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**RECEIVED**  
**OFFICE OF PUBLIC ACCOUNTABILITY**  
**PROCUREMENT APPEALS**  
DATE: 10/10/14  
TIME: 4:21  AM  PM BY: AG  
FILE NO OPA-PA: 14-008

**OFFICE OF THE PUBLIC AUDITOR**  
**PROCUREMENT APPEALS**

IN THE APPEAL OF ) **DOCKET NO. OPA-PA-14-008**  
)  
IP&E HOLDINGS, LLC ) **APPELLEE'S OPPOSITION TO**  
) **HEARING OFFICER'S REQUEST**  
Appellant. ) **FOR CONFIDENTIAL DOCUMENTS**  
\_\_\_\_\_)

**COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of record, D. GRAHAM BOTHA, ESQ., and hereby files its opposition to the Hearing Officer's Order to provide confidential financial documents, properly identified and withheld, as part of the procurement record.

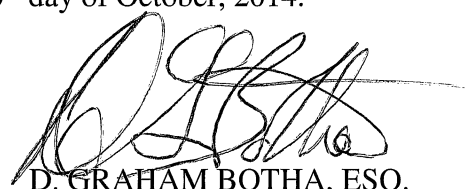
In the procurement record on page 148, GPA correctly identified confidential financial documents not included in the procurement record. §12105(c)(3) provides that the "Chief Procurement Officer, .... , or the head of a Purchasing Agency shall submit to the Public Auditor a complete copy of the procurement record relevant to the appeal." In this appeal, the financial records of the Appellant and Interested Party are not in contention. Both bidders were properly deemed qualified by GPA in the multi-step bid technical analysis. Appellant IP&E is appealing the award and the interpretation of the award methodology made by GPA. Neither the appellant or interested party is challenging GPA's decision to find both bidders technically qualified. The confidential financial information sought is therefore not relevant to the issues before the OPA.

1           5 GCA §5130(b) provides that information furnished by a bidder or offeror pursuant to this  
2 Section shall not be disclosed outside of the General Services Agency, the Department of Public  
3 Works or the purchasing agency without prior written consent by the bidder or offeror, but may be  
4 disclosed to the Attorney General at any time. The clear intent of IP&E is that “the data furnished  
5 in connection with our response .... Shall not be disclosed outside the Guam Power Authority, in  
6 whole or in part or for any purpose other than to evaluate the proposal....” (Procurement Record,  
7 page 48.) 5 GCA §5001(b)(7) provides “safeguards for the maintenance of a procurement system  
8 of quality and integrity” and (b)(4) provides for “fair and equitable treatment of all persons who  
9 deal with the procurement system ...” It appears clear that absent some compelling reason or  
10 dispute regarding technical qualifications that privileged financial records, not relevant to the  
11 appeal to the OPA, should be protected from disclosure.

12           GPA requests that the confidential financial records of appellant IP&E not be included as  
13 part of the procurement record, as they are clearly not relevant to the appeal before the OPA.

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**RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of October, 2014.



D. GRAHAM BOTHA, ESQ.  
GPA Legal Counsel