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OFFICE OF THE PUBLIC AUDITOR
 GUAM
 DATE: 02/20/2020
 TIME: 1:31 PM ✓
 FILE NO OPA/PA: 19-010/20-001

Attorneys for Party in Interest ENGIE Solar

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

In the Appeal of)	Docket No. OPA-PA-19-010
)	OPA-PA-20-001
GlidePath Marianas Operations, Inc.)	
)	ENGIE SOLAR'S MOTION IN LIMINE
Appellant.)	TO EXCLUDE GLIDEPATH'S
)	ATTACKS ON GPA'S COMPETENCE
)	TO MANAGE THE IFB
)	

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 was not competent to manage an invitation for bid of this size 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 is not competent to manage an invitation to bid of this size, 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” and that “[m]ore, the violation of law adds credence to the fact that GPA’s procurement processes are not up to the standards required of an agency seeking to procure \$200,000,000.00 of energy for island ratepayers.” *See* GlidePath’s Comments on Agency Report, p. 3-4.

The competence of GPA’s Purchasing Department is not an issue presently on appeal. GlidePath did not file a protest asserting GPA is not capable of managing an invitation for bid of this size. If GlidePath wished to protest on the basis that GPA is not capable of managing an invitation for bid on a contract this size, it should have submitted a written protest fourteen days after it knew or should have known of any facts giving rise to the assertion. 5 GCA § 5424(a).

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.¹ If ENGIE’s technical proposal complied with the requirements of the IFB, then GlidePath’s appeal must be denied.

Because no protest was filed by GlidePath alleging that GPA is incompetent, the issue of GPA’s competence (or lack thereof) to manage an invitation for bid of this size is not properly before the Public Auditor and any comment upon, reference to, evidence of, or testimony regarding

¹ *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.

GlidePath's assertion of GPA's incompetence 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.

BLAIR STERLING JOHNSON & MARTINEZ
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BY: 
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Attorneys for Interested Party ENGIE Solar

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