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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 11-07-17
TIME: 4:07 AM PM BY: MY
FILE NO OPA-PA: 17-008

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

IN THE APPEAL OF

SHANGHAI ELECTRIC POWER JAPAN
CO., LTD. and TERRA ENERGY, INC.,

Appellants.

APPEAL NO. OPA-PA-17-008

**HANWHA ENERGY CORPORATION
AND PACIFIC PETROLEUM
TRADING CORPORATION'S
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter was heard by the Public Auditor Doris Flores Brooks and Hearing Officer Peter C. Perez, Esq. on October 24, 25, and 26, 2017. The Public Auditor renders the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On May 13, 2016, Guam Power Authority (“GPA”) issued Multi-Step Invitation for Bid GPA-070-16, Renewable Energy Resource Phase II (“IFB”).¹

¹ GPA Exhibit A, Procurement R. Binder 1, Tab 1 at 213.

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2. GPA sought to acquire a total of 60 MW of renewable capacity that meets the following requirements:²

- a. A bidder's project must have a minimum nameplate capacity of 5 MW and a maximum nameplate capacity of 30 MW; this may be the combination of several units at one or more sites.
- b. **RI-ESS**. For intermittency, renewable projects shall incorporate a renewable integration energy storage system (RI-ESS) that will meet GPA's requirements as described in the IFB. *The RI-ESS shall have a 1% ramp control* within one minute of the project nameplate renewable capacity.³ The RI-ESS must provide the following:⁴
 - i. Significantly reduce the impact of intermittent renewable energy generation power fluctuations on GPA's power system frequency and the voltage at the point of interconnection.
 - ii. Provide supporting energy storage system to quickly respond to the variable renewable generation output and ameliorate the power imbalance within GPA's grid or an assigned local Microgrid.
 - iii. Provide highly reliable fault recovery and optimizing power distribution.
 - iv. Provide a reactive capability requirement up to .95 lag to lead at the point of interconnection as required by GPA.
- c. **Microgrid Option**. The RI-ESS must be capable of the following functions for Microgrid operations (priced option): generation scheduling, economic load dispatch and load frequency control functions and demand response controls.

² GPA Exhibit A, Procurement R. Binder 1, Tab 1 at 207.

³ GPA Exhibit A, Procurement R. Binder 1, Tab 1 at 165.

⁴ GPA Exhibit A, Procurement R. Binder 1, Tab 1 at 206-207.

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- d. Bidders must identify and discuss the ESS function of the proposed renewable project. Bidders are allowed to provide the ESS options for the same renewable project in the same proposal submitted however pricing shall be separated.
- e. The renewable resource will provide energy for a contract term of 25 years.
- f. GPA may elect to award, one, more, or none.
- g. GPA reserved the right to increase or decrease the quantity of the items for award and make additional awards for the same type items, and the vendor agrees to such modification and additional awards based on the bid prices for thirty (30) days after the original award.⁵
- h. **Delivery/Interconnection.** Bidders will deliver renewable energy to a GPA-determined interconnection point on GPA's 34.5 kV transmission system. GPA will determine the exact location after completion of a detailed interconnection study. *The System Impact Study recommendations impact the final interconnection agreement.*⁶
 - i. GPA recommends underground loop system in and out of a new substation at the renewable generation facility at transmission level (34.5kV and up) connecting to existing GPA transmission lines. The rerouted transmission line, its associated breakers, and control and protection devices, etc. may require upgrades.
 - ii. The cost of facilities to bring the Bidder's energy to GPA's point of interconnection is the responsibility of the bidder.
 - iii. Bidders must include the cost of interconnection in their priced proposals as this may be negotiated with GPA during contract negotiations.
 - iv. Total costs, however, must still fall below GPA's avoided costs: **the marginal cost of fuel at approved by the CCU and PUC.**

⁵ GPA Exhibit A, Procurement R. Binder 1, Tab 1 at 217.

⁶ GPA Exhibit A, Procurement R. Binder 1, Tab 1 at 162.

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- i. **Price for Energy.** Bidders are required to submit fixed pricing for the guaranteed renewable energy delivered for the entire contract period.⁷
 - j. GPA will evaluate price bids based on the most recent LEAC Rate approved by the PUC.
3. On July 15, 2016, GPA issued Amendment II with the following clarifications.⁸
 - a. GPA confirms that interconnection lines can be either overhead or underground. The location of the new on-site substation, the distance to the interconnection point, the system reliability and the cost comparison between constructing underground and overhead lines will have to be taken into account before making a decision. GPA will approach it in a case by case basis.
 - b. GPA confirms that the starting price does not have to be below the current LEAC rate but that GPA would like to see bids close to or lower than the current LEAC.
4. On August 10, 2016, GPA issued Amendment IV with the following clarifications.⁹
 - a. The primary purpose of the RI-ESS is ramp rate control. The RI-ESS must be able to provide the secondary applications of power frequency regulation, voltage regulation, storage capability, reactive power control and ride through and synchronization capabilities.
 - b. RI-ESS requirements state that the ESS shall have a 1% ramp control within one minute of the project nameplate renewable capacity with the guaranteed success rate for the contract period.

⁷ GPA Exhibit A, Procurement R. Binder 1, Tab 1 at 161.

⁸ GPA Exhibit B.

⁹ GPA Exhibit B.

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- c. Microgrid operations of the RI-ESS are not mandatory. GPA clarified that the requirements for the Microgrid are informational and that any information is notional and non-binding. The System Impact Study will identify additional specifications.
- d. GPA further clarified that until such time that the points of interconnection with GPA's power system grid are determined GPA cannot engage in discussions on specifics because each site may have unique opportunities and issues for integration of the renewable energy and energy storage system.
- e. GPA will evaluate bids based on the cost of energy which includes the bidder's total project cost in their price bid (renewable project and interconnection costs).
- f. Bidders will be responsible for the costs of system upgrades if any, and bidders must include these values in the bid price. Upon completion of the system impact study of the selected bidders, the bidders will be allowed to withdraw if the costs identified in the system impact study exceed the estimated or projected costs incorporated in the bidder's price proposal.
- g. GPA will contract with the selected bidder based on the bidder's price proposal with no adjustments.
- h. GPA is responsible for any cost associated with Renewable Energy after the interconnection point outside of the system impact study recommendations. Bidder is responsible for executing and paying for changes to the GPA system warranted by the system impact study.

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- i. Bidder's price proposal must include the RI-ESS for the ramp rate control.¹⁰ The intent of the bid to use RI-ESS is to regulate power fluctuations from non-firm (intermittent) renewable energy. Bidders may propose alternative options.
 - j. Bidders have the option to include a single annual price for the following microgrid functions: generation scheduling, economic load dispatch and load frequency control functions, and demand response controls.¹¹
 - k. GPA will evaluate the price (\$/MWH) and select the winning bid based on the output of the renewable energy plan and the RI-ESS for ramp control.¹²
5. On September 7, 2016, GPA issued Amendment V which provides the following clarifications.¹³
- a. The functions including generation scheduling, economic load dispatch, load frequency control and demand response controls are for the microgrid operation and are optional.
 - b. GPA will evaluate the bid price proposals on the total cost of power to the utility. The total cost of power includes the cost of the energy to be purchased as a product of the bid price and the contracted energy. The contract energy for the 25 years is based on the generation profile which is the bidder's estimated monthly average net energy (MWH) for every hour of the day.
6. On September 13, 2016, GPA issued Amendment VI extending the deadline for the technical proposals to October 19, 2016.¹⁴

¹⁰ GPA witness Jennifer Sablan testified to this requirement.

¹¹ GPA witness Jennifer Sablan testified to this requirement.

¹² GPA witness Jennifer Sablan testified to this evaluation method.

¹³ GPA Exhibit B.

¹⁴ GPA Exhibit B.

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7. On October 19, 2016, GPA received nineteen technical proposals from twelve bidders in response to phase one of the IFB. GPA received the following technical proposals:¹⁵

- a. LSIS #1 – Dandan East 30MW
- b. LSIS #2 – Dandan West 30MW
- c. Hecate Energy
- d. Global Sourcing USA Inc.
- e. Terra Solar
- f. SEAN & NEXGEO Consortium
- g. KEPCO-LG CNS Consortium #1 – Site A
- h. KEPCO-LG CNS Consortium #2 – Site B
- i. Pacific Progress LLC dba: Pacific Solar
- j. SolarCity
- k. Hanwha Energy-Pacific Petroleum Trading Corp. – Project A
- l. Hanwha Energy-Pacific Petroleum Trading Corp. – Project B
- m. Shanghai Electric Power Japan Co., Ltd. & Terra Energy – Project 1
- n. Shanghai Electric Power Japan Co., Ltd. & Terra Energy – Project 2
- o. Guam Clean Energy/Quantum Utility Generation – Project 1
- p. Guam Clean Energy/Quantum Utility Generation – Project 2
- q. Green Globe Solutions – Solar 30MW
- r. Green Globe Solutions – Wind
- s. Green Globe Solutions – Wind

8. On November 8, 2016, the Bid Evaluation Committee issued its findings of the evaluation of the technical proposals. The evaluation committee deemed Global Sourcing USA and Green Globe Solutions disqualified and Hecate Energy LLC, Pacific Progress LLC, and Terra Solar LLC as unacceptable. The evaluation committee recommended that the following technical proposals deemed acceptable.¹⁶

- a. Guam Clean Energy – Project 1 & 2
- b. KEPCO-LG CNS Consortium Site 1 & 2
- c. Hanwha Energy Corporation & Pacific Petroleum Trading Corp – Project A & B
- d. LSIS Co., Ltd. – 1 & 2
- e. Pacific Solar Storage (Guam) LLC
- f. SEAN & NEXGEO Consortium
- g. Shanghai Electric Power Japan Co., Ltd. & Terra Energy – Project 1 & 2

¹⁵ GPA Exhibit C.

¹⁶ GPA Exhibit D.

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9. On November 10, 2016, GPA issued Amendment VIII which provides additional information regarding technical requirements and pricing:¹⁷

- a. The existing transmission line from Dandan Substation to the Talafofo substation for purposes of bid pricing cannot be used. All price bides must delineate provisions for interconnections not assuming the use of the Dandan-Talafofo 34.5 kV line.
- b. For proposals considering interconnecting from Dandan substations to Talafofo substation, please note the following:
 - i. There is no available 34.5 kV breaker position at Talafofo substation.
 - ii. Space at Talafofo is limited.
 - iii. Rights-of-Ways acquisitions are bidder's responsibility.
 - iv. GPA will entertain a 34.5 kV overhead interconnection from Dandan substation to the Umatac substation.
- c. For proposals indicating capabilities or support for ancillary services including but [not] limited to microgrid operation, generation scheduling, economic load dispatch, spinning reserve, firm dispatchability, load frequency control, demand response controls, and automatic generation control participation, please price these offerings as options that GPA may consider outside the main proposals.
 - i. GPA will consider the optional pricing provided as the initial starting point for negotiating for these ancillary services with a proponent/bidders receiving an award under the non-optional bid scope.
 - ii. Any acceptance of ancillary services is at GPA's option.
- d. The system impact study is the final determining authority for how proposed systems will interconnect to GPA's grid.

¹⁷ Hanwha Exhibit F.

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10. On November 10, 2016, GPA notified the recommended bidders that their respective bids were deemed qualified. GPA invited all qualified bidders to submit a sealed "Price Proposal" not later than December 20, 2016.¹⁸

11. On December 9, 2016, GPA issued Amendment IX which further clarified the following:¹⁹

- a. Bidders may connect to Talafofo so long as they can overcome the limitations identified in Amendment VIII.
- b. Bidders connecting to Umatac will be required to make specific upgrades.

12. On December 12, 2016, GPA issued Amendment X which extended the deadline to submit the price proposals from December 20, 2016, to January 13, 2017.²⁰

13. On December 13, 2017, GPA issued Amendment XI which further clarified Amendment VIII as follows:²¹

- a. Bidders are responsible for interconnection and may choose to interconnect at the Talafofo Substation. Currently, the Talafofo substation is limited due to existing infrastructure. However, it may be possible to convert the existing Talafofo substation into an indoor substation complete with a new 34.5 kV and 12.8kV switchgear utilizing the recently acquired 2,100 square meter lot designated for the Energy System Storage project.
- b. The successful proponent should be aware of this and any other interconnection requirements and allocate costs for the required upgrades should the proponent choose to utilize the Talafofo substation.

¹⁸ GPA Exhibit E.

¹⁹ GPA Exhibit H.

²⁰ GPA Exhibit H.

²¹ GPA Exhibit H.

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14. On December 28, 2016, GPA issued Amendment XII, which further clarified Amendments VIII and IX about the Talafofo substation.²²

15. On January 5, 2017, GPA released Amendment XIII, which also explained Amendment XII about upgrading the Talafofo substation.²³

- a. GPA informed bidders that any upgrade costs should be included in their price proposals if the bidders decide to use the Talafofo substation.
- b. Winning bidders have the option to either withdraw their bid based on the results of the system impact study or agree to proceed forward with a contract based on their cost estimates.
- c. The separate System Integration Cost Agreement will not cover the cost of the upgrades.

16. On January 13, 2017, GPA opened the price bids for the IFB. The results are found in GPA's Exhibit I and summarized in Table 1 (Exhibit A).²⁴ Hanwha, KEPCO-LG CNS, and Shanghai submitted bids for the price option microgrid.²⁵

17. On January 27, 2017, GPA sent a letter to KEPCO- LG CNS Consortium and Hanwha Energy requesting clarification on their bid price.²⁶

18. On February 6, 2017, both KEPCO- LG CNS Consortium and Hanwha Energy confirmed their price bids subject to the final results of the System Impact Study.²⁷

²² GPA Exhibit H.

²³ GPA Exhibit H.

²⁴ Table 1 includes only the price bids submitted by the parties to this Appeal OPA-PA-17-008. Source data can be found in GPA Exhibit I.

²⁵ Shanghai Exhibits 6 – 11.

²⁶ GPA Exhibit L.

²⁷ GPA Exhibit L.

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19. On February 7, 2017, the IFB Evaluation Committee recommended that 30-60 MW Award be made to Hanwha Energy Corporation/Pacific Petroleum Trading Company and that an additional 30-60 MW award be made to KEPCO-LG CNS Consortium.²⁸

20. On February 8, 2017, GPA notified Hanwha that it was one of the lowest and most responsive bidders and that GPA intends to award (2) 30 MW projects to Hanwha subject to the System Impact Study's recommendations and Hanwha's acceptance of those recommendations.²⁹

21. On February 8, 2017, GPA notified KEPCO-LG CNS that it was one of the lowest and most responsive bidders and that GPA intends to award (2) 30 MW projects to Hanwha subject to the System Impact Study's recommendations and Hanwha's acceptance of those recommendations.³⁰

22. On June 6, 2017, the Consolidated Commission on Utilities unanimously approved Resolution No. 2017-25 wherein:³¹

- a. Bidders provided \$/MWH price proposals for the energy and ramp control to include interconnection costs of each 30MW proposal.
- b. Hanwha submitted a fixed price proposal for a GPA requested microgrid operations option, which would include the capability of energy shifting, required for a 60MW award, through an energy storage system of 40MW/65MW during peak solar days for discharge during GPA peak periods.

²⁸ GPA Exhibit M.

²⁹ GPA Exhibit N.

³⁰ GPA Exhibit N.

³¹ Hanwha Exhibit B.

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- c. GPA is considering the Hanwha microgrid operations option to improve management of system generation and dispatching which would be in addition to the proposed energy rate. *See* Table 1 (Exhibit A).
- d. GPA determined that the Hanwha and KEPCO-LG proposals would provide substantial savings to GPA over the term of the contracts based on projected LEAC rates.
- e. GPA considered renewable energy as an effective hedge against rising fuel oil prices, and that the bid prices are an excellent fuel hedge as the bidder's energy prices are fixed with escalations no more than 1% annually for all proposals.
- f. The award of 120MW to Hanwha and KEPCO-LG is projected to increase GPA's ratio of renewable energy to sales up to 23% by 2020.
- g. The results and recommendations of the system impact study will not change the bidder's proposals, and the IFB allows a successful bidder to withdraw its bid without penalty if the costs are unsustainable.
- h. The CCU authorized GPA to petition the PUC for approval to award Phase II Renewable Acquisition Bid of two 30MW proposals each to Hanwha Energy Corporation & Pacific Petroleum Trading Corporation and KEPCO-LG CNS Consortium.
- i. CCU authorized GPA to contract Hanwha Energy Corporation & Pacific Petroleum Trading Corporation and KEPCO-LG CNS Consortium for renewable energy subject to the System Impact Studies and PUC approval.

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23. On June 29, 2017, GPA notified Hanwha that the Consolidated Commission on Utilities approved the IFB on June 6, 2017, and determined that Hanwha is one of the successful bidders.³²

24. On June 29, 2017, GPA notified KEPCO-LG CNS Consortium that the Consolidated Commission on Utilities approved the IFB on June 6, 2017, and determined that Hanwha is one of the successful bidders.³³

25. On July 10, 2017, GPA rejected Shanghai Electric Power Japan, Co., Ltd. -Terra Energy Inc.'s bid due to a high price for Site #1 Inarajan and Site #2 Yona.³⁴

26. On July 10, 2017, GPA issued the Bid Analysis for Multi-Step Bid No. GPA-070-16 for Renewable Energy Resource Phase II.³⁵

27. On July 24, 2017, Shanghai Power Japan Co., Ltd and Terra Energy, Inc. filed a Protest with GPA in GPA -070-16.³⁶

28. Three days after Shanghai filed its Protest with GPA, on July 27, 2017, at 2:55 pm, Mr. Eddie Woo contacted Mr. Daejin Jeon, Hanwha Project Development Manager, Asia Pacific and Middle East Solar Business Division. Mr. Woo informed Mr. Jeon that Shanghai did not have anything against Hanwha or KEPCO and that Shanghai's protest was made to protect Shanghai's interest. Mr. Woo then advised Mr. Jeon that Shanghai just wants a part of the 120MW capacity which GPA is seeking to procure and that Shanghai would like to discuss with Hanwha possible arrangements which would allow Shanghai to participate in the IFB. Mr. Woo told Mr. Jeon that if Hanwha and KEPCO allow Shanghai to participate in the IFB, Shanghai will drop its protest. Mr. Woo also offered to fly to Seoul, to meet with Hanwha's management to discuss an agreement.

³² GPA Exhibit O.

³³ GPA Exhibit O.

³⁴ Procurement R. Binder 14, Tab 46.

³⁵ GPA Exhibit O.

³⁶ GPA Exhibit P.

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29. On August 3, 2017, GPA denied Shanghai's protest.

30. On August 22, 2017, Shanghai filed an Appeal with the Public Auditor appealing GPA's denial of its protest.³⁷

31. The Public Auditor held hearings on the Appeal on October 24-26, 2017.

32. At the hearing Counsel for Shanghai stated for the record that the allegations outlined in Shanghai's protest against Hanwha part of the Appeal and that only the claims described in the Appeal are valid.

II. CONCLUSIONS OF LAW

1. GPA provided sufficient notice to all bidders regarding the potential award of the microgrid to the bidder receiving an award under the non-optional bid scope.

Shanghai claims that GPA's acceptance of Hanwha's bid violated the IFB. Shanghai Appeal, OPA-PA-17-00, p. 3. Shanghai's sole basis was GPA's award of the microgrid to Hanwha. Id. Shanghai argues that the award amounts to an improper sole source procurement. Mr. Dale Gauthier of AECOMM, a Shanghai witness, testified that there is no need for a microgrid because the original IFB already called for RI-ESS and that the price bid should already include the battery storage. The facts presented in the IFB, the procurement record and the testimony at the hearings indicate otherwise.

Guam law provides that an award shall be made to the lowest responsible bidder whose bid meets the requirements and criteria outlined in the IFB. 5 GCA §5211(g). Shanghai has not presented any evidence that would disqualify Hanwha's submission. The fact that GPA later makes an optional award does not invalidate the lowest most responsible and responsive bidder.

³⁷ GPA Exhibit S.

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Hanwha is lowest responsible and responsive bidder. Absent any evidence that Hanwha is not responsive or responsible, Hanwha's award must stand.

The IFB required that the optional RI-ESS must be capable of the following functions for microgrid operations (priced option): generation scheduling, economic load dispatch and load frequency control functions and demand response controls.³⁸ GPA requested bidders to submit a price option for the same renewable project in the same proposal, but that pricing shall be separated. *Id.*

On August 10, 2016, GPA issued Amendment IV, before the deadline for the technical submissions, and clarified that the microgrid operations of the RI-ESS are not mandatory and that GPA could not evaluate a prospective bidders submission until it has determined where the interconnection to GPA's grid would take place to determine the requirements. More significant, GPA notified all bidders that GPA could not engage in discussion on the specifics of the microgrid option because each site may have unique opportunities and issues for integration of the renewable energy and the related storage system. GPA informed all bidders that specifics for the microgrid is contingent on the results of the System Impact Study.³⁹ All bidders were aware of this specification before submission of their technical proposal.

Amendment IV contradicts Mr. Gauthier's testimony. Amendment IV states that the bidder's price proposal must include the RI-ESS for the ramp rate control only. Jennifer Sablan confirmed this requirement. She testified that the base bid price was to cover the cost of production of energy and the RI-ESS for the 1% ramp rate control. Amendment IV also provides that bidders

³⁸ See Note 4.

³⁹ Ms. Jennifer Sablan testified that only the successful bidders will participate in the System Impact Study and that the System Impact Study did not begin until some time in March 2017.

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will have the option to add a single annual price for the following microgrid functions: generation scheduling, economic load dispatch and load frequency controls, and demand response controls. Again, Ms. Sablan testified that this price option would depend on the result of the System Impact Study and that GPA could not at the time discuss or provide specifics of the microgrid options to the bidders. GPA reiterated this position in Amendment V issued on September 7, 2016.

On November 8, 2016, after the evaluation of the technical proposals, GPA issued Amendment VIII.⁴⁰ Amendment VIII was the turning point for the microgrid option. GPA notified bidders to please price the microgrid operations as GPA may consider the price proposals in addition to the bidder's bid price. GPA further provided that the optional pricing is the starting point for negotiating the microgrid operations with bidders receiving an award under the non-optional bid scope. GPA specified that only GPA had the authority to exercise the option. GPA's intentions were clear. Bidders were invited to put their best foot forward in pricing both the original price bid and the microgrid bid price. All bidders had the same opportunity. All bidders involved in this Appeal submitted price options for the microgrid.⁴¹

Ms. Sablan testified that the preliminary results of the System Impact Study determined that GPA's system is vulnerable in the location of Hanwha's projected sites and that to stabilize the system due to the renewable energy production, GPA needs to include the microgrid option for Hanwha's sites. GPA decided on the microgrid option as a result of the preliminary System Impact Study. Mr. Daejin Jeon of Hanwha testified that GPA only approached Hanwha with the microgrid option after the preliminary System Impact Study was released. GPA correctly informed all bidders before the submission of their bid pricing (to include the price option for the microgrid)

⁴⁰ See Note 17.

⁴¹ See Note 25.

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that GPA may negotiate with the successful bidder on the award of the microgrid option. Mr. Jeon also testified that the negotiations were still ongoing and that due to the protest and appeal the System Impact Study suspended until this appeal is resolved. Only then can GPA and Hanwha continue the negotiations.

The CCU resolution contradicts Shanghai's claims regarding the microgrid. The CCU Resolution 2017-25 states explicitly:

- a. Hanwha submitted a fixed price proposal for a GPA requested microgrid operations option, which would include the capability of energy shifting, required for a 60MW award, through an energy storage system of 40MW/65MW during peak solar days for discharge during peak periods.
- b. GPA is considering the Hanwha microgrid operations options to improve management of system generation and dispatching which would be in addition to the proposed energy rate.
- c. GPA determined that Hanwha's proposal would provide substantial savings to GPA over the term of the contracts based on projected LEAC rates.
- d. GPA planned to hedge the current bid prices against rising fuel oil prices because Hanwha's bid prices were significantly lower than the current LEAC rate.

Shanghai raised the issue that Hanwha's \$54 million bid price for the microgrid indicates that GPA conferred preferential treatment to Hanwha. The fact is that even if you add on the 54 million dollars for the 25 years for both sites, the Hanwha's per \$kWh is still significantly lower than Shanghai's bid without the microgrid option. *See* Table 1 (Exhibit A). The \$54 million is nominal in this case when compared to Shanghai's base bid. For instance, Hanwha's price for Site 1 (*including microgrid* is \$.08386 per kWh) and for Site 2 (*including microgrid* \$.0803 per kWh).

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Compare this to Shanghai Site 1 without microgrid at \$.1613 per kWh and for Site 2 at \$.1280 per kWh. In fact, Hanwha's bid prices for Site 1 & 2 are lower than the next successful bidder KEPCO-LG CNS with or without the microgrid.

Additionally, the CCU's proposed action to award the microgrid is in the best interest of the ratepayers of Guam. By including the microgrid as recommended by the System Impact Study, GPA and the ratepayers would receive a stable system and a cost of energy lower than the current LEAC rate. Ms. Sablan testified that the peak hours for the GPA grid are generally during the evening and nighttime hours. Currently, to meet the peak demands GPA is required to utilize the less efficient generators. These generators typically use more expensive diesel fuel.

By including the 120MW renewable energy capacity and the microgrid option, GPA does not have to rely on the inefficient backup generators. The energy generated during the day from the photovoltaic panels are stored and released during the peak hours (night time). As a result, GPA would be providing clean and efficient energy at a lower cost. In other words, the addition of the microgrid option presents additional savings to the ratepayer because the energy produced during the day by the solar panels will be able to be stored and dispatched when GPA required the additional capacity without having to run the more expensive generators. Ms. Sablan confirmed that this was in fact GPA's intention and all bidders had the opportunity to submit competitive bids. Unfortunately for Shanghai, their proposal was not the lowest responsive and responsible bid, with or without the microgrid.

2. Shanghai claims that GPA did not have authority to award 120 MW.

Shanghai claims had it known that GPA intended to award 120 MW instead of just 60MW it would have provided a lower bid price. Shanghai Appeal, OPA-PA-17-008, p. 6. Shanghai argues that GPA's award was improper and GPA must rebid the IFB.

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Guam procurement regulations provide that an IFB include instructions for submissions of bids, the purchase description, evaluation factors, delivery or performance schedule, and the contract terms and conditions as applicable. 2 GAR § 3109(c)(2). The IFB's General Terms and Conditions states explicitly that "the government reserves the right to increase or decrease the quantities of the items for award and make additional awards for the same type of items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after the original award."⁴² Again, in the IFB Commercial Terms & Conditions, GPA states that "Note: GPA may elect to award one, more, or none."⁴³

In this case, GPA exercised its right to increase quantities from 60MW to 120MW and to make additional awards for the same energy. Ms. Sablan testified that due to the low prices for the renewable energy proposed by Hanwha and KEPCO-LG, GPA determined that it would hedge the renewable energy cost against rising fuel oil prices. Based on Hanwha's price bid (See Table 1) GPA would realize a savings of \$.0722875 per kWh from the current LEAC rate of \$.115725 (as of 8/1/2017).⁴⁴ As a result, GPA saves on fuel cost which in turn translates to savings to ratepayers.

The case law Shanghai sites are not instructive to the fact in this case. First, the cases are based on federal procurement laws and regulations which are not similar to the Guam procurement law and regulations. Second, the cases cited deal with changes to quantities after the contracts were awarded. In this case, the IFB provides that GPA had the right to increase quantities and the number of awards. GPA exercised its right by awarding four (4) projects, each 30MW, for a total

⁴² See Note 5.

⁴³ See Note 4, page 206.

⁴⁴ Hanwha Exhibit B.

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of 120MW.

Shanghai also argues that if it had known that it could bid for 120MW, it would have and at a lower price. Mr. Eddie Woo and Mr. Gauthier also testified that they never asked the question of whether they could bid for 120MW. Nonetheless, Shanghai failed to provide evidence of what its price bid would have been if they had known GPA was going to award 120MW. Absent any indication of what its bid price could have been; the OPA finds that Shanghai failed to substantiate its claim. All the parties testified that they were not aware at the time of the bid submissions that GPA would exercise its right, although the parties recognized that GPA had the right to increase the quantity and the number of awards. In fact, Ms. Sablan testified that GPA only decided to award the 120MW after the bid prices were submitted and determined that GPA should take advantage of the low rates to hedge fuel costs.

Shanghai's claim that the award of 120MW is improper lacks merit. There is no need for a rebid in this case. Shanghai made no effort to inquire and did not provide any evidence to show GPA did not have a right increase quantities. GPA had the right to increase quantities and the number of awards. The award to Hanwha and KEPCO-LG CNS should stand.

3. IFB did not require bidders to place transmission lines underground.

Shanghai claims that the IFB was ambiguous as to whether GPA wanted transmission lines placed underground or overhead. Shanghai Appeal, OPA-PA-17-008, p. 9.

Guam law provides that bids shall be evaluated based on the requirements outlined in the IFB which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The requirements that affect the bid price and considered in evaluation for the award shall be objectively measurable. 5 GCA §5111 (e).

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In Amendment II GPA clarifies that interconnection lines can be either overhead or underground.⁴⁵ All parties testified that underground lines were not a requirement. Ms. Sablan confirmed this in her testimony. The issue of overhead and underground transmission lines was not ambiguous. The IFB and the subsequent amendments spelled out that GPA preferred (or strongly recommended) underground lines, but left the decision to the bidder to make a business decision on what type of transmission line it would price out in its bid. GPA's "strong recommendation" does not make the underground transmission line a requirement. Because underground transmission lines were not a requirement, GPA did not evaluate a bidder's price on the transmission line criteria.

Shanghai makes much ado about the fact that Hanwha and KEPCO changed from underground to overhead after the technical proposals were submitted. Ms. Sablan testified that all the bidders had the same opportunities to improve their price bids based on the subsequent Amendments issued after the evaluation of the technical proposals. Ms. Sablan testified that GPA informed the bidders that there were issues with the substations in the south and that upgrades were required if the bidder planned to connect at one of the southern substations. In Amendment VIII, GPA offered an alternative site in Umatac. GPA recognized that constructing transmission lines a longer distance may cost significantly more; so GPA decided that a bidder could use overhead lines in light of the potential costs. All bidders were aware of this requirement and could have made adjustments accordingly.

Shanghai argues that the bids should be evaluated based on whether a bidder bid for underground or overhead transmission lines. Transmission lines were not criteria for evaluation.

⁴⁵ See Note 8.

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Each bidder was required to make a business decision as to what would make their bid competitive. Shanghai asks that the Public Auditor recognize that Shanghai should have been given credit for bidding for underground transmission lines. However, in the alternative, a bidder can argue that GPA should provide a premium for those bidders that offered overhead lines. The evidence presented does not substantiate Shanghai's claims. Shanghai's argument appears to do nothing more than an attempt at getting Hanwha's bid tossed out so Shanghai can have another chance at the award.

Hanwha and KEPCO-LG made business decisions that made their bids competitive. Shanghai failed to do the same. Mr. Gauthier testified that Shanghai took GPA's "strong recommendation" as a requirement. That was a business decision not a condition of the IFB. He also testified that Shanghai made other business decisions that were not requirements of the IFB. For instance, he testified that Shanghai's bid was substantially higher because Shanghai's proposal included a larger battery capacity. Again, Shanghai's proposed battery capacity was a business decision not a requirement of the IFB. The IFB Amendments and Ms. Sablan's testimony state that the bid prices were to include the cost to produce energy and for an RI-ESS for 1% ramp control. Shanghai made a business decision to bid for an RI-ESS above what the IFB required in the IFB. Shanghai's business decisions have no bearing on Hanwha and KEPCO-LG CNS's award.

Allowing Shanghai another opportunity at the IFB is unfair to the successful bidders who complied with the terms of the IFB and made significant investments in time and resources to put their best foot forward. *See* 5 GCA § 5001(b)(4). The Hanwha and KEPCO-LG contracts should proceed without further delay.

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4. Solar City's disqualification does not result in an award to Shanghai.

Shanghai's claim has no merit at this point because it has not submitted any evidence or authority to disqualify Hanwha's bid. As stated above, Shanghai bases its disqualification on a "potential" award to Hanwha for the microgrid option. GPA's potential award of the microgrid option is not a disqualifiable event.

Guam law provides that awards be made to the lowest responsible bidder whose bid meets the requirements and criteria outlined in the IFB. 5 GCA § 5211(g). Solar City's disqualification has no bearing on Hanwha's lowest responsive and responsible bid. Shanghai's fails to sufficiently provide evidence that would warrant Hanwha's bid nonresponse and not responsible. Hanwha's bid as determined by GPA remains the lowest responsible and responsive bidder.

5. At the OPA Hearing, Shanghai claimed that GPA rejected its bid because its rates were higher than the LEAC rates.

Shanghai's claim is without merit.⁴⁶ GPA confirmed that the starting price does not have to be below the current LEAC rate but that GPA would like to see bids close to or lower than the current LEAC.⁴⁷ In any event, GPA did not reject Shanghai's bid because it was higher than the LEAC, it based its decision on the fact that Shanghai's bid price double that of Hanwha's bid price. Hanwha and KEPCO are the lowest responsible and responsible bidders for this IFB. See Table 1 (Exhibit A).

III. CONCLUSION

Based on the findings of fact and conclusions of law presented above. The Public Auditor concludes that GPA's potential award of the microgrid option does not disqualify Hanwha's bid

⁴⁶ See Note 8.

⁴⁷ See Note 9 (e) & (k).

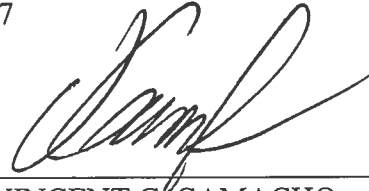
In the Appeal of Shanghai Electric Power Japan Co., Ltd. and Terra Energy, Inc.
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and the award to Hanwha stands. The Public Auditor finds that Shanghai failed to present any evidence that GPA violated the Guam Procurement Law to warrant a rebid. The Public Auditor sustains GPA's denial of Shanghai's Protest.

DATED: Hagåtña, Guam, November 7, 2017

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EXHIBIT A

Table 1.

GPA IFB GPA-70-016 Price Bids (\$/kWh)										
A	\$0.0052	C	D	E	F	G	H	I	J	K
Contract Year	Hanwha Site 1	Hanwha Site 2	Hanwha Microgrid Option	Hanwha 1 w/ Microgrid	Hanwha 2 w/ Microgrid	KEPCO Site 1 & 2	SEPJ Site 1	SEPJ Site 2	% Difference Column (E & H)	% Difference Column (F & I)
1	\$0.0660	\$0.0625	\$0.0179	\$0.0839	\$0.0803	\$0.0855	\$0.1613	\$0.1280	92.34%	59.36%
2	\$0.0667	\$0.0631	\$0.0176	\$0.0843	\$0.0807	\$0.0864	\$0.1629	\$0.1293	93.34%	60.22%
3	\$0.0673	\$0.0637	\$0.0175	\$0.0848	\$0.0812	\$0.0872	\$0.1645	\$0.1306	94.06%	60.84%
4	\$0.0680	\$0.0644	\$0.0173	\$0.0853	\$0.0816	\$0.0881	\$0.1662	\$0.1319	94.88%	61.54%
5	\$0.0687	\$0.0650	\$0.0171	\$0.0858	\$0.0821	\$0.0890	\$0.1679	\$0.1332	95.65%	62.22%
6	\$0.0694	\$0.0656	\$0.0169	\$0.0863	\$0.0825	\$0.0899	\$0.1695	\$0.1345	96.53%	62.99%
7	\$0.0701	\$0.0663	\$0.0168	\$0.0869	\$0.0831	\$0.0908	\$0.1712	\$0.1359	97.14%	63.50%
8	\$0.0708	\$0.0670	\$0.0167	\$0.0874	\$0.0836	\$0.0917	\$0.1729	\$0.1372	97.85%	64.11%
9	\$0.0715	\$0.0676	\$0.0166	\$0.0881	\$0.0842	\$0.0926	\$0.1757	\$0.1386	99.50%	64.58%
10	\$0.0722	\$0.0683	\$0.0163	\$0.0885	\$0.0847	\$0.0935	\$0.1764	\$0.1400	99.31%	65.38%
11	\$0.0729	\$0.0690	\$0.0163	\$0.0891	\$0.0852	\$0.0944	\$0.1782	\$0.1414	99.89%	65.87%
12	\$0.0736	\$0.0697	\$0.0161	\$0.0898	\$0.0858	\$0.0954	\$0.1800	\$0.1428	100.51%	66.43%
13	\$0.0744	\$0.0704	\$0.0160	\$0.0904	\$0.0864	\$0.0963	\$0.1818	\$0.1442	101.15%	66.99%
14	\$0.0751	\$0.0711	\$0.0158	\$0.0909	\$0.0869	\$0.0973	\$0.1836	\$0.1457	101.88%	67.62%
15	\$0.0759	\$0.0718	\$0.0158	\$0.0916	\$0.0876	\$0.0983	\$0.1854	\$0.1471	102.37%	68.03%
16	\$0.0766	\$0.0725	\$0.0157	\$0.0923	\$0.0882	\$0.0993	\$0.1873	\$0.1486	102.95%	68.54%
17	\$0.0774	\$0.0732	\$0.0156	\$0.0929	\$0.0888	\$0.1003	\$0.1891	\$0.1501	103.53%	69.06%
18	\$0.0782	\$0.0740	\$0.0154	\$0.0936	\$0.0894	\$0.1013	\$0.1910	\$0.1516	104.20%	69.64%
19	\$0.0789	\$0.0747	\$0.0153	\$0.0943	\$0.0900	\$0.1023	\$0.1929	\$0.1531	104.69%	70.07%
20	\$0.0797	\$0.0755	\$0.0152	\$0.0950	\$0.0907	\$0.1033	\$0.1949	\$0.1546	105.21%	70.51%
21	\$0.0805	\$0.0762	\$0.0152	\$0.0957	\$0.0914	\$0.1043	\$0.1968	\$0.1562	105.73%	70.95%
22	\$0.0813	\$0.0770	\$0.0150	\$0.0963	\$0.0920	\$0.1054	\$0.1988	\$0.1578	106.33%	71.50%
23	\$0.0821	\$0.0777	\$0.0150	\$0.0971	\$0.0927	\$0.1064	\$0.2008	\$0.1593	106.77%	71.87%
24	\$0.0830	\$0.0785	\$0.0149	\$0.0978	\$0.0934	\$0.1075	\$0.2028	\$0.1609	107.27%	72.33%
25	\$0.0838	\$0.0793	\$0.0148	\$0.0986	\$0.0941	\$0.1086	\$0.2048	\$0.1625	107.82%	72.79%

Source: GPA Exhibit I (Converted to \$/kWh)