

D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
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Mangilao, Guam, 96913
Tel: (671) 648-3203/3002
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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: July 14, 2020

TIME: 10:40 ~~AM~~ PM BY: Anní

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.,)	
)	MOTION TO CONSOLIDATE
Appellant.)	THIRD AGENCY APPEAL
_____)	

COMES NOW, the GUAM POWER AUTHORITY, by and through its counsel of record, D. GRAHAM BOTHA, ESQ., and hereby files its motion to consolidate a third appeal filed by GlidePath.

GlidePath's first appeal was filed on November 13, 2019 under OPA-PA-19-010 which was consolidated with a second appeal filed on January 21, 2020 under OPA-PA-010. At the conclusion of the hearing in both appeals, GlidePath filed a third protest with GPA on July 9, 2020. GPA has filed a denial of the third GlidePath protest on July 14, 2020, a copy of which is attached hereto as Exhibit "A". Each of the protests filed by GlidePath deal with the same facts and circumstances, and the hearing held by the OPA covers those issues raised in the third protest filed by GlidePath with GPA. The third protest appears to be very similar to the GlidePath Motion for Order Staying Proceedings filed with the OPA on July 9, 2020. There would be no prejudice to GlidePath if this third protest is included in the proceedings before the OPA in the two consolidated dockets. It would however be extremely prejudicial to GPA if this

third GlidePath protest was not consolidated with the first two protests already before the OPA for a hearing. This third agency protest filed by GlidePath with GPA on July 9, 2020, the same date as GlidePath filed a Motion for Order Staying Proceedings appears to be filed to delay the proceedings and needlessly extend the hearing with the OPA.

GPA requests that the Public Auditor consolidate this third appeal with the previous two appeals filed with the OPA. GlidePath should be required to either file a third appeal before the OPA or rescind its third protest letter with OPA. The Public Auditor has the authority to consolidate appeals for purposes including efficiency and expediency in resolving appeals. 5 GCA §5701; 2 GAR §§12101, 12108-12109. This third appeal by GlidePath arises from protests by GlidePath pertaining to the same IFB issued by GPA. Therefore, GPA requests that the two appeals be consolidated with any third appeal, and all matters pertaining to the three GlidePath appeals would be heard concurrently by the OPA.

RESPECTFULLY SUBMITTED this 9th day of July, 2020, by:


D. GRAHAM BOTHA, ESQ.
GPA General Counsel



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Tel: (671) 648-3225; Fax: 648-3290

DENIAL OF PROCUREMENT PROTEST

July 14, 2020

VIA E-mail: jdwalsh@rwtguam.com

VIA E-mail: prood@glidepath.net

Mr. Joshua D. Walsh
Razzano Walsh & Torres, P.C.
139 Murray Blvd, Suite 100
Hagatna, Guam 96910

RE: Guam Power Authority's Response to GlidePath Marianas Operations, Inc.'s Protest dated July 9, 2020, for GPA-IFB-007-18, Renewable Energy Resources Phase III

Dear Mr. Walsh:

I have reviewed your protest letter dated July 9, 2020, protesting the Guam Power Authority's (GPA) proposed award to ENGIE Solar ("ENGIE"), and the procurement record for the IFB. Your Protest is hereby denied for the following reasons:

1. You correctly indicated that this matter is currently before the OPA on a consolidated procurement protest appeal in OPA-PA-19-010 and OPA-PA-20-001. Your protest letter failed to indicate that you had filed a motion before the OPA regarding your allegation that the procurement record was incomplete. This motion was substantially the same as this third protest letter filed with GPA on the same day. A copy of the motion filed with the OPA on July 9, 2020 is attached hereto as Exhibit "A". The testimony provided by Mr. Burlingame at the OPA hearing on July 7, 2020, was that there were no technical literature or brochures he relied upon in assisting with the drafting of the technical specifications for the GPA Phase III Solar bid.

EXA

You claim that “the first-time David Burlingame was identified as having some role in the IFB was when GPA submitted its Witness List to the OIPA in the current appeal on March 13, 2020.” That claim is factually inaccurate as the procurement record referencing Dave Burlingame are contained in an e-mail included in the procurement record at pages 10051, 10069, and 10073. The procurement record pages are attached hereto as Exhibit “B”. The procurement record containing these pages was filed with the OPA on December 12, 2020. Additionally, on July 9, 2020, a Supplemental Procurement Record consisting of additional e-mails and draft specifications was filed with the OPA, a copy of the top page showing receipt by your firm is attached hereto as Exhibit “C”.

Each bidder in this procurement was provided identical documents consisting of the Invitation for Bid, and the numerous amendments to the IFB. All bidders, including GlidePath, had numerous opportunities to request clarification from GPA regarding the technical specifications. The two previous protests submitted by GlidePath do not contain any protests regarding the technical specifications contained in the GPA Phase III solar bid. The person assisting GPA in the creation or revision of the technical specifications is not material or relevant to the issues raised by GlidePath in its two appeals before the OPA.

The e-mails regarding David Burlingame in the procurement record states that “[w] are working on the following for the 1st amendment 3. Any further ESS or interconnection requirements as recently discussed with Dave Burlingame and the EPS team.” GlidePath was on notice with the filed procurement record that Dave Burlingame and EPS played a role in the “ESS or interconnection requirements” since December 12, 2019. Any protest regarding the completeness of the procurement record, particularly regarding Dave Burlingame and EPS, should have been filed within 14 days, or by December 26, 2019. For procurement protests, any actual or prospective bidder, offeror or contractor who may be aggrieved in connection with source selection, solicitation, or award of a contract may protest to the head of a purchasing

agency. 5 GCA §5425(a). The protest shall be submitted in writing within fourteen days after such aggrieved person knows or should know of the facts giving rise thereto and protests filed after the fourteen-day period shall not be considered. *Id.*, 2 GAR, Div. 4, §9101(c)(1). Your third protest is therefore untimely and is denied.

Therefore, your protest is denied on these grounds. GPA reviewed the bid packages and provided a notice of intent to award to the lowest responsible and responsive bidder. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).

2. GPA has determined that ENGIE should be awarded the bid for Renewable Energy Resources Phase III, as they were deemed to be the lowest, responsive and responsible bidder. Therefore, GPA hereby finds that there is no merit to the GlidePath Marianas Operations, Inc.'s claim that they have been prejudiced in their two appeals currently before the OPA. Additionally, GPA hereby finds there is no merit to the GlidePath claim that there was a fundamentally flawed procurement.

GlidePath Marianas Operations, Inc. is hereby ON NOTICE that this is the Guam Power Authority's final decision concerning GlidePath Marianas Operations, Inc.'s July 9, 2020, third protest for the above described IFB, filed while the previous two protests were before the OPA. You are hereby advised that GlidePath Marianas Operations, Inc. has the right to seek judicial review.

Sincerely,


JOHN M. BENAVENTE, P.E.
General Manager

RAZZANO WALSH & TORRES, P.C.
SUITE 100, 139 MURRAY BLVD
HAGÁTÑA, GUAM 96910
TELEPHONE: (671)969-3009

Attorneys for Appellant
GlidePath Marianas Operations Inc

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
1100 HENRIE DRIVE
DATE: 7/13/20
TIME: 3:12 PM
FILE NO: OPA-PA-19-0010

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of
GlidePath Marianas Operations Inc.,
Appellant.

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

MOTION FOR ORDER STAYING
PROCEEDINGS PENDING
COMPLETION OF THE
PROCUREMENT RECORD

Appellant GlidePath Marianas Operations, Inc., moves the Office of Public Accountability (“OPA”) for an order staying proceedings in connection with matters in this action¹, pending the production by the procuring Agency, the Guam Power Authority (“GPA”), of the complete Procurement Record of Guam Power Authority Invitation for Bid GPA-007-18 Renewable Energy Resources Phase III (the “IFB”).

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

¹ This Motion is not brought to seek a delay of the proceedings *vis vis* Interested Party ENGIE’s ability to continue with its case-in chief.

Ex A

about the IFB and the underlying technical specifications and rationales of the Phase III project. On July 7, 2020, Mr. Burlingame confirmed Ms. Sablan's testimony under oath. Unfortunately, none of these items appear in the procurement record for the IFB that has been produced in the appeal.

A complete procurement record requires all drafts, signed by the draftsman and other papers or materials used in the development of specifications. See, 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. 5 G.C.A. § 5267 and 2 G.A.R. § 4108. Nowhere in the procurement record does GPA identify David Burlingame and his role in the drafting of the specifications of the IFB. The procurement record also does not contain the technical literature or the reports and documents provided by Mr. Burlingame or GPA in drafting the specifications of the IFB.

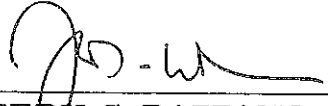
On July 8, 2020, GPA counsel informed counsel for GlidePath that GPA would be searching Ms. Sablan's email and when finished would supplement the admittedly incomplete procurement record. Without prejudice to its position that the procurement is fundamentally flawed because of the errors in the procurement record², Glidepath desires to see the previously undisclosed portions of the procurement record before determining if rebuttal testimony is required, and before

² In order to preserve its rights on this issue, GlidePath filed a procurement protest with the Agency regarding the incomplete procurement record on July 9, 2020.

closing the hearing in this case and submitting this matter for the Public Auditor's decision.

Submitted this 9th day of July, 2020.

RAZZANO WALSH & TORRES, P.C.

By: 
JOSEPH C. RAZZANO
JOSHUA D. WALSH
Attorneys for Appellant
GlidePath Marianas Operations, inc.

Dawn KP Fejeran

From: Jennifer G Sablan
Sent: Wednesday, November 29, 2017 3:51 PM
To: Dawn KP Fejeran; Lance M.C. Lujan
Subject: FW: Proposed January Site Visit Dates > RE: Phase III announced today

Dawn, Lance,

Just got off the phone with Matt from Navy. Dates are good and we will have vendors submit applications to Navy directly. GPA will request for vendors to advise GPA that applications have been submitted in order to cross check with Navy and ensure processing before site visit.

Also, will go over the vendor questions and give you an amendment tomorrow. I just need to finish the bond report for finance today.

Thanks,
jenn

-----Original Message-----

From: Jennifer G Sablan
Sent: Wednesday, November 29, 2017 11:27 AM
To: Matthew.Harbeson@fe.navy.mil
Cc: kirstin.punu@navy.mil; thomas.bawden@navy.mil; Lance M.C. Lujan <lmclujan@gpagwa.com>; John J Cruz, Jr. <jcruz@gpagwa.com>; david.stiner@navy.mil; Victoria.Zialcita@fe.navy.mil; Dawn KP Fejeran <dfejeran1@gpagwa.com>
Subject: Proposed January Site Visit Dates > RE: Phase III announced today

Matt,

Referring to my voice mail yesterday, this is the proposed schedule for the applications and the site visits:

Deadline for Applications - 12/20/2017
GPA Pre Bid & Site Visits -1/23/2017 (S. Fin) , 1/24/2017 (NBG)

Please let me know if this schedule works with you. Also the base application does require sensitive information (passport numbers, social security no., etc.). We would like Navy to reconsider that the applications be sent directly to Navy with indication on it for the Phase III site visit so it may be sorted at the VCC. GPA can ask vendors to register to GPA so that we can verify if Navy has received all interested participants.

Thank you,
jenn

-----Original Message-----

From: Jennifer G Sablan
Sent: Wednesday, November 22, 2017 10:00 AM
To: 'Matthew.Harbeson@fe.navy.mil' <Matthew.Harbeson@fe.navy.mil>; david.stiner@navy.mil; Victoria.Zialcita@fe.navy.mil

Ex B

Cc: kirstin.punu@navy.mil; thomas.bawden@navy.mil; Lance M.C. Lujan <lmclujan@gpagwa.com>; John J Cruz, Jr. <jcruz@gpagwa.com>
 Subject: RE: Phase III announced today

Matt,

I was going through the schedule and the timeframe is tight for December 7th deadline as we may not get the amendment out until mid week if GPA is on Holiday this Friday. After some consideration we would like to delay the site visits (both S. Fin and NBG) until January and try to accommodate all bidders in one visit as suggested in #1 below. Please call me on Monday to confirm these dates.

If we can issue the amendment by Tuesday or Wednesday we can still set deadline around mid-December and schedule around 3rd or 4th week of January to allow application processing. GPA will limit to 2 participants per company to manage the count. This may be however more than 40 persons (only 3-4 being GPA), but we would know well in advance.

Regards,
 Jenn

-----Original Message-----

From: Matthew.Harbeson@fe.navy.mil [mailto:Matthew.Harbeson@fe.navy.mil]
 Sent: Tuesday, November 21, 2017 5:03 PM
 To: Jennifer G Sablan <jsablan@gpagwa.com>; david.stiner@navy.mil; Victoria.Zialcita@fe.navy.mil
 Cc: kirstin.punu@navy.mil; thomas.bawden@navy.mil; Lance M.C. Lujan <lmclujan@gpagwa.com>
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Jen,

I was not able to get in contact with our VCC POC today to confirm the lead time for processing up to 40 visitors. Based on our discussions yesterday regarding the site visits here is what I propose on how to proceed:

1. If there are more than 40 persons attending the site visits I propose we postpone site visits to second week in Jan. to have all site visits together and give enough processing time with the base visitor center.

If GPA expects or restricts to 40 people or less then:

- Schedule Kickoff Meeting for Tuesday, Dec 19th. Plan for afternoon site visit to South Finegayan.
- Wednesday, Dec 20th site visits at NBG.
- For base access please provide a compiled list of visitor names, company, and citizenship with completed base access forms by COB Dec. 7th.
- For any non-U.S. citizen/foreign nationals, they will be responsible for doing in-person biometrics at the NBG Visitor Control Center before the site visit.

Let me know if you have any questions.

Thanks.

v/r,

Matt

Matthew Harbeson
PW Facilities and Energy Program Coordinator NAVFAC Marianas PW8
COMM: 671-349-5404
DSN: 315-349-5404
Matthew.harbeson@fe.navy.mil

-----Original Message-----

From: Jennifer G Sablan (mailto:jsablan@gpagwa.com)
Sent: Thursday, November 16, 2017 3:04 PM
To: Stiner, David D CIV NAVFAC PACI, PW
Cc: Punu, Kirstin M CIV NAVFAC PAC, AM; Harbeson, Matthew J CIV USN NAVFAC MARIANAS; Bawden, Thomas M CIV NAVFAC Pacific, PW (thomas.bawden@navy.mil); Lance M.C. Lujan
Subject: [Non-DoD Source] Phase III announced today

The bid was announced today. We had a little technical difficulties but the documents are now available on our website, Bid Announcement No. GPA-007-18 Renewable Energy Resource Phase III. Please let me know if you have any issues/concerns that we can correct before bids are due.

http://guampowerauthority.com/gpa_authority/procurement/gpa_current_rfps.php

We are working on the following for the 1st amendment:

1. Drawing and property size revision for setback of sewer line on S. Finn
2. Finalizing Site visit dates (they are labeled To Be Determined "TBD" on the schedule right now)
3. Any further ESS or interconnection requirements as recently discussed with Dave Burlingame and EPS team.

regards,

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Jennifer G. Sablan

Manager, SPORD

P.O. Box 2977

Hagatna, Guam 96932-2977

Phone: (671) 648-3103

Email: jsablan@gpagwa.com <<mailto:jsablan@gpagwa.com>>

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Let me know if you have any questions.

Thanks.

v/r,

Matt

 Matthew Harbeson.
 PW Facilities and Energy Program Coordinator NAVFAC Marianas PW8
 COMM: 671-349-5404
 DSN: 315-349-5404
 Matthew.harbeson@fe.navy.mil

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Sent: Thursday, November 16, 2017 3:04 PM
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Cc: Punu, Kirstin M CIV NAVFAC PAC, AM; Harbeson, Matthew J CIV USN NAVFACMARIANAS; Bawden, Thomas M CIV NAVFAC Pacific, PW (thomas.bawden@navy.mil); Lance M.C. Lujan
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http://guampowerauthority.com/gpa_authority/procurement/gpa_current_rfps.php

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Jenn

Jennifer G. Sablan

Manager, SPORD

GUAM POWER AUTHORITY

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Hagatna, Guam 96932-2977

Phone: (671) 648-3103

Email: jsablan@gpagwa.com <<mailto:jsablan@gpagwa.com>>

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Dawn KP Fejeran

From: Dawn KP Fejeran
Sent: Wednesday, November 29, 2017 10:48 AM
To: Jennifer G Sablan
Cc: Lance M.C. Lujan; Stephanie M. Tajjeron; Jamie C. Pangelinan
Subject: RE: Phase III announced today

Tracking:	Recipient	Delivery
	Jennifer G Sablan	Delivered: 11/29/2017 10:48 AM
	Lance M.C. Lujan	Delivered: 11/29/2017 10:48 AM
	Stephanie M. Tajjeron	Delivered: 11/29/2017 10:48 AM
	Jamie C. Pangelinan	Delivered: 11/29/2017 10:48 AM

Hi Jenn,

I verified the proposed dates below in reference your request, both Option 1 and 2 are both clear on the calendar. Kindly advise the actual dates with the updated Bid Milestone and any additional changes as discussed as soon as possible.

Awaiting your advisement☺

Thank you,

Dawn

From: Jennifer G Sablan
Sent: Wednesday, November 22, 2017 1:30 PM
To: Dawn KP Fejeran
Cc: Lance M.C. Lujan; Stephanie M. Tajjeron; Jamie C. Pangelinan
Subject: RE: Phase III announced today

Dawn,

As discussed earlier, I have informed Navy that the December site visit and application deadline schedules are too tight so I'm going to go with their recommendation (email from Matt H below) to move to January. Matt from Navy won't be available until next Monday, so I will confirm then. In the meantime can you look at the following dates and times for proposed prebid and site visits

Option 1.

1/16/18	9AM - 11AM	Prebid
	1PM - 3PM	S. Fin Site Visit (Meet at S. Fin site on Rt. 3, Dededo)
1/17/18	9AM - 12PM	Naval Base Guam Site Visit (Meet at Navy Visitor Control Center, Agat)

Option 2.

1/23/18	9AM - 11AM	Prebid
	1PM - 3PM	S. Fin Site Visit (Meet at S. Fin site on Rt. 3, Dededo)

Thank you,
Jenn

-----Original Message-----

From: Jennifer G Sablan

Sent: Tuesday, November 21, 2017 5:41 PM

To: Dawn KP Fejeran <dfejeran1@gpagwa.com>

Cc: Lance M.C. Lujan <lmclujan@gpagwa.com>; Stephanie M. Taijeron <smtaijeron@gpagwa.com>; Jamie C. Pangellinan <jpangellinan@gpagwa.com>

Subject: FW: Phase III announced today

Importance: High

Dawn,

We are trying to coordinate the site visit with Navy for the Naval Base Site. Due to base pass access processing and the timing for the site visit, they are asking to limit the number of visitors for this first Naval Base Guam (Agat) site visit to 40 (including any GPA personnel that may need base pass access - yourself or other Procurement personnel required at the site visit.)

Please advise if we can have the following scheduled:

12/19 9AM-11AM	PRE-BID CONFERENCE (@ GPA Procurement Office
12/19 1PM-3PM	South Finegayan Site Visit, Rt 3 Dededo (Meet at the site)
12/20 9AM - 12PM	Naval Base Guam Site Visit, Agat (Meet at the Navy VCC - GPA to provide bus transportation into Base)

As noted below, bidders accessing the N8G sites will be required to submit their applications to GPA (per Navy) by December 6. GPA would need to send applications to Navy as a single submittal. Navy will process up to 40 applications. Lance is working on obtaining the bus

GPA may limit NGB site access to 1-2 persons per company, however GPA can schedule another visit on January 9th.

I'm working on the amendment to include other updates to the bid documents.

Thanks,
jenn

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Sent: Tuesday, November 21, 2017 5:03 PM

To: Jennifer G Sablan <jsablan@gpagwa.com>; david.stiner@navy.mil; Victoria.Zialcita@fe.navy.mil

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 COMM: 671-349-5404
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 To: Stiner, David D CIV NAVFAC PACI, PW
 Cc: Punu, Kirstin M CIV NAVFAC PAC, AM; Harbeson, Matthew J CIV USN NAVFACMARIANAS; Bawden, Thomas M CIV NAVFAC Pacific, PW (thomas.bawden@navy.mil); Lance M.C. Lujan
 Subject: [Non-DoD Source] Phase III announced today

The bid was announced today. We had a little technical difficulties but the documents are now available on our website, Bid Announcement No. GPA-007-18 Renewable Energy Resource Phase III. Please let me know if you have any issues/concerns that we can correct before bids are due.

http://guampowerauthority.com/gpa_authority/procurement/gpa_current_rfps.php

We are working on the following for the 1st amendment:

1. Drawing and property size revision for setback of sewer line on S. Finn
2. Finalizing Site visit dates (they are labeled To Be Determined "TBD" on the schedule right now)
3. Any further ESS or interconnection requirements as recently discussed with Dave Burlingame and EPS team.

regards,

Jenn

Jennifer G. Sablan

Manager, SPORD

GUAM POWER AUTHORITY

P.O. Box 2977

Hagatna, Guam 96932-2977

Phone: (671) 648-3103

Email: jsablan@gpagwa.com <<mailto:jsablan@gpagwa.com>>

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D. GRAHAM BOTHA, ESQ.
GPA General Counsel
Guam Power Authority
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Mangilao, Guam, 96913
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Fax: (671) 648-3290

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DATE: July 9, 2020
TIME 2:38 PM BY: Cnn
FILE NO. OPA-PA 19-010/20-001

Attorney for the Guam Power Authority

OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

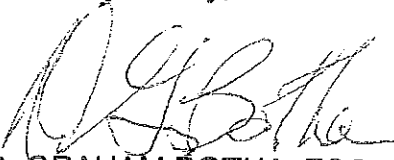
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@ 3:15 pm
Rec'd 7/14/20
37/20

IN THE APPEAL OF)
)
GlidePath Marianas Operations, Inc.,)
)
Appellant.)
_____)

DOCKET NO. OPA-PA-19-010
OPA-PA-20-001
SUPPLEMENTAL PROCUREMENT
RECORD

COMES NOW, D. GRAHAM BOTHA, ESQ., and hereby submits the Supplemental Procurement Record in this matter on behalf of appellee, GUAM POWER AUTHORITY (GPA). This supplement consists of e-mails between Jennifer Sablan, GPA SPORD Manager, and Mr. David Burlingame, GPA consultant, regarding GPA Phase III Solar. It specifically excludes all e-mail correspondence between Ms. Sablan and Mr. Burlingame related to other GPA studies, including Reliability Standards for GPA grid, Renewable Integration Study, Military Buildup, Phase II System Impact Studies, and Long Range Integration Study, which Mr. Burlingame testified about on July 7, 2020.

RESPECTFULLY SUBMITTED this 8th day of July, 2020.


D. GRAHAM BOTHA, ESQ.
GPA General Counsel

Exc

RAZZANO WALSH & TORRES, P.C.

www.rwtguam.com

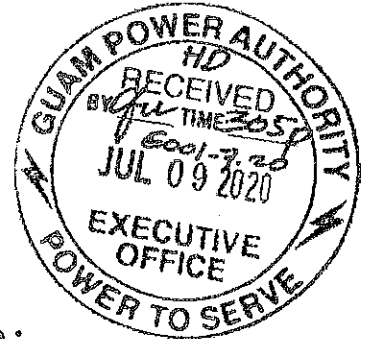
Sender's Direct E-Mail:
jdwalsh@rwtguam.com

July 9, 2020

This is a pre-award procurement protest of Guam Power Authority IFB No. 007-18 ("IFB"), and as such this correspondence serves as a statutory trigger for an Automatic Stay regarding the continued procurement of the IFB. Pursuant to 5 GCA § 5425(g), the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of this protest.

VIA HAND DELIVERY

John M. Benavente, P.E.
General Manager, Guam Power Authority
Post Office Box 2977
Hagåtña, Guam 96932-2977



**RE: Bid Protest of Invitation for Multi-Step Bid No.:
GPA-007-18 Renewable Energy Resources Phase III; Sunshine
Act Request.**

Dear Mr. Benavente:

PROCUREMENT PROTEST

Our office represents GlidePath Marianas Operations Inc. ("GlidePath") who was an offeror on GPA-IFB-007-18 (the "IFB"). As you know, the matter is currently before the Office of Public Accountability ("OPA") on a consolidated procurement protest appeal advanced by GlidePath.

On July 6, 2020, Guam Power Authority ("GPA") Engineer Jennifer Sablan, P.E, testified before the OPA that she worked with Mr. David Burlingame on the specifications for the IFB and its more than 20 amendments. Ms. Sablan also testified that she communicated with Mr. Burlingame via email and telephone. Ms. Sablan also testified that there are emails in her possession with Mr. Burlingame about the IFB and the underlying technical specifications and rationales of the Phase III project. On July 7, 2020, Mr. Burlingame confirmed Ms. Sablan's testimony under oath. Unfortunately, none of these items appear in the procurement record for the IFB.

A complete procurement record requires all drafts, signed by the draftsman and other papers or materials used in the development of specifications. See, 5 G.C.A. § 5249(d) and 2 G.A.R. § 3129(4)). Moreover, the specifications contained in

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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. 5 G.C.A. § 5267 and 2 G.A.R. § 4108. Nowhere in the procurement record does GPA identify David Burlingame and his role in the drafting of the specifications of the IFB. The procurement record also does not contain the technical literature or the reports and documents provided by Mr. Burlingame or GPA in drafting the specifications of the IFB.

The first time that David Burlingame was identified as having some role in the IFB was in GPA submitted its Witness List to the OPA in the current appeal on March 13, 2020. The full extent of his role, and his communications with GPA, were obscured until Ms. Sablan provided her testimony. The recent disclosure confirming that the procurement record is incomplete is especially troubling given the fact that on February 20, 2020, GlidePath filed in its protest appeal a Motion for Order Compelling Agency to Supplement Record. 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 and that the record was complete. March 3, 2020 Motion Hearing.

This haphazard post award decision "certification" violates Guam's procurement law, and it is now clear that the post hoc certification was in error. Without the information regarding the persons, communications, reports, technical literature, and brochures that gave birth to the IFB and its various requirements, GlidePath has been prejudiced not just in its procurement appeal, but was also prejudiced in forming its technical proposal since none of this information that the IFB and Amendments were built upon was previously provided to bidders.

RELIEF REQUESTED

GlidePath requests that GPA render a decision that:

- (1) Determines that the procurement record was incomplete and could not have been certified as being complete;
- (2) Determines that the Agency's failure to 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 of the IFB and Amendments resulted in a fundamentally flawed procurement; and

(3) Determines that the only fair remedy is to allow GlidePath to resubmit to GPA its technical proposal and price submission following a period allowing for questions to the agency seeking clarifications about the previously undisclosed documents.

Finally, this is a pre-award procurement protest of Multi-Step Bid No.: GPA-007-18 Renewable Energy Resources Phase III, and as such this correspondence serves as a continuation of the statutory trigger already in place for an Automatic Stay regarding the continued procurement of IFB GWA IFB-2019-17. Pursuant to 5 GCA § 5425(g), the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of this protest.

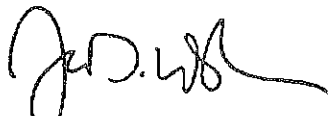
We look forward to your prompt and expeditious resolution of this protest.

SUNSHINE ACT REQUEST

In addition to the instant protest, GlidePath also requests, pursuant to the Guam Sunshine Act, PL 25-06 and 5 G.C.A. § 10101, *et seq.* the following documents:

- All documents, records, drafts, reports and other material produced by Mr. David Burlingame and his firm relied upon in producing the technical requirements of Phase III;
- A copy of all communications between GPA and Mr. David Burlingame and his firm regarding, about, or otherwise related to the IFB;
- A Copy of all communications between Ms. Jennifer Sablan, P.E. and Mr. David Burlingame regarding, about, or otherwise related to the IFB;
- The log of communications kept by GPA relative to the IFB; and
- The certification of the procurement record issued in this IFB.

Sincerely,



Joshua D. Walsh