

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)

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PROCUREMENT APPEALS

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Attorney for Appellant  
IP&E Holdings, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of )  
 ) PROTESTOR REPOSENSE TO AGENCY REPORT  
 ) AND STATEMENT  
 )  
IP&E HOLDINGS, LLC., ) Docket No. OPA-PA 16-013  
 )  
Appellant. )

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IP&E Holdings LLC hereby files its response to the GWA Agency Report and Statement.

On or about August 8, 2016, GWA issued an invitation for bid GPA -2016-09 for the procurement of diesel (50,000 gallons) and automotive fuel (115,000) for the GWA Fleet.

Bid opening was initially scheduled for August 25, 2016 but extended by GWA amendment No. 1 to September 7, 2016. On or about September 14, 2016, GWA issued its intent to make award to Mobil Oil Guam.

Section 6 of the IFB states that the "award of the contract will be made by GWA to the lowest responsive and responsible bidder whose bid conforms to the Invitation for Bid. It is clear from the IFB that award was to be made to a sole contractor for the identified requirements.

GWA admits that the estimated quantities did not reflect its actual requirements notwithstanding the fact that the estimates were provided to all bidders less than a month before bid opening. No explanation is provided as to why GWA did not modify its actual requirements if they knew that the estimates were incorrect.

Applicable Guam Acquisition Regulation provides that:

Bid Evaluation and Award. (1) General. The contract is to be awarded “to the lowest responsible and responsive bidder” whose bid meets the requirements and criteria set forth in the Invitation for Bids. See 5 GCA §5211(g) (Competitive Sealed Bidding, Award) of the Guam Procurement Act. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids. G.A.R, Div. 4 Chap. 3 §3109(n).

Using the requirements set for in the IFB, award should be made to IP&E as the lowest responsive and responsible bidder. GWA was required to state its requirements and value on the basis of what was set forth in the IFB. GWA states that the purpose of the estimates was to allow (1) bidders to bid intelligently and (2) allow GWA to evaluate proposals on a relatively equal basis. It is unclear either can be accomplished when the estimates did not reflect a credible estimate. The actual volumes used in determining award were off by almost 50% on diesel and almost 45% on MoGas from the stated requirements.<sup>1</sup>

IFB Stated Requirement	GWA Award Evaluation Quantity
Diesel 50,000 gallons	31,270.32 gallons
MoGas 115,000 gallons	159,000 gallons

Given the drastic difference in estimated and actual quantities used, GWA should have either modified the IFB prior to award or cancelled the bid to reflect its requirement if it found

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<sup>1</sup> Agency Report, Tab 29, page 4.

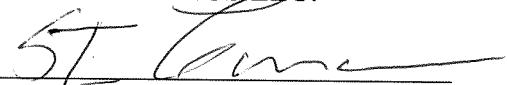
out post opening.<sup>2</sup> In situations where the estimates are inaccurate the General Accounting Office interpreting similar federal procurements has sustained challenges to such procurements. *See generally, Mallinckrodt Inc.* File: B-282902 September 10, 1999.<sup>3</sup>

By failing to include rational estimates, GWA is making an awarded based on factors outside of the IFB and in contravention of Guam procurement law and regulations. Allowing agencies to make awards outside of the stated requirements encourages poor procurement practice. Accordingly, IP&E requests the OPA to grant its protest and direct GWA to make award to IP&E as the lowest responsive and responsible bidder.

Dated this 10th day of October 2016.

IP&E HOLDINGS LLC.

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

  
Steven Carrara  
General Counsel

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<sup>2</sup> GWA's argument that the incumbent IP&E should have known the estimates were inaccurate is without merit. GWA is in the best position to assess its requirements and its equipment mix and fuel uses is solely within its purview.

<sup>3</sup> <http://www.gao.gov/products/403168>