

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, Guam, 96913
Tel: (671) 648-3203/3002
Fax: (671) 648-3290

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 1-17-2020
TIME: 3:25 PM RECEIVED BY: JM
FILE NO OPA-PA: 19-010

Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-19-010
)	
GlidePath Marianas Operations, Inc.,	)	SUPPLEMENTAL PROCUREMENT
	)	RECORD
Appellant.)	
_____)	

COMES NOW, D. GRAHAM BOTHA, ESQ., and hereby submits the Supplemental Procurement Record in this matter on behalf of appellee, GUAM POWER AUTHORITY (GPA).

RESPECTFULLY SUBMITTED this 16th day of January, 2020.



D. GRAHAM BOTHA, ESQ.
GPA General Counsel

**SUPPLEMENTAL
PROCUREMENT
RECORD**

OPA PA-19-010

Invitation for Multi-Step Bid No.: GPA-007-18

Renewable Energy Resource Phase III

SUPPLEMENTAL PROCUREMENT RECORD

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- Tab 1: Denial of Procurement Protest letter issued to GlidePath Marianas dated January 7, 2020 issued via e-mail dated January 9, 2020 and acknowledged by Mr. Peter Rood with GlidePath dated January 10, 2020.
- Tab 2: Notice of Status of Conference issued by the Office of Public Accountability Appeals (OPA) received on December 20, 2019.
- Tab 3: Receipt of Procurement Record, Ref.: OPA PA-19-010, Binders 3, 4 and 5 delivered to the Law Office of Blair Sterling Johnson & Martinez, P.C. dated December 13, 2019
- Tab 4: Receipt of Procurement Record, Ref.: OPA PA-19-010, Binders 3, 4 and 5 delivered to the Law Office of Civile & Tang, PLLC dated December 13, 2019
- Tab 5: Receipt of Procurement Record, Ref.: OPA PA-19-010, Binders 1 thru 12 delivered to the Office of Public Accountability dated December 12, 2019
- Tab 6: Receipt of Procurement Record, Ref.: OPA PA-19-010, Binders 1, 2 and 6 thru 12 delivered to the Law Office of Blair Sterling Johnson & Martinez, P.C. dated December 12, 2019
- Tab 7: Receipt of Procurement Record, Ref.: OPA PA-19-010, Binders 1, 2 and 6 thru 12 delivered to the Law Office of Civile & Tang, PLLC dated December 12, 2019
- Tab 8: Motion to Extend Time to File Comments on Agency Report filed by Civile & Tang, PLLC received by the Guam Power Authority on December 06, 2019.
- Tab 9: Procurement Record Hearing Request filed by D. Graham Botha, ESQ, GPA General Counsel delivered to the Office of Accountability Appeals (OPA), Blair Sterling Johnson & Martinez and Civile & Tang, PLLC on November 29, 2019
- Tab 10: Conflicts Check filed by D. Graham Botha, ESQ, GPA General Counsel delivered to the Office of Accountability Appeals (OPA), Blair Sterling Johnson & Martinez and Civile & Tang, PLLC on November 29, 2019
- Tab 11: Entry of Appearance and Hearing Request filed by D. Graham Botha, ESQ, GPA General Counsel delivered to the Office of Accountability Appeals (OPA), Blair Sterling Johnson & Martinez and Civile & Tang, PLLC on November 29, 2019
- Tab 12: Declaration Regarding Court Action filed by D. Graham Botha, ESQ, GPA General Counsel delivered to the Office of Accountability Appeals (OPA), Blair Sterling Johnson & Martinez and Civile & Tang, PLLC on November 29, 2019
- Tab 13: Agency Report filed by D. Graham Botha, ESQ., GPA General Counsel delivered to the Office of Public Accountability Appeals (OPA), Blair Sterling Johnson & Martinez and Civile & Tang, PLLC on November 29, 2019
- Tab 14: Stipulated Motion to Continue Dates filed by Blair Sterling Johnson & Martinez received by Office of Public Accountability Appeals (OPA) dated November 21, 2019

**** END OF SUPPLEMENTAL PROCUREMENT RECORD

Vince JR Barcinas

From: Peter Rood <prood@glidepath.net>
Sent: Friday, January 10, 2020 5:13 PM
To: Vince JR Barcinas
Cc: Graham Botha; Jamie C. Pangelinan; Josephina F. Naputi; Reuben C Ulloa; Dawn KP Fejeran; Melissa C Uncangco; Joshua D Walsh
Subject: RE: DENIAL OF PROCUREMENT PROTEST (GlidePath Marianas Operations, Inc.)

Hafa Adai Vincent,

We acknowledge receipt. Have a good weekend.

Peter

Peter Rood
C: 651.494.4939
prood@glidepath.net

From: Vince JR Barcinas <vbarcinas@gpagwa.com>
Sent: Thursday, January 9, 2020 18:24
To: Peter Rood <prood@glidepath.net>
Cc: Graham Botha <gbotha@gpagwa.com>; Jamie C. Pangelinan <jpangelinan@gpagwa.com>; Josephina F. Naputi <jfnaputi@gpagwa.com>; Reuben C Ulloa <rulloa@gpagwa.com>; Dawn KP Fejeran <dfejeran1@gpagwa.com>; Melissa C Uncangco <muncangco@gpagwa.com>
Subject: DENIAL OF PROCUREMENT PROTEST (GlidePath Marianas Operations, Inc.)
Importance: High

Hafa Adai Peter,

Kindly acknowledge receipt of the Authority's Denial of Procurement Protest to Multi-Step Bid No.: GPA-007-18, Renewable Energy Resources Phase III.

Regards,

Vincent Jr. Barcinas
Buyer II
Guam Power Authority
Procurement Materials Management
Tel. No.: (671) 648-3054/5
Fax No.: (671) 648-3165
Email: vbarcinas@gpagwa.com

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Vince JR Barcinas

From: Vince JR Barcinas
Sent: Friday, January 10, 2020 10:24 AM
To: 'prood@glidepath.net'
Cc: Graham Botha; Jamie C. Pangelinan; Josephina F. Naputi; Reuben C Ulloa; Dawn KP Fejeran; Melissa C Uncangco
Subject: DENIAL OF PROCUREMENT PROTEST (GlidePath Marianas Operations, Inc.)
Attachments: DOC003

Importance: High

Hafa Adai Peter,

Kindly acknowledge receipt of the Authority's Denial of Procurement Protest to Multi-Step Bid No.: GPA-007-18, Renewable Energy Resources Phase III.

Regards,

Vincent Jr. Barcinas
Buyer II
Guam Power Authority
Procurement Materials Management
Tel. No.: (671) 648-3054/5
Fax No.: (671) 648-3165
Email: vbarcinas@gpagwa.com



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Tel: (671) 648-3225; Fax: 648-3290

DENIAL OF PROCUREMENT PROTEST

January 7, 2020

VIA E-mail: prood@glidepath.net

Mr. Peter K. Rood
Chief Development Officer
GlidePath Marianas Operations, Inc.
709 Dandan Road
Inarajan, Guam 96915

RE: Guam Power Authority's Response to GlidePath Marianas Operations, Inc.'s Protest dated November 13, 2019, for GPA-IFB-007-18, Renewable Energy Resources Phase III

Dear Mr. Rood:

I have reviewed your protest letter dated November 13, 2019, protesting the Guam Power Authority's (GPA) proposed award to ENGIE Solar ("ENGIE"). Your Protest is hereby denied for the following reasons:

I. You indicated in your letter that you believe that "to the extent that GPA has waived the 20.7MW cap that GlidePath and other offerors found in the IFB, GlidePath respectfully submits this second protest regarding the IFB." The ENGIE proposal meets the GPA bid requirement that "the MW rating of the ESS shall be equal to or great than the 145% of the MW rating of the PV charging system." GlidePath claims that GPA's technical requirements limit solar system capacity to 20.7MW DC. GPA's bid did not limit the capacity of the PV installation, but does restrict the delivery of energy at the interconnection point which is 30MW AC. Volume II- Technical Qualification Proposal Requirement, Section 1 Overview (pg 52 of 501) states: "1.

The bidder's renewable resource project shall have a **maximum export capacity 30MW_{ac}**; this may be the combination of several generation units at one site." Section 2.3.1. Minimum and Maximum Project Capacity (pg 56 of 501) states: "there is no minimum nameplate project capacity that a Bidder may offer, **however the maximum export capacity shall be 30MW.**"

GlidePath itself sought clarification on this issue on February 11, 2019, which was addressed in Amendment XVII (pg. 2 of 17) in which GlidePath asks "what is the maximum procurement under this bid, could GPA select two 30MW_{ac} projects at each site for a total procurement of 60MW_{ac}? The GPA response was "Yes."

GlidePath states that the GPA limit on the ESS size to 30MW at each project site together with the 145% requirement effectively caps the size of the PV system to 20.7MW_{ac}. The IFB states that the intent of the 145% requirement is to require the ESS charge and discharge be asymmetrical, with ESS discharge power required to be 30MW_{ac} at the point of connection and ESS charge power not to exceed 20.7MW. This requirement limits the maximum AC PV charging power on each site to 1/1.45 of the maximum AC export capacity. The "MW rating of the PV charging system" in ENGIE's proposal, is equal to the power rating of the DC/DC converters, and is capped at 20.7MW (i.e. 1/1.45 of 30MW AC), in full compliance with the IFB requirements.

Therefore, your protest is denied on these grounds. GPA reviewed the bid packages and provided a notice of intent to award to the lowest responsible and **responsive** bidder. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).

2. GPA has determined that ENGIE should be awarded the bid for Renewable Energy Resources Phase III, as they were deemed to be the lowest, responsive and responsible bidder.

The ENGIE bid was responsive to the IFB and complied with the specifications set forth in the IFB. Therefore, GPA hereby finds that there is no merit to the GlidePath Marianas Operations, Inc.'s claim that their bid was the lowest responsive bid, and the GlidePath Marianas Operations, Inc.'s bid was properly rejected due to high price.

GlidePath Marianas Operations, Inc. is hereby ON NOTICE that this is the Guam Power Authority's final decision concerning GlidePath Marianas Operations, Inc.'s November 13, 2019, protest for the above described IFB. You are hereby advised that GlidePath Marianas Operations, Inc. has the right to seek judicial review.

Sincerely,


JOHN M. BENAVENTE, P.E.
General Manager

CIVILLE & TANG, PLLC

E-MAIL

www.civilletang.com

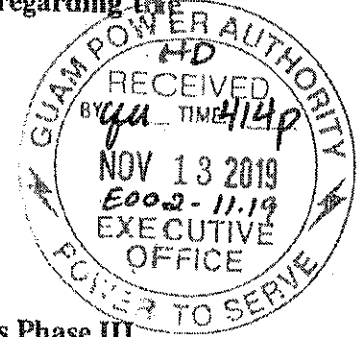
Sender's Direct E-Mail:
jdwalsh@civilletang.com

November 13, 2019

This is a pre-award procurement protest of Guam Power Authority Solicitation Number GPA-IFB-007-18, and as such this correspondence serves as a continued statutory trigger for an Automatic Stay regarding the continued procurement of GPA-IFB-007-18.

VIA HAND DELIVERY

John M. Benavente, P.E.
General Manager
GUAM POWER AUTHORITY
688 Route 15, Suite 100
Mangilao, Guam 96913-6203



Re: Protest 2, GPA-IFB-007-18, Renewable Energy Resources Phase III

Dear General Manager Benavente:

Our office represents GlidePath Marianas Operations Inc. ("GlidePath"). As you know, GlidePath was an offeror who submitted a bid pursuant to GPA-IFB-007-18 ("IFB") issued by the Guam Power Authority ("GPA"). The IFB sought proposals to provide GPA with the renewable energy contemplated by Phase III of its Renewable Energy Resource project. GPA ultimately selected ENGIE Solar ("ENGIE") for award, and after learning that ENGIE submitted a proposal to GPA that did not materially comply with the technical requirements of the IFB, GlidePath submitted a protest on October 9, 2019 ("Protest 1"). GPA denied the protest via correspondence received by GlidePath on October 31, 2019, and GlidePath is appealing that decision to the Office of Public Accountability.¹

GPA's denial of GlidePath's Protest 1 was built upon GPA's assertion that the IFB did not limit capacity to no more than 20.7MWp, despite IFB amendments setting requirements that ESS systems should be equal to or greater than 145% of the MW rating of the PV charging system and that the ESS be no larger than 30MW for each project site. To the extent that GPA has waived the 20.7 MWp cap that GlidePath and other offerors found in the IFB, GlidePath respectfully submits this second protest regarding the IFB. This protest is based upon the fact that the amendments, communications, and information provided to the bidders resulted in a flawed procurement where only one offeror—an offeror that ignored the plain language of the various pronouncements by GPA in the procurement record²—submitted a bid that met the

¹ This second protest is submitted to GPA out of an abundance of caution to assure administrative review of the key issues and flaws affecting this procurement.

² The aspects of the IFB that led to GlidePath's understanding of the 20.7MWp cap are contained in GlidePath's first protest. The essential facts are that on January 25, 2019, GPA issued Amendment XIII that required that the ESS should be equal to or greater than the 145% of the MW rating of the PV charging system. This 145% requirement was coupled to GPA's other requirement that the ESS be no larger than 30MW at each project site. Coupled together, these requirements meant that GPA wanted an ESS system that was both no larger than 30MW, but was also at least 145% greater than the mega-watt rating of the system. This meant that the system to be procured would be limited to a peak mega-watt capacity of 20.7 MWp, since 145% of a 20.7 MWp system would be no larger than the 30MW ESS maximum demanded by GPA in its IFB.

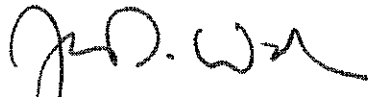
John M. Benavente, P.E.
General Manager
Guam Power Authority
November 13, 2019
Page 2

contours of the system held within GPA's mind's eye.

GPA, by allowing ENGIE to submit a project for consideration that did not hold to the 20.7 MWp PV charging system parameters set by the IFB that all other offerors held to, means that GPA did not compare equivalent projects and, therefore, selection of ENGIE as the lowest bidder was in error because their proposal was materially different than the other bidders. This has resulted in a competitive bid process that was not competitive at all, *i.e.*, the ENGIE projects have substantially more solar generation capacity than 20.7 MWp per project. This meant that ENGIE's proposal, as accepted by GPA, increased the projects' power production and allowed for the fixed project costs—the costs that form the basis of an offeror's price submission to GPA—to be distributed across more MWhs resulting in more gross revenue to ENGIE, and an ultimate lower cost per MWh to GPA. By moving forward with an award to ENGIE without first allowing the other offerors to competitively bid on providing a system that is not capped at 20.7 MW per project, GPA prejudices the people of Guam by ignoring what could be competing bids that offer GPA and its ratepayers substantial savings over ENGIE's price.

GPA should clarify its stance on the 20.7 MWp cap for all bidders, and allow all bidders to submit bids for consideration in conformance with that clarification. Providing such clarification will correct the error that has occurred here. We look forward to your prompt and expeditious resolution of this matter.

Sincerely,



Joshua D. Walsh

E-MAIL**CIVILLE & TANG, PLLC**

www.civilletang.com

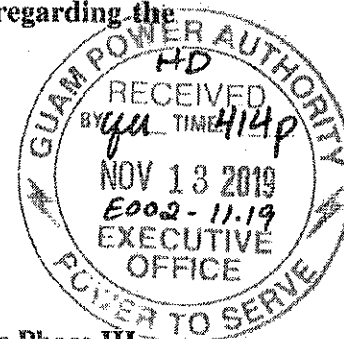
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November 13, 2019

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VIA HAND DELIVERY

John M. Benavente, P.E.
General Manager
GUAM POWER AUTHORITY
688 Route 15, Suite 100
Mangilao, Guam 96913-6203



Re: Protest 2, GPA-IFB-007-18, Renewable Energy Resources Phase III

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John M. Benavente, P.E.
General Manager
Guam Power Authority
November 13, 2019
Page 2

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Sincerely,

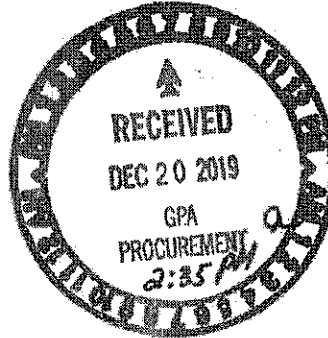


Joshua D. Walsh

Josephina F. Naputi

From: Josephina F. Naputi
Sent: Friday, December 20, 2019 2:36 PM
To: Chilang F Unpingco
Subject: Accepted: OPA's Notice of Status Conference re: GlidePath Marianas Operations Inc

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



FAX

To:	Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
	Mr. D. Graham Botha, Esq. General Counsel Guam Power Authority 688 Route 15, Suite 302 Mangilao, Guam, 96913 Phone: (671) 648-3203/3002 Fax: (671) 648-3290	Pages:	3 (including cover page)
CC:	Mr. Joshua D. Walsh, Esq. Mr. Joseph C. Razzano, Esq. Civille & Tang PLLC Attorneys for Appellant GlidePath Mariannas Operations Inc. 330 Hernan Cortez Avenue Ste. 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax (671) 477-2511	Date:	December 19, 2019
	Mr. Richard L. Johnson, Esq. Mr. R. Marsil Johnson, Esq. Blair Sterling Johnson & Martinez Attorneys for Interested Party ENGIE Solar 238 Archbishop Flores Street Suite 1008 Hagatna, Guam Phone: (671) 477-7857 Email: r.marsiljohnson@bsjmlaw.com	Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-19-010 Notice of Status Conference

For Review

Please Comment

Please Reply

Please Recycle

Comments:

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,

Jerrick Hernandez, Auditor

jhernandez@guamopa.com

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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

In the Appeal of) Appeal No: OPA-PA-19-010
GlidePath Marianas Operations Inc.	) NOTICE OF STATUS
Appellant.	) CONFERENCE

To: **Purchasing Agency:**
Guam Power Authority
C/O D. Graham Botha, Esq.
General Counsel
688 Route 15, Suite 302
Mangilao, Guam, 96913
Phone: (671) 648-3203/3002
Fax: (671) 648-3290

Appellant:
GlidePath Marianas Operations Inc.
C/O Joshua D. Walsh, Esq. and Joseph C. Razzano, Esq.
Civille & Tang PLLC
330 Hernan Cortez Avenue Ste. 200
Hagatna, Guam 96910
Phone: (671) 472-8868/9
Fax (671) 477-2511

Interested Party:
ENGIE Solar
C/O Richard L. Johnson, Esq. and R. Marsil Johnson, Esq.
Blair Sterling Johnson & Martinez
238 Archbishop Flores Steet Suite 1008
Hagatna, Guam
Phone: (671) 477-7857
Email: r.marsjohnson@bsjmlaw.com

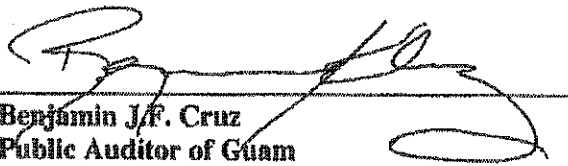
NOTICE IS HEREBY GIVEN, that a Status Conference shall be held before the Public Auditor at the Office of Public Accountability, Suite 907, 9th Floor, DNA Building, 238 Archbishop Flores Street, Hagatna, Guam 96910 on Thursday, January 2, 2020 at 2:00 p.m.

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In addition, the December 19, 2019 deadline for the Comments on the Agency Report is vacated until further notice.

Any persons requiring special accommodations, auxiliary aids or services to attend the Pre-Hearing Conference shall contact and submit their request to Jerrick Hernandez, Office of Public Accountability, Suite 401, DNA Building, 238 Archbishop Flores Street, Hagatna, Guam, 96910, at 475-0390 ext. 208.

SO ORDERED this 19th day of December 2019 by:


Benjamin J.F. Cruz
Public Auditor of Guam

**Law Office of Blair Sterling Johnson & Martinez,
P.C.**

BINDER:	RECEIVED BY:	DATE:
3	<u>Mellanne Rasmussen</u>	<u>12/13/19</u>
4	<u>Mellanne Rasmussen</u>	<u>12/13/19</u>
5	<u>Mellanne Rasmussen</u>	<u>12/13/19</u>

RECEIVED

DEC 13 2019

Blair Sterling Johnson & Martinez
A Professional Corporation

Law Office of Civile & Tang PLLC

BINDER:

RECEIVED BY:

DATE:

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Cyndi Messa

02/13/19

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Cyndi Messa

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Cyndi Messa

12/13/19

OFFICE OF PUBLIC ACCOUNTABILITY

One (1) Original

Two (2) Copies

12/12/19
1:28 X Ann
19-10

BINDER:	RECEIVED BY:	DATE:
1	Chris Rivera	12/12/19
2	Chris Rivera	12/12/19
3	Chris Rivera	12/12/19
4	Chris Rivera	12/12/19
5	Chris Rivera	12/12/19
6	Chris Rivera	12/12/19
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10	Chris Rivera	12/12/19
11	Chris Rivera	12/12/19
12	Chris Rivera	12/12/19

**Law Office of Blair Sterling Johnson & Martinez,
P.C.**

BINDER:	RECEIVED BY:	DATE:
1	<u>Claudine Chargvalat CBC</u>	<u>12/12/19</u>
2	<u>Claudi Chargvalat CBC</u>	<u>12/12/19</u>
6	<u>Cladi Chargvalat</u>	<u>12/12/19</u>
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12	<u>Cladi Chargvalat</u>	<u>12/12/19</u>

Law Office of Civile & Tang PLLC

BINDER:	RECEIVED BY:	DATE:
1	<u>Chelsea Martins</u>	<u>12.12.19</u>
2	<u>Chelsea</u>	<u>12.12.19</u>
6	<u>Chelsea</u>	<u>12.12.19</u>
7	<u>Chelsea</u>	<u>12.12.19</u>
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11	<u>Chelsea</u>	<u>12.12.19</u>
12	<u>Chelsea</u>	<u>12.12.19</u>

CIVILLE & TANG, PLLC
SUITE 200, 330 HERNAN CORTEZ AVENUE
HAGÁTÑA, GUAM 96910
TELEPHONE: (671)472-8868
FACSIMILE: (671) 477-2511

Attorneys for Appellant
GlidePath Marianas Operations, Inc.

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

DATE: Dec 6, 2019

TIME: 4:02 AM PM BY: FAJ

FILE NO OPA-PA: A-010

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

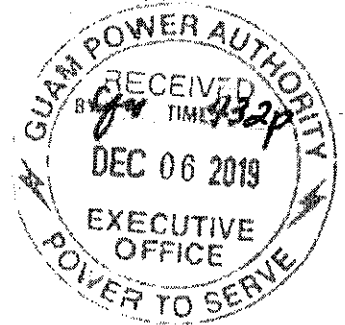
In the Appeal of

GlidePath Marianas Operations Inc.,

Appellant.

Docket No. OPA-PA-19-010

**MOTION TO EXTEND TIME TO
FILE COMMENTS ON AGENCY
REPORT**



MOTION

GlidePath Marianas Operations, Inc. ("GlidePath" or "Appellant") respectfully moves the Office of Public Accountability for an Order confirming that GlidePath's comments to the Guam Power Authority Agency Report filed on November 29, 2019, will not be due until after the procurement record kept in accordance with 5 GCA §5249 is provided to the Appellant, and a scheduling conference has been held to determine appropriate dates to adhere to as this procurement appeal moves forward. This Motion is supported by the following Memorandum In Support of Motion and the record already before the Office of Public Accountability.

MEMORANDUM IN SUPPORT OF MOTION

I. RELEVANT PROCEDURAL HISTORY

GlidePath filed its Notice of Appeal on November 13, 2019. On November 14, 2019, the Office of Public Accountability ("OPA") directed the General manager of the Guam Power Authority ("GPA") to provide copies of the procurement record kept in accordance with 5 GCA

§5249 to the Appellant and the OPA by Thursday, November 21, 2019. The Public Auditor also ordered that the Agency Report outlined in 2 GAR, Division 4, §12105 should be filed by November 29, 2019.

On November 21, 2019, the parties submit a joint stipulation seeking an order from the OPA allowing GPA until November 29, 2019, to produce the procurement record. The purpose of the extension of time was to: (1) allow GPA the additional time it needed to compile the voluminous procurement record, and (2) allow GlidePath and interested party ENGIE Solar ("ENGIE") time to work toward a mutually satisfactory resolution to ENGIE's November 15, 2019, motion seeking to prevent disclosure of its technical proposal as part of the procurement record.

On November 22, 2019, the OPA issued an email order extending the procurement record filing deadline to November 29, 2019, and setting the due date for GPA's Agency Report to Friday, December 6, 2019. On November 29, 2019, the parties submitted a further joint stipulation allowing GPA until December 12, 2019, to submit the procurement record as the parties continued their efforts to resolve the ENGIE's claimed need for confidentiality protection. On the same day that stipulation was filed, GPA went ahead and filed its agency report, as well as a request for a hearing on the matter of the Procurement Record. No actual record was produced.

II. A REGULATORY DEADLINE HAS BEEN TRIGGERED AND GOOD CAUSE EXISTS TO MODIFY THAT DEADLINE.

Guam law sets certain dates for the occurrence of the parties' filings during the course of a procurement appeal. The Agency's procurement record is to be provided within five working days of the receipt of the Notice of Appeal. 2 GAR Div 4 §12104(c)(3). An Agency Report based upon that record and answering the Notice of Appeal is due within 10 working days of receipt of the Notice of Appeal. 2 GAR Div 4 §12104(c)(3). The Agency Report and the procurement record are inextricably linked, as the applicable regulations command that Agency Report include the procurement record,

which contains "...a copy of the bid or offer that is being considered for award or whose bid or offer is being protested..." 2 GAR Div 4 §12105(b). The Appellant and any interested party—here GlidePath and ENGIE—shall provide their comments on the Agency Report within ten (10) days after the Public Auditor's receipt of the report. Since GPA submitted its Agency Report on November 29, 2019, comments on that report would be due under the applicable regulatory clock on December 10, 2019.¹

The OPA has adopted a good cause standard when deciding to extend the time for appellants to file comments on an agency report, and has provided such extensions freely. *See, e.g., In the Appeal of Eons Enterprises, Corp.* OPA—PA—10—003, Order Re Appellant's Motion to Extend Time to File Comments on Agency Report (June 18, 2010). Good cause exists here to extend the deadline as the Appellant seeks.

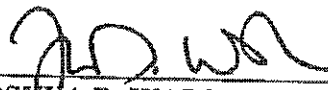
Simply put, comments on an Agency Report are impossible to craft so long as GPA does not provide the Procurement Record. The Agency Report provided by GPA makes numerous references to the IFB, clarifications, and proposals received that make up the procurement record, but the Appellant does not have possession of that record. GlidePath would be severely prejudiced if compelled to furnish its comments on an Agency Report based upon a procurement record that remains in GPA's sole possession. Accordingly, GlidePath respectfully requests that the OPA issue an order confirming that GlidePath's comments to the GPA Agency report filed on November 29, 2019, will not be due until after the procurement record kept in accordance with 5 GCA §5249 is provided to the Appellant, and a scheduling conference has been held to determine appropriate dates to adhere to as this procurement appeal moves forward.

¹ Monday, December 9, 2019, is the feast day of *Santa Marian Kamalen*, and a Government of Guam observed holiday.

Given the compressed regulatory timelines that have been triggered by GPA's decision to submit an Agency Report without a Procurement Record, an expedited decision on this Motion is requested. Both counsel for GPA and interested party ENGIE have been informed, via email, of this Motion being filed, and have not expressed opposition to the extension that is being sought.

Respectfully submitted on December 6, 2019.

CIVILLE & TANG, PLLC

By: 
JOSHUA D. WALSH
*Attorneys for Appellant
GlidePath Marianas Operations, Inc.*

CERTIFICATE OF SERVICE

I, JOSHUA D. WALSH, do hereby certify as follows:

On December 6, 2019, via hand delivery, I caused to be served a true and correct copy of the **MOTION TO EXTEND TIME TO FILE COMMENTS ON AGENCY REPORT** upon the following:

D. Graham Botha
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, GU 96913
Attorneys for Appellant Guam Power Authority

R. Marsil Johnson
Blair Sterling Johnson & Martinez, P.C.
238 Archbishop Flores St., Suite 1008
Hagatna, GU 96910
Attorneys for Appellant ENGIE Solar

Executed December 6, 2019, at Hagåtña, Guam.

CIVILLE & TANG, PLLC

By: _____


JOSHUA D. WALSH
Attorneys for Appellant
GlidePath Marianas Operations Inc.

Dawn KP Fejeran

From: Jamie C. Pangelinan
Sent: Tuesday, December 10, 2019 8:34 AM
To: Vince JR Barcinas; Melissa C Uncangco
Cc: Josephina F. Naputi; Dawn KP Fejeran
Subject: FW: Civile & Tang for GlidePath re: Motion to Extend Time to File Comments on Agency Report
Attachments: Scanned from a Xerox Multifunction Printer.pdf; Scanned from a Xerox Multifunction Printer.pdf

All,

Kindly see Civile & Tang, PIIC, request for extension until 12/12/19.

With Warm Regards,
JAMIE LYNN C. PANGELINAN
Supply Management Administrator
Guam Power Authority
Procurement/Materials Management
Tel: (671)648-3054/5
Fax: (671) 648-3165
Email: jpangellinan@gpagwa.com

From: Chilang F Unpingco <cfejeran@gpagwa.com>
Sent: Friday, December 06, 2019 5:06 PM
To: Melinda C. Mafnas <cmamacho@gpagwa.com>; Graham Botha <gbotha@gpagwa.com>; Beatrice Limtiaco <tlimtiaco@gpagwa.com>; Jamie C. Pangelinan <jpangelinan@gpagwa.com>
Cc: John M Benavente <jbenavente@gpagwa.com>; Bernadette Lou Sablan <l.sablan@gpagwa.com>
Subject: Civile & Tang for GlidePath re: Motion to Extend Time to File Comments on Agency Report

Forwarded for your info and proper handling.

Si Yu'os ma'ase',
Chilang Fejeran Unpingco
Administrative Officer
GENERAL MANAGER'S EXECUTIVE OFFICE
Phone: (671) 648-3228/3225
Fax: (671) 648-3290



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 - AGANA, GUAM U.S.A. 96932-2977



PHYSICAL ADDRESS: Gloria B. Nelson Public Service Building
688 Route 15, Fadian Main Office
Mangilao, Guam 96913

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D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, Guam, 96913
Tel: (671) 648-3203/3002
Fax: (671) 648-3290

Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-19-010
)	
GlidePath Marianas Operations, Inc.,	)	PROCUREMENT RECORD
	)	HEARING REQUEST
Appellant.)	
_____)	

COMES NOW, D. GRAHAM BOTHA, ESQ., and hereby submits the Procurement Record in this matter on behalf of appellee, GUAM POWER AUTHORITY (GPA). Pursuant to 2 GAR §12108(a), GPA hereby requests a hearing on the appeal stated above. Counsel requests that all further documents in this appeal be served upon GPA's counsel of record.

RESPECTFULLY SUBMITTED this 22nd day of November, 2019.

D. GRAHAM BOTHA, ESQ.
GPA General Counsel

RECEIVED
OFFICE OF PUBLIC ACCOUNTS & BILLS
PROCUREMENT APPEALS

DATE: 11/29/19

TIME: 2:45 BY: DAM DEVEY Vince D.

FILE NO OPA-PA: 19-010

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, Guam, 96913
Tel: (671) 648-3203/3002
Fax: (671) 648-3290

Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

IN THE APPEAL OF)	DOCKET NO. OPA-PA-19-010
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GlidePath Marianas Operations, Inc.,)	PROCUREMENT RECORD
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RESPECTFULLY SUBMITTED this 22nd day of November, 2019.

D. GRAHAM BOTHA, ESQ.
GPA General Counsel

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Blair Sterling Johnson & Martinez
A Professional Corporation

Civille & Tang, PLLC

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DATE: 11/29/19

TIME: 3:07 PM

BY: [Signature]

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, Guam, 96913
Tel: (671) 648-3203/3002
Fax: (671) 648-3290

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF)	DOCKET NO. OPA-PA-19-010
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D. GRAHAM BOTHA, ESQ.
GPA General Counsel



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O BOX 2977 • AGANA, GUAM U S A. 96932-2977

Tel: (671) 648-3203/3002; Fax: (671) 648-3290

November 29, 2019

Mr. Benjamin J.F. Cruz
Office of the Public Auditor
238 Archbishop Flores St, Ste 401
Hagatna, Guam 96910

RE: GlidePath Marianas Operations, Inc. vs. GPA – OPA-PA-19-010; Conflicts Check

Dear Mr. Cruz:

The requested information is listed below:

General Counsel: D. Graham Botha, Esq.
Procurement Officer: Ms. Jamie Pangelinan
Asst General Manager: Ms. Beatrice Limtiaco
General Manager: Mr. John M. Benavente, P.E.
CCU Board Members: Joseph Duenas, Simon Sanchez, Francis Santos, Michael Limtiaco, Judith Guthertz

If you have any questions, please do not hesitate to contact me at the office.

Sincerely,

D. Graham Botha, Esq.
General Counsel

Cc: Joshua Walsh, Esq.
Mars Johnson, Esq.

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 11/29/19
TIME: 2:45 PM BY: Vince D.
FILE NO OPA-PA: 19-010



GUAM POWER AUTHORITY

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Limtiaco, Judith Guthertz

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Sincerely,

D Graham Botha, Esq.
General Counsel

Cc: Joshua Walsh, Esq.
Mars Johnson, Esq.

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NOV 29 2019

Blair Sterling Johnson & Martinez
A Professional Corporation



GUAM POWER AUTHORITY

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Sincerely,

D Graham Botha, Esq.
General Counsel

Cc: Joshua Walsh, Esq.
Mars Johnson, Esq.

Civille & Tang, PLLC
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DATE: 11/29/19
TIME: 3:06 PM
BY: [Signature]

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, Guam, 96913
Tel: (671) 648-3203/3002
Fax: (671) 648-3290

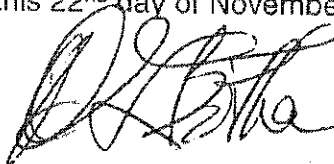
Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-19-010
)	
GlidePath Marianas Operations, Inc.,)	
)	ENTRY OF APPEARANCE AND
Appellant.)	HEARING REQUEST
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COMES NOW, D. GRAHAM BOTHA, ESQ., and hereby files his Entry of Appearance on behalf of appellee, GUAM POWER AUTHORITY (GPA). Pursuant to 2 GAR §12108(a), GPA hereby requests a hearing on the appeal stated above. Counsel requests that all further documents in this appeal be served upon GPA's counsel of record.

RESPECTFULLY SUBMITTED this 22nd day of November, 2019.



D. GRAHAM BOTHA, ESQ.
GPA General Counsel

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 11/22/19

TIME: 2:45 AM PM BY: Vince D.

FILE NO OPA-PA: 19-010

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
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688 Route 15, Suite 302
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Fax: (671) 648-3290

Attorney for the Guam Power Authority

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PROCUREMENT APPEALS**

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D. GRAHAM BOTHA, ESQ.
GPA General Counsel

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Civille & Tang, PLLC

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BY: [Signature]

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Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
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D. GRAHAM BOTHA, ESQ.
GPA General Counsel

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688 Route 15, Suite 302
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Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-19-010
)	
GlidePath Marianas Operations, Inc.,)	
	)	DECLARATION REGARDING
Appellant.	)	COURT ACTION
_____)	

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 22nd day of November, 2019.

GUAM POWER AUTHORITY (GPA)

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 11/29/19
TIME: 2:45 PM BY: Vince D.
FILE NO OPA-PA: 19-010

By: 
JOHN M. BENAVENTE, P.E.
General Manager

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
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Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

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GUAM POWER AUTHORITY (GPA)

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NOV 29 2019

Blair Sterling Johnson & Martinez
A Professional Corporation

By: 
JOHN M. BENAVENTE, P.E.
General Manager

Civille & Tang, PLLC

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DATE: 11/29/19

TIME: 3:04 PM

BY: [Signature]

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
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Tel: (671) 648-3203/3002
Fax: (671) 648-3290

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

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GlidePath Marianas Operations, Inc.,)	
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GUAM POWER AUTHORITY (GPA)

By: [Signature]
JOHN M. BENAVENTE, P.E.
General Manager

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, Guam, 96913
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FILED BY: Vince D.
FILE NO OPA-PA: 19-010

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF) DOCKET NO. OPA-PA-19-010
)
GlidePath Marianas Operations, Inc.,) 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 November 29, 2019, 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 November 29, 2019, by GPA.*

(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 November 29, 2019, by GPA.*

(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 November 29, 2019, by GPA.*

(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 November 29,*

2019, by GPA.

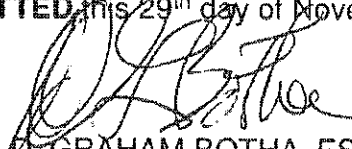
(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 29, 2019, by GPA.***

(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 November 29, 2019, by GPA.***

RESPECTFULLY SUBMITTED this 29th day of November, 2019, by:


D. GRAHAM BOTHA, 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-007-018, RENEWABLE ENERGY RESOURCES PHASE III

On November 28, 2017, Guam Power Authority ("GPA") issued Multi-Step Invitation for Bid, GPA-IFB-007-018, RENEWABLE ENERGY RESOURCES PHASE III, (Tab "71"). Multiple bidders expressed interest in the IFB from November 28, 2017 to June 3, 2019. Six companies submitted bids in response to the Multi-Step IFB, ENGIE, AES, KEPCO/Hanwha, Glidepath, X-Elio, and Global Sources. All bidders, except for Global Sources, submitted bids for both sites, Naval Base Guam and South Finegayan. Tabs 37-47. Phase I Bid Abstract, June 3, 2019. (Tab "48"). Prior to submission of the technical proposals, the bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments II to XIX in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab "50-68".

On June 3, 2019, the sealed technical proposals of the six bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the technical proposals for the six bidders. The Bid Abstract- Phase I, is contained in the procurement record at Tab "48." Each of the six bidders submitted technical proposals for either one site or two sites.

On August 12, 2019, the evaluation committee met and recommended that five of the six

bidders be deemed qualified under the Phase I technical evaluation, and one of the six bidders be deemed not qualified under the Phase I technical evaluation to proceed to Phase II -- price proposals. Five bidders with twelve project sites were qualified, ENGIE, AES, KEPCO/Hanwha, GlidePath, and X-Elio. (Tab "22"). One bidder was not qualified in the Phase I technical proposal, Global Sourcing USA, Inc. (Tab "21").

Amendment No. XXIII and letters were sent to the qualified bidders on August 14, 2018 (Tab "22"). Phase I letters were sent to the non-qualified bidders on August 14, 2018 (Tab "21"). Amendment XX to XXIII and clarifications were sent to Phase II bidders. (Tabs "20-35"). On September 10, 2019, the sealed price proposals for the five bidders and ten project sites were opened in the presence of company representatives. (Tab "38"). The price proposal evaluation was completed and determined that the lowest responsive bidder for Naval Base Guam and South Finegayan was ENGIE. (Tab "12"). The evaluation committee recommended award of Naval Base Guam (NBG) and South Finegayan (SF) sites based on the technical price proposals submitted. (Tab "12"). The Phase II – Bid Abstract and evaluation committee memo reflect the NBG site price of **\$110.90/MWh** and the SF site price of **\$108.90/MWh**; AES prices for NGB of **\$169.00/MWh** and SF of **\$158.90/MWh**; GlidePath prices for NGB of **\$196.00/MWh** and SF of **\$191.50/MWh** and GlidePath (Alternate) prices for NGB of **\$176.00/MWh** and SF of **\$176.00/MWh**. The alternate bid reflected the GlidePath demand that it be awarded both sites.

GlidePath filed a protest with GPA which resulted in a Stay of Procurement, and a Lift of Stay when the protest was denied by GPA. (Tab "5"). GlidePath filed an appeal to the OPA on

November 13, 2019, and GPA filed a Stay of Procurement on November 15, 2019 (Tab "2 & 4").

II. DISCUSSION

- A. THE ENGIE BIDS WERE RESPONSIVE, AND THE AWARDS FOR RENEWABLE ENERGY RESOURCE PHASE III WERE PROPERLY AWARDED TO ENGIE FOR THE NAVAL BASE GUAM AND SOUTH FINEGAYAN SITES AS ENGIE MET THE SPECIFICATIONS IN THE MULTI-STEP 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).

Five bidders submitted technical price proposals for ten sites which were opened by GPA on September 10, 2019. The evaluation committee recommended award of the two lowest site proposals each consisting of a renewable energy and battery project. The committee evaluation memo and the Bid Abstract – Phase II clearly sets forth the prices of the bidders, including ENGIE, GlidePath and AES. Based on the bid abstract, the two proposals submitted by ENGIE, NGB and SF, based on price are the #1 bidder for both sites, at a first-year price of \$110.90/MWh for NGB and \$108.90/MWh for SF. This compares with the AES price of \$169.00/MWh for NGB and \$158.90 for SF, and the GlidePath (Alternate) price of \$176.00/MWh for NGB and \$176.00/MWh for SF.

GlidePath states that "ENGIE's projects have included more solar generation capacity than allowed by the technical requirement of the IFB. Based on the significantly higher

Guaranteed Net Annual Generation ("GNAG") included, the ENGIE Priced Proposals when compared to the proposal submitted by GlidePath and all the other bidders, GlidePath's technical experts are concerned that ENGIE may not have followed all of GPA's technical requirements." The ENGIE proposal meets the GPA bid requirement that "the MW rating of the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system." GlidePath claims that GPA's technical requirements limit solar system capacity to 20.7MW_{DC}. GPA's bid did not limit the capacity of the PV installation, but does restrict the delivery of energy at the interconnection point which is 30MW_{ac}. Volume II- Technical Qualification Proposal Requirement, Section 1 Overview (pg 52 of 501) states: "1. The bidder's renewable resource project shall have a **maximum export capacity of 30MW_{ac}**; this may be a combination of several generation units at one site." Section 2.3.1. Minimum and Maximum Project Capacity (pg 56 of 501) states "there is no minimum nameplate project capacity that a Bidder may offer, **however the maximum export capacity shall be 30MW.**"

GlidePath itself sought clarification on this issue on February 11, 2019, which was addressed in Amendment XVII (pg. 2 of 17) in which GlidePath asks "what is the maximum procurement under this bid, could GPA select two 30MW_{ac} projects at each site for a total procurement of 60MW_{ac}? The GPA response was "Yes."

GlidePath states that the GPA limit on the ESS size to 30MW at each project site together with the 145% requirement effectively caps the size of the PV system to 20.7MW_{ac}. The IFB states that the intent of the 145% requirement is to require the ESS charge and discharge be asymmetrical, with ESS discharge power required to be 30MW_{ac} at the point of connection and

ESS charge power not to exceed 20.7MW. This requirement limits the maximum AC PV charging power on each site to 1/1.45 of the maximum AC export capacity. The "MW rating of the PV charging system" in ENGIE's proposal, is equal to the power rating of the DC/DC converters, and is capped at 20.7MW (i.e. 1/1.45 of 30MW AC), in full compliance with the IFB requirements. Clarifications were provided in Amendment XVII for both GlidePath and ENGIE regarding the increased delivery period.

GlidePath also claims that "except for the ENGIE proposals, all bidders are, in fact, within a similar Guaranteed Net Annual Energy ("GNAG") range." For the Naval Base location, the percentage difference between ENGIE and KEPCO is 28.5%, and between KEPCO and X-Elio is 34%. For South Finegayan, the difference between ENGIE and AES is 16.5%, which is close to the gap between GlidePath and AES. There clearly appears to be significant variation between the GNAG values among the bidders. In addition, there is no direct correlation between the GNAG and tariff, i.e. a higher GNAG does not necessarily correspond to a lower tariff: X-Elio offered a 25% lower GNAG than AES, but at virtually the same tariff (\$170 vs. \$169).

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

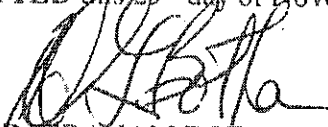
in the Invitation for bids." 5 GCA §5211(e) and 2 GAR, Div 4, Chap 3, §3109(n)(1).

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 two renewable energy sites at Naval Base Guam and South Finegayan to ENGIE as the lowest responsible and responsive bidder. The price proposal evaluation and bid abstract clearly demonstrate that the ENGIE bid for the two sites was the lowest bid for each site for renewable energy. The bids were evaluated and awarded based on the Multi-Step bid specifications and evaluation criteria.

CONCLUSION

GPA requests that the appeal of GlidePath Marianas Operations, Inc. 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 29th day of November, 2019, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel

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Attorney for the Guam Power Authority

Blair Sterling Johnson & Martinez
A Professional Corporation

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-19-010
)	
GlidePath Marianas Operations, Inc.,	)	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 November 29, 2019, 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 November 29, 2019, by GPA.*

(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 November 29, 2019, by GPA.*

(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 November 29, 2019, by GPA.*

(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 November 29,*

2019, by GPA.


(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 November 29, 2019, 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 November 29, 2019, by GPA.***

RESPECTFULLY SUBMITTED this 29th day of November, 2019, by:


D. GRAHAM BOTHA, 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-007-018, RENEWABLE ENERGY RESOURCES PHASE III

On November 28, 2017, Guam Power Authority ("GPA") issued Multi-Step Invitation for Bid, GPA-IFB-007-018, RENEWABLE ENERGY RESOURCES PHASE III, (Tab "71"). Multiple bidders expressed interest in the IFB from November 28, 2017 to June 3, 2019. Six companies submitted bids in response to the Multi-Step IFB, ENGIE, AES, KEPCO/Hanwha, Glidepath, X-Elio, and Global Sources. All bidders, except for Global Sources, submitted bids for both sites, Naval Base Guam and South Finegayan. Tabs 37-47. Phase I Bid Abstract, June 3, 2019. (Tab "48"). Prior to submission of the technical proposals, the bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments II to XIX in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab "50-68".

On June 3, 2019, the sealed technical proposals of the six bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the technical proposals for the six bidders. The Bid Abstract- Phase I, is contained in the procurement record at Tab "48." Each of the six bidders submitted technical proposals for either one site or two sites.

On August 12, 2019, the evaluation committee met and recommended that five of the six

bidders be deemed qualified under the Phase I technical evaluation, and one of the six bidders be deemed not qualified under the Phase I technical evaluation to proceed to Phase II – price proposals. Five bidders with twelve project sites were qualified, ENGIE, AES, KEPCO/Hanwha, GlidePath, and X-Elio. (Tab “22”). One bidder was not qualified in the Phase I technical proposal, Global Sourcing USA, Inc. (Tab “21”).

Amendment No. XXIII and letters were sent to the qualified bidders on August 14, 2018 (Tab “22”). Phase I letters were sent to the non-qualified bidders on August 14, 2018 (Tab “21”). Amendment XX to XXIII and clarifications were sent to Phase II bidders. (Tabs “20-35”). On September 10, 2019, the sealed price proposals for the five bidders and ten project sites were opened in the presence of company representatives. (Tab “38”). The price proposal evaluation was completed and determined that the lowest responsive bidder for Naval Base Guam and South Finegayan was ENGIE. (Tab “12”). The evaluation committee recommended award of Naval Base Guam (NBG) and South Finegayan (SF) sites based on the technical price proposals submitted. (Tab “12”). The Phase II – Bid Abstract and evaluation committee memo reflect the NBG site price of **\$110.90/MWh** and the SF site price of **\$108.90/MWh**; AES prices for NGB of **\$169.00/MWh** and SF of **\$158.90/MWh**; GlidePath prices for NGB of **\$196.00/MWh** and SF of **\$191.50/MWh** and GlidePath (Alternate) prices for NGB of **\$176.00/MWh** and SF of **\$176.00/MWh**. The alternate bid reflected the GlidePath demand that it be awarded both sites.

GlidePath filed a protest with GPA which resulted in a Stay of Procurement, and a Lift of Stay when the protest was denied by GPA. (Tab “5”). GlidePath filed an appeal to the OPA on

November 13, 2019, and GPA filed a Stay of Procurement on November 15, 2019 (Tab "2 & 4").

II. DISCUSSION

- A. THE ENGIE BIDS WERE RESPONSIVE, AND THE AWARDS FOR RENEWABLE ENERGY RESOURCE PHASE III WERE PROPERLY AWARDED TO ENGIE FOR THE NAVAL BASE GUAM AND SOUTH FINEGAYAN SITES AS ENGIE MET THE SPECIFICATIONS IN THE MULTI-STEP 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).

Five bidders submitted technical price proposals for ten sites which were opened by GPA on September 10, 2019. The evaluation committee recommended award of the two lowest site proposals each consisting of a renewable energy and battery project. The committee evaluation memo and the Bid Abstract – Phase II clearly sets forth the prices of the bidders, including ENGIE, GlidePath and AES. Based on the bid abstract, the two proposals submitted by ENGIE, NGB and SF, based on price are the #1 bidder for both sites, at a first-year price of \$110.90/MWh for NGB and \$108.90/MWh for SF. This compares with the AES price of \$169.00/MWh for NGB and \$158.90 for SF, and the GlidePath (Alternate) price of \$176.00/MWh for NGB and \$176.00/MWh for SF.

GlidePath states that "ENGIE's projects have included more solar generation capacity than allowed by the technical requirement of the IFB. Based on the significantly higher

Guaranteed Net Annual Generation ("GNAG") included, the ENGIE Priced Proposals when compared to the proposal submitted by GlidePath and all the other bidders, GlidePath's technical experts are concerned that ENGIE may not have followed all of GPA's technical requirements." The ENGIE proposal meets the GPA bid requirement that "the MW rating of the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system." GlidePath claims that GPA's technical requirements limit solar system capacity to 20.7MW_{DC} GPA's bid did not limit the capacity of the PV installation, but does restrict the delivery of energy at the interconnection point which is 30MW_{ac}. Volume II- Technical Qualification Proposal Requirement, Section 1 Overview (pg 52 of 501) states: "1. The bidder's renewable resource project shall have a **maximum export capacity of 30MW_{ac}**; this may be a combination of several generation units at one site." Section 2.3.1. Minimum and Maximum Project Capacity (pg 56 of 501) states "there is no minimum nameplate project capacity that a Bidder may offer, **however the maximum export capacity shall be 30MW.**"

GlidePath itself sought clarification on this issue on February 11, 2019, which was addressed in Amendment XVII (pg. 2 of 17) in which GlidePath asks "what is the maximum procurement under this bid, could GPA select two 30MW_{ac} projects at each site for a total procurement of 60MW_{ac}? The GPA response was "Yes."

GlidePath states that the GPA limit on the ESS size to 30MW at each project site together with the 145% requirement effectively caps the size of the PV system to 20.7MW_{ac}. The IFB states that the intent of the 145% requirement is to require the ESS charge and discharge be asymmetrical, with ESS discharge power required to be 30MW_{ac} at the point of connection and

ESS charge power not to exceed 20.7MW. This requirement limits the maximum AC PV charging power on each site to 1/1.45 of the maximum AC export capacity. The "MW rating of the PV charging system" in ENGIE's proposal, is equal to the power rating of the DC/DC converters, and is capped at 20.7MW (i.e. 1/1.45 of 30MW AC), in full compliance with the IFB requirements. Clarifications were provided in Amendment XVII for both GlidePath and ENGIE regarding the increased delivery period.

GlidePath also claims that "except for the ENGIE proposals, all bidders are, in fact, within a similar Guaranteed Net Annual Energy ("GNAG") range." For the Naval Base location, the percentage difference between ENGIE and KEPCO is 28.5%, and between KEPCO and X-Elio is 34%. For South Finegayan, the difference between ENGIE and AES is 16.5%, which is close to the gap between GlidePath and AES. There clearly appears to be significant variation between the GNAG values among the bidders. In addition, there is no direct correlation between the GNAG and tariff, i.e. a higher GNAG does not necessarily correspond to a lower tariff: X-Elio offered a 25% lower GNAG than AES, but at virtually the same tariff (\$170 vs. \$169).

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 I-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

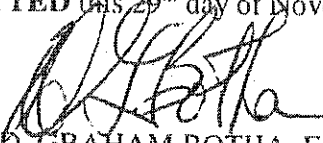
in the Invitation for bids." 5 GCA §5211(e) and 2 GAR, Div 4, Chap 3, §3109(n)(1).

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 two renewable energy sites at Naval Base Guam and South Finegayan to ENGIE as the lowest responsible and responsive bidder. The price proposal evaluation and bid abstract clearly demonstrate that the ENGIE bid for the two sites was the lowest bid for each site for renewable energy. The bids were evaluated and awarded based on the Multi-Step bid specifications and evaluation criteria.

CONCLUSION

GPA requests that the appeal of GlidePath Marianas Operations, Inc. 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 29th day of November, 2019, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel

Civille & Tang, PLLC
RECEIVED

D. GRAHAM BOTHA, ESQ.
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DATE: 11/29/19
TIME: 3:07 PM
BY: [Signature]

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-19-010
)	
GlidePath Marianas Operations, Inc.,	)	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 November 29, 2019, 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 November 29, 2019, by GPA.*

(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 November 29, 2019, by GPA.*

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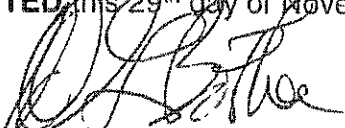
(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 29, 2019, by GPA.***

(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 November 29, 2019, by GPA.***

RESPECTFULLY SUBMITTED, this 29th day of November, 2019, by:


O. GRAHAM BOTHA, ESQ.
GPA General Counsel

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

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On June 3, 2019, the sealed technical proposals of the six bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the technical proposals for the six bidders. The Bid Abstract- Phase I, is contained in the procurement record at Tab "48." Each of the six bidders submitted technical proposals for either one site or two sites.

On August 12, 2019, the evaluation committee met and recommended that five of the six

bidders be deemed qualified under the Phase I technical evaluation, and one of the six bidders be deemed not qualified under the Phase I technical evaluation to proceed to Phase II – price proposals. Five bidders with twelve project sites were qualified, ENGIE, AES, KEPCO/Hanwha, GlidePath, and X-Elio. (Tab “22”). One bidder was not qualified in the Phase I technical proposal, Global Sourcing USA, Inc. (Tab “21”).

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II. DISCUSSION

- A. THE ENGIE BIDS WERE RESPONSIVE, AND THE AWARDS FOR RENEWABLE ENERGY RESOURCE PHASE III WERE PROPERLY AWARDED TO ENGIE FOR THE NAVAL BASE GUAM AND SOUTH FINEGAYAN SITES AS ENGIE MET THE SPECIFICATIONS IN THE MULTI-STEP 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).

Five bidders submitted technical price proposals for ten sites which were opened by GPA on September 10, 2019. The evaluation committee recommended award of the two lowest site proposals each consisting of a renewable energy and battery project. The committee evaluation memo and the Bid Abstract – Phase II clearly sets forth the prices of the bidders, including ENGIE, GlidePath and AES. Based on the bid abstract, the two proposals submitted by ENGIE, NGB and SF, based on price are the #1 bidder for both sites, at a first-year price of \$110.90/MWh for NGB and \$108.90/MWh for SF. This compares with the AES price of \$169.00/MWh for NGB and \$158.90 for SF, and the GlidePath (Alternate) price of \$176.00/MWh for NGB and \$176.00/MWh for SF.

GlidePath states that "ENGIE's projects have included more solar generation capacity than allowed by the technical requirement of the IFB. Based on the significantly higher

Guaranteed Net Annual Generation ("GNAG") included, the ENGIE Priced Proposals when compared to the proposal submitted by GlidePath and all the other bidders, GlidePath's technical experts are concerned that ENGIE may not have followed all of GPA's technical requirements." The ENGIE proposal meets the GPA bid requirement that "the MW rating of the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system." GlidePath claims that GPA's technical requirements limit solar system capacity to 20.7MW_{DC}. GPA's bid did not limit the capacity of the PV installation, but does restrict the delivery of energy at the interconnection point which is 30MW_{ac}. Volume II- Technical Qualification Proposal Requirement, Section I Overview (pg 52 of 501) states: "1. The bidder's renewable resource project shall have a **maximum export capacity of 30MW_{ac}**; this may be a combination of several generation units at one site." Section 2.3.1. Minimum and Maximum Project Capacity (pg 56 of 501) states "there is no minimum nameplate project capacity that a Bidder may offer, **however the maximum export capacity shall be 30MW.**"

GlidePath itself sought clarification on this issue on February 11, 2019, which was addressed in Amendment XVII (pg. 2 of 17) in which GlidePath asks "what is the maximum procurement under this bid, could GPA select two 30MW_{ac} projects at each site for a total procurement of 60MW_{ac}? The GPA response was "Yes."

GlidePath states that the GPA limit on the ESS size to 30MW at each project site together with the 145% requirement effectively caps the size of the PV system to 20.7MW_{ac}. The IFB states that the intent of the 145% requirement is to require the ESS charge and discharge be asymmetrical, with ESS discharge power required to be 30MW_{ac} at the point of connection and

ESS charge power not to exceed 20.7MW. This requirement limits the maximum AC PV charging power on each site to 1/1.45 of the maximum AC export capacity. The "MW rating of the PV charging system" in ENGIE's proposal, is equal to the power rating of the DC/DC converters, and is capped at 20.7MW (i.e. 1/1.45 of 30MW AC), in full compliance with the IFB requirements. Clarifications were provided in Amendment XVII for both GlidePath and ENGIE regarding the increased delivery period.

GlidePath also claims that "except for the ENGIE proposals, all bidders are, in fact, within a similar Guaranteed Net Annual Energy ("GNAG") range." For the Naval Base location, the percentage difference between ENGIE and KEPCO is 28.5%, and between KEPCO and X-Elio is 34%. For South Finegayan, the difference between ENGIE and AES is 16.5%, which is close to the gap between GlidePath and AES. There clearly appears to be significant variation between the GNAG values among the bidders. In addition, there is no direct correlation between the GNAG and tariff, i.e. a higher GNAG does not necessarily correspond to a lower tariff: X-Elio offered a 25% lower GNAG than AES, but at virtually the same tariff (\$170 vs. \$169).

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 two renewable energy sites at Naval Base Guam and South Finegayan to ENGIE as the lowest responsible and responsive bidder. The price proposal evaluation and bid abstract clearly demonstrate that the ENGIE bid for the two sites was the lowest bid for each site for renewable energy. The bids were evaluated and awarded based on the Multi-Step bid specifications and evaluation criteria.

CONCLUSION

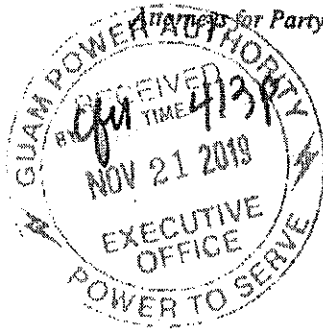
GPA requests that the appeal of GlidePath Marianas Operations, Inc. be dismissed, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

RESPECTFULLY SUBMITTED this 29th day of November, 2019, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel

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Attorneys for Party in Interest ENGIE Solar

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of)
)
GlidePath Marianas Operations, Inc.)
)
Appellant.)
)
)
)
)

Docket No. OPA-PA-19-010
**STIPULATED
MOTION TO CONTINUE DATES**

Interested Party ENGIE Solar ("ENGIE"), Agency Guam Power Authority ("GPA"), and Appellant GlidePath Marianas Operations, Inc. ("GlidePath"), hereby move on a stipulated and agreed basis for an order to provide GPA additional time to submit the procurement record in this case as was ordered by the OPA on November 14, 2019.

In support of the Stipulated Motion, ENGIE, GPA and GlidePath jointly state as follows:

1. On November 13, 2019, GlidePath filed a Notice of Appeal with the Office of Public Accountability, appealing GPA's denial of a procurement protest it filed on October 9, 2019 related to GPA-IFB-007-18, Renewable Energy Resources Phase III (the "IFB").
2. On November 14, 2019, the Office of Public Accountability (the "OPA") issued its Notice of Receipt of Appeal – OPA-PA-19-010 wherein it ordered GPA, as proscribed in 5 G.C.A. §5249 and 2 G.A.R. § 12104(3), to submit a complete copy of the procurement record

by November 21, 2019. The OPA also ordered GPA, pursuant to 2 G.A.R. § 12105, to submit a copy of the Agency Report by November 29, 2019.

3. On November 15, 2019, ENGIE filed an Entry of Appearance and Request for Notice asking to be served with all papers and pleadings filed in OPA PA-19-010.

4. On November 15, 2019 ENGIE also filed a Motion for Stay in GPA's Production of the Full Agency Report and to Preserve Confidentiality.

5. On November 18, 2019, counsels for ENGIE and GPA discussed (1) GPA's concern that it would need additional time to provide all necessary copies of the procurement record and (2) ENGIE's Motion for Stay in GPA's Production of the Full Agency Report and to Preserve Confidentiality. ENGIE's counsel relayed the agency's concern to Glidepath's counsel, who discussed the concern with GPA counsel on November 20, 2019.

6. GPA has informed ENGIE that each copy of the procurement record for OPA-PA-19-010 require twenty three-inch binders. GPA will be required to print seven copies of the procurement record. In total, GPA will need to print enough paper to fill one hundred and twenty three-inch binders to produce the procurement record. GPA believes that allowing the agency to submit the procurement record by November 29, 2019 would provide it with enough time to submit the procurement record.

7. The parties also intend to confer in good faith about whether an agreement whereby disclosure of information from ENGIE's submissions to GPA marked as confidential or proprietary can be avoided or limited.

8. The parties agree to enter into this stipulation without prejudice to any position any party may raise in the future regarding the appropriateness, content, or legal conformance of the procurement record kept in GPA-IFB-007-18, Renewable Energy Resources Phase III.

Based on the foregoing, ENGIE, GPA, and GlidePath respectfully request that the OPA enter an order:

- a. Allowing GPA until November 29, 2019 to submit the procurement record in this case as proscribed in 5 G.C.A. §5249 and 2 G.A.R. § 12104(3);
- b. Establishing further dates in this procurement appeal as determined by the OPA to be appropriate given the delayed submission of the procurement record.

SO STIPULATED:

INTERESTED PARTY:

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

DATED: 11/21/2019

BY: R. Marsil Johnson
R. MARSIL JOHNSON
Attorneys for Interested Party ENGIE Solar

APPELLEE:

THE GUAM POWER AUTHORITY
A PUBLIC CORPORATION

DATED: 9/21/19

BY: D. Graham Botha
D. GRAHAM BOTHA
Attorney for Guam Power Authority

APPELLANT:

CIVILLE & TANG
A PROFESSIONAL LIMITED LIABILITY
PARTNERSHIP

DATED: 11/21/19

BY: Joshua D. Walsh
JOSHUA D. WALSH
Attorneys for Appellant GlidePath Marianas Operations, Inc.