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PROCUREMENT APPEALS
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FILE NO OPA-PA: 19-008

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF)	DOCKET NO. OPA-PA-19-008
)	
PTI Pacifica Inc. dba IT&E,)	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 July 9, 2019, 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 July 9, 2019, 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 July 9, 2019, 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 July 9, 2019, 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 July 9, 2019,***

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 July 9, 2019, 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 July 9, 2019, by GPA.***

RESPECTFULLY SUBMITTED this 16th day of July, 2019, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

A. GPA SOLICITS PROPOSALS FOR RFP GPA-19-005, GPA DATA CENTER CO-LOCATION SERVICES

On February 21, 2018, Guam Power Authority (“GPA”) issued Request for Proposal, GPA-RFP-19-005, GPA Data Center Co-Location Services. Procurement Record, (Tab “38”). Four bidders expressed interest in the RFP as shown on the RFP Register. (Tab “37”). Two bidders, Docomo Pacific Inc. (“Docomo”) and PTI Pacifica Inc. dba IT&E (“IT&E”) submitted bids in response to the RFP for GPA Data Center Co-Location Services. Abstract of RFPs, March 22, 2019. (Tab “27”). Prior to submission of the technical proposals, the four bidders had an opportunity to submit questions regarding the IFB. GPA issued amendment I in response to these questions, and to extend the closing date. Procurement Record, Tab “30”.

On March 21, 2019, the sealed technical proposals of the two bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of RFPs which lists the technical proposals for the two bidders. The RFPs Abstract is contained in the procurement record at Tab “27”.

On April 16, 2019, the evaluation committee met and recommended that based on the evaluation of the two proposals that Docomo Pacific Inc. was the best qualified offeror, and that Docomo Pacific Inc. should be requested to submit its price proposal. (Tab “18”). Status letters were sent to both bidders, Docomo and IT&E and acknowledged by both. IT&E’s counsel sent

a formal bid protest on May 3, 2019, complaining that IT&E was never requested to submit a price proposal. (Tab “14”). On June 12, 2019, GPA responded to IT&E counsel, and advised IT&E that it’s proposal was deemed acceptable, however, Docomo Pacific, Inc. was deemed the best qualified offeror, and only the top-ranking proponent is required to submit a price proposal. (Tab “12). On June 28, 2019, IT&E filed a protest with the OPA in Docket No. OPA-PA-19-008, and GPA filed a Notice of Stay of Procurement. (Tab “1”).

IT&E filed a protest with the Office of Public Auditor on June 28, 2019, and on June 28, 2019, GPA issued a Stay of Procurement, and letters were sent to both bidders. (Tab “1”).

II. DISCUSSION

A. GPA PROPERLY DETERMINED THE BEST QUALIFIED BIDDER BASED ON THE EVALUATION FACTORS SET FORTH IN THE REQUEST FOR PROPOSALS, AND PRICE NEGOTIATIONS COMMENCED WITH DOCOMO PACIFIC, INC., THE BEST QUALIFIED OFFEROR.

Procurement law requires that an “award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable.” 5 GCA §5216(e). “If compensation cannot be agreed upon with the best qualified offeror, the negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.” 5 GCA §5216(e).

2 GAR §3114(j), Selection of the Best Qualified Offerors, provides that “after the conclusion of validation of qualifications, evaluation, and discussion ... the head of the agency conducting the procurement ... shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.” “The offeror determined to be best qualified shall be required to submit cost or pricing data to the head of the agency conducting the procurement at a time specified prior to the commencement of negotiations.” 2 GAR §3114(k). 2 GAR §3114(l), Negotiation and Award of Contract, provides that “the head of the agency conducting the procurement or a designee of such officer shall negotiate a contract with the **best qualified offeror** for the required services at compensation determined in writing to be fair and reasonable.”

GPA found both Docomo and IT&E qualified, but determined that Docomo Pacific, Inc. was the best qualified offeror, and prior to the protest was negotiating a contract for the required services at compensation determined in writing to be fair and reasonable, as required by 5 GCA §5216(e) and 2 GAR §3114(l). IT&E’s argument that GPA is compelled to accept a price proposal from IT&E in the absence of termination of negotiations with the best qualified offeror, is legally incorrect, and in fact prohibited by the Guam procurement code and regulations.

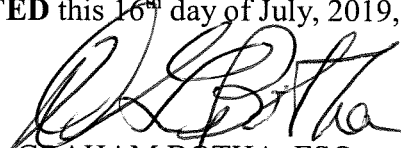
Guam procurement law and regulations that an “award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable.” 5 GCA §5216(e). The evaluation committee memorandum indicates that Docomo Pacific Inc. was selected as the best

qualified offeror, and negotiations were properly conducted with Docomo Pacific Inc.

CONCLUSION

GPA requests that the appeal of PTI Pacifica Inc. dba IT&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 16th day of July, 2019, by:



D. GRAHAM BOTHA, ESQ.
GPA General Counsel