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PROCUREMENT APPEALS  
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FILE NO OPA-PA: 19-010/20-001

*Attorney for the Guam Power Authority*

**OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS**

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-19-010
	)	OPA-PA-20-001
GlidePath Marianas Operations, Inc.,	)	
	)	<b>OPPOSITION TO MOTION FOR</b>
Appellant.	)	<b>COMPELL SUPPLEMENTING</b>
_____	)	<b>PROCUREMENT RECORD</b>

**COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of record, D. GRAHAM BOTHA, ESQ., and hereby files its opposition to Appellant's motion to compel GPA to supplement the Procurement Record.

GlidePath alleges that GPA has not submitted a log of communications required by 5 GCA §5249. Specifically, it alleges that the Procurement Record does not include "a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement" as set forth in 5 GCA §5429(b). While GPA does not maintain a separate log indicating the communication, it is clear in the Procurement Record that all communications with GPA procurement and potential bidders are done through either e-mail or letters. A response is prepared to questions posed by potential bidders, and amendments are given to all potential bidders regarding the questions and the responses. All potential bidders must respond by e-mail that they acknowledge all of the amendments made by GPA. These e-mails between potential bidders and acknowledgement of

amendments issued by GPA are in fact contained in the procurement record.

Noteworthy, is that GlidePath does not claim that any questions it or any other bidder posed to GPA were not in fact responded to and GlidePath and all other bidders in fact responded to GPA procurement to acknowledge receipt of those amendments. GlidePath having failed to show that it didn't receive the amendments, next complains it didn't understand the amendments, particularly Amendment XIII issued on January 25, 2019, and once again recycles the arguments contained in its discovery motion and other filings that GlidePath was confused by the requirement that the energy storage of the system shall be equal to or greater than the 145% of the megawatt rating of the solar charging system. It claims that the technical restrictions were mistaken, somehow figuring that because GlidePath failed to ask sufficient questions during the procurement process, that information regarding the so claimed restriction is hidden in the technical specification development.

GlidePath should be aware that GPA is required to seek both CCU and PUC approval prior to procurement of anything exceeding \$1.5M. Publicly available records indicate that in PUC GPA Docket 17-21 that GPA received approval for the procurement of Phase III Solar on Navy leased property on September 28, 2017. GPA included in the filings Volumes 1-5 of the technical requirements as well as a draft Renewable Energy Purchase Agreement. These technical requirements were based on the Phase II solar contract awarded to KEPCO and Hanwha, and were based on the Phase II specifications, but included battery storage and energy shifting. These documents were and have been publicly available since the PUC approved the procurement in September 28, 2017.

GlidePath will no doubt have ample opportunity at the hearing to cross examine GPA witnesses or to bring its own technical experts to further its interpretation of the technical

specifications provided by GPA in the Phase III solar procurement. It will have the opportunity to file trial briefs explaining in detail its interpretation of the specifications. GlidePath desires by its multiple motions filed at the last minute to convert the procurement hearing process into detailed litigation with depositions and months of discovery. Unfortunately for GlidePath the procurement rules do not provide for this type of litigation strategy and tactics in the procurement process. In OPA-PA-17-008, Shanghai Electric challenged the award of the Phase II Solar contract to KEPCO and Hanwha, which was done through the regular procurement hearing process, without the need for depositions and extensive discovery which are not provided for in the procurement rules.

GPA has in fact provided a complete Procurement Record to the OPA and the Appellant, GlidePath as a review of the procurement record documents would reveal. The questions and responses regarding Amendment XIII and other amendments are already part of the procurement record.

GPA requests that OPA deny the request submitted by appellant GlidePath to supplement the procurement record.

**RESPECTFULLY SUBMITTED** this 27<sup>th</sup> day of February, 2020, by:

/s/

D. GRAHAM BOTHA, ESQ.  
GPA General Counsel

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:	)	GPA Docket 17-21
	)	
The Application of the Guam Power for	)	ORDER
Approving the Procurement of Phase III	)	
Renewable Acquisition for GPA	)	
_____	)	

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Petition of the Guam Power Authority ["GPA"] for PUC Approval of the Phase III Renewable Acquisition Procurement.<sup>1</sup>
2. In GPA Docket 16-05, the PUC authorized GPA to enter into a Lease agreement with the United States Navy [hereinafter "Navy"] for approximately 164 acres of federal land.<sup>2</sup>
3. The purpose of the Lease is to enable GPA to undertake a 37MW Solar PV development on five Navy parcels of land, which include South Finegayan, WWTP Site, CDF Site, existing 250KV Site, and Commissary Site.<sup>3</sup>

BACKGROUND

4. Having been granted PUC authorization to lease the Navy land, GPA now requests approval of the procurement of Phase III Renewable Acquisition, which would include up to 40MW of renewable energy "with energy storage requirements for the primary purpose of shifting solar PV energy."<sup>4</sup>
5. In support of its procurement request, GPA has submitted a CD which sets forth Volumes I-V draft procurement documents.

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<sup>1</sup> GPA Petition for Approving the Procurement of Phase III Renewable Acquisition for GPA, GPA Docket 17-21, filed September 12, 2017.  
<sup>2</sup> PUC Order GPA Docket 16-05, dated July 28, 2016, at p. 7.  
<sup>3</sup> Id. at p. 1.  
<sup>4</sup> GPA Petition for Approving the Procurement of Phase III Renewable Acquisition for GPA, GPA Docket 17-21, filed September 12, 2017 at p. 1.

6. GPA seeks to procure developers who will construct solar PV plants on each of the five projected sites. GPA will function as the Engineering, Procurement and Construction ["EPC"] Partner for Navy on these projects. It is responsible for soliciting bids from firms and the issuance of the procurement to provide solar PV facilities at each of the leasehold sites.<sup>5</sup>
7. GPA has set forth the Technical Qualifications for bidders in Volume II: Technical Qualification Proposal Requirements, Renewable Energy Resource Phase III. GPA sets forth such requirements for project development, financing, management/experience, projects schedule and commercial operation date, engineering and technology, and many other matters.<sup>6</sup>
8. A significant aspect of this bid is that bidders must provide "Dispatchability": "This bid requires ESS [i.e. Energy Storage System] for the purpose of shifting energy to a period other than when the energy is produced. Proposals with no ESS or not capable of shifting its energy to another period (i.e. during evening hours) shall be disqualified."<sup>7</sup>
9. GPA has also submitted a "Draft Renewable Energy Purchase Agreement" in its bid documents.<sup>8</sup> Such Agreement is similar to the NRG solar agreement and the Phase II Renewable Agreements. The Bidders ("Seller") will be required to construct solar PV plants on the leased premises and to sell power to GPA at a set price per kWh. The term of the contract will be 25 years.<sup>9</sup>
10. Only Solar Photovoltaic systems may be proposed for this bid.<sup>10</sup>
11. The contract form requires that all energy be stored and delivered to GPA as requested (i.e. during evening hours) and that the intermittency impact to the GPA system be minimized.<sup>11</sup>
12. GPA presently contemplates that the solar power plants constructed under the bid should be commissioned by May 27, 2020.<sup>12</sup> The minimum project capacity for each

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<sup>5</sup> Id at pgs. 1-2.

<sup>6</sup> Vol II: Technical Qualification Proposal Requirements Renewable Energy Resource Phase III at pgs 16-22.

<sup>7</sup> Id. at p. 21.

<sup>8</sup> Vol III, Renewable Energy Resource, Phase III: Draft Renewable Energy Purchase Agreement.

<sup>9</sup> Id. at Article Two.

<sup>10</sup> Id. at Vol II, p. 4.

<sup>11</sup> Issues for Decision, CCU Member Board Packet dated August 29, 2017.

plant is 5MW, and the maximum is 30MW. GPA has estimated that the plants could be constructed on the projected sites ranging from 4MW to 18MW.<sup>13</sup>

13. The bidder will be responsible for providing interconnection facilities that can deliver renewable energy to a GPA-determined interconnection point on GPA's 34.5kV transmission system.<sup>14</sup>
14. Each selected bidder will, pursuant to the contract, have "minimum production" requirements during each contract year.
15. In Resolution No. 2017-34, the Guam Consolidated Commission on Utilities authorized the management of GPA to petition the PUC for approval of the Phase III Renewable Acquisition through multi-step bid documents under the Procurement Protocol.<sup>15</sup>

#### DETERMINATIONS

16. In GPA Docket 16-05, the PUC authorized GPA to enter into the lease agreement with Navy for implementation of solar projects providing an additional capacity of 37MW of energy. However, the PUC raised the concern that GPA had not thoroughly analyzed the cost of these projects nor done a detailed economic analysis.
17. At present, there is no clear understanding as to what the cost to GPA for these projects will be. When the procurements are undertaken, GPA should have a better understanding of what the costs will be through the bid responses submitted.
18. GPA's participation in the 37MW Navy renewables project is advantageous to Guam and in the best interest of the ratepayers: "GPA has justified an opportunity to bid such projects and determine whether they can be incorporated into the power system."<sup>16</sup>

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<sup>12</sup> Id.

<sup>13</sup> Vol II: Technical Qualification Proposal Requirements, Renewable Energy Resource Phase III, at p. 7.

<sup>14</sup> Id. at p. 8.

<sup>15</sup> Resolution No. 2017-34, Authoring Management of the Guam Power Authority to Petition the PUC for Approval Phase III Renewable Acquisition Multi-step Bid Documents under the Procurement Protocol, adopted August 29, 2017.

<sup>16</sup> PUC Order, GPA Docket 16-05, dated July 28, 2016 at p. 4.

19. GPA has a legitimate concern it could lose revenues if it did not undertake the projects and purchase the capacity of the solar plants.
20. This 37MW Phase III Renewable Project with the Navy is part of GPA's long standing plan to incorporate 120MW of renewables in to the IWPS.<sup>17</sup>
21. The procurement process herein will involve two steps, establishment of a qualified bidders list and submission thereafter of priced proposals. The procurement documents are standard and have been used for prior renewable acquisitions.
22. The draft renewable energy purchase agreement appears to be well written and includes numerous provisions protecting GPA from non-performance by the Seller, including adequate security (line of credit/performance bond etc.), default/penalty provisions for failure of Seller to provide minimum storage capacity, or to otherwise comply with the provisions of the contract, indemnification, and insurance provisions.

#### ORDERING PROVISIONS

After review of the record herein, including GPA's Petition for PUC Approval of the Phase III Renewable Acquisition Procurement, and the PUC Counsel Report, for good cause shown, on Motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GPA's procurement of the Phase III Renewable Acquisition is approved.
2. GPA must submit to the PUC the proposed Contract for each bidder with which it contemplates entering into a solar energy purchase agreement, in accordance with the Contract Review Protocol.
3. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.


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<sup>17</sup> Id. at p. 5.

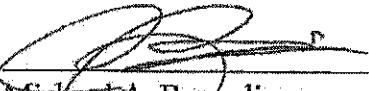
Order  
Procurement for GPA Phase III  
Renewable Acquisition  
GPA Docket 17-21  
September 28, 2017


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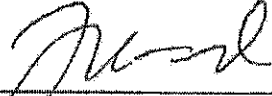
Dated this 28th day of September, 2017.


  
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Jeffrey C. Johnson  
Chairman


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Rowena E. Perez  
Commissioner

  
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Michael A. Pangelinan  
Commissioner

  
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Filomena M. Cantoria  
Commissioner

  
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Joseph M. McDonald  
Commissioner

  
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Peter Montinola  
Commissioner

  
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Andrew E. Niven  
Commissioner