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PROCUREMENT APPEALS

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

14 IN THE APPEAL OF)
15) DOCKET NO. OPA-PA-15-006
16 IP&E Holdings, LLC,)
17 Appellant.) **APPELLEE'S HEARING BRIEF**
18 _____)
19)
20)

21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22 record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the February 10, 2017,
23 hearing as follows.
24

25 **ARGUMENT**

26 Guam Power Authority (GPA) submits that it properly awarded the Salvage bid,
27 GPA-SS-003-16, to 4J's Equipment. One company, Trans Steel Management, submitted a bid in
28 response to the IFB. The minimum bid listed in the IFB was \$30,000, and on September 6, 2016,
29 Trans Steel Management, submitted a bid in the amount of \$5,000, Tab "1A". This bid was
30 properly rejected by GPA. GPA again advertised the bid with a lower minimum bid of \$15,000 on
31 September 20, 2016, Tab "3". Trans Steel submitted a bid on October 6, 2016, in the amount of
32 \$4,300, which was again properly rejected by GPA, "Tab 6".

33 GPA notified appellant that it would again seek bidders for the salvage bid, having already
34 attempted unsuccessfully two times to find a qualified bidder. Trans Steel was notified on October
35 17, 2016, that its bid was rejected due to failure to meet the minimum bid, "Tab 12". GPA

1 determined that other salvage bids would be considered with a minimum bid of \$10,000, with the
2 highest bidder awarded the salvage bid. Two bids were received by GPA, one from Trans Steel
3 Management in the amount of \$10,000, and one from 4J Heavy Equipment in the amount of
4 \$15,100, Tab "15, 16, 17". GPA properly accepted the highest salvage bid from 4J

5 Procurement law requires that GPA award to the lowest responsible and **responsive**
6 bidders. A responsive bidder is a person who has submitted a bid which conforms in all material
7 respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).
8 Further, any bidder's offering which does not meet the acceptability requirements shall be rejected
9 as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

10 Trans Steel Management contends that GPA improperly awarded the salvage bid to 4J
11 Heavy Equipment, as Trans Steel Management states that it was the only bidder on 2 separate bids,
12 and therefore only it should have been allowed to make an offer for a third time. Trans Steel did
13 submit a bid on two separate occasions, but in each instance their bid was properly rejected by
14 GPA, as its bid was non-responsive as Trans Steel acknowledges in its letter that it did not meet
15 the minimum bid required by GPA. The bid clearly listed a minimum bid requirement for the two
16 salvage bids. Trans Steel admits it did not comply with that requirement set forth in the salvage
17 bid.

18 GPA properly made an award to 4J Heavy Equipment as the highest salvage bid received,
19 as it deemed 4J Heavy Equipment the **responsive** and responsible bidder for salvage as specified
20 in the IFB.

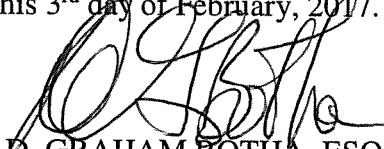
21 CONCLUSION

22 GPA requests that the appeal of Trans Steel Management be dismissed, and that the Public
23 Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

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RESPECTFULLY SUBMITTED this 3rd day of February, 2017.



D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel