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**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 OPPOSITION TO
Appellant.)	MOTION FOR ORDER COMPELLING
)	AGENCY TO SUPPLEMENT RECORD
)	
)	

Interested Party **ENGIE SOLAR** (“ENGIE”), the winning bidder of GPA-IFB-007-18, Renewable Energy Resource Phase III (the “IFB”), hereby submits its opposition to the Motion for Order Compelling Agency to Supplement Record filed by Appellant **GLIDEPATH MARIANAS OPERATIONS, INC.** (“GlidePath”) on February 20, 2020.

GlidePath’s motion seeks an order compelling Guam Power Authority (“GPA”) to supplement the procurement record by producing all documents, communications and records “explaining the Agency’s technical reasoning behind creating Amendment XIII.” The motion, which is essentially seeking source of specification information, has no factual or legal support. Guam’s Procurement Law only allows for source of specifications information in supply contract procurements. The IFB was not issued to procure supplies and therefore that requirement does not apply here.

ORIGINAL

GlidePath also argues that GPA failed to keep a log of communications between GPA, the public, and interested bidders. GPA did better than that – they kept all of the communications between the agency and others, kept meticulous notes about when the communications were received and acknowledged receipt of such communications in writing, and provided them in the procurement record that is before the OPA. The procurement record is complete.

ARGUMENT

The procurement record need only include what is required by Guam Procurement Law. GlidePath fails to cite any authority, statutory or otherwise, requiring GPA to supplement the procurement record in this matter by providing “information on how the technical requirements in the supplement of Amendment XIII came to be, . . . the Agency’s communications with others and the technical reasoning behind creating Amendment XIII and how that Amendment impacted the other technical requirements of the project.” GlidePath Motion at 3. Without any authority for this request, GlidePath’s motion should be denied outright.

Under Guam Procurement Law, specifications in an invitation for bids and any amendments are required to “identify the person responsible for drafting the specifications and any persons, technical literature or manufacturer’s brochures relied upon by the responsible person in drafting the specifications”, **only when the invitation for bids is for the procurement of supplies**. 5 GCA § 5267. The energy purchased through the IFB does not meet the definition of “supplies”, defined in 5 GCA § 5030(u) to mean “all property, including but not limited to equipment, materials, printing of forms, stationery and the like which are designed for further use or processing by the using agency, insurance, and leases of real property, excluding land and a permanent interest in land.” 5 GCA § 5030(u). GPA is not purchasing the energy for its use or processing. The energy is to be used by GPA’s ratepayers. Further, the energy is not processed by GPA, it is provided to GPA in a form ready to be used by its ratepayers.

This IFB seeks a service provider, not a provider of supplies. The coversheet for the IFB includes, in a section titled "OTHER REQUIREMENT", that "Bidders MUST comply with PL 26-111 dated June 18, 2002, PL 28-165 dated January 04, 2007 and Wage Determination under the Service Contract Act (www.wdol.gov)." See Procurement Record, Binder 12, p. 11913 (capitalization in original). Public Law 26-11 added Section 5801 to Title 5 of the Guam Code Annotated. That section provides that:

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ('contractor') for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

5 GCA § 5801 (emphasis added). Bidders were also required to sign an acknowledgement of the Guam statute restricting service providers to the government Guam from allowing sex offenders in their employ from working on government of Guam property. 5 GCA § 5253. The foregoing provisions establish unequivocally that the IFB was for procurement of services, not supplies.

Given that 5 GCA § 5267 only requires the source of specifications to be published when an invitation for bid seeks supplies, that the energy to be procured does not meet the definition of "supplies" found in 5 GCA § 5030(u), and that the IFB itself treats the contractual relationship between GPA and the winning bidders as a services contract, GPA is not required to provide the source of the specifications set forth in Amendment XIII and thus GlidePath's motion to supplement the record should be denied.

GPA's procurement record spans over 12,000 pages. Even a short review of the record shows that it includes every communication made between GPA and any individual who was not part of GPA. The IFB's Commercial Terms and Conditions, at Section 2.1.2, specifically state

that that any communication between any prospective bidder and GPA be made in writing through the GPA Procurement Office. Therefore, there is no oral or telephonic communication that needs to be included in the record. By keeping an ongoing record based solely on written communications between GPA and the outside world, GPA was constantly and consistently generating a record of the procurement as it went along, resulting in a record that could not be any more complete. Furthermore, the fact that all communications between GPA and the bidders was done in writing and that all communications are included shows that the procurement record is as transparent as possible, allowing the public to see everything that took place. This goes above and beyond the requirement of Guam procurement law, which actually does not require the details of all communication made between GPA and members of the community.

CONCLUSION

ENGIE SOLAR respectfully requests that the Public Auditor deny GlidePath's Motion for Order Compelling Agency to Supplement Record.

DATED this 27th day of February, 2020.

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