

D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel
Guam Power Authority
1911 Army Drive, Ste 227
Harmon, Guam, 96913
Tel: (671) 648-3203/3002
Fax: (671) 648-3290

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PROCUREMENT APPEALS

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FILE NO OPA-PA: 14-008

Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

IN THE APPEAL OF)	DOCKET NO. OPA-PA-14-008
)	
IP&E Holdings, LLC,)	AGENCY REPORT
)	
Appellant.)	
_____)	

Appellee GUAM POWER AUTHORITY (GPA), by and through its attorney, D. GRAHAM BOTHA, ESQ., hereby submits its Agency Report in the form required under 2 G.A.R. §12105:

(a) A copy of the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on September 2, 2014, by GPA.***

(b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on September 2, 2014, by GPA.***

(c) A copy of the solicitation, including the specification or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on September 2, 2014, by GPA.***

(d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on September 2, 2014, by GPA.***

(e) Any other documents which are relevant to the protest, including the contract, if one has been awarded, pertinent amendments, and plans and drawings:

Previously submitted to the Office of the Public Auditor (“OPA”) on September 2, 2014, by GPA.

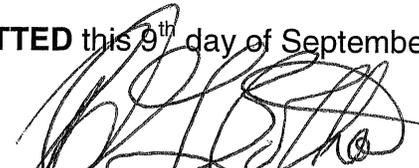
(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: **Previously submitted to the Office of the Public Auditor (“OPA”) on September 2, 2014, by GPA.**

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal: **Please see attached.**

(h) If the award was made after receipt of the protest, the report will include the determination required under 2 G.A.R. §9101(e): **Not applicable.**

(i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding: **Previously submitted to the Office of the Public Auditor (“OPA”) on September 9, 2014, by GPA.**

RESPECTFULLY SUBMITTED this 9th day of September, 2014, by:



D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

A. GPA SOLICITS BIDS FOR MULTI-STEP BID GPA-029-14, SUPPLY OF DIESEL FUEL OIL NO. 2 FOR BASELOADS AND PEAKING UNITS

On March 13, 2014, Guam Power Authority (“GPA”) issued Invitation for Multi-Step Bid, GPA-029-14, Supply of Diesel Fuel Oil No. 2 for Baseloads and Peaking Units. Procurement Record, Tab “2”. The IFB was a two-step bid process consisting of the technical bid and submission of a sealed price proposal. Two companies submitted bids in response to the IFB, IP&E Holdings, LLC (IP&E) and Mobil Oil Guam Inc. (Mobil), and both companies were qualified in the phase I technical bid review process. Prior to submission of technical bids and sealed price proposals, the two bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I to VII in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab “8, 10-15”.

Amendment V, dated May 14, 2014, clarified certain questions raised by both prospective bidders, with bidder IP&E asking specific questions regarding the quantity of diesel fuel stock. Other amendments notified prospective bidders of the changes to Bid Milestone dates.

The technical review committee qualified both bidders, IP&E and Mobil, as technically qualified under the multi-step process. On July 9, 2014, the sealed bid proposals of the two qualified bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the five locations and 1st to 3rd year of the contract and option years 1 and 2 of the two bidders. The bid abstract, containing the IP&E and

Mobil Price Proposals, are contained in the procurement record at Tab "24." Each of the two bidders submitted detailed price proposals in accordance with the bid documents.

On August 14, 2014, GPA provided the bidders with a Notice of Intent of Possible Award for four (4) locations to Mobil, and one (1) location to IP&E. Tab "28". On or about August 12, 2014, IP&E sent an e-mail of protest to GPA. GPA denied the protest on August 14, 2014. Procurement Record, Tab "29". IP&E filed a protest with the Office of Public Auditor on August 22, 2014.

II. DISCUSSION

A. THE MOBIL BID WAS RESPONSIVE, AND THE AWARD FOR THE DIESEL FUEL SUPPLY WAS PROPERLY AWARDED TO MOBIL FOR FOUR LOCATIONS AND TO IP&E FOR ONE LOCATION

Procurement law requires that GPA award to the lowest responsible and **responsive** bidders. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). Further, any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

IP&E contends that GPA improperly awarded the four locations to Mobil since IP&E submitted the overall lower cost, but was only awarded the contract for the Tenjo location. It relies on section 4.3 of the proposal evaluation, and dismisses 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 IFB clearly allowed GPA to award to multiple bidders, contrary to the assertions of IP&E. Section 2.13 clearly indicates that GPA intended to select whichever combination of separate "per plant" locations or "in whole" based on the best price for GPA. Section 5.1, Definitions, provides that "the terms used have the meanings

indicated which are applicable to both the singular and plural thereof.” IP&E claims not that should GPA intended to make multiple awards it should have explicitly provided for in the IFB as “it would have impacted bidders’ pricing strategy.” Interestingly, two IP&E representatives, including Mr. Fred Keller, showed up for the Pre-Bid conference on March 25, 2014, and received and acknowledged Amendments 1-VII, yet at no time did IP&E or its qualified representatives request clarification from GPA as to whether it was a per plant or whole bid for the five locations. IP&E clearly understood that it had to respond to GPA’s price proposal for all five locations, and its price proposal reflects five different locations.

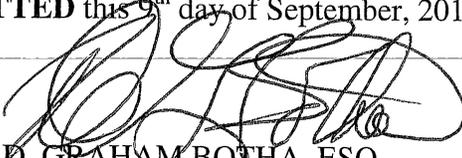
The Abstract of Bids lists the price proposals for all bidders for the different locations. GPA’s lowest cost is to accept the four locations with Mobil’s price and one location with IP&E’s price, and GPA did so according to the evaluation criteria specified in the IFB. The Mobil bid and IP&E bid were both responsive bids, and GPA evaluated the prices based on the appropriate evaluation criteria.

GPA had the duty and responsibility to make an award to Mobil for four locations, and to IP&E for one location, as it deemed each bidder to be the lowest, **responsive** and responsible bidder for each separate plant location as specified in the IFB.

CONCLUSION

GPA requests that the appeal of IP&E be dismissed, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

RESPECTFULLY SUBMITTED this 9th day of September, 2014, by:


D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel