

DATE: 12/2/2015

TIME: 11:30 AM PM BY: MSB

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

FILE NO OPA-PA: 15-013

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

A. GPA SOLICITS BIDS FOR MULTI-STEP BID GPA-005-15, DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED FOR THE GPA TRANSPORTATION FLEET

On October 28, 2014, Guam Power Authority (“GPA”) issued Invitation for Bid, GPA-005-15, Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded for the GPA Transportation Fleet. Procurement Record, Tab ”3”. Three companies submitted bids in response to the IFB, IP&E Holdings, LLC (IP&E), South Pacific Petroleum Corp. (SPPC), and Mobil Oil Guam Inc. (Mobil). Prior to submission of the sealed price proposals, the three bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I to VI in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab “7-17”.

Amendment IV, dated January 2, 2015, clarified certain questions raised by IP&E and Mobil, with IP&E asking specific questions regarding bid bond formats and audited financial statements. (Tab “13”). Other amendments notified prospective bidders of the changes to Bid Milestone dates.

On January 13, 2015, the sealed bid proposals of the three qualified bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the line item bids for 1A and 1B. The bid abstract, containing the SPPC, IP&E and Mobil Price Proposals, are contained in the procurement record at Tab “22.” Each of the three bidders submitted detailed price proposals in accordance with the bid documents.

On January 29, 2015, the evaluation committee met and requested clarification from Mobil, IP&E and SPPC regarding confirmation of insurance requirements. (Tab 28). On January 29, January 30, and February 2, 2015, GPA received response letters from SPPC, IP&E and Mobil regarding insurance. (Tab 29, 31, 32). On February 6, 2015, GPA provided the bidders with a Notice of Intent of Possible Award for items 1A and 1B to Mobil. (Tab 35). On or about February 13, 2015, IP&E sent a protest letter to GPA. GPA denied the protest on April 17, 2015, Procurement Record, Tab "37". IP&E filed a protest with the Office of Public Auditor on April 29, 2015. Tab "42". The OPA issued a Decision dated September 18, 2015, and in compliance with that Decision GPA issued Amendment VII within 30 days as required. The Decision clearly indicated that it is a Final Administrative Decision, and that the parties may appeal to the Superior Court of Guam, within fourteen (14) day after receipt of a Final Administrative Decision in accordance with 5 GCA §5481(a). No appeal by IP&E to the Superior Court of Guam was filed within 14 days as required. IP&E filed a second protest on November 9, 2015.

II. DISCUSSION

- A. THE MOBIL BID WAS RESPONSIVE, AND THE AWARD FOR DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED FOR THE GPA TRANSPORTATION FLEET WAS PROPERLY AWARDED TO MOBIL FOR LINE ITEMS 1A and 1B.

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).

IP&E contends that GPA improperly awarded items 1A and 1B to Mobil, as IP&E states

that the Mobil bid is non-compliant with the insurance documentation required by the bid. The actual items required at the time of the IFB submission are indicated in the Special Reminders to Prospective Bidders and include the bid guarantee, statement of qualification, and various affidavits regarding shareholders, non-collusion, no gratuities, ethical standards, wage determination, and sex offenders. There is no requirement anywhere in the Special Reminders to Prospective Bidders to provide any insurance certificates or policies. 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**, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained.” GPA requires any winning bidder to provide the appropriate insurance policies to GPA upon notification of the award of the contract. An insurance policy which lists GPA as an insured party can’t be provided until after a contract is awarded.

The Abstract of Bids lists the price proposals for all three bidders for the two different line items. Specifically, it is clear the Mobil provided the lowest responsive price for items 1A and 1B, and GPA made the evaluation according to the evaluation criteria specified in the IFB.

GPA properly made an award to Mobil for line items 1A and 1B, as it deemed Mobil the lowest, **responsive** and responsible bidder for each line item in 1A and 1B as specified in the IFB.

GPA acted in accordance with the OPA Decision dated September 18, 2015, page 12, paragraph 4, which states that “No later than thirty (30) days after this Decision is issued, GPA must either cancel the IFB **or revise it** to comply with 5 GCA §5001(b)(6) and 2 GAR, 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”, and

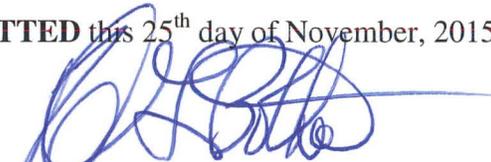
issued Amendment VII. Thereafter, it properly awarded the bid to Mobil as the lowest, responsive and responsible bidder as specified in the IFB, as revised by the OPA Decision.

IP&E had an opportunity within 14 days of the OPA Decision to appeal the Decision to the Superior Court of Guam. The appeal rights are clearly set forth in the OPA Decision, and since IP&E failed to appeal in a timely manner, the Decision is a Final Administrative Decision pursuant to 5 GCA §5481(a).

CONCLUSION

GPA requests that the second appeal of IP&E be dismissed, since IP&E had an opportunity and failed to appeal the Final Administrative Decision to the Superior Court of Guam within 14 days, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

RESPECTFULLY SUBMITTED this 25th day of November, 2015, by:



D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel