



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

November 10, 2015

John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977
Hagatna, Guam 96932
VIA FACSIMILE: (671) 648-3290

Re: Notice of Receipt of Appeal – OPA-PA-15-013

Dear Mr. Benavente,

Please be advised that IP&E Holdings, LLC (IP&E) filed an appeal with the Office of Public Accountability (OPA) on November 9, 2015 regarding the Guam Power Authority (GPA) procurement actions related to GPA IFB-005-15 for the Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded for the GPA Transportation Fleet. OPA has assigned this appeal case number OPA-PA-15-013.

Immediate action is required of GPA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required. However, we recognize that the procurement record for GPA IFB-005-15 was previously submitted in procurement appeal case number OPA-PA-15-006 on May 7, 2015. OPA understands that the procurement record is voluminous and to increase efficiency, OPA will not require a duplicate copy of the record. However, to ensure the completeness of the procurement record, OPA requires GPA to certify that the procurement record that was submitted for GPA IFB-005-15 is complete in its entirety and will be the same procurement record for OPA-PA-15-013 by **Wednesday, November 18, 2015**, five work days following receipt of this notice of appeal. We also request one copy of the Agency Report for the procurement solicitation cited above, as

outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Wednesday, November 25, 2015**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to IP&E. OPA respectfully asks that GPA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Clariza Roque at 475-0390 ext. 216, or croque@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova, CPA, CIA, CGFM, CGAP, CGMA
Deputy Public Auditor

Enclosure: First Four Pages of Notice of Appeal – OPA-PA-15-013

Cc: Attorney Steven Carrara, IP&E Holdings, LLC General Counsel

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

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.)

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.

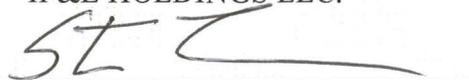
Declaration regarding court action:

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

Dated this 6th day of November 2015.

IP&E HOLDINGS LLC.

By:

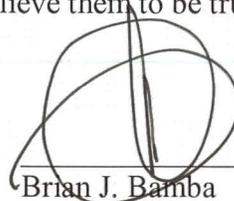


Steven Carrara
General Counsel

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 6th 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 8th, 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
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



Shell Licensee

ATTACHMENT A

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



FAX

To:	John M. Benavente General Manager Guam Power Authority	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Fax:	(671) 648-3290	Pages:	7 (including cover page)
CC:	Steven Carrara, Esq. Attorneys for IP&E Holdings, LLC Phone: (671) 646-1222 Fax: (671) 646-4723	Date:	November 10, 2015
		Phone:	475-0390 x. 216
		Fax:	472-7951

Re: OPA-PA-15-013 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
 Clariza Roque
 Audit Staff
 croque@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.