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PROCUREMENT APPEALS
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FILE NO. OPA-PA-21-002

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF)
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Track Me Guam, LLC,)
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Appellant.)
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DOCKET NO. OPA-PA-21-002

**OPPOSITION TO MOTION FOR
DISCOVERY**

COMES NOW, the GUAM POWER AUTHORITY, by and through its counsel of record, D. GRAHAM BOTHA, ESQ., and hereby files its opposition to Appellant's motion for discovery.

Track Me requests that the Public Auditor pursuant to 5 GCA §9218 and 2 GAR §§12109(c) and 12105(g) issue an Order requiring Guam Power Authority (GPA) to produce for deposition a competent representative to testify regarding the Technical Qualification proposal requirements contained in the bid, GPA-IFB-024-21, Fleet and Fuel Management Software Services for the Authority's Fleet.

The procurement rules of procedure are clear in this matter. Track Me references 2 GAR §12109 (a), which references the authority of the Hearing Officer. The section states that "the Hearing Officer shall receive written, oral, or otherwise presented testimony, evaluate such testimony and make recommendations to the Public Auditor. No prior determination shall be final or conclusive. The Hearing Officer has the power, among others, to:

(a) Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matter that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's [Hearing Officer] own motion."

2 GAR §12108(d) Hearing Proceedings, provides that:

"Hearings shall be as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure **except as provided by the Guam Procurement Law, Chapter 5 of Title 5, Guam Code Annotated**, and with these procurement appeals regulations. The testimony presented shall be written, oral or otherwise. The weight to be attached to evidence presented in any particular forum will be within the discretion of the Hearing Officer.... Where not otherwise provided for by these rules and regulations or statute, and where not inconsistent herewith, hearings shall be conducted in accordance with the Administrative Adjudication Law in Chapter 9 of Title 5, Guam Code Annotated, including those provisions on subpoenas and contempt."

Track Me references 5 GCA §9218 as a basis for allowing a deposition, despite the fact there is no provision for depositions in the procurement code. The section provides that:

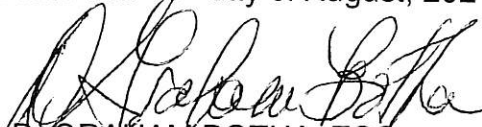
Depositions. On the **verified petition** of any party, an agency may order that the testimony of any material witness residing within or without the territory of Guam be taken by deposition in the manner prescribed by law for depositions in civil actions. The **petition** shall set forth the nature of the pending proceedings; the name and address of the witness whose testimony is desired, a showing of the materiality of his testimony, **a showing that the witness will be unable or cannot be compelled to attend**; and shall request an order requiring the witness to appear and testify before an office named in the petition for that purpose...."

There has been no verified petition filed by Track Me as required under 5 GCA §9218, and no showing has been made that the witness will be unable or cannot be compelled to attend. Track Me's counsel repeats the same arguments in previously argued in *GlidePath vs. GPA*, and argues that the Superior Court case supports its argument. The procurement record in this appeal is contained in 3 binders, yet counsel finds that the issues and material contained in this appeal are as difficult and complicated as in the *GlidePath* appeal.

While the OPA may not be bound by the technical rules of evidence, there is nothing in the rules that requires the OPA to allow depositions, particularly in a matter containing only two

bidders and a very limited procurement record consisting of three binders. The OPA has already given a scheduling order for the parties, which requires the parties to provide pre-trial briefs establishing each party's position on different issues. GPA requests that OPA deny the request submitted by appellant Track Me for a deposition, and allow them to state their position in their pre-trial brief.

RESPECTFULLY SUBMITTED this 18th day of August, 2021, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel