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 PROCUREMENT APPEALS
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Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
 PROCUREMENT APPEALS

IN THE APPEAL OF)	DOCKET NO. OPA-PA-19-010
)	
GlidePath Marianas Operations, Inc.,)	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 November 29, 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 November 29, 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 November 29, 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 November 29, 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 November 29,***

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 November 29, 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 November 29, 2019, by GPA.***

RESPECTFULLY SUBMITTED this 29th day of November, 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 BIDS FOR IFB GPA-IFB-007-018, RENEWABLE ENERGY RESOURCES PHASE III

On November 28, 2017, Guam Power Authority (“GPA”) issued Multi-Step Invitation for Bid, GPA-IFB-007-018, RENEWABLE ENERGY RESOURCES PHASE III, (Tab “71”). Multiple bidders expressed interest in the IFB from November 28, 2017 to June 3, 2019. Six companies submitted bids in response to the Multi-Step IFB, ENGIE, AES, KEPCO/Hanwha, Glidepath, X-Elio, and Global Sources. All bidders, except for Global Sources, submitted bids for both sites, Naval Base Guam and South Finegayan. Tabs 37-47. Phase I Bid Abstract, June 3, 2019. (Tab “48”). Prior to submission of the technical proposals, the bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments II to XIX in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab “50-68”.

On June 3, 2019, the sealed technical proposals of the six bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the technical proposals for the six bidders. The Bid Abstract- Phase I, is contained in the procurement record at Tab “48.” Each of the six bidders submitted technical proposals for either one site or two sites.

On August 12, 2019, the evaluation committee met and recommended that five of the six

bidders be deemed qualified under the Phase I technical evaluation, and one of the six bidders be deemed not qualified under the Phase I technical evaluation to proceed to Phase II – price proposals. Five bidders with twelve project sites were qualified, ENGIE, AES, KEPCO/Hanwha, GlidePath, and X-Elio. (Tab “22”). One bidder was not qualified in the Phase I technical proposal, Global Sourcing USA, Inc. (Tab “21”).

Amendment No. XXIII and letters were sent to the qualified bidders on August 14, 2018 (Tab “22”). Phase I letters were sent to the non-qualified bidders on August 14, 2018 (Tab “21”). Amendment XX to XXIII and clarifications were sent to Phase II bidders. (Tabs “20-35”). On September 10, 2019, the sealed price proposals for the five bidders and ten project sites were opened in the presence of company representatives. (Tab “38”). The price proposal evaluation was completed and determined that the lowest responsive bidder for Naval Base Guam and South Finegayan was ENGIE. (Tab “12”). The evaluation committee recommended award of Naval Base Guam (NBG) and South Finegayan (SF) sites based on the technical price proposals submitted. (Tab “12”). The Phase II – Bid Abstract and evaluation committee memo reflect the NBG site price of **\$110.90/MWH** and the SF site price of **\$108.90/MWh**; AES prices for NGB of **\$169.00/MWh** and SF of **\$158.90/MWh**; GlidePath prices for NGB of **\$196.00/MWh** and SF of **\$191.50/MWh** and GlidePath (Alternate) prices for NGB of **\$176.00/MWh** and SF of **\$176.00/MWh**. The alternate bid reflected the GlidePath demand that it be awarded both sites.

GlidePath filed a protest with GPA which resulted in a Stay of Procurement, and a Lift of Stay when the protest was denied by GPA. (Tab “5”). GlidePath filed an appeal to the OPA on

November 13, 2019, and GPA filed a Stay of Procurement on November 15, 2019 (Tab “2 & 4”).

II. DISCUSSION

A. THE ENGIE BIDS WERE RESPONSIVE, AND THE AWARDS FOR RENEWABLE ENERGY RESOURCE PHASE III WERE PROPERLY AWARDED TO ENGIE FOR THE NAVAL BASE GUAM AND SOUTH FINEGAYAN SITES AS ENGIE MET THE SPECIFICATIONS IN THE MULTI-STEP IFB.

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).

Five bidders submitted technical price proposals for ten sites which were opened by GPA on September 10, 2019. The evaluation committee recommended award of the two lowest site proposals each consisting of a renewable energy and battery project. The committee evaluation memo and the Bid Abstract – Phase II clearly sets forth the prices of the bidders, including ENGIE, GlidePath and AES. Based on the bid abstract, the two proposals submitted by ENGIE, NGB and SF, based on price are the #1 bidder for both sites, at a first-year price of \$110.90/MWh for NGB and \$108.90/MWh for SF. This compares with the AES price of \$169.00/MWh for NGB and \$158.90 for SF, and the GlidePath (Alternate) price of \$176.00/MWh for NGB and \$176.00/MWh for SF.

GlidePath states that “ENGIE’s projects have included more solar generation capacity than allowed by the technical requirement of the IFB. Based on the significantly higher

Guaranteed Net Annual Generation (“GNAG”) included, the ENGIE Priced Proposals when compared to the proposal submitted by GlidePath and all the other bidders, GlidePath’s technical experts are concerned that ENGIE may not have followed all of GPA’s technical requirements.” The ENGIE proposal meets the GPA bid requirement that “the MW rating of the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system.” GlidePath claims that GPA’s technical requirements limit solar system capacity to 20.7MW_{DC}. GPA’s bid did not limit the capacity of the PV installation, but does restrict the delivery of energy at the interconnection point which is 30MW_{ac}. Volume II- Technical Qualification Proposal Requirement, Section 1 Overview (pg 52 of 501) states: “1. The bidder’s renewable resource project shall have a **maximum export capacity of 30MW_{ac}**; this may be a combination of several generation units at one site.” Section 2.3.1. Minimum and Maximum Project Capacity (pg 56 of 501) states “there is no minimum nameplate project capacity that a Bidder may offer, **however the maximum export capacity shall be 30MW.**”

GlidePath itself sought clarification on this issue on February 11, 2019, which was addressed in Amendment XVII (pg. 2 of 17) in which GlidePath asks “what is the maximum procurement under this bid, could GPA select two 30MW_{ac} projects at each site for a total procurement of 60MW_{ac}? The GPA response was “Yes.”

GlidePath states that the GPA limit on the ESS size to 30MW at each project site together with the 145% requirement effectively caps the size of the PV system to 20.7MW_{ac}. The IFB states that the intent of the 145% requirement is to require the ESS charge and discharge be asymmetrical, with ESS discharge power required to be 30MW_{ac} at the point of connection and

ESS charge power not to exceed 20.7MW. This requirement limits the maximum AC PV charging power on each site to 1/1.45 of the maximum AC export capacity. The “MW rating of the PV charging system” in ENGIE’s proposal, is equal to the power rating of the DC/DC converters, and is capped at 20.7MW (i.e. 1/1.45 of 30MW AC), in full compliance with the IFB requirements. Clarifications were provided in Amendment XVII for both GlidePath and ENGIE regarding the increased delivery period.

GlidePath also claims that “except for the ENGIE proposals, all bidders are, in fact, within a similar Guaranteed Net Annual Energy (“GNAG”) range.” For the Naval Base location, the percentage difference between ENGIE and KEPCO is 28.5%, and between KEPCO and X-Elio is 34%. For South Finegayan, the difference between ENGIE and AES is 16.5%, which is close to the gap between GlidePath and AES. There clearly appears to be significant variation between the GNAG values among the bidders. In addition, there is no direct correlation between the GNAG and tariff, i.e. a higher GNAG does not necessarily correspond to a lower tariff: X-Elio offered a 25% lower GNAG than AES, but at virtually the same tariff (\$170 vs. \$169).

5 GCA §5211(g) provides that “Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids ...” as cited in *Pacific Data Systems, Inc. vs. General Services Agency*, OPA-PA 15-012. *In the Appeal of 1-A Guam WEBZ*, OPA-PA 16-002 also addresses the issue of bid evaluation and stated that “the invitation for bids shall set forth the evaluation criteria to be used and no criteria may be used in bid evaluation that are not set forth

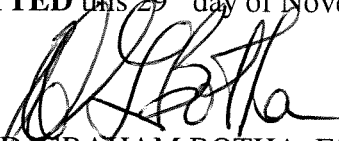
in the Invitation for bids.” 5 GCA §5211(e) and 2 GAR, Div 4, Chap 3, §3109(n)(1).

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). GPA properly awarded two renewable energy sites at Naval Base Guam and South Finegayan to ENGIE as the lowest responsible and responsive bidder. The price proposal evaluation and bid abstract clearly demonstrate that the ENGIE bid for the two sites was the lowest bid for each site for renewable energy. The bids were evaluated and awarded based on the Multi-Step bid specifications and evaluation criteria.

CONCLUSION

GPA requests that the appeal of GlidePath Marianas Operations, Inc. 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 29th day of November, 2019, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel