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

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

In the Appeal of

GlidePath Marianas Operations Inc.,

Appellant.

DOCKET NOS. OPA-PA-19-010
OPA-PA-20-001

**OBJECTION TO GUAM POWER
AUTHORITY'S INCOMPLETE
PROCUREMENT RECORD**

Appellant, GlidePath Marianas Operations Inc., (“GlidePath”) hereby files this Objection to Guam Power Authority’s Incomplete Procurement Record.

OBJECTION

On June 6, 2020, Jennifer Sablan, Guam Power Authority’s (“GPA”) witness, testified that she worked with Mr. David Burlingame on the specifications for the IFB and its more than 20 amendments. Ms. Sablan informed the OPA and the parties that she communicated with Mr. Burlingame via email and telephone. Ms. Sablan also testified that there are emails in her possession with Mr. Burlingame.

In *In the Appeal of America’s Best Electricmart, Inc.*, OPA-PA-17-006, the Public Auditor declared “[a] complete procurement record requires all drafts, signed by the draftsman and other papers or materials used in the development of specifications.” Decision, OPA-PA-17-006, pg. 8 (citing 5 G.C.A. § 5249(d) and 2 G.A.R. § 3129(4)). Moreover, “the specifications contained in any invitation for bids or requests for proposals shall identify the person responsible

for drafting the specifications and any person, technical literature or manufacturer's brochures relied upon by the responsible person in drafting the specifications." *Id.* (citing 5 G.C.A. § 5267 and 2 G.A.R. § 4108). Because the procurement record in *America's Best Electricmart* did not "identify the person responsible for drafting the specifications used in the IFB or identify the persons, technical literature, or manufacturer's brochures relied upon by the person drafting the specifications...." the OPA declared the procurement record was incomplete.

Here, nowhere in the procurement record does GPA identify David Burlingame as the expert or consultant who aided in the drafting of the specifications of the IFB. The procurement record also does not contain the technical literature or the brochures used by Mr. Burlingame or GPA in drafting the specifications of the IFB. As GPA failed in *America's Best Electricmart*, it has failed in the instant appeal to provide a complete procurement record.

The only time GPA informs the parties that David Burlingame played some part of the IFB was in its Witness List filed on March 13, 2020. GPA, however, fails to identify that Mr. Burlingame was the person responsible for drafting the specifications or an individual who aided in the drafting of the specifications. GlidePath has been prejudiced by GPA's failure to identify Mr. Burlingame as the individual responsible for the specifications of the IFB. Consequently, the procurement record is incomplete, and GlidePath submits that is another reason to order GPA rebid the project.

Additionally, GlidePath filed a Motion for Order Compelling Agency to Supplement Record on February 20, 2020. In that Motion, GlidePath requested GPA provide "(1) 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 generally, and specifically the creation of Amendment XIII; and (2) any and all documents, communications

and records explaining the Agency's technical reasoning behind creating Amendment XIII." Motion to Order Agency Supplement the Record, pg. 4. During the hearing on GlidePath's Motion for Order Compelling Agency to Supplement Record, GPA counsel informed the OPA and the parties that "there is nothing else" to produce for the procurement record. March 3, 2020 Motion Hearing. GPA affirmatively informed the OPA and counsels that the procurement record was complete and no other documents would be provided.¹ Without the information regarding the person, technical literature and manufacturer's brochures, GlidePath is at a disadvantage and is prejudiced. GlidePath is unable to adequately challenge the specifications because it did not know Mr. Burlingame was an essential member of the team drafting the specifications. The record is incomplete, and this provides another reason why GPA should be ordered to rebid the project.

CONCLUSION

Without a complete procurement record that identifies the person responsible for drafting the specifications used in the IFB and provides the technical literature or manufacturer's brochures, GlidePath is unable to have a fair and complete review of the merits of its appeal. The OPA is also put at a disadvantage because it cannot adjudicate the merits when the procurement record supplied to it is incomplete. The OPA should order GPA rebid the project.

Respectfully submitted this 7th day of July, 2020.

RAZZANO WALSH & TORRES, P.C.

By: 

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¹ Audio of Motion Hearing held on March 3, 2020, available at <https://www.opaguam.org/procurement-appeals/glidepath-marianas-operations-incs-vs-guam-power-authority>