Vista Plant, \$19,188,000.00 (3-Year Base Contract, commencing December 01, 2014).

The Guam Power Authority greatly appreciates the interests and participation in our bids.

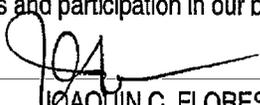
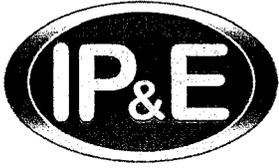

JOAQUIN C. FLORES, P.E.
General Manager

Exhibit D



Mr. Joaquin Flores
General Manager

Guam Power Authority
P.O. Box 2977
Hagåtña Guam, 96932

Attn: Joaquin Flores / GPA General Manager

Dear Mr. Flores:

In the recent Guam CCU meeting held on August 12, 2014 the potential award of the fuel bid IFB GPA-029-14 was highlighted to the CCU Board. During the discussion, GPA advised the CCU Board, the fuel supply would be split amongst the two responsive bidders.

This brings great concern to IP&E as our bid was based on the instructions outlined in section 4.3 page 25/26 of the RFP Section - Volume 1: Commercial Terms and Conditions.

“GPA will award the Contract to the BIDDER whose proposal yields to lowest overall CONTRACT price for the contract base year period.”

As outlined in the following table IP&E’s total contract price is lower by \$147,600 per annum or \$442,800 per the contact period when compared to the other bidders offer.

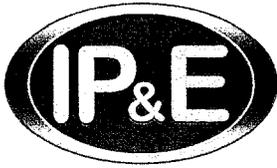
Shell trademarks used under license.

Exhibit E

IP&E Holdings, LLC.
dba: IP&E Guam
Suite 100, 643 Chalan San Antonio
Tamuning, Guam 96913-3644
Tel: 671-647-0000 | Fax: 671-649-4353
Email: corporate@ipehq.com



Shell Licensee



IFB GPA-029-14 (SUPPLY OF DIESEL FUEL OIL NO.2 TO BASELOADS & PEAKING Units)

Based on RFP Volumes

Plant Description	Bid Volume (gals)	IPE		Mobil	
		Bid	Total	Bid	Total
Baseload Plants	200,000	3.198	639,600	3.190	638,000
Dededo & CT	1,500,000	3.198	4,797,000	3.170	4,755,000
Fast Track	1,000,000	3.198	3,198,000	3.170	3,170,000
Tenjo Vista	2,000,000	3.198	6,396,000	3.310	6,620,000
Temes CT	600,000	3.198	1,918,800	3.190	1,914,000
Totals	5,300,000		16,949,400		17,097,000
Total IP&E Savings					(147,600)
IP&E Savings per Gallon					(0.03)

IP&E looks forward to receiving the award of all the plants and continuing supply to the GPA base load units.

Should you have any questions please contact me at your convenience,

Regards,

Fred Keller
Director of Sales

F.keller@ipehq.com
1-671-797-0337 (cell)
1-671-647-0123 ext.102 (work)
1-671-734-2056 (home)

C/C GPA Procurement Manager, Jaime Pangelinan,
GPA Assistant General Manager Operations, Melinda Cruz

Exhibits 1 and 2

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IP&E Holdings, LLC.
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Suite 100, 643 Chalan San Antonio
Tamuning, Guam 96913-3644
Tel: 671-647-0000 | Fax: 671-649-4353
Email: corporate@ipehq.com



Shell Licensee



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

August 15, 2014

Fred Keller
Director of Sales
IP&E Holdings, LLC
dba: IP&E Guam
Suite 100, 643 Chalan San Antonio
Tamuning, Guam 96913-3644
T: 647-0000
F: 649-4353
Email: F.keller@ipehq.com

SUBJECT: Potential Award

**REF.: Invitation for Multi-Step Bid No.: GPA-029-14 for Supply of Diesel Fuel Oil
No.: 2 for Baseloads and Peaking Units**

Dear Mr. Keller:

This is in response to your letter regarding the potential award announced during the recent Guam CCU meeting held on August 12, 2014.

Please refer to **Section 2 - Instructions to Bidders, 2.13, Award of Contract:**

"The contract will be awarded in whole or per plant location to the BIDDER evaluated as being qualified and with the best-priced proposal."

This section allows GPA to award in whole or in plant location. Based on the analysis, GPA has determined the per plant location gives the best proposal to GPA. Mobil Oil Guam was the low bidder for all but one plant, which was correctly awarded to IP&E Guam.

If you have any other questions or concerns regarding this matter, you may contact Mrs. Jamie L.C. Pangelinan, Supply Management Administrator at 648-3054/55 or by fax at 648-3165.

Respectfully,

JOAQUIN C. FLORES, P.E.
General Manager

Exhibit F