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OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENTS/ATALE  
 DATE: 02/20/2020  
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 FILE NO. OPA-PA: 19-010/20-001

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

<p><b>In the Appeal of</b></p> <p><b>GlidePath Marianas Operations, Inc.</b></p> <p><b>Appellant.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. OPA-PA-19-010</b></p> <p><b>OPA-PA-20-001</b></p> <p><b>ENGIE SOLAR'S MOTION IN LIMINE</b></p> <p><b>TO EXCLUDE REFERENCES TO</b></p> <p><b>VIOLATION OF AUTOMATIC STAY</b></p>
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COMES NOW ENGIE SOLAR (“ENGIE”), the winning bidder of GPA-IFB-007-18, Renewable Energy Resource Phase III (the “IFB”) and moves that the Public Auditor exclude from evidence and prohibit GlidePath and its counsel from commenting upon, referring to, introducing evidence of, eliciting testimony regarding GlidePath’s assertion that the Guam Power Authority violated the automatic stay during the hearing in this matter scheduled to begin on March 25, 2020 at 10:00 a.m.

Guam’s procurement rules and regulations grant a hearing officer the power to hold informal conferences to consider “matters that may aid in the expeditious disposition of the proceeding”, to “[r]egulate the course of the hearing and conduct of participants therein”, and to

“[r]eceive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious.” 2 GAR § 12109(a), (e), and (f).

In raising its assertion that GPA violated the automatic stay, GlidePath stated that: “[a]t the heart of this procurement dispute is the question of whether or not GPA understood the technical requirements of the IFB it put out.” *See* GlidePath’s Comments on Agency Report, p. 3. This is not true. This appeal is not about whether GPA understood its technical requirements. While GlidePath has restated its claim in numerous ways in its two notices of appeal, the sole issue before the Public Auditor is whether ENGIE’s bid met the specifications of the IFB.<sup>1</sup> If ENGIE’s technical proposal complied with the requirements of the IFB, then GlidePath’s appeal must be denied.

GlidePath did not file a protest asserting that GPA violated the automatic stay. Even if GlidePath did file that protest, the remedy for a violation of the automatic stay is to void any and all action taken by the agency. The statute specifically provides for this, stating that “[i]n the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, **and any such further action is void.**” 5 GCA § 5425(g) (emphasis added).

Because any action GPA may have taken in furtherance of the solicitation is void and because no protest was filed by GlidePath alleging that the automatic stay was violated, the issue of the automatic stay is not properly before the Public Auditor and any comment upon, reference

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<sup>1</sup> *See* GlidePath’s November 13, 2019 Notice of Appeal, p. 5 and 7 and GlidePath’s January 21, 2020 Notice of Appeal p. 7 and 10.

to, evidence of, or testimony regarding the asserted violation of the automatic stay is irrelevant and immaterial to the issues raised by GlidePath in their notices of appeal and so must be excluded.

**DATED:** this 20th day of February, 2020.

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BY:   
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