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Reminder: OPA-PA-21-002 Findings of Fact and Conclusions of Law

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Mon, Oct 11, 2021 at 2:52 PM

Mr. Hernandez:

Please find attached GPA's proposed findings of facts and conclusions of law in Track Me vs. GPA.

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 **OPA - GPA Findings of Fact and Conclusions of Law OPA-PA-21-002.pdf**
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10 **OFFICE OF THE PUBLIC AUDITOR**
11 **PROCUREMENT APPEALS**
12

13 IN THE APPEAL OF) DOCKET NO. OPA-PA-21-002
14)
15 Track Me Guam, LLC,)
16) **APPELLEE'S [PROPOSED] FINDINGS**
17 Appellant.) **OF FACTS AND CONCLUSIONS**
18) **OF LAW**
19 _____)
20

21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22 record, D. GRAHAM BOTHA, ESQ., and submits its Proposed Findings of Facts and
23 Conclusions of Law, as follows.
24

25 **[PROPOSED] FINDINGS OF FACTS**

26 The Public Auditor makes the following finds of fact:

- 27 1. On January 7, 2021, Guam Power Authority ("GPA") issued Invitation for Bid, GPA-IFB-
28 024-21, FLEET & FUEL MANAGEMENT SOFTWARE SERVICES FOR THE
29 AUTHORITY'S FLEET [Procurement Record ("PR"), Tab 49].
- 30 2. Two bidders, Track Me Guam, LLC and PTI Pacifica, Inc. dba IT&E, expressed interest in
31 the IFB from January 7, 2021 to January 28, 2021, and both submitted bids in response to the
32 IFB. Bid Abstract, January 28, 2021 [PR, Tab 40].
- 33 3. Prior to submission of the bids, the bidders had an opportunity to submit questions regarding
34 the IFB. GPA issued amendments I and II in response to these questions, and other
35 amendments to clarify the IFB. [PR, Tabs 41-48].

- 1 4. On January 28, 2021, the bids were opened in the presence of company representatives. The
2 representatives were provided a copy of the Abstract of Bids which lists the two bids
3 submitted by Track Me Guam, LLC and PTI Pacifica, Inc. dba IT&E. The bid submitted by
4 **Track Me Guam, LLC was \$9,338.46 per month, and the PTI Pacifica, Inc. dba IT&E**
5 **bid was \$5,628.00 per month.** [PR, Tab 40].
- 6 5. On February 9, 2021, the evaluation committee met and requested clarification from PTI
7 Pacifica, Inc. dba IT&E. [PR, Tab 35-36].
- 8 6. The evaluation committee requested further clarification on February 11, 2021, and February
9 19, 2021 from PTI Pacifica, Inc. dba IT&E. [PR, Tab 30-33].
- 10 7. The evaluation committee met on February 22, 2021, and determined that both bidders met
11 the required bid specifications, and recommended the lowest responsible and responsible
12 bidder be awarded. [PR, Tab 29].
- 13 8. The Bid Analysis dated March 8, 2021, recommended that Line Item No. 1.0 be awarded to
14 PTI Pacifica, Inc. dba IT&E in the total amount of \$67,536.00 annually as being the lowest
15 responsive and responsible bidder. [PR, Tab 26].
- 16 9. The Certification of Completed Procurement Record is dated March 10, 2021. [PR, Tab 25].
- 17 10. Track Me Guam, LLC filed a protest with GPA on March 12, 2021, which resulted in a Stay
18 of Procurement. [PR, Tab 24].
- 19 11. A Bid Protest Supplement was filed on April 6, 2021. [PR, Tab 16].
- 20 12. GPA denied the protest on June 10, 2021, and there was a Lift of Stay when the protest was
21 denied by GPA. [PR, Tab 12].
- 22 13. Track Me Guam, LLC filed an appeal to the OPA on July 1, 2021, and GPA filed a Stay of
23 Procurement on July 1, 2021. [PR, Tabs 4 & 6].
- 24 14. The formal evidentiary hearing was held on September 12, 2021 before the Public Auditor.

- 1 15. Track Me, employee Alan Delos Santos, testified at the hearing that IT&E's solution
2 required Russian software to be integrated with Russian hardware, based on his e-mails
3 regarding Wialon software, although he did not contact the IT&E provider, DCS. Testimony
4 of Allan Delos Santos.
- 5 16. During the hearing, on cross-examination, employee Alan Delos Santos, admitted that the
6 solution proposed by Track Me did not meet the requirement set forth in Section C.2 for
7 unlocking of vehicle doors for older vehicles without power locks without additional parts,
8 and that the Wialon software was used by Track Me. Testimony of Allan Delos Santos.
- 9 17. Melissa Uncangco, GPA Buyer II, testified that the existing contract with Track Me was
10 expiring, and was the reason for issuing a new IFB. [PR, Tab 49]. Testimony of Melinda
11 Uncangco.
- 12 18. Melissa Uncangco testified that the end user, Transportation Division, Jimmy Pangelinan
13 and Pedro Sanchez, were responsible for developing the specifications for the IFB.
14 Testimony of Melissa Uncangco.
- 15 19. Pedro Sanchez, Management Analyst III, testified about his role in developing the bid
16 specifications from a previous IFB, and his role on the evaluation committee. Testimony of
17 Pedro Sanchez.
- 18 20. Pedro Sanchez testified that the bid evaluation committee met on February 22, 2021 and
19 recommended that both bidders met the required bid specifications, and recommended that
20 the lowest responsible and responsible bidder be awarded. [Tab 29]. Testimony of Pedro
21 Sanchez.
- 22 21. The bid evaluation committee carefully reviewed the submissions of both bidders, and
23 determined that the submissions of both bidders met the GPA bid specifications. There was

1 no determination made as to which bid proposed a superior product, but only a determination
2 that the bid specifications were met.

3 **[PROPOSED] CONCLUSIONS OF LAW**

4 22. Pursuant to 5 GCA §5703, the Public Auditor reviews GPA's denial of Track Me's
5 Protests *de novo*, and concludes that GPA's decision to award the Fleet and Fuel
6 Management Software Services to IT&E was proper.

7 23. Procurement law requires that GPA make an award to the lowest responsible and
8 **responsive bidder**. A responsive bidder is a person who has submitted a bid which
9 confirms in all material respects to the Invitation for Bid. 5 GCA §5201 (g) and 2
10 GAR, Div. 4, Chap. 3, §3109(n)(2). Further, any bidder's offering which does not
11 meet the acceptability requirement shall be rejected as non-responsive. 2 GAR, Div.
12 4, Chap. 3, §3109(n)(3)(c).

13 24. The IT&E bid was clearly the lowest responsible and responsive bid submitted, as
14 the bid submitted by **Track Me Guam, LLC was \$9,338.46 per month, and the PTI**
15 **Pacifica, Inc. dba IT&E bid was \$5,628.00 per month.**

16 25. The Public Auditor has reviewed the procurement recorded submitted by GPA, and
17 after careful evaluation and consideration, the Public Auditor determines that the
18 procurement record is complete.

19 26. 5 GCA §5211(g) provides that "the contract shall be awarded with reasonable
20 promptness by written notice to the lowest responsible bidder whose bid meets the
21 requirements and criteria set forth in the Invitation for Bids ...". *Pacific Data*
22 *Systems, Inc. vs. General Services Agency*, OPA-PA 15-012.

23 27. 5 GCA §5211(e) and 2 GAR, Div. 4, Chap. 3, §3109(n)(1) provides that "the
24 invitation for bids shall set forth the evaluation criteria to be used and no criteria may

1 be used in bid evaluation that are not set forth in the Invitation for Bids." *In the*
2 *Appeal of 1-A Guam WEBZ, OPA-PA 16-002.*

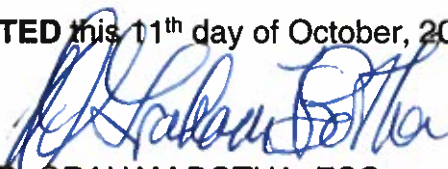
3 28. GPA properly awarded the Fleet and Fuel Management Software Services to IT&E
4 as the lowest responsible and responsive bidder, as the price proposal evaluation
5 and bid abstract clearly demonstrate that the IT&E bid was the lowest bidder, and
6 the bid was evaluated and awarded based on the bid specifications and evaluation
7 criteria.

8 29. GCA § 5001. Purposes, Rules of Construction. (a) Interpretation, provides that the
9 underlying purposes and policies of this Chapter are: ... (3) to provide for increased
10 public confidence in the procedures followed in public procurement; (4) to ensure the
11 fair and equitable treatment of all persons who deal with the procurement system of
12 this Territory; (6) to foster effective broad-based competition within the free
13 enterprise system; (7) to provide safeguards for the maintenance of a procurement
14 system of quality and integrity; and (8) to require public access to all aspects of
15 procurement consistent with the sealed bid procedure and the integrity of the
16 procurement process.

17 CONCLUSION

18 GPA requests that the appeal of Track Me be dismissed, the award to IT&E be
19 upheld, and that the Public Auditor award all legal and equitable remedies that GPA may
20 be entitled to as a result.

21 **RESPECTFULLY SUBMITTED** this 11th day of October, 2021, by:

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23 D. GRAHAM BOTHA, ESQ.
24 GPA General Counsel
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