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PROCUREMENT APPEALS
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FILE NO OPA-PA: 21-002

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF)	DOCKET NO. OPA-PA-21-002
)	
Track Me Guam, LLC,)	AGENCY REPORT
)	
Appellant.)	
_____)	

Appellee GUAM POWER AUTHORITY (GPA), by and through its attorney, D. GRAHAM BOTHA, ESQ., hereby submits its Agency Report in the form required under 2 G.A.R. §12105:

(a) A copy of the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on July 9, 2021, by GPA.***

(b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on July 9, 2021, by GPA in OPA-PA-21-002.***

(c) A copy of the solicitation, including the specification or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on July 9, 2021, by GPA in OPA-PA-21-002.***

(d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on July 9, 2021, by GPA in OPA-PA-21-002.***

(e) Any other documents which are relevant to the protest, including the contract, if one has been awarded, pertinent amendments, and plans and drawings: ***Previously submitted to the Office of the Public Auditor ("OPA") on July 9, 2021,***

by GPA in OPA-PA-21-002.

(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: ***Previously submitted to the Office of the Public Auditor (“OPA”) on July 9, 2021, by GPA.***

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal: ***Please see attached.***

(h) If the award was made after receipt of the protest, the report will include the determination required under 2 G.A.R. §9101(e): ***Not applicable.***

(i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding: ***Previously submitted to the Office of the Public Auditor (“OPA”) on July 16, 2021, by GPA.***

RESPECTFULLY SUBMITTED this 16th day of July, 2021, by:


D. GRAHAM BÖTHA, ESQ.
GPA General Counsel

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

A. GPA SOLICITS BIDS FOR IFB GPA-IFB-024-21, FLEET & FUEL MANAGEMENT SOFTWARE SERVICES FOR THE AUTHORITY'S FLEET

On January 7, 2021, Guam Power Authority ("GPA") issued Invitation for Bid, GPA-IFB-024-21, FLEET & FUEL MANAGEMENT SOFTWARE SERVICES FOR THE AUTHORITY'S FLEET, (Tab "49"). Two bidders, Track Me Guam, LLC and PTI Pacifica, Inc. dba IT&E, expressed interest in the IFB from January 7, 2021 to January 28, 2021, and both submitted bids in response to the IFB. Bid Abstract, January 28, 2021. (Tab "40"). Prior to submission of the bids, the bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I and II in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab "41-48".

On January 28, 2021, the bids were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the two bids submitted by Track Me Guam, LLC and PTI Pacifica, Inc. dba IT&E. The Bid Abstract is contained in the procurement record at Tab "40." The bid submitted by Track Me Guam, LLC was \$9,338.46 per month, and the PTI Pacifica, Inc. dba IT&E bid was \$5,628.00 per month.

On February 9, 2021, the evaluation committee met and requested clarification from PTI Pacifica, Inc. dba IT&E, Tab "35-36". The evaluation committee requested further clarification

on February 11, 2021, and February 19, 2021 from PTI Pacifica, Inc. dba IT&E. Tab "30-33". The evaluation committee met on February 22, 2021, and determined that both bidders met the required bid specifications, and recommends the lowest responsible and responsible bidder be awarded. Tab "29". The Bid Analysis dated March 8, 2021, recommended that Line Item No. 1.0 be awarded to PTI Pacifica, Inc. dba IT&E in the total amount of \$67,536.00 annually as being the lowest responsive and responsible bidder. Tab "26". The Certification of Completed Procurement Record is dated March 10, 2021. Tab "25".

Track Me Guam, LLC filed a protest with GPA on March 12, 2021, which resulted in a Stay of Procurement. "Tab 24". A Bid Protest Supplement was filed on April 6, 2021. "Tab 16". GPA denied the protest on June 10, 2021, and there was a Lift of Stay when the protest was denied by GPA. (Tab "12"). Track Me Guam, LLC filed an appeal to the OPA on July 1, 2021, and GPA filed a Stay of Procurement on July 1, 2021 (Tab "4 & 6").

II. DISCUSSION

A. THE IT&E BID WAS RESPONSIVE, AND THE AWARD FOR FLEET & FUEL MANAGEMENT SOFTWARE SERVICES FOR THE AUTHORITY'S FLEET WAS PROPERLY AWARDED TO IT&E AS IT&E MET THE SPECIFICATIONS IN THE IFB.

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

Two bidders submitted bids which were opened by GPA on January 28, 2021. The

evaluation committee requested clarification from PTI Pacific, Inc. dba IT&E, and reviewed the clarification. Track Me Guam, LLC sent a letter to GPA alleging the PTI Pacifica, Inc. dba IT&E did not meet the bid specifications. In its protest, Track Me Guam, LLC alleges, without substantiation, that the IT&E solution “can only fulfill the requirement of the IFB by integrating the software proposed by IT&E with a Russian partner hardware solution from a Russian Partner unprepared to do work in the United States market.” The basis for this unsupported allegation is not disclosed in the protest, or in the protest letters submitted to GPA. Further allegations from Track Me Guam, LLC are not supported by documents showing that the IT&E submission does not meet the GPA bid specifications.

The GPA evaluation committee carefully reviewed the submissions of the both bidders, and determined that the submissions of both bidders met the GPA bid specifications. There was no determination made as to which bid proposed a superior product, but only a determination that the bid specifications were met. It is not reasonable to expect the bid evaluation committee to be an expert on Russian hardware and software, which the Track Me Guam, LLC President claims to be an expert on. A review of the bid abstract indicates a substantial difference in price between Track Me Guam, LLC and PTI Pacifica, Inc. dba IT&E. The bid submitted by Track Me Guam, LLC was \$9,338.46 per month, and the PTI Pacifica, Inc. dba IT&E bid was \$5,628.00 per month.

5 GCA §5211(g) provides that “Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids ...” as cited in *Pacific Data Systems, Inc. vs.*

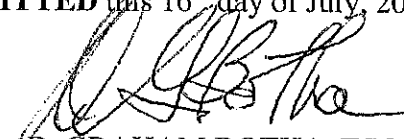
General Services Agency, OPA-PA 15-012. In the Appeal of 1-A Guam WEBZ, OPA-PA 16-002 also addresses the issue of bid evaluation and stated that “the invitation for bids shall set forth the evaluation criteria to be used and no criteria may be used in bid evaluation that are not set forth in the Invitation for bids.” 5 GCA §5211(e) and 2 GAR, Div 4, Chap 3, §3109(n)(1).

Procurement law requires that GPA award to the lowest responsible and **responsive** bidders. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). GPA properly awarded Line Item No. 1 to IT&E as the lowest responsible and responsive bidder. The price proposal evaluation and bid abstract clearly demonstrate that the IT&E bid was the lowest bid. The bid was evaluated and awarded based on the bid specifications and evaluation criteria.

CONCLUSION

GPA requests that the appeal of Track Me Guam, LLC be dismissed, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

RESPECTFULLY SUBMITTED this 16th day of July, 2021, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel