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 PROCUREMENT APPEALS
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Attorneys for Party in Interest Mobil Oil Guam Inc.

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

In the Matter of,)	Docket OPA PA-15-006
)	
IP&E HOLDINGS, LLC,)	
)	
Appellant,)	
)	HEARING BRIEF OF
And)	INTERESTED PARTY
)	
GUAM POWER AUTHORITY,)	
)	
Purchasing Agency.)	

Interested Party **MOBIL OIL GUAM INC.** ("Mobil"), hereby submits its Hearing Brief for the August 18, 2015 hearing in the present procurement appeal filed by **IP&E HOLDINGS, LLC** ("IP&E").

This appeal concerns the invitation for multi-step bid on GPA-005-15, a contract to provide diesel fuel and automotive gasoline for the GPA transportation fleet.

The sole issue on appeal is whether bidders were required to submit insurance policies at the time of bid submission. It is the position of Mobil, as an interested party, that the invitation for bid did not require the bidders to submit insurance policies with their bids. Instead, the draft contract required the winning bidder to submit an insurance policy along

with the terms and conditions of the contract. Further, none of the bidders could have submitted valid insurance policies, because none of them could have an insurable interest in the contract without having been awarded the contract.

A. THE CONTRACT ONLY REQUIRES THE WINNING BIDDER TO SUBMIT AN INSURANCE POLICY

As noted by GPA, "the actual items required at the time of the IFB submission are indicated in the Special Reminders to Prospective Bidders and include the bid guarantee, statement of qualification, and various affidavits regarding shareholders, non-collusion, no gratuities, ethical standards, wage determination, and sex offenders." See Agency Report. Paragraph G is part of Section 3.13 of the Fuel Oil Supply Contract. The first page of the contract defines the term "Contractor" to mean the party with whom GPA executes the contract, on the date of the award, whomever that party shall be. ("This CONTRACT, shall be executed on the date of the award, by and between Guam Power Authority, a public corporation, hereinafter referred to as 'Authority' or 'GPA', and _____ herein referred to as 'Contractor' or 'Supplier'.") See Page 857 of the Procurement Record). Thus, the contract defined the "Contractor" as the party that executes the contract with GPA, not any or all of the prospective bidders.

The Fuel Oil Supply Contract states that "the contractor", meaning the party that executes the contract with GPA,

. . . shall not commence work under this contract until he has obtained all insurance required under this section and such insurance has been approved by GPA, nor shall the Contractor allow any Subcontractor to commence work on this subcontractor until all similar insurance required of the Subcontractor has been so obtained.

Since the identity of the contractor was not ascertainable until the contract was awarded, none of the prospective bidders could be obligated under the terms of the contract.

B. THE BIDDERS COULD NOT SUBMIT VALID INSURANCE POLICIES WITH THEIR BIDS, BECAUSE NONE OF THEM HAD AN INSURABLE INTEREST IN THE CONTRACT

None of the parties bidding on GPA-005-15 could have an insurable interest in connection with the contract until the contract was awarded and executed. Before the award and execution, the parties had a contingent to expectant interest at most. However, contingent or expectant interest, not founded upon a valid contract is not insurable. See 18 G.C.A. § 18204(a) ("A mere contingent or expectant interest in anything, not founded upon an actual right to or in the thing, nor upon any valid contract for it, is not insurable.").

Without such an insurable interest, any insurance policy submitted by any bidder that included an interest in GPA-005-15 would be void under 22 G.C.A. § 18204(c) See 22 G.C.A. § 18204(c) ("If the insured has no insurable interest, the contract is void.").

C. IP&E ITSELF FAILED TO COMPLY WITH PARAGRAPH G

The insurance policy submitted by IP&E does not comply with

Paragraph G. Paragraph G of the draft contract provides that "[t]he Certificates of Insurance shall clearly show this Contract number." See Page 872 of the Procurement Record). The insurance policy submitted by IP&E does not. ("Endorsement No. GL-1"). GPA-005-15 is clearly not included in the schedule of contracts.

Thus, even if the Parties were required to conform with Paragraph G of the draft contract when they submitted their bids, IP&E failed to do so.

CONCLUSION

The award made by GPA was made properly as it was made to the lowest responsible and responsive bidder, which was Mobil. Only the winning bidder was required to submit a valid insurance policy. None of the bidders could have submitted a valid insurance policy because none of them could have an insurable interest in a contract that had not yet been awarded. IP&E's failure to do so is evidence of this.

For these reasons, Mobil respectfully requests that the Public Auditor deny IP&E's appeal.

DATED this 11th day of August, 2015.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

BY: 

R. MARSIL JOHNSON

Attorneys for Party in Interest Mobil Oil Guam Inc.

CERTIFICATE OF SERVICE

I, **R. MARSIL JOHNSON**, do hereby certify that on the 11th day of August, 2015, I caused to be served a copy of **HEARING BRIEF OF INTERESTED PARTY** to be served upon the following, via hand delivery:

Purchasing Agency: Joaquin C. Flores
General Manager
Guam Power Authority
1911 Rte 16
Harmon, Guam

Appellant: Steven Carrara
IP&E Holdings, LLC
646 Chalan San Antonio
Tamuning, Guam 96913-3644

DATED this 11th day of August, 2015.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

BY: 
R. MARSIL JOHNSON
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