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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of)	Docket No. OPA-PA-19-010
)	OPA-PA-20-001
GlidePath Marianas Operations, Inc.)	
)	ENGIE SOLAR'S OPPOSITION TO
Appellant.)	GLIDEPATH'S MOTION FOR ORDER
)	STAYING PROCEEDINGS PENDING
)	COMPLETION OF THE PROCUREMENT
)	RECORD

ENGIE SOLAR ("ENGIE"), hereby submits its Opposition to GlidePath's Motion for Order Staying Proceedings Pending Completion of the Procurement Record. After presenting what can only be described as a pathetic case, GlidePath now seeks to stay these proceedings in an obvious attempt to salvage its disastrous appeal. GlidePath's motion is frivolous and should be denied.

A. GlidePath's Motion is Largely Moot

In its motion, dated July 9, 2020, GlidePath states that it “desires to see the previously undisclosed portions of the procurement record before determining if rebuttal testimony is required, and before closing the hearing in this case and submitting this matter for the Public Auditor’s decision.”

Also on July 9, 2020, GPA served a copy of GPA’s Response to GlidePath’s Objection to GPA’s Incomplete Procurement record, wherein GPA provided the previously undisclosed portions of the procurement record mentioned in GlidePath’s motion.

As of the date of this brief, GlidePath has had four whole days to review the 218-page supplement provided by GPA. A firm of three attorneys should certainly be capable of reviewing 218 pages in four days, at least to determine whether those pages contain anything relevant to the appeal. A date should be set for the completion of GlidePath’s review. That date should be soon and it should take into account the third protest filed by GlidePath immediately after it filed its Motion for Order Staying Proceedings Pending Completion of the Procurement Record.

B. The Documents Provided by GPA, Together with the Testimony of Mr. Burlingame, Make it Clear it was GPA’s and Electric Power Systems’ Intent not to Limit the Size of the PV Installations

In its second protest, GlidePath alleges the IFB was ambiguous and resulted in a sole-source procurement, because GPA provided an after-the-fact interpretation of the 145% procurement that allowed only ENGIE’s unpriced technical proposal to meet all the technical requirements. Rather than support GlidePath’s claim that GPA reinterpreted their requirement to allow ENGIE alone to provide a qualifying proposal, the additional records provided by GPA instead show that it was the intent of GPA and Electric Power Systems for the 145% requirement to address the charge and discharge rate of the EPS from the beginning.

GPA's July 9, 2020 Supplemental Procurement Record includes an Electric Power Systems report titled "Comments on Invitation for Multi-Step Bid: Renewable Energy Resource Phase III Guam Power Authority", dated October 17, 2017. That report states that "[t]he relative size between the PV and ESS are not clear in the documents. Is it GPA's intent to restrict the size of the PV for charging the ESS? Or will GPA allow larger PV installations to increase the MWh rating of the ESS?" See GPA's Supplemental Procurement Record, p. 50 (July 9, 2020). This report was sent to Jennifer Sablan on October 21, 2017 and shows that both Mr. Burlingame and GPA were aware of the potential for confusion with this issue on October 21, 2017, before the 145% requirement was created.

On November 13, 2017, Mr. Burlingame sent J. Sablan an email in which he stated that "EPS will prepare a document that will be issued as an addendum to the current solicitation. In that addendum, we will clarify all of the technical specifications for the RFB." He said he planned to have the document ready for review on December 6, 2017 Guam time.

That document was provided on December 6, 2017 (p. 27 of GPA's supplement). The document was titled "AMENDMENT TO INVITATION FOR MULTI-STEP BID NO.: GPA-007-18 DESCRIPTION OF OPERATION/ KEY CHARACTERISTICS & TECHNICAL REQUIREMENTS." This is the part of Amendment XIII that includes the "145% rule" that is at the heart of this matter. From the date the December 6, 2017 document was sent to Ms. Sablan, the language never changed. From the very beginning, the requirement was stated as such:

The MW rating of the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system, up to a maximum capacity of 40 MW. For instance, for a PV installation of 27 MW, the ESS shall be rated at a minimum of 40 MW. For a PV capacity of 10 MW, the ESS rating shall be a minimum of 14.5 MW.

See p. 10, p. 23, and p. 32 of GPA's Supplemental Procurement Record (July 9, 2020).

On July 7, 2020, Mr. Burlingame, whose company authored the purpose of the 145% requirement quoted above, testified that the 145% percent requirement was not to restrict the size of the PV for charging the ESS and that the only purpose of the requirement was to set the relative charge and discharge rates of the ESS. It is also worth noting that the DESCRIPTION OF OPERATION/ KEY CHARACTERISTICS & TECHNICAL REQUIREMENTS, also provided to GPA by Electrical Power Systems for the first time on December 6, 2017, includes Requirement #3, which specifically provides that the parties must maximize the MW output of PV used to charge the ESS to the amount of capacity available at each site. See p. 10, p. 23, and p. 32 of GPA's Supplemental Procurement Record (July 9, 2020) ("The MW output of PV used to charge the ESS should be maximized to the amount of capacity available on each site and any energy restrictions of the ESS.").

D. GlidePath is Making a Mockery of these Proceedings and the Public Auditor's Orders

GlidePath sought discovery in numerous ways during this procurement matter, despite Guam's procurement law specifically prohibiting discovery.

First, GlidePath sought the unpriced technical reports of the other bidders pre-award through a Sunshine Reform Act request, despite the fact that release of unpriced technical offers before an award is prohibited by 2 G.A.R. § 3109(v)(2) and 2 G.A.R. § 3109(t)(3). Second, GlidePath filed a Motion for Discovery on February 5, 2020, pursuant to 5 G.C.A. § 9218, in which it sought a single deposition of a GPA employee. GlidePath claimed the deposition was needed because "GPA should be compelled to nominate a competent representative to provide deposition testimony on how this "DC/DC" acceptance came to be, and to explain the technical underpinnings of Amendment XIII since the procurement record is silent on that matter." Glidepath Motion for Discovery p. 3-4 (February 5, 2020). ENGIE pointed out in its opposition that 5 G.C.A. § 9218 does not authorize depositions for discovery purposes. The Public Auditor denied GlidePath's

motion on March 3, 2020. Third, at the Fourth Status Conference, held on June 12, 2020, ENGIE complained that GlidePath was using its proposed stipulations as a veiled request for admissions. In response, GlidePath's counsel admitted that was its intent.

It is now apparent that GlidePath, instead of abiding by the Public Auditor's decision denying its motion for a deposition, chose to call GPA employee Jennifer Sablan as its first witness at the July 6, 2020 hearing so it could conduct the deposition it wanted all along. GlidePath's examination included extensive questioning on how the origin of the 145% requirement came to be and who Ms. Sablan spoke with in formulating that and other requirements. GlidePath then used that examination to form the basis of its third protest—a protest it filed secretly during the examination of ENGIE's final witness. GlidePath's third protest is not based on an independent violation of the procurement law, claiming that GPA's failure to submit records was an independent violation of the procurement law, but instead was an attempt to file any sort of protest it could by nitpicking at the absence of immaterial documents and communications from the procurement record. The clear purpose of this third protest, filed in secret on the last day of the procurement hearing was to complicate and delay the procurement appeals process.

By using its examination during the procurement hearing in order to accomplish the deposition that was denied by the Public Auditor, GlidePath—at the least—deceived the Public Auditor and the other parties to this protest and—at the most—engaged in flagrant abuse of process. GlidePath's mockery of the procurement process in its apparent attempt to pile protest upon protest and delay these proceedings as long as possible must be put to an end.


CONCLUSION

ENGIE respectfully requests that the Public Auditor provide GlidePath with a date by which its review must be completed and a schedule to allow the parties to merge GlidePath's

frivolous third protest, should it be denied by GPA, with the other protests already on appeal so the parties, the Public Auditor, and GPA's ratepayers may see a light at the end of this dark tunnel.

DATED this 14th day of July, 2020

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