

Steven Carrara  
IP&E Holdings LLC  
P.O. Box 2881  
Barrigada, Guam 96921  
Telephone No. (671) 646-1222  
Fax No. (671) 646-4723  
E-mail: [Steven.Carrara@itehq.net](mailto:Steven.Carrara@itehq.net)

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: November 09, 2015  
TIME: 3:53  AM  PM BY: AR  
FILE NO OPA-PA: 15-013

Attorney for Appellant  
IP&E Holdings, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of ) NOTICE OF PROCUREMENT APPEAL  
)  
IP&E HOLDINGS, LLC., ) Docket No. OPA-PA 15-013  
)  
Appellant. )

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Appellant Information:

IP&E Holdings, LLC. (IP&E)  
646 Chalan San Antonio  
Tamuning Guam 96913-3644

Tel: 647-0123  
Fax: 649-4353

Appeal Information:

- A) Guam Power Authority ("GPA"), Consolidated Commission on Utilities ("CCU").
- B) Invitation for Bid N0. GPA 005-15 for the Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline (Regular Unleaded) for GPA Transportation Fleet.
- C) Decision being appealed is the GPA Denial of Protest, dated October 30, 2015.
- D) Appeal is made from a decision on protest of notice of award.
- E) Names of Competing Bidders: Mobil Oil Guam, Inc., South Pacific Petroleum Inc.

Form and Filing:

On or about October 28, 2015, GPA issued invitation for bid GPA -005-15 for the procurement of diesel and automotive fuel for the GPA Fleet. Bid opening occurred on July 8, 2015.

On or about April 29, 2015, IP&E filed its initial protest challenging award to Mobil Guam for failure to provide the specified insurance as part of its bid submission. On or about September 18, 2015 the OPA issued its protest decision. Specifically stating that submission of the identified insurance was required that if GPA did not desire the insurance it should revise its requirements or race. A copy of the OPA decision is included as part of Attachment B.

On or about September xx, 2015, IP&E filed an agency protest challenging the deletion of the insurance requirements without soliciting subsequent bids. (Attachment A). In a letter dated October 30, 2015, GPA denied the protest. (Attachment B).

It is IP&E position that once GPA elected to change the requirements, GPA should have re-solicited bids from the existing bidders so that may adjust their pricing for the new requirements or cancel the bid entirely and begin anew. By merely deleting the requirement without new pricing to favor one bidder is an anathema to sound procurement procedure and policy and inapposite to the original protest decision which found the insurance was required to be submitted as part of the original bid. To find otherwise renders the initial protest and decision moot and perpetuate poor procurement practice.

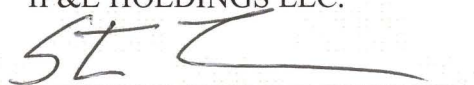
Declaration regarding court action:

IP&E confirms that an action in court has not been commenced.

Dated this 6th day of November 2015.

IP&E HOLDINGS LLC.

By: \_\_\_\_\_

  
Steven Carrara  
General Counsel

#### VERIFICATION

I Brian J. Bamba, Managing Director, for IP&E Holdings LLC, hereby declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct of my own knowledge, except as to those matter alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 6<sup>th</sup> day of November 2015.

  
\_\_\_\_\_  
Brian J. Bamba



Mr. John M. Benavente, P.E.  
General Manager

Guam Power Authority  
P.O. Box 2977  
Hagåtña Guam, 96932

Subject: GPA IFB GPA-005-15

Topic: Formal Bid Protest

Attn: Mr. John Benavente, P.E. - General Manager

Dear Mr. Benavente:

I write this in response to Amendment No.: VII to GPA IFB GPA-005-15, which IP&E received on October 8<sup>th</sup>, 2015.

The recent OPA decision, Section VI, subsection four clearly states that the IFB must be cancelled and revised. In the event that GPA wishes to amend the specifications, it is required to make a formal amendment to the existing procurement, it should be required to solicit bids to reflect the change. It is an inherent principle of procurement law that bidders are aware of the specifications so that may submit a bid to meet the specifications. If the specifications are changed a bidder must be accorded the opportunity to respond. Merely, deleting the requirement, which GPA previously found to be important, without soliciting additional bids or restarting the entire procurement makes the OPA decision superfluous.

Regards,

Fred Keller  
Director of Sales

[F.keller@ipehq.com](mailto:F.keller@ipehq.com)  
1-671-797-0337 (cell)  
1-671-647-0123 ext.102 (work)

C/C - GPA Procurement Manager, Jaime Pangelinan, GPA Assistant General Manager Operations, Melinda Cruz  
C/C - Steven Carrara IP&E Legal Counsel

**IP&E Holdings, LLC.**  
**dba: IP&E Guam**  
Suite 100, 643 Chalan San Antonio  
Tamuning, Guam 96913-3644  
Tel: 671-647-0000 | Fax: 671-649-4353  
Email: [corporate@ipehq.com](mailto:corporate@ipehq.com)



**Shell Licensee**

ATTACHMENT A





# GUAM POWER AUTHORITY

ATURIDAT ILEKTRESEDAT GUAHAN  
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

October 30, 2015

Fred Keller  
 Director of Sales  
 IP&E Holdings, LLC  
 dba: IP&E Guam  
 Suite 100, 643 Chalan San Antonio  
 Tamuning, Guam 96913-3644  
 T: 647-0000  
 F: 649-4353  
 Email: F.keller@ipehq.com

**SUBJECT:** Amendment No.: VII to IFB GPA-005-15

**REF.:** OPA Decision and Order – OPA-PA-15-006, GPA-005-15 for Diesel Fuel Oil No. 2 and Automotive Gasoline (Regular Unleaded) for GPA Transportation Fleet

Dear Mr. Keller:

This is in response to your letter regarding Amendment No.: VII. You have cited the OPA Decision and Order dated September 18, 2015, a copy of which is attached hereto.

However, page 12, paragraph 4, directs GPA to "No later than thirty (30) days after this Decision is hereby issued, GPA must either cancel the IFB or *revise it* to comply with 5.G.C.A. §5001(b) (6) and 2 G.A.R., Div. 4, Chap. 1, §1102(5) by deleting the language in Part B, Section 3.13.G of the IFB and IFB Amendment No.: II, which requires the bidders to submit insurance policies with their bids. Based on the Decision and Order, GPA revised the IFB to comply with the OPA Decision and Order.

Respectfully,

  
 JOHN M. BENAVENTE, P.E.  
 General Manager

PLEASE ACKNOWLEDGE RECEIPT BY  
 SIGNING BELOW AND RETURN THIS FAX  
 TO MELISSA UNCANGCO. FAX. NO.: 648-3165.

\_\_\_\_\_  
PRINT/SIGNATURE

\_\_\_\_\_  
DATE

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COMPANY

APPRECIATE YOUR IMMEDIATE RESPONSE.  
THANK YOU.

GPA PROCUREMENT DIVISION  
TEL.: (671) 648-3054/55

*ATTACHMENT B*



**OFFICE OF PUBLIC ACCOUNTABILITY**  
Davis Flores Brooks, CPA, CGFM  
Public Auditor

**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS**

IN THE APPEAL OF,

APPEAL NO: OPA-PA-15-006

IP&E HOLDINGS, L.L.C.,

DECISION

Appellant

**I. INTRODUCTION**

This is the Decision of the Public Auditor for appeal number OPA-PA-15-006 which was filed by IP&E HOLDINGS, L.L.C., (hereafter referred to as "IPE") on April 29, 2015 regarding the GUAM POWER AUTHORITY's (hereafter referred to as "GPA") April 17, 2015 denial of IPE's February 13, 2015 protest concerning GPA-IFB-005-15 for Diesel Fuel Oil No. 2 and Automotive Gasoline (hereafter referred to as "IFB"). The Public Auditor holds that Part B, Section 3.13.G of the IFB required the bidders to submit various insurance policies naming GPA as an additional insured and providing waivers of subrogation to GPA and this requirement violates 5 G.C.A. §5001(b)(6) and 2 G.A.R., Div. 4, Chap. 1, §1102(5) because it favors bidders with existing GPA contracts and prejudices bidders who do not have them. Accordingly, IPE's appeal is hereby GRANTED in part and DENIED in part.

**II. FINDINGS OF FACT**

The Public Auditor in reaching this Decision has considered and incorporated herein the procurement record and all documents submitted by the parties, and all arguments made during the August 18, 2015 hearing for Appellant's Appeal. Based on the aforementioned record in this



1 matter, the Public Auditor makes the following findings of fact:

2 1. On or about November 6, 2014, GPA issued the IFB.<sup>1</sup>

3 2. The IFB stated, in relevant part:

4 a. That the Contractor shall furnish GPA with two (2) copies of a Certificate of  
5 Insurance evidencing policies for Workmen's Statutory Compensation Insurance and  
6 Employer's Liability Insurance, Commercial General Liability, Automobile Liability Insurance,  
7 Pollution Liability Insurance, and Excess Liability Insurance, and that such certificates shall  
8 specifically indicate the Commercial General Liability Insurance includes all extensions of  
9 coverage as specified by the IFB, and that the insurance certificate state that the insurance  
10 company or companies issuing the insurance policies shall give GPA at least thirty (30) days  
11 written notice in the event of cancellation of or material change in any of the policies, and that if  
12 coverage on the certificate or certificates is shown to expire prior to the completion of all terms  
13 of the Contract, the Contractor shall furnish Certificates of Insurance evidencing renewal of  
14 such coverage to GPA and that the Certificates of Insurance shall show the IFB's Contract  
15 number.<sup>2</sup>

16 b. That the Contractor shall provide a copy of their Insurance Policy to GPA as part  
17 of the bid requirements. All updates or revisions after contract commencement shall also be  
18 forwarded to GPA.<sup>3</sup>

19 c. That any explanation desired by a bidder regarding the meaning or interpretation  
20 of the IFB must be submitted in writing and with sufficient time allowed for a written reply to  
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28 <sup>1</sup> IFB advertisement, page 35, Pacific Daily News dated November 6, 2014, Tab

<sup>2</sup> Procurement Record filed on May 7, 2015

<sup>3</sup> Section 3.13.G Insurance, page 872, IFB, Tab 3, Id.

<sup>4</sup> Id.

1 reach all bidders before submission of their bids.<sup>4</sup>

2       d. That the IFB's bid opening was at 2:00 p.m. on December 4, 2014, and that all  
3 bids submitted in response to the IFB must be submitted prior to that date and time.<sup>5</sup>

4       3. On November 6, 2014, IPE picked up a copy of GPA's Bid Package.<sup>6</sup>

5       4. On December 1, 2014, IPE sent a written request to GPA to answer the following  
6 questions, in relevant part:

7       a. Concerning IFB Part II, Fuel Supply Contract, Section 3.13.F, Excess  
8 Liability's requirement that the Contractor must carry Excess Liability Insurance for \$5,000,000,  
9 IPE inquired whether GPA would accept increasing General Liability Insurance from \$2,000,000  
10 to \$7,000,000 in lieu of the Excess Liability Insurance requirement.

11       b. Concerning Part II, Fuel Supply Contract, Section 3.13.G, Certificate of  
12 Insurance's requirement that the Contractor provide two (2) copies of a Certificate of Insurance  
13 in GPA's favor, and GPA's request for the bidder's Insurance Policies as part of the bid  
14 requirements, IPE inquired whether a certificate of insurance in GPA's favor with maximum  
15 insurance limits for items in paragraphs B (Workmen's Statutory Compensation Insurance and  
16 Employer's Liability Insurance), C (Commercial General Liability Insurance), D (Automobile  
17 Liability Insurance), & E (Pollution Liability Insurance), would suffice in lieu of insurance  
18 policies.<sup>7</sup>

19       4. On December 3, 2014 GPA issued IFB Amendment No. 1, which extended the bid  
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27 <sup>4</sup> Paragraph 3, Explanation to Bidders, Sealed Bid Solicitation Instructions, page 897, Id.

28 <sup>5</sup> Page 832, Id.

<sup>6</sup> Bidder's Register, page 812, Tab 4, Id.

<sup>7</sup> IFB Amendment No. II Dated December 12, 2014, page 829, Tab 3, Id.



opening date from 2:00 p.m. on December 4, 2014 to 2:00 p.m. on December 23, 2014.<sup>8</sup>

5. On December 12, 2014, GPA issued IFB Amendment No. II, which, in relevant part:

a. Answered IPE's inquiry concerning whether GPA would accept increasing General Liability Insurance from \$2,000,000 to \$7,000,000 in lieu of the Excess Liability Insurance requirement by stating: "Please submit a copy of the insurance coverage for GPA's review."<sup>9</sup>

b. Answered IPE inquiry concerning whether a certificate of insurance in GPA's favor with maximum insurance limits for items in paragraphs B (Workmen's Statutory Compensation Insurance and Employer's Liability Insurance), C (Commercial General Liability Insurance), D (Automobile Liability Insurance), & E (Pollution Liability Insurance), would suffice in lieu of insurance policies by stating: "No. GPA requires a copy of the insurance policy(ies)."<sup>9</sup>

6. On December 22, 2014, GPA issued IFB Amendment No. III which extended the bid opening date from 2:00 p.m. on December 23, 2014 to 2:00 p.m. on January 6, 2015.<sup>10</sup>

7. On January 5, 2015, GPA issued IFB Amendment No. V which extended the bid opening date from 2:00 p.m. on January 6, 2015 to 2:00 p.m. on January 13, 2015.<sup>11</sup>

8. On January 13, 2015, prior to bid opening, GPA received bids in response to the IFB from IPE, MOBIL OIL GUAM, INC. (hereafter referred to as "MOBIL") and SOUTH PACIFIC PETROLEUM CORPORATION (hereafter referred to as "SPPC").<sup>12</sup>

9. GPA opened the bids at 2:00 p.m. on January 13, 2015, and determined, in relevant part, that IPE and SPPC included copies of their insurance policies with their bids and MOBIL

<sup>8</sup> IFB Amendment No. I dated December 3, 2014, page 797, Tab 7, Id.

<sup>9</sup> IFB Amendment No. II dated December 12, 2014, page 823, Tab 3, Id.

<sup>10</sup> IFB Amendment No. III dated December 22, 2014, page 823, Id.

<sup>11</sup> IFB Amendment No. V dated January 5, 2015, page 315, Id.

<sup>12</sup> Bidder's Register, TAB 4, Id.



7 did not include a copy of its insurance policy with its bid.<sup>13</sup>

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10. On January 29, 2015, GPA's Bid Evaluation Committee requested that GPA's Supply Management Administrator inquire from the three (3) bidders that upon award their insurance provider will comply with the insurance requirements as stated in the IFB.<sup>14</sup>

11. On January 29, 2015, Jamie L.C. Pangelinan, GPA's Supply Management Administrator sent a letter to IPE, MOBIL, and SPPC requesting that they confirm that if awarded the IFB contract, each of them would respectively comply with the insurance requirements as stated in IFB, Part B, Section 3.13, Insurance of the IFB and she required the bidders to submit their responses no later than February 2, 2015.<sup>15</sup>

12. On January 29, 2015, SPPC responded to GPA's request for confirmation by stating that if awarded, SPPC will comply with the insurance requirements stated in Part B, Section 3.13, Insurance of the IFB.<sup>16</sup>

13. On January 30, 2015, IPE responded to GPA's request for confirmation with a letter confirming their ability to comply with the IFB's insurance requirements and IPE attached copies of the insurance policies it provided to GPA with IPE's bid and IPE stated that these documents were required by Part B, Section 3.13, Subpart G, Certificate of Insurance and that this requirement was further clarified by answer to Question 14, in IFB Amendment No. II.<sup>17</sup>

14. On February 2, 2015, MOBIL responded to GPA's request for confirmation by stating that MOBIL would comply with the insurance requirements upon receiving the formal

<sup>13</sup> Abstract of Bids dated January 19, 2015, TAB 22, Id.

<sup>14</sup> GPA Memorandum dated January 29, 2015 from Evaluation Committee to Supply Management Administrator, TAB 28, Id.

<sup>15</sup> See Letter from Jamie Pangelinan dated January 29, 2015 to SPPC, to IPE, and to MOBIL, located respectively at page 231 (SPPC), and at page 234 (IPE) TAB 29, and page 225 (MOBIL), TAB 30, Id.

<sup>16</sup> Letter from Ernie Van Seters to Jamie Pangelinan dated January 29, 2015, page 227, TAB 29, Id.

<sup>17</sup> Letter dated January 30, 2015 from Fred Keller to Jamie L.C. Pangelinan, page 152, TAB 31.

1 award notice and executed supply contract and MOBIL attached its existing Certificates of  
2 Insurance. MOBIL further stated that it would include the IFB Contract in its insurance policies.  
3 add GPA as an additional insured, and grant a waiver of subrogation in favor of GPA.<sup>18</sup>

4 15. On February 5, 2015, GPA's Bid Evaluation Committee determined that IPE,  
5 MOBIL, and SPPC bids met the IFB's specifications and they recommended awarding the IFB  
6 Contract to MOBIL because it was the overall lowest, and most responsive and responsible  
7 bidder. GPA's General Manager approved the Bid Evaluation Committee's recommendation  
8 that same day.<sup>19</sup>

9 16. On February 6, 2015, GPA issued a Notice of Intent of Possible Award of the IFB  
10 Contract to MOBIL, which gave MOBIL fourteen (14) days to submit their performance bond to  
11 GPA.<sup>20</sup>

12 17. On that same day, GPA issued a Bid Status to IPE and SPPC informing them that  
13 their respective bids were rejected due to high price and notifying them that the IFB Contract  
14 was being recommended for award to MOBIL.<sup>21</sup>

15 18. On February 13, 2015, seven (7) days after being notified that its bid was rejected  
16 due to high price and that GPA was considering awarding the IFB Contract to MOBIL, IPE  
17 protested GPA's acceptance and consideration of MOBIL's bid because it did not include the  
18 insurance documents required by IFB Section 3.13, Insurance, Item G.<sup>22</sup>

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25 <sup>18</sup> Email dated February 2, 2015 from Tom Anibek to Stephanie Teizeron, page  
26 140, TAB 32, Id.

27 <sup>19</sup> GPA Memorandum dated February 5, 2015 from Bid Evaluation Committee to  
28 Supply Management Administrator, page 135, TAB 34, Id.

29 <sup>20</sup> Letter dated February 6, 2015 from John M. Benavente to Charles Swart, page  
30 123, TAB 35, Id.

31 <sup>21</sup> See BID Status dated February 6, 2015 for IPE and SPPC, page 132 (IPE), and  
32 page 127 (SPPC), Id.

33 <sup>22</sup> IPE's Protest dated February 13, 2015, page 107, TAB 36.



19. That same day, GPA issued a stay of procurement as a result of IPE's protest.<sup>23</sup>

20. On April 17, 2015, GPA denied IPE's February 13, 2015 protest on the grounds that the IFB did not require the bidders to submit insurance certificates and policies and that Section 3.13 of the Supply Contract form states that: "the contractor 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," and GPA only required the winning bidder to submit the insurance policies in Section 3.13 because such policies could not be provided until after the contract is awarded.<sup>24</sup>

21. On April 29, 2015, twelve (12) days after GPA denied its protest on April 17, 2015, IPE filed this appeal.

**III. ANALYSIS**

Pursuant to 5 G.C.A. §5703, the Public Auditor shall review GPA's April 17, 2015 decision denying IPE's February 13, 2015 protest *de novo*. The issue in this matter is whether MOBIL's bid was responsive and this issue is dependent on whether Part B, Section 3.13.G of the IFB required the bidders to submit copies of their policies for Workmen's Statutory Compensation Insurance and Employer's Liability Insurance, Commercial General Liability Insurance, Automobile Liability Insurance, Pollution Liability Insurance, and Excess Liability Insurance with their bids.

**A. The IFB required copies of insurance policies to be submitted with the bids.**

The IFB required the bidders to submit copies of their insurance policies with their bids. A plain reading of the IFB's language indicates that it clearly and unambiguously required the

<sup>23</sup> Letter dated February 13, 2015 from John M. Benavente, page 102 (to SPFC), page 194 (to MOBIL), TAB 37, Id.

<sup>24</sup> GPA's Denial of Procurement Protest dated April 17, 2015, page 72, TAB 31, Id.

1 Contractor to provide GPA copies of its policies for Workmen's Statutory Compensation  
2 Insurance and Employer's Liability Insurance, Commercial General Liability Insurance,  
3 Automobile Liability Insurance, Pollution Liability Insurance, and Excess Liability Insurance.<sup>25</sup>  
4  
5 Further, the IFB clearly and unambiguously states that the Contractor shall provide a copy of  
6 their Insurance Policy to GPA as part of the bid requirements.<sup>26</sup> The term "contractor" as used in  
7 the IFB likely means a person having a contract with GPA. 5 G.C.A. §5030(f) and 2 G.A.R.,  
8 Div. 4, Chap. 1, §1106(6). The IFB language, read as a whole, would require such person to  
9 submit a bid to get awarded the IFB Contract and the aforementioned IFB language requiring the  
10 insurance policies be submitted as part of the bid clearly indicates that copies of the insurance  
11 policies must be submitted with the bid. If the use of the word "contractor" created an  
12 ambiguity, such ambiguity was cleared up when GPA issued IFB Amendment No. II. As stated  
13 above, GPA answered both of IPE's inquiries concerning Part B, Section 3.13.G of the IFB by  
14 requiring the submission of insurance coverage for GPA's review and by stating that GPA  
15 required the insurance policies, not just the certificates of insurance.<sup>27</sup> Two (2) of the three (3)  
16 bidders submitted copies of their respective policies to GPA. Based on the foregoing, the Public  
17 Auditor finds that Part B, Section 3.13.G of the IFB and GPA's responses to IPE's inquiries  
18 concerning the need for insurance policies required the bidders to submit the insurance policies  
19 with their bids to comply with Part B, Section 3.13 of the IFB.  
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23 GPA and MOBIL argue that Part B of the IFB only concern the draft contract and its  
24 requirements, including Section 3.13.G of the IFB and need only be performed by the bidder  
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27 <sup>25</sup> Section 3.13.G Insurance, page 872, IFB, Tab 3, Id.

28 <sup>26</sup> Id.

29 <sup>27</sup> IFB Amendment No. II dated December 12, 2014, page 829, Tab 3, Id.



1 who is awarded the IFB contract.<sup>28</sup> Generally, for multi-year contracts only the term of the  
2 contract and conditions for renewal and extension must be included in the solicitation. 5 G.C.A.  
3 §5237(a). In addition to the term and renewal provisions, the solicitation must also state: (1) The  
4 amount of supplies or services for the proposed contract period; (2) That a unit price shall be  
5 given for each supply and service that is uniform throughout the contract; (3) That the contract  
6 will be cancelled only if funds are not appropriated or otherwise made available to support  
7 continuation of performance in any fiscal period succeeding the first; (4) That the procurement  
8 officer must notify the contractor on a timely basis as to whether funds are or are not available  
9 for the fiscal years succeeding the first; (5) Whether the bidders had to submit prices for the first  
10 fiscal period only, the entire period only, or both the first fiscal period and the entire time of  
11 performance; (6) How the award will be determined; and (7) That in the event of cancellation,  
12 the contractor will be reimbursed the unamortized, reasonably incurred, non-recurring costs. 2  
13 G.A.R., Div. 4, Chap. 3, §3121(e)(1). Had GPA taken the approach of only including these  
14 required provisions in the IFB, or had it edited the draft contract to remove any and all language  
15 stating the contractor had to provide information as part of its bid submission, or had the IFB  
16 specifically stated that the provisions of Part B of the IFB would only have to be performed by  
17 the winning bidder, perhaps its argument would have more merit. Instead, GPA went beyond  
18 these requirements by including the entire draft contract in the IFB and by adding the language  
19 requiring the contractor to submit a copy of their Insurance Policy to GPA as part of the bid  
20 requirements in Part B, Section 3.13.G of the IFB. Further, GPA specifically required the  
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<sup>28</sup> Page 3, GPA's Statement Answering Allegations of Appeal filed on May 14,  
2015, and page 2, MOBIL's Hearing Brief filed on August 11, 2015.

1 bidders to fill out the draft contract and return it to GPA as part of their responses to the IFB.<sup>29</sup>  
2 Therefore, the Public Auditor finds no merit in GPA and MOBIL's argument that only the  
3 winning bidder had to submit their insurance policies to GPA in accordance with the  
4 requirements of Part B, Section 3.13.G of the IFB.  
5

6 The Public Auditor must now closely analyze whether any of the bidders could comply  
7 with the IFB's requirement for the bidders to submit insurance policies with their bids.  
8

9 **B. The IFB violates the procurement policy favoring broad-based competition.**

10 GPA and MOBIL argue that none of the bidders could have submitted a valid insurance  
11 policy with their bids because they would not have an insurable interest until one of them was  
12 awarded the contract.<sup>30</sup> Every interest in property, or any relation thereto, or any liability in  
13 respect thereto, of such nature that a contemplated peril might directly damnify the insured, is an  
14 insurable interest. A mere contingent or expectant interest in anything, not founded upon an  
15 actual right to or in the thing, nor upon any valid contract for it, is not insurable. 22 C.C.A.  
16 §18204(a). Here, the bidders were to submit their Workmen's Statutory Compensation  
17 Insurance and Employer's Liability Insurance providing a waiver of subrogation in favor of  
18 GPA.<sup>31</sup> GPA was required to be an additional insured and the bidders were to include a waiver  
19 of subrogation in favor of GPA for their Commercial General Liability, Automobile Liability,  
20 Pollution Liability, and Excess Liability Insurance Policies.<sup>32</sup> Here, the insurance policies  
21 submitted by IPE with their bid indicate that GPA contracts are in fact listed in their schedule of  
22 insured contracts, however, they are for GPA Diesel Fuel Supply Contract awarded to IPE in  
23 GPA-049-09 and GPA-050-09 and neither of these contracts concern the IFB at issue in this  
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27 \* Notice, page 24, IFB, ID.

28 \* Page 3, GPA's Statement Answering Allegations of Appeal filed on May 14,  
2015, and Page 3, MOBIL's Hearing Brief filed on August 11, 2015.

29 \* Part B, Section 3.13.B, page 870, Procurement Record filed on May 7, 2015.

\* Part B, Section 3.13.C, D, E, and F, pages 870-872, Id.



1 matter.<sup>33</sup> GPA is also listed as an additional insured in IPE's Insurance Policies.<sup>34</sup> So how could  
2 IPE readily comply with Part B, Section 3.13.G of the IFB without being awarded the contract?  
3 IPE admits that it submitted its existing insurance policies covering its existing Diesel Fuel  
4 Supply Contracts for GPA's Fast Track Generators with its bid.<sup>35</sup> This means that the IFB's  
5 requirement for bidders to submit insurance policies set forth in Part B, Section 3.13.G of the  
6 IFB highly favors bidders with existing contracts with GPA by requiring the same types of  
7 insurance, and highly prejudices bidders without those same contracts. One of the underlying  
8 purposes and policies of Guam's Procurement Laws and Regulations is to foster effective broad-  
9 based competition within the free-enterprise system. 5 G.C.A. §5001(b)(6) and 2 G.A.R., Div. 4,  
10 Chap. 1, §1102(5). The Public Auditor finds that the IFB's requirement that the bidders submit  
11 insurance policies with their bids violates 5 G.C.A. §5001(b)(6) and 2 G.A.R., Div. 4, Chap. 1,  
12 §1102(5) because of the aforementioned favoritism to bidders with existing GPA contracts and  
13 its prejudice to bidders without them.

14 Accordingly, the issue of whether MOBIL's bid was responsive to the IFB is moot  
15 because the questions concerning its responsiveness raised in this matter concerned the IFB's  
16 unlawful requirement that the bidders submit insurance policies with their bids.

17 **C. The IFB must be revised to comply with Guam's Procurement Laws and Regulations.**

18 As stated above, the Public Auditor finds that Part B, Section 3.13.G violates 5 G.C.A.  
19 §5001(b)(6) and 2 G.A.R., Div. 4, Chap. 1, §1102(5). If prior to award it is determined that a  
20 solicitation is in violation of law, then the solicitation shall be cancelled or revised to comply  
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27 <sup>33</sup> Contractual Liability, Schedule of Insured Contracts, page 211, attached to  
28 IPE's January 30, 2015 response to GPA's Request for Confirmation, TAB 31,  
29 Procurement Record filed on May 7, 2015.

30 <sup>34</sup> Additional Insured, page 213, Id.

31 <sup>35</sup> Statement of Steven Garbisa, Esq., August 18, 2015 Hearing Re Appellant's  
32 Appeal.

1 with the law, 5 G.C.A. §5451 and 2 G.A.R., Div. 4, Chap. 9, §9105. Thus, GPA must either  
2 cancel the IFB or revise it to comply with 5 G.C.A. §5001(b)(6) and 2 G.A.R., Div. 4, Chap. 1,  
3 §1102(5) by deleting the language in Part B, Section 3.13.G of the IFB and IFB Amendment No.  
4 II, which require the bidders to submit insurance policies with their bids.  
5

#### 6 IV. CONCLUSION

7 Based on the foregoing the Public Auditor hereby determines the following:

8 1. Part B, Section 3.13.G of the IFB and GPA's responses to IPE's inquiries concerning  
9 the need for insurance policies required the bidders to submit the insurance policies to comply  
10 with Part B, Section 3.13 of the IFB with their bids.

11 2. The Public Auditor finds that the aforementioned IFB's requirement that the bidders  
12 submit insurance policies with their bids violates 5 G.C.A. §5001(b)(6) and 2 G.A.R., Div. 4,  
13 Chap. 1, §1102(5) because the requirement highly favors bidders with existing GPA contracts  
14 and it prejudices bidders who do not have them.  
15

16 3. IPE's Appeal is hereby GRANTED in part and DENIED in part.

17 \* 4. No later than thirty (30) days after this Decision is issued, GPA must either cancel  
18 the IFB or revise it to comply with 5 G.C.A. §5001(b)(6) and 2 G.A.R., Div. 4, Chap. 1,  
19 §1102(5) by deleting the language in Part B, Section 3.13.G of the IFB and IFB Amendment No.  
20 II, which requires the bidders to submit insurance policies with their bids.  
21

22 5. The Public Auditor finds that IPE is entitled to its reasonable costs incurred  
23 in connection with the IFB's solicitation and IPE's protest, excluding attorney's fees, pursuant to  
24 5 G.C.A. §5425(h), because there was a reasonable likelihood that IPE may have been awarded  
25 the contract because it had the second lowest bid but for GPA's violations of Ohio Procurement  
26 Law and Regulations as set forth herein. GPA may object to IPE's cost demand by filing the



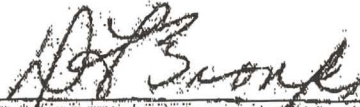
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appropriate motion with the Public Auditor no later than fifteen (15) days after IPE submits such cost demand to GPA.

This is a Final Administrative Decision. The Parties are hereby informed of their right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with Article D of Chapter 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative Decision, 5 G.C.A. §5481(a).

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website [www.opaguam.org](http://www.opaguam.org).

DATED this day 18<sup>th</sup> of September, 2015.

  
DORIS FLORES BROOKS, CPA, CGFM  
PUBLIC AUDITOR

Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	D. Graham Botha, Esq. GPA Legal Counsel Guam Power Authority	<b>From:</b>	Dorita Flores Brooks Guam Public Auditor Office of Public Accountability
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<b>CC:</b>	Steven Carrara, Esq. Attorney for IP&E Holdings, LLC Phone: (671) 646-1222 Fax: (671) 646-4723	<b>Date:</b>	September 18, 2015
	R. Marsil Johnson, Esq. Attorney for Interested Party Mobil Oil Guam Inc. Phone: (671) 477-7857 Fax: (671) 472-4290	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 218 472-7951

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	Phone: (671) 648-3203/3002 Fax: (671) 648-3290	<b>Pages:</b>	14 (including cover page)
<b>CC:</b>	Steven Carrara, Esq. Attorney for IP&E Holdings, LLC Phone: (671) 646-1222 Fax: (671) 646-4723	<b>Date:</b>	September 18, 2015
	R. Marsil Johnson, Esq. Attorney for Interested Party Mobil Oil Guam Inc. Phone: (671) 477-7857 Fax: (671) 472-4290	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 218 472-7951

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