



Jerrick Hernandez <jhernandez@guamopa.com>

dooik, opa-pa-23-004

Marianne Woloschuk <mwoloschuk@gpagwa.com>

Tue, Dec 26, 2023 at 5:30 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "service@camachotaitano.law" <service@camachotaitano.law>, Beatrice Limtiaco <tlimtiaco@gpagwa.com>, "Tricia Lyn T. Guzman" <tltguzman@gpagwa.com>

Good afternoon, Jerrick!

Attached for filing is GPA's motion to dismiss as moot (7 pp.).

Thank you,

-Marianne

Marianne Woloschuk**Guam Power Authority**

Gloria B Nelson Public Service Building



#688 Route 15 Fadian

Mangilao, GU 96913

TEL: 671.648.3203

MailScanner has detected a possible fraud attempt from "gpagwa.com" claiming to be mwoloschuk@gpagwa.com

Disclaimer Notice: The information contained in this communication is intended solely for the use of the individual or entity to whom it is addressed and others authorized to receive it. It may contain confidential or legally privileged information. If you are not the intended recipient you are hereby notified that any disclosure, copying, distribution or taking any action in reliance on the contents of this information is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by responding to this email and then delete it from your system. Guam Power Authority is neither liable for the proper and complete transmission of the information contained in this communication nor for any delay in its receipt.

This email was scanned by Bitdefender

2 attachments



image001.jpg
5K

 **23-12-26_GPA's motion to dismiss as moot.pdf**
172K

1 **MARIANNE WOLOSCHUK**
2 Legal Counsel
3 Guam Power Authority
4 Gloria B. Nelson Public Building
5 688 Route 15, Mangilao, GU 96913
6 Telephone: (671) 648-3203
7 Fax No. (671) 648-3290
8 Email: mwoloschuk@gpagwa.com

9 *Attorney for Guam Power Authority*

10 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
11 **PROCUREMENT APPEAL**

12 **In the Appeal of:**

13 **Appeal Case No. OPA-PA-23-004**

14 **DOOIK ENG., LTD.,**

15 **GPA'S MOTION TO DISMISS**
16 **PROCUREMENT APPEAL AS MOOT**

17 **Appellant.**

18 **I. Introduction.**

19 The Guam Power Authority (GPA) hereby moves to dismiss this appeal as moot.

20 **II. Facts.**

21 In January of this year, GPA issued Multi-Step Invitation for Bids GPA-023-23 for a
22 performance management contract (PMC) for the Yigo diesel generators. On or about May 23,
23 2023, GPA rejected as non-responsive the bid submitted by appellant Dooik Eng Co., Ltd.
24

25 Typhoon Mawar struck Guam on and about May 24, 2023.

26 Dooik launched a protest on May 30, 2023, which was denied, then perfected this
27 procurement appeal on or about September 18, 2023, which imposed an automatic stay on the
28 procurement under MS IFB GPA-023-23. In November, GPA unsuccessfully sought to lift the
29 stay of the procurement through a determination of substantial interest. *See* GPA's Mot. re
30
31
32

1 Substantial Interest, Nov. 13, 2023 (denied at Mot. Hr'g, Nov. 27, 2023). The matter proceeded
2 to a hearing on the merits on December 19, 2023.

3
4 At the merits hearing, the Public Auditor directed the parties' attention to the OPA's
5 decision in *In re Johndel Int'l, Inc. dba JMI-Edison*, Appeal Case No. OPA-PA-23-002, which
6 held that the Guam International Airport Authority could not justify an emergency procurement
7 for its baggage handling system based on the appellant's procurement protest, when the alleged
8 emergency could have been avoided through better management practices.

9
10 GPA interpreted the decision as suggesting that in the absence of a determination of
11 substantial interest in this case, it would be better to cancel an allegedly flawed procurement than
12 to pursue a potentially years-long appellate process. In addition, GPA obtained authorization to
13 proceed with the procurement of temporary power, necessitating the reconfiguration of the Yigo
14 diesel generators PMC project. GPA therefore cancelled MS IFB GPA-023-23 on December 21,
15 2023, Ex. A (Mem. re Cancellation of MS IFB GPA-023-23, Dec. 21, 2023), and issued
16 cancellation letters to all of the bidders on or about December 22, 2023. Exs. B (Notices of
17 Cancellation of Procurement, Dec. 22, 2023) & C (Mem. re Appointment of Acting Gen.
18 Manager, Dec. 14, 2023).

19
20
21
22 GPA now moves to dismiss this procurement appeal as moot.

23 24 **III. Legal Argument.**

25
26 "Mootness is a jurisdictional question because [tribunals are] not empowered to decide
27 moot questions or abstract propositions." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)
28 (citations and internal quotation marks omitted). A case is moot "when the issues are no longer
29 live or the parties lack a legally cognizable interest in the outcome. Mootness can arise at any
30 stage of litigation. . . . [A]n appeal should be dismissed as moot when, by virtue of an intervening
31
32

1 event, the [reviewing body] cannot grant effectual relief whatever in favor of the appellant.”

2 *Town House Dep't Stores v. Ahn*, 2000 Guam 32 ¶ 9.

3
4 Many courts have “consistently found that the cancellation of a procurement renders a
5 protest of that procurement moot.” *Coastal Env't Group, Inc. v. United States*, 114 Fed. Cl. 124,
6 131 (Fed. Cl. 2013). In this appeal, Dooik seeks an order of the Public Auditor compelling GPA
7 to find Dooik’s proposal acceptable (or potentially acceptable) and allow Dooik to advance to
8 Step 2 of the IFB. Comment to Agency Report, 7 (Oct. 13, 2023); Dooik’s Hr’g Br., 11 (Dec. 11,
9 2023); Notice of Appeal, 3 (Sept. 18, 2023). Alternatively, Dooik asks the Public Auditor to
10 issue an order cancelling the procurement altogether based on GPA’s alleged errors in the
11 procurement, including failure to consult with the Attorney General, errors related to the
12 scoresheet and scoring, and the method of solicitation. *Id.*


13
14
15
16 GPA has cancelled the procurement, a form of relief sought by Dooik, in order to
17 reconfigure the project. The cancellation of the procurement has rendered Dooik’s other remedy,
18 advancement to Step 2, meaningless. As a result, the Public Auditor cannot grant effectual relief
19 in Dooik’s favor. GPA’s cancellation of MS IFB GPA-023-23 for the PMC has thus rendered
20 Dooik’s protest moot. The Public Auditor should therefore dismiss this matter as moot.

21
22
23 **IV. Conclusion.**

24 In light of the foregoing, GPA asks that this procurement appeal be dismissed as moot.

25 Respectfully submitted this 26th day of December, 2023.

26
27 *Attorney for Guam Power Authority*

28
29 By: 
30 Marianne Woloschuk
31 GPA Legal Counsel
32



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O.BOX 2977 • HAGÁTÑA, GUAM U.S.A. 96932-2977

MW/AGMA2321
December 21, 2023

MEMORANDUM

To: Assistant General Manager, Engineering & Technical Services
Assistant General Manager, Administration
Supply Management Administrator

From: General Manager

Subject: **Cancellation of MS IFB GPA-023-23
Yigo Diesels Performance Management Contract (PMC)**

The purpose of this memo is to notify you of my decision to cancel the Yigo Diesels Performance Management Contract (PMC) Multi-Step Invitation for Bid (MS GPA-023-23).

I have determined that the cancellation of this bid is in the best interests of GPA and the government of Guam pursuant to 2 GAR Div. 4 § 3115 for the following reasons.

This bid was issued in January 2023 to provide critical performance management services for the Authority's 40MW Yigo Diesel generators. A stay of procurement was placed on September 18, 2023 due to an appeal to the Office of Public Accountability.

In May 2023, Typhoon Mawar significantly damaged the 20MW Yigo CT unit. The unit is undergoing repairs in Texas and is expected to arrive on Guam in February. The 198MW Ukudu power plant project completion date is now delayed from April 2024 to January 2026 due to the irreparable damage to the fuel and water tanks by Typhoon Mawar, requiring re-construction of the tanks. The Authority is addressing the need for generation capacity by restoring down units and improving the generation output of operating units.

The CCU and PUC approved and authorized GPA to procure 40MW of temporary power services to be commissioned within 100 days of the notice to proceed until the 2026 commissioning of the Ukudu plant to address the urgent need for power capacity demand before May 2024. GPA considered several potential sites to place the temporary power generators. This week, GPA determined the most viable sites for the temporary power services as Yigo (for diesel engines) and Tenjo (for combustion engines), primarily due to air permitting and fuel availability considerations.

The Yigo site currently houses the Yigo diesel generators, the subject of this current bid. The award of the temporary power bid will require the removal of these generators. While it is possible for the generators to be assessed and repaired at another location, the immediate operation (power generation capability) of such is unlikely as the necessary permitting and infrastructure are not available at alternate sites. Furthermore, amendments to the bid scope of work would significantly differ from that originally contained in the current bid.

Additionally, the Public Auditor, in a hearing on *In re Dooik Eng Co., Ltd.*, Case No. OPA-PA-23-004, suggested that in the absence of a determination of substantial interest, it is better to cancel an allegedly flawed procurement



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUÅHAN
P.O.BOX 2977 • HAGÁTÑA, GUAM U.S.A. 96932-2977

December 22, 2023

Sugbog Moon
President
Dooik Eng. Co., Ltd.
31, Haeyang-ro, Yeongdo-gu
Busan, Korea
Tel. No.: +82-51-466-9492
Fax No.: +82-51-467-8586
Email: sbmoon27@hanmail.net

SUBJECT: Cancellation of Multi-Step Bid No.: GPA-023-23 for Performance Management Contract (PMC) Yigo Diesel Generators

Dear Mr. Moon:

The Guam Power Authority has determined that the cancellation of this bid as provided in the procurement regulations is in the best interests of Guam. 2 GAR Div. 4 § 3115(b).

Due to the passage of time since a PMC for these generators was first contemplated as well as the changes needed to eliminate potential flaws in this procurement, GPA has determined that the proposed amendments to the solicitation are of such magnitude that a new solicitation is desirable. 2 GAR Div. 4 § 3115(d)(1)(B)(iii).

Therefore, Multi-Step Invitation for Bid No.: GPA-023-23 is cancelled and a new procurement for the performance management contract for the diesel generators will be issued. All bidders will have an opportunity to compete on any future procurement for this project.

Respectfully,

A handwritten signature in black ink, appearing to read 'MW' followed by a cursive signature.

BEATRICE P. LIMTIACO
General Manager (Acting)

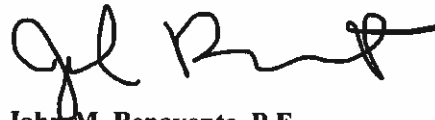
Handwritten initials in black ink, possibly 'JM'.

EXHIBIT B

than to pursue a potentially years-long appellate process. The Guam Power Authority has determined that the cancellation of this bid as provided in the procurement regulations is in the best interests of Guam. 2 GAR Div. 4 § 3115(b).

Due to the passage of time since a PMC for these generators was first contemplated as well as the changes needed to eliminate potential flaws in this procurement, GPA has determined that the proposed amendments to the solicitation are of such magnitude that a new solicitation is desirable. 2 GAR Div. 4 § 3115(d)(1)(B)(iii).

Therefore, MS IFB GPA-023-23 is cancelled and a new procurement for the performance management contract for the diesel generators will be issued. All bidders will have an opportunity to compete on any future procurement for this project.



John M. Benavente, P.E.

Concurred by:



Marianne Woloschuk
Staff Attorney

cc: CFO
AGMO

//



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUÁHAN
P.O.BOX 2977 • HAGÁTÑA, GUAM U.S.A. 96932-2977

MEMORANDUM

TO: Distribution A, B, & C

FROM: General Manager

DATE: December 14, 2023

SUBJECT: Acting General Manager Appointment/BEATRICE P. LIMTIACO

Effective, December 20, 2023 through January 10, 2024, MRS. BEATRICE "TRICEE" P. LIMTIACO (AGMA) shall serve in the capacity as GPA GENERAL MANAGER.

Please provide Mrs. Limtiaco your utmost support and cooperation as she takes on these additional duties and responsibilities.

Thank you,


JOHN M. BENAVENTE, P.E.

Approved:


JOSEPH T. DUENAS
CCU Chairman

cc: CCU Members
Human Resources Department
File

EXHIBIT C