

RAZZANO WALSH & TORRES, P.C.
SUITE 100, 139 MURRAY BLVD.
HAGÁTÑA, GUAM 96910
TELEPHONE: (671) 989-3009
FACSIMILE: (671) 989-8750

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Attorneys for Appellant
GlidePath Marianas Operations Inc

**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
OPA-PA-20-007

**[PROPOSED]
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

INTRODUCTION

This matter came before the Office of Public Accountability (“OPA”), through the Public Auditor, on Consolidated Appeals filed by GlidePath Marianas Operations Inc. (“GlidePath” or “Appellant”) regarding the award of GPA-IFB-007-18 (the “IFB”), Renewable Energy Resources Phase III, by Guam Power Authority (“GPA”) to interested party ENGIE SOLAR (“ENGIE”).¹

¹ While this procurement involves an interested party commonly referred to as ENGIE, there are several associated ENGIE entities involved in this procurement. The bidding entity and interested party in these proceedings is ENGIE SOLAR. The institutional representative present, Mr. Darin Mingo, was from ENGIE SERVICES U.S. July 8, 2020. Testimony of Darren Mingo [00:02:39]. Testimony regarding the technical submission of ENGIE SOLAR was provided by engineering personnel from affiliated entity ENGIE EPS— an independent company partially owned by the parent company of ENGIE SOLAR. July 8 and July 9, 2020, Testimony of Engineers Daniele Rosati [July 8, 2020 00:03:56] and Dario Gigliotti

GlidePath's first Appeal was filed on November 13, 2019. GlidePath originally appealed GPA's determination that ENGIE was compliant with certain material technical specifications set by GPA and was therefore properly given a Notice of Award. On January 21, 2020, GlidePath filed a Notice of Appeal with the OPA following GPA's denial of its second agency level protest, claiming that GPA was wrong in asserting that the IFB did not contain the certain technical restrictions that GlidePath believed ENGIE failed to meet. Both Appeals were consolidated by Order of the Public Auditor on January 30, 2020. On July 20, 2020, GlidePath filed a third Notice of Appeal, docketed as OPA-PA-20-007, appealing GPA's decision of July 14, 2020, denying GlidePath's third protest about the incomplete and uncertified nature of the Procurement Record for the IFB. The Public Auditor consolidated this third appeal with the others pursuant to an Order issued on July 22, 2020.

The OPA conducted an evidentiary hearing over six (6) days between July 6 to July 14, 2020. The hearing was conducted with restrictions on the amount of individuals that could be physically present because of the COVID-19 pandemic. In addition to counsel for the parties, several institutional representatives were physically present at the hearing. Physically present at the hearing for GlidePath Marianas Operations Inc. was its corporate representative Peter Rood. Leticia Limtiaco was the representative for procuring agency GPA, and Darin Mingo of

[July 9, 2020 00:09:38]. The time references provided herein are generated from the OPA recordings appearing on the OPA website.

ENGIE SERVICES U.S. was present as the institutional representative of the interested party. ENGIE SOLAR, the awardee, only appeared through counsel.²

The OPA has considered the evidence, including the testimony of witnesses and exhibits admitted into evidence, the procurement record maintained and its supplements prepared by GPA, and the submissions placed into the record by the parties. The OPA has further considered the written arguments and proposed Findings of Fact and Conclusions of Law submitted by counsel for the parties.

The OPA hereby enters the following Findings of Fact and Conclusions of Law. To the extent that Findings of Fact, as stated, may be considered Conclusions of Law, they shall be deemed Conclusions of Law. Similarly, to the extent that matters expressed as Conclusions of Law may be considered Findings of Fact, they shall also be deemed Findings of Fact

FINDINGS OF FACT

GPA PHASE III RENEWABLE ENERGY

1. GPA began Phase III of its Renewable Energy Resource³ project by publishing a Multi-Step Invitation for Bid on November 16, 2017.⁴

² No testimony was provided regarding the relationship between ENGIE SERVICES U.S., for whom Mr. Mingo works, and the awardee ENGIE SOLAR. Mr. Mingo was neither listed as part of the ENGIE SOLAR project team nor appears in ENGIE SOLAR's proposal submitted to GPA. *See* Procurement Record Pages 2108-2113; 2095. No institutional or corporate representatives from ENGIE SOLAR appeared at the hearing in any capacity.

2. The Invitation for Bid was published as GPA-IFB-007-18 (the "IFB") as a multi-step procurement. The first step of the IFB was an analysis of technical compliance in all material respects with the requirements of the IFB in conformance with 2 GAR §§3109(r)(1)'s command "to evaluate and determine the acceptability of technical offers."

3. The second step of the IFB process was to analyze price and make an award to the lowest priced offeror who had advanced beyond the first step technical analysis.

4. The IFB is part of an ongoing effort to comply with Public Law 29-62, which requires GPA to meet renewable energy portfolio standard goals and add additional renewable energy capacity.⁵

5. Phase III also involves a land use partnership between GPA and United States Navy, where two specific sites – one at Naval Base Guam and the other at South Finegayan – were leased to the Government of Guam with the intent that each would subsequently be subleased that to the bidder(s) selected for award(s) under the terms of the IFB.⁶

³ "Renewable Energy Resource" is defined in IFB Volume III Draft Renewable Energy Purchase Agreement, Section 1.83 (IFB Page 86 of 501) to mean an energy source that is replaced by a natural, ongoing process and that is not nuclear or fossil fuel. GlidePath Exhibit Binder ("GEB") GEB 1-000086

⁴ GlidePath Exhibit Binder ("GEB") 1-000001-1000501

⁵ IFB Page 9 of 501

⁶ IFB Page 10 of 501, first bullet

6. All submissions in response to the IFB would use the same physical sites and offerors could choose to submit proposals for one or both of the sites.⁷

7. The use of Navy owned land and the supply of such land by GPA to the ultimate awardee(s) of the IFB was unique to this IFB. Prior Renewable Energy procurements by GPA required each bidder to identify the site for its proposed project.

8. Because the sites for the IFB were uniform, site location was not a factor providing variety in bidder price submissions.

9. The project contemplated by the IFB builds upon the basic concepts of solar generation already in place on Guam, such as the Dandan Solar Project located in Inarajan, Guam (the "Dandan Project"), which GlidePath owns and operates.⁸

SOLAR POWER GENERATION AND ENERGY STORAGE

10. GlidePath institutional representative Peter Rood provided testimony regarding how solar power generation works generally, and how the project contemplated by the IFB builds upon those principles.⁹

⁷ IFB Page 10 of 501, First Bullet

⁸ July 6, 2020, Testimony of Peter Rood *See* OPA recording July 6, 2020 Part A at [01:18:49] and [01:23:33.] Mr. Rood's testimony regarding solar power generation appears at OPA recording July 6, 2020 Part A at 01:32:57

⁹ July 6, 2020, Testimony of Peter Rood at July 6, 2020 [00:51:00]

11. All solar systems using solar photovoltaic (“PV”) technology, including the project contemplated by the IFB at issue in this Appeal, generate electricity by converting light energy emitted by the sun to electrical energy using PV modules.

12. PV modules are also commonly known as solar modules, or solar panels.¹⁰

13. Electricity is measured in watts (“W”), one thousand watts is also called a kilowatt (“kW”), and one million watts is also called a megawatt (“MW”).

14. GPA Engineer Jennifer Sablan testified how watts can be aggregated together to be understood to be kilowatts.¹¹

15. Testimony was provided about how the term MegaWatt (MW) can be further understood to encompass a subset of expressions including MW_{AC}, MW_{DC}, and MW_p.¹²

16. When the electricity being measured is in the form of Direct Current (“DC”) more specific unit abbreviations of W_{DC}, kW_{DC}, and MW_{DC} or when measured in the form of alternating current (“AC”) W_{AC}, kW_{AC}, and MW_{AC} may be used for additional clarity.

17. The relationship between MW, MW_{AC}, MW_{DC}, and MW_p can be summarized as follows; if a unit is expressed as MW_p it can also be expressed as MW_{DC} or MW, a unit expressed as MW_{DC} can also be expressed as MW, and a unit expressed as MW_{AC} can also be expressed as MW. The addition of “AC” or “DC”

¹⁰ July 6, 2020, Testimony of Jennifer Sablan [00:51:00]

¹¹ July 6, 2020, Testimony of Jennifer Sablan[00:51:52]

¹² July 7, 2020, Testimony of David Burlingame [01:03:53]

after MW simply provides additional information about the type of electrical current, AC or DC, being measured. Similarly, in the PV industry, the addition of “p” after MW provides the additional information that the unit is describing the peak output of the equipment being described.

18. The use of “MW” without the addition of “AC”, “DC”, or “p” is less precise, but does not change the meaning of the measurement.¹³

19. Each model of solar PV module is rated for a maximum output at specific conditions as measured in its peak W_{DC} , or W_p , by the manufacturer. The higher the rating the more efficient the module is at producing electricity.¹⁴

20. A module rated at 300 W_p would produce less electricity under the same conditions when compared to another module rated at 400 W_p .

21. A collection of modules rated at a total of 1,000,000 W_p module would also be a 1 megawatt peak array, or 1 MW $_p$.

22. The actual amount of electricity produced by each module at any given moment is correlated to the sunlight received at the module, temperature, and other site conditions, though more modules will always allow for the production of more electricity assuming other variable conditions are constant.¹⁵

¹³ July 8, 2020, Testimony of ENGIE EPS Engineer Rosati [00:20:55]; July 6, 2020 Testimony of Peter Rood [00:26:06]

¹⁴ July 6, 2020, Testimony of Peter Rood [01:30:32]; July 8, 2020, Testimony of ENGIE EPS Engineer Rosati [00:22:48].

¹⁵ July 6, 2020, Testimony of Peter Rood Part [1:30:32]

23. As the sun moves across the sky or is obscured by clouds or haze, electrical output from the module charges generally producing the most electricity on clear days around noon.¹⁶

24. The relationship between the overall amount of electricity generated is proportional total capacity of modules installed (expressed in Wp, kWp, or MWp). The more physical modules installed on a site the more solar energy the system can collect and convert to electricity when compared to a site with fewer of the same modules.¹⁷

25. Independent Engineer Robert Charles the Independent Engineering Firm Sargent & Lundy confirmed that ENGIE's inclusion of additional megawatts on the site beyond the limit adhered to by others provided ENGIE with a power production advantage and annual minimum power generation advantage.¹⁸

26. Solar power generation facilities gather the power from the sun through the panels, and then groups of those panels are electrically connected in series to form a string. In an AC-coupled system with solar directly connected to the grid, multiple strings are connected to an inverter which converts the DC electricity generated by the modules to AC electricity.¹⁹

¹⁶ July 6, 2020, Testimony of Peter Rood Part A [01:30:32]

¹⁷ July 6, 2020, Testimony of Peter Rood Part A [01:32:57]

¹⁸ July 7, 2020, Testimony of Robert Charles, [37:47]

¹⁹ July 6, 2020, Testimony of Peter Rood Part A [01:32:57]

27. AC electricity is the form of electricity purchased by GPA and that is used by the consumer. The AC output from each of the inverters is combined, metered, and injected into the GPA electric grid at the point of interconnection.²⁰

28. In the IFB, solar generation (similar to what is installed at the Dandan Project) is paired with a battery component. In the Phase III projects, the electricity generated by the solar PV modules will, instead of being directly delivered to GPA as it is generated, be stored via a separate Energy Storage System (“ESS”) in large batteries for later delivery to GPA’s electric grid.

29. This separate ESS component helps solve one of the fundamental problems with solar power: peak power demand does not occur when the sun shines brightest. On average, peak output from solar PV panels occurs at mid-day, which on Guam is before the typical day’s peak demand.

30. The ESS enables GPA to store Renewable Energy for use during the evening hours when electricity demand is the highest.

31. While PV technology has been well established in recent decades, the incorporation of an ESS into a PV generation facility is based upon new technology and recently developed methods.²¹

32. GPA Consultant Burlingame testified that the Phase III projects would be the first on Guam, and among some of the first in the world, to use an ESS to fully shift solar energy generated during the daytime to evening or nighttime hours.

²⁰ July 6, 2020, Testimony of Peter Rood Part A 01:32:57All Engineers; IFB

²¹ See, July 7, 2020, Testimony of Robert Charles [7:03].

33. GPA Consultant Burlingame confirmed that the technology being procured for a 100% load shifting project under this IFB has not yet been deployed to any project in this hemisphere.

FINANCIAL STRUCTURE OF PHASE III AND BID PRICING

34. The projects called for in the IFB will sell the electricity it generates to GPA pursuant to the terms of a Renewable Energy Purchase Agreements (“REPAs”) for each project.

35. The electricity that is delivered to GPA is metered on a kilowatt-hour (“kWh”) basis similar to the way individual GPA customers buy electricity from GPA and 1,000 kWh are equal to one megawatt hour (“MWh”)

36. For each MWh delivered to GPA, the power provider is paid a fixed price as defined in the REPAs and is paid monthly by GPA based on the total number of MWhs delivered to GPA in that month multiplied by the rate (enumerated in dollars per MWh or \$/MWh) applicable for that month. This represents the sole source of revenue for the solar power provider.

37. The initial capital investment required for building a solar production facility can be significant, especially if the project includes battery storage systems.

38. The contract contemplated by the IFB allows the solar power provider to sell a long-term supply of electricity to GPA at an agreed upon price and recover both its capital investment and operating costs over the term of the REPA.

39. Since solar projects like the one called for in the IFB have high upfront capital costs, known operating costs, and no fuel costs, the rate paid in the REPA can be defined upfront for the life of the REPA.²²

40. In the responses to the IFB, the bidders' offered a rate schedule to be included in the REPA that is primarily a function of the capital and operating cost (including profit/return requirements) of the project spread over the total number of MWhs of electricity generated by the solar modules installed in the project.²³

41. If two projects have identical costs but one is able to supply a higher quantity of electricity (MWhs), then the project supplying more electricity would generally be expected to have a lower cost as measured in a \$/MWh basis.²⁴

²² July 6, 2020, Testimony of Peter Rood Part A [01:27:37]

²³ July 6, 2020, Testimony of Peter Rood Part A [01:27:37]

²⁴ For Example:

If Project A has a capital cost of \$120,000,000 and an annual operating cost of \$500,000 per year the total cost to be recovered for the 20-year contract would be \$130,000,000 (\$120,000,000 + 20 years x \$500,000/year). If that same Project A generated 500,000 MWh over a 20-year period, the required REPA rate could be calculated by dividing \$130,000,000 by 500,000 MWh which equals \$260 per MWh. (Capital Cost + Operating Costs)/Production= \$130,000,000/(500,000 MWh)=\$260/MWh.

If, however, Project B had the 10% higher capital and operating costs and was capable of generating 800,000 MWh over the course of the same 20-year period, the required REPA rate would only be \$178.75/MWh, or over \$80/MWh less than Project A because Project B could spread its costs, even though higher, over significantly more energy generation. (Capital Cost + Operating Costs)/Production= \$143,000,000/ (800,000 MWh) = \$178.75 /MWh.

**THE IFB REQUIREMENTS LIMITING THE SIZE OF THE PROJECTS' "PV INSTALLATION," "PV
CAPACITY," AND "PV CHARGING SYSTEM"**

42. The initial version of the IFB issued by GPA in November 2017 was 501 pages long. The IFB ultimately grew to nearly 900 pages with 24 amendments and over 18 months of time extensions.

43. GPA Engineer Sablan testified that key engineering personnel who participated in the drafting of original IFB requirements were not part of the IFB process when the time came for the issuance of certain amendments or the review of technical responsiveness to those various requirements contained in the amendments.²⁵

44. Unlike previous GPA IFBs for Renewable Energy where each bidder selected its own site for its project, GPA identified the two project sites that all bidders could elect to build their projects on and did not allow the use of any other locations.

45. The projects requested in the IFB consists of a solar generation system and the battery ESS.

46. GPA has used the term "PV charging system" to describe the solar generation portion of the IFB project.

²⁵ July 6, 2020, Testimony of Jennifer Sablan [1:05]

47. The IFB required that the solar system and ESS be electrically connected together via DC coupling, and prohibited projects from directly providing energy produced by the solar generation system to GPA's grid.²⁶

48. All energy produced by the solar generation system was required to be stored in the ESS via the DC connection between the solar system and ESS. The ESS would then be discharged to the GPA grid in the evening hours when demand is higher and there is little or no solar production.²⁷

49. The IFB also set specific limits on the size of the battery that could be installed on the project sites. The IFB explained that the maximum export capacity of each project shall not exceed 30 MW_{ac}.²⁸

50. The IFB also defined a ratio that set specific limits on the generation capacity of the solar panels that could be installed on the project sites.

51. Both Peter Rood and Independent Engineer Robert Charles testified that the limit on the generation capacity of the solar panels was a physical limit on the actual PV Panel installation.²⁹

52. Offerors were provided with a specific formula within which to size and shape the solar systems that would be offered. These systems had to comply with specific requirements about the maximum megawatt size of the system as well as the minimum ESS capacity of the system.

²⁶ IFB Item 3, Amendment XXII to the IFB ("GPA requires only ESS inverters be directly tied to the grid..."); July 7, 2020 Testimony of Burlingame [53:33].

²⁷ GEB 2-000160; Amendment XIII to the IFB, Attachment B, Section 2

²⁸ GEB1-000009; IFB Volume I, Section 1, 5th bullet (IFB Page 9 of 501), IFB Volume 1, Section 2.2.5.

²⁹ July 7, 2020 Testimony of Robert Charles [14:00]

53. Numerous requests for information were sent by various offerors to GPA over the course of the procurement, and GPA, in response to those inquiries, issued numerous amendments to the procurement that helped confirm the outer formula contours to be applied to the systems that would be offered.

54. GPA accepted questions from November 16, 2017 until February 23, 2018.³⁰

55. In Amendment V to the IFB GPA announced that it would accept clarifications to its responses to questions and technical changes until February 19, 2019.

56. Most questions posed to GPA during the bidding process were responded to in writing via an amendment to the IFB.

57. After February 19, 2019 bidders were not given any additional opportunities to ask questions or seek clarifications. Specifically, this meant that bidders had no opportunities to submit questions or seek clarifications of any of the information provided by GPA in Amendments XVI through Amendment XXIV.

58. GPA Engineer Sablan testified that Mr. Burlingame may have been consulted regarding IFB amendments and answers provided to bidders, but was unclear on the extent of that involvement and about which particular answers Mr. Burlingame assisted with.

59. The Procurement Record originally provided by GPA in accordance with 2 GAR, Div. 4, Ch. 12, §12104(3) contains no copies of correspondence, or log of

³⁰ Amendment III to the IFB

communications, regarding Mr. Burlingame's assistance with the IFB, its amendments, or clarifications provided to bidders despite both GPA and Mr. Burlingame confirming that Mr. Burlingame participated in the development of the IFB. On January 25, 2019, GPA issued as part of Amendment XIII, an attachment called the "Supplement and Update to Volume II Technical Qualification Requirements." The amendment required that the ESS should be equal to or greater than the 145% of the MW rating of the PV charging system.³¹

60. Amendment XIII carried with it the directive that "This document is an update to the "Invitation For Multi-Step Bid" ("Bid Document"), NO.: GPA-007-18, Renewable Energy Resource, Phase III. This provides additional description of operation and sets forth additional and clarified technical requirements. Bids received will be judged based on adherence to criteria and performance requirements noted in this amendment. To the degree a conflict may arise between this amendment and the Bid Document, the language in this amendment shall prevail." (Emphasis added)

61. This 145% requirement was coupled to GPA's other requirement that the ESS be no larger than 30MW_{AC} at each project site.

62. GPA also specified that, in addition to a 30MW limit at each project site, the interconnection into GPA's grid must also be limited to 30 MW. GPA

³¹ GEB 2-000160; Amendment XIII to the IFB, Attachment B, Section 2

counsel's opening statement confirmed that "At least we agree on one thing, and that is that the two sides were in fact capped at 30 megawatts."³²

63. The IFB amendment dictated that GPA wanted an ESS system that was both no larger than 30MW_{AC} but was also at least 145% greater than the megawatt rating of the solar PV system.

64. GPA provided specific illustrations applying the 145% ratio so that bidders could be certain in how the ratio was applied. GPA explained that "For instance, for a PV installation of 27 MW, the ESS shall be rated at a minimum of 40 MW. For a PV capacity of 10 MW, the ESS rating shall be a minimum of 14.5 MW."

65. GPA Consultant Burlingame confirmed that the GPA provided these illustrations so that offerors could apply the 145% ratio requirement contained in Amendment XIII. GPA Engineer Sablan confirmed that the application of the 145% ratio would change the PV installation size in proportion to a particular ESS size, and vice versa.

66. Both Mr. Burlingame and Ms. Sablan confirmed that the terms "PV Installation," "PV Capacity," and "PV charging system" in Amendment XIII are terms which are used interchangeably to refer to the same thing, and Robert Charles of the independent Engineering Firm Sargent & Lundy confirmed in his testimony that the terms "PV Installation," "PV Capacity," and "PV charging

³² July 6, 2020, GPA counsel opening statement, [00:25:27]

system” meant the same thing in this IFB to GPA, especially since the procuring agency had no definition section to provide alternative definitions.³³

67. ENGIE used the terms “PV Installation,” “PV Capacity,” and “PV charging system” interchangeably throughout the testimony provided in this procurement appeal.

68. ENGIE uses the term “PV Plant”, “PV Capacity”, “installed capacity”, and “PV peak power installed” interchangeably throughout their Technical Proposals without the distinction that ENGIE makes during this procurement appeal.³⁴

69. The phrase “PV charging system” is not used by GPA anywhere else in the IFB and is not formally defined by GPA thus requiring bidders to determine its meaning only by the context of the 145% ratio requirement and associated illustrations.

70. GPA Engineer Sablan confirmed how the 145% ratio would be applied to set a size relationship between the Solar PV Capacity and the size of the ESS.

71. GPA’s illustrations showed, as applied by Engineer Sablan, that for each 1 MWp Solar PV Capacity, an offeror must have 1.45 MW of ESS capacity.

72. Robert Charles confirmed that in his opinion that GPA required, in Amendment XIII, that the solar field was limited by the 1/1.45 ratio.³⁵

³³ July 7, 2020 Testimony of Robert Burlingame [42:40]; Testimony of Robert Charles: [00:23:22]

³⁴ See ENGIE Technical Proposals

³⁵ Testimony of Robert Charles [00:22:34][9.4]

73. Robert Charles confirmed that application of the ratio resulted in a limitation of the solar field size to 20.7 MW.³⁶

74. ENGIE EPS Engineer Rosati confirmed in his testimony that there was a “requirement that was clear” that mandated that existence of a 20.7 MW limitation.³⁷ He further explained that ENGIE installed its converter in an attempt to meet the 20.7 limitation so that “we respect the requirement number two ... relative to the ratio.”³⁸

75. GPA’s illustrations confirmed that this meant that the solar PV system to be procured would be limited to a peak megawatt capacity of 20.7 MWp, since 145% of a 20.7 MWp system would be no larger than the 30MW ESS maximum demanded by GPA in its IFB.

76. ENGIE EPS Engineers confirmed that application of the 145% ratio required adherence to a 20.7 limitation on the PV installation given the maximum ESS Size of 30 MW.³⁹

77. No Amendment to the IFB, subsequent to Amendment XIII, included any language modifying the 145% Requirement.⁴⁰

³⁶ Testimony of Robert Charles [00:46]

³⁷ July 8, 2020 testimony of ENGIE EPS Engineer Rosati [1:01]

³⁸ July 8, 2020 testimony of ENGIE EPS Engineer Rosati [00:32:24 and 00:47:58]

³⁹ See Testimony of Dario Gigliotti [1:01:06]; Rosati [00:32:24]

⁴⁰ GEB 5-000001-5-0000017; Amendment XVII to the IFB issued by GPA on April 18, 2019, included responses to two clarification questions from bidders related to the 145% Requirement. Both responses were essentially the same and appeared to be intended to provide GPA’s reasoning for the 145% Requirement, for example the response on page 13 of the amendment says “This section of the amendment is to illustrate that the charging and discharging times of the ESS are different and design of the ESS should include consideration that the ESS would only have 4-6

78. Robert Charles testified that the analysis of the 145% ratio does not change if the measures MWac or MWp are used instead of MW.⁴¹

GPA BID OPENING AND RESULTING PROTESTS

79. On June 3, 2019 both GlidePath and ENGIE submitted bids to install the solar generation and ESS facilities at both the Naval Base Guam site and the South Finegayan site for technical review.

80. GlidePath's bid submission followed the IFB language regarding the 145% ratio by physically limiting the size of the solar system that was to be installed at each location to no more than 20.7 MW.

81. GlidePath fully understood that GPA's physical limitation on the size of the PV installation was not an optimal system design. Peter Rood testified that "we wanted to submit a very fully compliant bid. And so we did everything that was asked of us in the documents, but then then we were so confident that there was a better deal for the people of Guam so we told G.P.A., hey, there's a better way to do this..."⁴²

hours to discharge at a maximum interconnection output of 30MW ac." Neither answer contained any language modifying the requirement in any way.

⁴¹ Testimony of Robert Charles [Second Day OPA Recording, [00:24]

⁴² Testimony of Peter Rood [01:48:45]

82. GlidePath also specifically included the following statement in both of its technical proposals stating that removing the limitation on the size of the solar installation could improve the system design:

GlidePath would be especially interested to increase the MW_{DC} of the Project, as interconnection limitations and ratios of PV to battery systems in the IFB are the limiting factors driving the system design. GlidePath believes that, should GPA be able to reevaluate these requirements, increased project sizing would ultimately be beneficial to ratepayers to provide lower-cost energy than is currently possible with a project that fully complies with IFB requirements.⁴³

83. ENGIE's bid submission attempted to follow the IFB language regarding the 145% ratio by using only software controls to throttle back the generation of power from its PV array to no more than 20.7 MW.⁴⁴

84. ENGIE EPS Engineer Rosati Testified that ENGIE's software controls in its technical proposal do not create a physical limit on the power generation, and can be adjusted upwards remotely, though doing so may void specific warranties that ENGIE claims are in place.⁴⁵

85. The details of ENGIE's software throttling scheme are not described in its technical proposal nor is there any record of GPA seeking clarification of how such a scheme would be implemented, despite the IFB containing clear prohibition

⁴³ Procurement Record Binder 5, pg. 4168, 4554§ C3-c of GlidePath's Naval Base Guam and South Finegayan technical proposals.

⁴⁴ Testimony of Engine EPS Engineer Rosati [58:57];[1:44:49]

⁴⁵ Testimony of Engine Engineers [1:45:51];[1:9:50]

against using novel technology⁴⁶ and responses to bidders questions about the use of software control schemes to meet IFB requirements.⁴⁷

86. Sargent & Lundy Engineer Robert Charles testified that it was his expert opinion that a software control limiting a PV system to outputting 20.7 MW is not the same thing as a PV installation with 20.7 MW installed capacity, and therefore not compliant with the plain provisions of the IFB's Amendment XIII.⁴⁸

87. During their evaluation of the submitted bids GPA contacted offerors to ask clarifying questions and/or provide offerors an opportunity to correct errors identified by GPA. Based on the Procurement Record GPA contacted all the offerors except for GlidePath.

88. On June 24, 2019, GPA contacted offeror AES Distributed Energy ("AES") and notified them that their bid for the South Finegayan site included the placement of PV modules over a Guam Waterworks Authority ("GWA") underground pipe in violation of the requirements of the IFB.⁴⁹ On June 25, 2019 and June 29, 2019 AES provided and GPA accepted a revised bid from AES that met the requirement to not install PV modules over the GWA pipeline and a revised scoring workbook reflecting a reduction in production.⁵⁰

⁴⁶ IFB, Volume II, Section 2.2.3 (Page 55 of 501)

⁴⁷ Amendment XII to IFB, Page 40, Question 6.3

⁴⁸ Testimony of Robert Charles, [00:36:53]

⁴⁹ June 24, 2019 letter from GPA to AES (Procurement Record Pages 1288-1290 of 12,444)

⁵⁰ June 25, 2019 letter from AES to GPA (Procurement Record Pages 1263-1266 of 12,444) and June 29, 2019 email and attachments from AES to GPA (Procurement Record Pages 1211-1226 of 12444)

89. GlidePath, despite writing to GPA as part of its bid submission in an effort to have GPA correct the system requirements that would result in a less than optimal solar generation plant, received no contact from GPA addressing the issue that ultimately led to this consolidated procurement appeal.⁵¹

90. On August 14, 2019, GlidePath was notified that, following GPA's technical review, both of its bids had been deemed as qualified to proceed to Step 2 of the Procurement, where offerors would submit their prices.

91. GPA's Notice of Award included a list of other offerors that had similarly been deemed to be technically compliant, and all but one bidder had been deemed qualified.

92. Prices were submitted to GPA pursuant to a price submission worksheet that included explaining the cost of power to GPA in the form of the cost of a megawatt of power for one hour (MWh).

93. Price submissions were opened at a public venue on September 10, 2019, and ENGIE had a year one bid a price of \$110.90/MWh for the Navy Base Guam location and \$108.90/MWh for the South Finegayan location.⁵² ENGIE presented GPA with a price that was at least 35% lower than the next offeror.

94. ENGIE's prices were the lowest submitted, and there was great price disparity amongst the bids submitted.

⁵¹ Testimony of Jennifer Sablan, [1:14:34]

⁵² All bidders' price proposals included upward escalation of the purchase price over the contract term and a reduction in annual solar production due to degradation each year.

95. GPA confirms a large price disparity, even amongst just the three lowest bidders:⁵³

<u>Bidder</u>	<u>NBG price</u>	<u>SF price</u>	<u>% Increase</u>
ENGIE	\$110.95/MWH	\$108.90/MWH	
AES	\$169.00/MWH	\$158.90/MWH	52.3%/45.9%
GlidePath(alt)	\$176.00/MWH	\$176.00/MWH	58.6%/61.6%
GlidePath	\$196.00/MWH	\$191.50/MWH	76.6%/75.8%

96. Neither GPA nor ENGIE provided an explanation for the great price disparity demonstrated in the price submissions, beyond “difficulty in accessing the base and all the rest of it....”⁵⁴

97. The price disparity cannot be attributed to variety in the solar panel hardware installed on the project sites, as solar panels are commodity items with little price variety.⁵⁵

98. On October 4, 2019, GlidePath was notified by GPA that it was not selected for award, and instead GPA’s procurement team had recommended award for both of the projects included in the IFB to ENGIE.

99. October 7, 2019, ENGIE EPS issued a press release indicating that “[the] systems proposed by ENGIE integrate more than 50 MWp of solar PV with approx. 300 MWh of battery energy storage....”

⁵³ GPA Trial Brief, 3.

⁵⁴ GPA counsel opening statement, [00:28:06]

⁵⁵ July 6, 2020 Testimony Rood [Part A 01:31:57]

100. Peter Rood of GlidePath testified that the price advantage presented by ENGIE is due to ENGIE's inclusion of more solar power generation capacity on the site, and the resulting ability of ENGIE to sell more power to GPA over the 20-year lifetime of the project.

101. Independent Engineer Charles confirmed that the extra generation capacity installed by ENGIE gave ENGIE increased power generation, and thus a pricing, advantage.⁵⁶

102. GlidePath initiated a Protest of the Award to ENGIE on October 9, 2019. Glidepath's protest was built upon the fact that inclusion of more than 20.7 MWp of solar generation capacity at either of the project sites is not allowed by the IFB.

103. In its denial of GlidePath's protest GPA incorrectly states that "The 'MW rating of the PV charging system,' in ENGIE's proposal, is equal to the power rating of the DC/DC converters, and is capped at 20.7MW (i.e. 1/1.45 of 30MW AC), in full compliance with the IFB requirements."⁵⁷

104. ENGIE's technical proposal confirms that the rating of the DC/DC converters is, in fact, 24 MW_{DC}.⁵⁸

⁵⁶ July 7, 2020, Testimony of Robert Charles, [37:47]

⁵⁷ See, Procurement Record Binder 1, pg. 69; page 2 of GPA's October 28, 2019 Denial of Procurement Protest beginning at line 17

⁵⁸ See, GEB3-000064; page 2139 of the Procurement Record – ENGIE Technical Proposal for South Finegayan, Section A5 – Page 6. ENGIE states that their design will include 12 blocks each with 4 DC-DC converters for a total of 48 DC-DC converters with each converter rated at 500kW or 0.5 MW for a total of 24 MW (48 * 0.5 MW = 24 MW).

105. ENGIE EPS engineer Rosati testified that “We decided to install a nameplate power for the DC/DC Converter of 24....”⁵⁹

106. GPA’s protest denial contradicts the fact that GPA used the terms “PV Installation,” “PV Capacity,” and “PV charging system” in Amendment XIII interchangeably to refer to the physical limit of the installed solar panels on each project site.⁶⁰

107. ENGIE argues that the term “PV charging system” is defined as the DC/DC converter, though the term “PV charging system” does not appear in ENGIE’s technical or price proposal beyond a single reference repeating GPA’s illustrations.

108. ENGIE EPS Engineer Gigliotti testified that a “PV Plant” includes “modules”, “structure”, the “converter”⁶¹ and specifically that for a PV + ESS project, such as Phase III, “...always for sure there is always module, structure for the module, and the converter.”⁶²

109. ENGIE’s technical proposals state that the South Finegayan PV Plant size is 26.47 MWp and the Naval Base PV Plant size is 27.64 MWp.⁶³

110. ENGIE’s technical proposals described the two variables it considered when designing its projects as “PV capacity in MWp” and “BESS capacity in MWh” and goes on describe the “results of this optimization process” as an “Optimal PV

⁵⁹ July 8, 2020, Testimony of ENGIE EPS Engineer Rosati [00:47:58]

⁶⁰ July 7, 2020 Testimony of Robert Burlingame [42:40].

⁶¹ July 9, 2020, Testimony of ENGIE EPS Engineer Gigliotti [01:09:46]

⁶² July 9, 2020, Testimony of ENGIE EPS Engineer Gigliotti [01:10:49]

⁶³ Page 2086 of 12444 (South Finegayan) and Page 2323 of 12444 (Naval Base) of Procurement Record

capacity” at the South Finegayan site of 26.47 MWp and the Naval Base site as 27.64 MWp.⁶⁴

111. Procurement Record shows that the GPA evaluation committee does not use of the term “PV Charging System” in an internal memorandum dated October 3, 2019, addressing concerns raised by GlidePath in a September 30, 2019, letter or in the committee’s internal memorandum dated October 11, 2019, responding to GlidePath’s first protest. Neither memorandum includes any discussion of the concept of ENGIE’s software limitation of the DC/DC Converter or the term “DC/DC converter”.⁶⁵

112. The phrases “PV Charging System” and “DC/DC converter”, the concept that the rating of the DC/DC converters can be modified by a software control, and the concept that ENGIE satisfies the 145% requirement via the rating of the DC/DC converters does not appear anywhere in the Procurement record until the GPA letter to GlidePath denying the first appeal. There is no record of the GPA evaluation committee considering any such concepts.⁶⁶

113. ENGIE’s first adoption in the record of the phrase “PV Charging System” comes in February 2020, as part of ENGIE’s proposed demonstrative Exhibits submitted to the OPA as part of this appeal.

⁶⁴ Pages 2163-2164 of 12444 (South Finegayan) and Page 2399-2400 of 12444 (Naval Base) of Procurement Record

⁶⁵ Page 208 of 12444 and Page 352 of 12444 of Procurement Record

⁶⁶ GPA Denial of Procurement Protest dated October 28, 2019

114. Both GPA and ENGIE abandon the interchangeable use of the terms “PV Installation,” “PV Capacity,” and “PV charging system” only after, or in response to, GlidePath’s protest.

115. GPA’s protest decision that revealed GPA’s misunderstanding of the IFB requirements the agency issued led to GlidePath’s second agency level protest.

116. On July 6, 2020, GPA Engineer Jennifer Sablan, P.E, testified before the OPA that she worked with Mr. David Burlingame of Electric Power Systems or EPS — a witness that GPA had originally informed counsel for GlidePath was testifying as an expert in the case — on the development and specifications for the IFB and its more than 20 amendments.⁶⁷

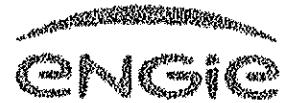
117. Ms. Sablan also testified that she communicated with Mr. Burlingame via email and telephone. Ms. Sablan further testified that there are emails in her possession with Mr. Burlingame about the IFB and the underlying technical specifications and rationales of the Phase III project— emails that appear nowhere in the procurement record and that GPA counsel had previously confirmed to the OPA did not exist.⁶⁸

118. On July 7, 2020, Mr. Burlingame confirmed Ms. Sablan’s testimony about his involvement with GPA under oath.

⁶⁷ Testimony of Jennifer Sablan, [43:36]

⁶⁸ Testimony of Jennifer Sablan, [44:00]

119. The same Electric Power Systems of Alaska, led by David Burlingame, is also identified by ENGIE in both technical proposals as the ENGIE "Transmission Consultant."⁶⁹



Transmission Consultant

Burns and McDonnell and EPS (Electric Power System), based in Alaska, has been hired by GPA for System Integration Studies. They will be the Transmission Consultants for the project.

120. Neither ENGIE nor Mr. Burlingame volunteered information about his consulting relationship with ENGIE.

121. Glidepath initiated a third protest on July 9, 2020, regarding the procurement record deficiencies revealed by Ms. Sablan's and Mr. Burlingame's testimonies. The Agency denied that protest on July 14, 2020. GlidePath appealed that denial to the OPA on July 20, 2020. The Public Auditor consolidated this third appeal with the others pursuant to an Order issued on July 22, 2020.

122. While the Agency denied GlidePath's protest regarding the state of the procurement record, GPA went on to produce three (3) more supplements to the record on January 16, 2020, July 8, 2020, and July 15, 2020.

123. The supplements provided to date by GPA indicate that the Procurement Record likely remains incomplete, as the supplements make references to documents and correspondence that remain unaccounted for.⁷⁰

⁶⁹ Page 2127 of 12444 of Procurement Record

124. To date, GPA has not produced a signed certification of the Procurement Record.⁷¹

**GPA DID IN FACT LIMIT THE PV INSTALLATION TO NO MORE THAN 20.7 INSTALLED
MEGAWATTS, AND ENGIE EXCEEDED THAT LIMITATION**

125. While GPA may not have realized it, the issuance of Amendment XIII meant that the inclusion of more than 20.7 MWp of solar generation capacity at either of the project sites was explicitly and specifically prohibited in the IFB.

126. There is no dispute that ENGIE offered a system to GPA exceeding 20.7 MWp of installed PV capacity. ENGIE's proposal explains its offer of a "27.64 MWp PV Plant"⁷² at Naval Base Guam and a "26.47 MWp PV Plant"⁷³ at South Finegayan.

127. ENGIE EPS Engineer Gigliotti confirmed in during his testimony that the the term "PV Plant" is the same as what ENGIE has called the "PV charging system"⁷⁴ since GlidePath brought its first protest.

⁷⁰ For example, an email on 8/24/2019 from Mr. Burlingame to Mr. Cruz that appears to be in response to an earlier email from Mr. Cruz which is not included in the procurement record (7/15/2020 supplement)

⁷¹ CITE

⁷² GEB 4-000011; Procurement Record Binder 3, Tab 41, Section 1.1, Bullet 1 (Page 2323 of 12444 of Procurement Record).

⁷³ GEB 3-000011; Procurement Record Binder 3, Tab 40, Section 1.1, Bullet 1 (Page 2086 of 12444 of Procurement Record)

⁷⁴ July 9, 2020, Testimony of ENGIE EPS Engineer Gigliotti [01:09:46]

128. Because the inclusion of more than 20.7 MWp of solar generation capacity at either of the project sites was not allowed by the technical requirements of the IFB, ENGIE's proposal is unresponsive to the IFB.

129. By allowing ENGIE to move forward with proposals that exceeded the amount of solar generation capacity allowed by the IFB, GPA allowed ENGIE an unfair pricing advantage over GlidePath that complied with the IFB requirement on installing PV generation capacity within the 145% ratio limit.

130. ENGIE's proposed projects, by not holding to the 145% ratio limit, were capable of generating a greater volume of electricity to sell to GPA and, therefore, were able to offer a lower per unit cost to GPA for that electricity. A lower per unit cost is possible because ENGIE was able to distribute the projects' fixed costs over more units of electricity.

131. Since GlidePath's proposal is compliant to the 145% ratio limit contained in the amended IFB GlidePath had fewer units of electricity to sell to GPA and, therefore, had to distribute the cost of their project over those fewer units.

132. By allowing both the ENGIE and GlidePath proposal to move beyond the initial technical review, GPA could not conduct a like-to-like or "apples to apples" comparison and has no way of knowing if the project ENGIE proposed is, in fact, the lowest cost since it cannot be competently compared to the GlidePath project.

133. While, now and only in response to GlidePath's protests, both ENGIE and GPA seem to claim that application of the 145% ratio did not result in a 20.7

MWp cap on the size of the PV Installation, ENGIE's submission to GPA recognized the cap as a mandatory requirement, as ENGIE's technical proposals acknowledge the existence of a 20.7 MWp cap.⁷⁵

134. ENGIE's proposal includes clear attempts to meet a 20.7 MW limitation.



2. DISPATCHABILITY

This bid requires ESS 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.

The BESS proposed by ENGIE is designed for a full time-shifting of the solar energy produced by the PV field during the day, to cover the evening-time load.

In every sub-system of the Facility ("the block"), the solar energy flows to the BESS through the DC coupling, to be accumulated, converted and delivered to the site substation once the daytime PV production is completed.

The plant is designed to charge the BESS with a maximum combined power rate of 20.7MW and to discharge it up to 30MW at the delivery point. These values have been selected in compliance with the following tender requirement:

The MW rating of the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system ("Multi-Step Bid GPA-007-18-Amd.XII", pag. 160).

135. ENGIE also demonstrates knowledge and attempted compliance with the 20.7 limitation by claiming to have a "20.7(rated)" 'PV DC/DC Converter Capacity'.⁷⁶ This limitation is included by ENGIE, despite the fact that Amendment

⁷⁵ GEB 3-000087, 4-000086; Procurement Record Binder 3, Tab 40, Section B1-a, Bullet 13 (Page 2162 of 12444 of Procurement Record) and Procurement Record Binder 3, Tab 41, Section B1-a, Bullet 13 (Page 2398 of 12444 of Procurement Record)

⁷⁶ ENGIE Trial Brief, 9.

XIII makes a clear limitation not on the “PV DC/DC Converter Capacity,” but instead on the “PV Installation,” “PV Capacity,” and “PV charging system.”

136. ENGIE’s knowledge of a 20.7 MWp PV installation limitation is confirmed again by the fact that GPA refused to provide ENGIE an answer that would have allowed it to exceed the system limits contained in the IFB. Specifically, GPA gave no answer to the portion of ENGIE’s question that asked “Can we assume therefore the maximum PV charging system rating that can be installed is 27 MW?”⁷⁷

137. ENGIE asked specifically if it could install more than 20.7 MWp of PV capacity on the project sites, and GPA did not say yes.

138. GPA’s explanation that the 20.7 MWp limit was not a limit on the system itself, but actually a cap of the “DC/DC converters” has no support in the record.

139. Even if the 145% ratio requirement were to be applied to the DC/DC converters, which it is not, ENGIE’s technical submission would still be unresponsive since the ENGIE proposals include 24 MW_{DC} of DC/DC converter capacity.

140. ENGIE explains that its large corporate structure provides ENGIE with the necessary experience to provide responsive offers.

⁷⁷ GEB 5-000013; Question and Answer #32 on Page 13 of Amendment XVII

141. There is no dispute that ENGIE is a large company with a global presence, as ENGIE offered much testimony on the point unrelated to the issues of Amendment XIII.

142. ENGIE's Opening Statement included the assertion that it was operating 16 "desert" PV and ESS systems across islands and outer areas throughout the world.⁷⁸

143. ENGIE EPS Engineer admitted under cross examination that, the referenced 16 operating projects were 1) not owned by the bidder, ENGIE Solar, 2) were significantly smaller than the project contemplated in this IFB, and 3) has vastly different functions than the complete time shifting of PV contemplated by the IFB.⁷⁹

144. ENGIE confirmed that the time shifting battery PV plant contemplated by GPA under the IFB was, at the time of the bid "the largest and shifting system in the world."⁸⁰

145. ENGIE EPS Engineer confirmed in its testimony that all of its previous cited experience were for projects smaller – in most cases significantly smaller - than the Guam project contemplated by the IFB.

146. ENGIE EPS Engineer Rosati claimed that ENGIE EPS Engineer's expertise is based on successful execution of many similar projects.⁸¹ In fact, most

⁷⁸ Opening Statement. July 6, 2020, [00:30:34]

⁷⁹ July 8, 2020 Testimony of Darin Mingo [00:28:58], ENGIE Technical Proposals, Table 6.6.1 (Procurement Record Pages 2279-2283 of 12444)

⁸⁰ Testimony of ENGIE EPS Engineer Gigliotti [1:08]

⁸¹ July 8, 2020 Rosati Testimony [00:20:07]

of the projects he listed have not been constructed, or even awarded yet. He cited four (4) specific projects in New Caledonia, Tasmania, Chile, and Maldives as similar to the Guam IFB when, the projects are not at all comparable to the Guam project, either in system size or function.⁸²

147. ENGIE EPS Engineer Gigliotti testified that one of the “most important” storage project that he worked on was a 20 MW standalone ESS project in Spain that was built in 2017.⁸³

148. In 2015 GlidePath’s Jake, Elwood, and McHenry standalone ESS projects began operating in the Chicago area. Each of these projects are 20 MW projects and, at the time, were among the largest battery projects in the United States.⁸⁴

149. ENGIE has no previous relationship with GPA, unlike GlidePath which saved GPA’s Dandan project from insolvency after its last operator— another large global energy company— drove the project to the point of failure.

⁸² The project on Lifou Island in New Caledonia consisted of solar projects installed by other companies, and ENGIE EPS Engineer’s role was limited to providing a separate energy storage facility with a 5 MWh capacity. The Tasmania project is a very small, 3 MW microgrid, powered primarily by fossil fuel generators paired with 0.5 MWp of solar, and just 0.5MWh of energy storage. The Maldives project, which ENGIE testified is especially similar, is also a small diesel generator microgrid, with a total of 0.8 MWp of solar paired with 0.3 MWh of energy storage. The project in Chile, with just 0.1 MWp of solar and 0.6 MWh of energy storage, is so small that it could not provide even half the electricity needed by Guam’s George Washington High School. All also included in ENGIE Technical Proposals, Table 6.6.1 (Procurement Record Pages 2279-2283 of 12444)

⁸³ July 9, 2020 Gigliotti Testimony [00:14:04]

⁸⁴ GlidePath Technical Proposal, Section A3-b (Procurement Record page 4125 of 12444)

150. ENGIE has asserted that they have “years of experience in designing, building, and operating PV + ESS systems”⁸⁵ and that GlidePath, the operator of the sole solar project on Guam and with years of energy storage experience, somehow was “confused” is not only an attempt to distract the Public Auditor but, in reality, is the main argument advanced by ENGIE.

151. The facts presented tell a much different story; 1) the bidder, ENGIE Solar has no experience with solar + ESS projects,⁸⁶ 2) no entity affiliated with ENGIE has experience with anything related to solar energy on Guam, 3) ENGIE appears to be relying on their indirect and arms-length affiliate ENGIE EPS (an independent publicly traded company partially acquired by ENGIE Solar’s parent ENGIE S.A. in 2018) to provide all of their claimed “experience,”⁸⁷ 4) ENGIE EPS Engineer does not have any experience with any projects of similar size or function to those proposed here,⁸⁸ and 5) ENGIE EPS Engineer witnesses misrepresented their experience when testifying before the Public Auditor by implying that projects they had simply submitted proposals for were actually built successful projects.

152. ENGIE claims to have submitted a responsive bid due to ratings of their system that ENGIE provided.

⁸⁵ ENGIE Opening Statement [00:30:03]

⁸⁶ ENGIE Technical Proposal, Table A3.d.1 (Procurement Record Page 2114 of 12444)

⁸⁷ ENGIE Technical Proposal, Table A3.d.1 [sic] (Procurement Record Page 2116 of 12444)

⁸⁸ ENGIE Technical Proposal, Table A3.d.1 [sic] (Procurement Record Page 2116 of 12444)

153. It is only because of ENGIE's so-called "rating" that they can attempt to claim compliance when it is clear that what ENGIE claims to be a "rating" is a non-physically limited software setting that; 1) GPA has no way of verifying and 2) ENGIE can potentially change and reset remotely from outside of Guam without any accountability.⁸⁹

154. GPA was specifically asked during the clarification period of this procurement of the mathematical implications of the 145% requirement. GPA chose not to tell bidders that asked at the time if, like the project ENGIE ultimately submitted and the position GPA has taken since defending its award to ENGIE, the PV charging system capacity could exceed the limits bidders understood to be in place given the formulas provided to the bidders.

155. GPA could have told offerors that the system could have been larger when directly asked but chose not to provide such clarity.

156. GPA gave extremely vague answers to clarification requests on the matter of the implications of Amendment XIII, and, in some cases partial answers, even when asked direct questions by bidders, including questions asked by both GlidePath and ENGIE.

157. The result of GPA's failures to properly address the inquiries about Amendment XIII was a non-competitive procurement as some bidders diligently held to the 145% ratio requirement of Amendment XIII.

⁸⁹ July 9, 2020 Rosati Testimony [01:45:45]

158. GPA has explained, “that the intent of the 145% requirement is to require the ESS charge and discharge be asymmetrical with ESS discharge power required to be 30MWac at the point of connection and ESS charge power not to exceed 20.7MW.”

159. This explanation does not alter the fact that the plain language requirement in Amendment XIII commands that “the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system.” It is clear that the 145% requirement sets a size for the ESS that is explicitly tied to the size of the “PV charging system” and is not simply an expression of desire for an “asymmetrical” discharge of power.

GPA’S RECORD FOR THIS \$200,000,000.00 PROCUREMENT IS IN DISARRAY

160. The record of procurement maintained by GPA does not contain a sworn certification that conforms to the requirements of 5 G.C.A. § 5249, and continues to lack the vital log of communications required by 5 G.C.A. § 5249(b) that would provide insight into how, and with whom, the IFB specifications were developed.

161. GPA’s Procurement record that was submitted at the inception of GlidePath’s first appeal needed to be supplemented for the first time on January 16, 2020, and then multiple times thereafter.

162. GPA's continued supplementation of the procurement record comes after 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.⁹⁰

163. GPA would not have further supplemented its record unless it's Engineer, Jennifer Sablan, admitted during cross examination on July 6, 2020, the existence of correspondence and technical information from Mr. Burlingame of EPS. Ms. Sablan's testimony specifically contradicted GPA's earlier oral assertion to the OPA, through counsel, that the record was complete.

164. A second procurement record supplement containing previously undisclosed items including correspondence from Mr. Burlingame was provided on July 9, 2020, minutes before the examination of Dario Gigliotti of ENGIE EPS Engineer.

165. The second procurement record supplement contained documents material and directly relevant to the 145% ratio contained in Amendment XIII, as well as Mr. Burlingame's role in shaping that requirement.

166. The second procurement record supplement contradicted its earlier oral assertion to the OPA, through counsel, that the record was complete.

167. The second procurement record supplement contained several references to information not included in the, as supplemented, Procurement Record⁹¹ making it clear that the Procurement Record remained incomplete.

⁹⁰ March 3, 2020, Motion Hearing.

⁹¹ For example: 12/20/2018 email from Ms. Sablan to Mr. Burlingame "This is from the Phase III technical amendment EPS provided last year...", 12/14/2020 email

168. GPA supplemented the record that was supposed to be properly maintained on January 17, 2020, on July 9, 2020 and again on July 15, 2020. The supplements of July 9, 2020 and July 15, 2020 came after GPA counsel affirmatively informed the OPA, in response to GlidePath's original effort to have the record supplemented, that there were no further materials to provide.

169. The third (July 15, 2020) procurement record supplement contained additional references to documents not included in the, as already supplemented, Procurement Record⁹² again making it clear that; 1) not only did the Procurement Record remain incomplete but 2) GPA cannot provide a complete Procurement Record.

170. The supplemental material originally excluded from the procurement record by GPA was material in that it is reasonably clear that GPA accepted the Supplement and Update to Volume II Technical Qualification Requirements provided by Mr. Burlingame without significant discussion and directly incorporated the document into what became Amendment XIII.⁹³

171. There is no evidence in the Procurement Record of any material discussions between GPA and Mr. Burlingame related to the contents of this

from Mr. Burlingame to Ms. Sablan, indicating that a meeting took place for which no logs or notes appear in the procurement record, 11/30/2017 email from Mr. Burlingame to Ms. Sablan that includes a reference to a 11/4/2017 email from Ms. Sablan with an associated attachment, 9/9/2017 email from Mr. Burlingame to Mr. Cruz "John, I think we need to combine some of the elements of the paper we sent you on the ESS sizing and PV sizing..." (all 7/8/2020 supplement)

⁹² For example, an email on 8/24/2019 from Mr. Burlingame to Mr. Cruz that appears to be in response to an earlier email from Mr. Cruz which is not included in the procurement record (7/15/2020 supplement)

⁹³ 11/29/2017 email from Ms. Sablan to Mr. Burlingame (7/8/2020 supplement)

supplement nor is there any evidence of any substantial internal review by GPA of the document. It appears that there was only a single edit made by GPA to the proposed technical amendment prepared by EPS⁹⁴, with no evidence of any discussion between GPA and EPS of the numerous significant changes that the supplement made to the technical requirements of the IFB.

172. It seems as if GPA simply “stapled” the document provided by Mr. Burlingame onto the amendment and did not thoroughly review it at the time it was incorporated into the amendment, did not include Mr. Burlingame in a substantive manner in answering questions related to the supplement, did not receive any training by Mr. Burlingame on how to evaluate submitted proposals against the requirements in the supplement, and did not include Mr. Burlingame directly or indirectly in the evaluation of proposals against the highly technical requirements in the supplement. None of these factors could have been known without the late coming supplementation of GPA’s record of procurement.

173. GPA does not address the merits of GlidePath’s protest regarding the incomplete and un-maintained nature of the Procurement Record, and instead has called the Protest untimely since Mr. Burlingame’s name appears “in the procurement record at pages 10051, 10069, and 10073.”⁹⁵

174. Mr. Burlingame’s name does not appear three times. His name is repeated twice in a procurement record of more than 12,000 pages themselves containing tens of dozens of names. His name appears in a forwarded email chain

⁹⁴ 12/20/2017 email from Ms. Sablan to Mr. Burlingame (7/15/2020 supplement)

⁹⁵ GPA Protest Denial, p. 2.

where Jennifer Sablan states simply that she is working along with “any further ESS or interconnection requirements as recently discussed with Dave Burlingame and EPS team.”

175. The single reference to Mr. Burlingame in the voluminous record provides no indication in this email that there are other items missing from the procurement record that an offeror should have known existed within 14 days of the disclosure of the communication.

176. In fact, the reference to Mr. Burlingame does not even indicate that he is not an employee of GPA nor give any indication as to what “EPS” means let alone that it is a third-party consulting firm contracted by GPA.

177. It was not known until GPA eventually supplemented the deficient record following Ms. Sablan’s testimony that Mr. Burlingame was involved in the substantial written correspondence that actually took place, nor that such correspondence directly related to the matters primary to GlidePath’s protests.

178. The single reference to Mr. Burlingame does not reflect the magnitude of comments and involvement from EPS throughout this procurement, as discovered in the testimony provided by Ms. Sablan and in the supplemental procurement record submission that followed that testimony.

179. GPA’s timeliness argument ignores the fact that GPA itself affirmed, after questioning by GlidePath, on the record before the OPA— falsely— that the record was indeed complete, and that there were absolutely no other communications to provide, and furthermore, no log of communications to rely upon.

180. GPA again, falsely and on the record, affirmed the completeness of the Procurement Record on July 9, 2020 when, in fact and only days later, GPA provided additional supplements on July 15, 2020. Those supplements also appear to be incomplete.

181. GPA's assertion about the completeness of the record was exposed as false when Jennifer Sablan testified on July 6, 2020. GlidePath's protest on the record deficiency came within 14 days of that testimony, and is therefore timely within the law.

182. In addition, deficiencies continue, and GPA has yet to provide an executed certification that the Procurement Record is complete.

CONCLUSIONS OF LAW

1. A "Responsive bidder means a person who has submitted a bid which conforms in all material aspects to the Invitation for Bids." 5 G.C.A. § 5201(g).

2. "Responsiveness addresses whether a bidder has promised to perform in the precise manner requested by the government. To be considered for an award a bid must comply in all material respects with the invitation for bids. A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. If there is material nonconformity in a bid, it must be rejected. Material nonconformity goes to the substance of the bid which affects the price, quality, quantity, or delivery of the

article or service offered.” *Bean Dredging Corp. v. United States* 22 Cl. Ct. 519, 522 (1991).

3. Adherence to the plain language of the IFB is essential for bidders and the integrity of the procurement system. *Baldrige v. Government Printing Office*, 513 Fed.Appx. 965, 967 (Fed. Cir. 2013)(“If the plain language of the IFB unambiguously called for delustered laminate film, that language controls.”); *Professional Bldg. Concepts, Inc. v. City of Cent. Falls Housing Authority*, 783 F.Supp. 1558, 1563 (U.S. Dist. R.I. 1992), *aff’d Professional Bldg. Concepts, Inc. v. City of Cent Falls*, 974 F.2d 1 (1st Cir. 1992).(“Unless ambiguous, it is the language of the IFB which controls the form that a bid guarantee must take.”)

4. The plain language of Amendment XIII required that the PV Installation be limited to a physical size that was within the 1/145% ratio of the size of the ESS.

5. GPA used the word “shall” in directing bidders to adopt the 145% ratio limitation.

6. While the 145% requirement is coupled with the word “shall,” the other provisions of the amendment do not contain the same declaration of firm restrictions. For instance, GPA explains that “the PV may be scheduled to the maximum discharge rate allowed by the GPA system load.”⁹⁶ GPA uses similarly

⁹⁶ GEB 2-000160; Attachment B to Amendment No.: XIII to Invitation for Multi-Step Bid No.: GPA-007-18 for Renewable Energy Resource Phase III issued on January 25, 2019.

flexible language on how “GPA may schedule the energy delivery,” and how “It is anticipated the ESS loads will be changed every 15 minutes....”⁹⁷

7. GPA’s technical team made a decision to use mandatory language in Amendment XIII that “the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system.”

8. Both GlidePath and ENGIE noted the contrast between the compulsory, prescriptive nature of GPA's terminology regarding the 145% requirement and other technical aspects that were clearly open to interpretation (based on terms such as "may be") and structured their bids accordingly, with only GlidePath adhering to the physical limitation and ENGIE conveniently ignoring the physical limitation and instead adopting a different limitation to the DC/DC converter.

9. GPA⁹⁸ used the terms “PV Installation,” “PV Capacity,” and “PV charging system” in Amendment XIII interchangeably to refer to the physical limit of the installed solar panels on each project site.

10. GPA’s use of the word “capacity” in Amendment XIII’s illustrations confirms that GPA was calling for a physical limitation, despite the IFB having no definition section.

11. Even though the IFB did not define Capacity, the meaning of the term should have been clear to offerors. In the case of *Discover Prop. & Cas. Ins. Co. v.*

⁹⁷ GEB 2-000160; Attachment B to Amendment No.: XIII to Invitation for Multi-Step Bid No.: GPA-007-18 for Renewable Energy Resource Phase III issued on January 25, 2019.

⁹⁸ July 7, 2020 Testimony of Robert Burlingame [42:40].

Blair, No. EDCV 13-00290-VAP, 2014 WL 4412339, at *8 (C.D. Cal. Aug. 26, 2014),

the Court explained that:

“Load Capacity” is not defined in the Infinity Policy, nor is it specifically defined in any legal dictionary or California statute. As there is nothing to indicate that the parties intended “load capacity” to have a “technical or special meaning,” the Court interprets the term in its “ordinary and popular sense.”⁹⁹

12. The Court further explained that:

The Merriam–Webster Collegiate Dictionary defines “capacity,” as “the maximum amount or number that can be contained or accommodated” and “the potential or suitability for holding, storing, or accommodating.” Thus, the dictionary definitions of the terms “capacity” suggests that the ordinary meaning of the term refers to a “maximum” or “potential” amount that can be held or carried, rather than actual amount being carried or contained at a specific time. Considered together, the dictionary definitions of the terms “load” and “capacity” suggest that the ordinary meaning of the term “load capacity” is the maximum weight or amount that may be carried or held by something. When interpreted in the context of the Infinity Policy, the ordinary meaning of a “vehicle with a load capacity in excess of 1,500 pounds” is a vehicle that has can carry an amount in excess of 1,500 pounds.¹⁰⁰

13. ENGIE’s EPS Engineers confirm that “Capacity” means the “maximum power of the P.V. Installation...”¹⁰¹

14. ENGIE testified that the software control limiting its system to 20.7 MW could, in fact, be adjusted upwards and could likely be done so with minimal physical effort or adjustment. This fact means that ENGIE’s system’s “capacity” was higher than 20.7 MW, and thus fell beyond the 145 % ratio called for my Amendment XIII of the IFB.¹⁰²

⁹⁹ *Discover Prop. & Cas. Ins. Co. v. Blair*, No. EDCV 13-00290-VAP, 2014 WL 4412339, at *8 (C.D. Cal. Aug. 26, 2014) (internal citations omitted)

¹⁰⁰ *Id.*

¹⁰¹ July 8, 2020, Testimony of ENGIE EPS Engineer Rosati [01:36:35]

¹⁰² July 8, 2020, Testimony of ENGIE EPS Engineer Rosati[01:45:51]

15. Only GlidePath met the technical requirement of limiting the physical installation of PV Capacity to less than 20.7 MW in conformance with the 145% ration. GPA confirms this¹⁰³:

<u>Bidder</u>	<u>SF site</u>	<u>NBG site</u>
	ESS MW/PV MW	ESS MW/PV MW
GlidePath	30MW/20.6MW	30MW/20.6MW
KEPCO/Hanwha	30MW/21.06MW	30MW/21MW
AES	25MW/23.58MW	20MW/19.65MW
X-Elio	14MW/24.97MW	12MW/20.5MW
ENGIE	30MW/26.47MW	30MW/27.64MW

16. The first step of the IFB was an analysis of technical compliance in all material respects with the requirements of the IFB in conformance with 2 GAR §§3109(r)(1)'s command "to evaluate and determine the acceptability of technical offers."

17. It is clear that GPA did not evaluate the technical offers for compliance with the 145% ratio requirement, as only GlidePath provided a system that complied with the requirements of Amendment XIII.¹⁰⁴

¹⁰³ GPA Trial Brief, 5.

¹⁰⁴ ENGIE Exhibit K, page 8

18. Only GlidePath responded with a technical offer that met the 145% ratio. Even ENGIE recognized this, as its submitted Exhibit K demonstrates:

GLIDEPATH ONLY BIDDER TO MISINTERPRET IFB

BIDDER	South Finegayan			Naval Base		
	ESS rating [MW]	PV [MW DC]	GlidePath ratio*	ESS rating [MW]	PV [MW DC]	GlidePath ratio*
KEPCO / HANWHA	30	21.06	142%	30	21	143%
AES	25	23.58	106%	20	19.66	101%
X-ELIO	14	24.975	56%	12	20.5	59%
ENGIE	30	26.47	113%	30	27.64	109%
GLIDEPATH	30	20.6	145%	30	20.6	145%

* Would need to be ≥145% in GlidePath's erroneous interpretation

19. ENGIE Exhibit K makes it clear that only GlidePath submitted a bid that was responsive to the 145% technical requirement of Amendment XIII.

20. The pricing disparity is significant and should have alerted GPA to a failed procurement. First, the ratepayers will be paying for 100% of this system over a 20 year period. This was all done on an extremely detailed and finite set of requirements. The site was uniform to all bidders with detailed system requirements. Price variance cannot be attributed to solar panels, as those panels are commodities are commodities. When ENGIE was asked to explain the disparity they either could not or avoided the answer. The reality is with such a detailed and definitive set of parameters all of the bids should have been close in price.

21. The fact that only GlidePath submitted a technically responsive bid means that either other offerors ignored the technical requirement, or that GPA created an ambiguity without realizing that it did so.¹⁰⁵

22. Procurement law is well developed that price discrepancies caused by agency discrepancies should result in the cancellation of a bid.¹⁰⁶

23. It is fundamental that "The drafting of specifications to reflect the needs of the government and the determination as to whether those needs can be met by a given product are primarily with the jurisdiction of the procuring agency."¹⁰⁷

24. More, "full and free competition required cannot be obtained unless the invitation and the specifications are sufficiently definite to permit the preparation and evaluation of bids on a common basis. There can be no legal competition unless bidders are competing on a common basis."¹⁰⁸

¹⁰⁵ AES did not comply with 145% requirement. Hanwah/KEPCO did not comply with 145% requirement and did not offer a system that was DC coupled (Procurement Record page 1173 of 12444), X-Elio also did not comply with 145% requirement and also did not offer a system that was DC coupled (Procurement Record page 4922 of 12444),

¹⁰⁶ *Protests of: Rmd Nat'l Harbor Gp, LLC d/b/a Metro. Gaming*, DCCAB No. P-0967, 2015 WL 1090168 (D.C.C.A.B. Mar. 6, 2015). ("This Board has held that inadequate or ambiguous specifications, discrepancies in quantity for a basic year requirement, and discrepancies in price calculations are all compelling reasons to cancel a bid."); *See also, Dynamic Corp.*, B-296366 (June 29, 2005). ("Specifications must be sufficiently definite and free from ambiguity so as to permit competition on an equal basis.")

¹⁰⁷ *To the Sec'y of the Army*, 39 Comp. Gen. 570, 572 (Feb. 10, 1960) (internal citations omitted).

¹⁰⁸ *To the Sec'y of the Army*, 39 Comp. Gen. 570, 572 (Feb. 10, 1960) (internal citations omitted).

25. When confusion on specifications exists and “the full and free competition required was not obtained... the purported award is void.”¹⁰⁹

26. Cancellation is appropriate where “numerous inadequacies and ambiguities in the specifications caused the large differences in bid pricing and that the specifications, as written, did not adequately reflect the actual needs of the government.”¹¹⁰

27. GPA’s ultimate acceptance of ENGIE’s inclusion of extra solar generation capacity as part of the project prejudiced Glidepath and other offerors and resulted in a procurement that effectively compared “apples to oranges” and denied the ratepayers of Guam the opportunity to obtain the best competitive price for the IFB.

28. In the course of this appeal, it has also become evident that GPA failed to maintain a complete procurement record as required by 5 G.C.A. §5249.

29. GlidePath raised the issue of missing procurement record documents in its Motion for Order to Supplement Procurement Record filed on February 20, 2020. The portions of the record identified by GlidePath as missing were “(1) a log

¹⁰⁹ *Id.*; See Also, *C & D Contractors, Inc. v. Delaware Tech. & Cmty. Coll.*, 318 A.2d 142, 146 (Del. Ch. 1974). (“A contract cannot be said to have been let to the lowest and best bidder unless all bidders have been invited to bid upon the same specifications.”)

¹¹⁰ *SPECIAL SYSTEMS SERVICES, INC.*, Cont.Cas.Fed. (CCH) P 104264.; See also *NOOTKA ENVIRONMENTAL SYSTEMS, INC.*, Cont.Cas.Fed. (CCH) P 101857.

(“we do not think it unreasonable for the agency to cancel the solicitation for the purpose of readvertising the work under terms in which the government's requirements are clearly understood by all. The protest is denied.”)

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"— other relevant documents that would be required by 2 GAR Div. 4 §12105(e). Motion to Order Agency Supplement the Record, pg. 4.

30. 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. GPA rested on the position that in lieu of a log, all communications were provided. This is not enough under the law.

31. The Superior Court of Guam canceled a procurement in which the Government Agency kept an incomplete procurement record. *See Teleguam Holdings LLC v. Government of Guam and Pacific Data Systems*. The Court in *Teleguam Holdings* held that where the "procurement record upon which IFB GSA 064-11 and the proposed awards were based is incomplete, [a] revision of the consequent proposed awards cannot render the preceding procurement record complete and it would remain in violation of the Procurement Law ... " The court ordered the IFB and the proposed awards canceled, noting specifically that "[i]f another invitation for bids regarding this matter is issued, the agencies involved shall maintain a complete procurement record in compliance with the Procurement

Law." Because GPA failed to maintain a complete procurement record as required under 5 GCA §5249, the Notice of Award to ENGIE must be set aside.

32. Guam law is clear that, in order to protect the integrity of the bidding process, a procurement record must be kept and maintained. 5 G.C.A. § 5252 (a). That record must include the papers, papers including "drafts... and other papers or materials used in the development of specifications." 5 G.C.A. § 5249 (d). The record must also be certified, in writing, as having been properly maintained and complete. 5 G.C.A. § 5249.

33. The record of this procurement is incomplete, does not contain the drafts used in generating the specifications of Amendment XIII, does not contain a log of communications that could shed light on the conversations and parties involved with developing Amendment XIII, and does not contain a written certification that the record has been properly maintained.

34. Over the course of this Appeal, it has also become clear that GPA committed an error by providing cryptic, unclear, and evasive answers to bidders questions, including specific questions about how much PV Capacity could be installed at each site.

35. GPA's inadequate handling of bidder questions directly contributed the ambiguity surrounding the specifications provided in Amendment XIII, and must be corrected in future procurements.

36. It is fundamental that "An agency may not mislead an offeror through the framing of a discussion question or a response to a question into responding in a

manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal or about the government's requirements."¹¹¹

37. Because of these failings, an award cannot be made under this IFB, and the law requires the procurement be cancelled. *See, In the Appeal of Latte Treatment Center, Inc.*, OPA-PA-08-008, Decision (Office of the Public Auditor, February 26, 2009).

38. GlidePath timely protested these failings upon learning during the hearing on the merits of its Appeals that further information and correspondence relevant to Amendment XIII was not provided as part of the procurement record.

39. Even if GlidePath was somehow untimely in raising its protest regarding the incomplete record, Guam law would prevent an Award when the record was of procurement was not maintained. Such an award would be void.

40. The failure to disclose Mr. Burlingame's involvement with the development of the Amendment XIII specifications also prevented the parties from understanding that Mr. Burlingame's company, EPS, is listed as ENGIE's transmission consultant who potentially either assisted ENGIE in the preparation of its Bid, or could be in a position to financially gain from an award to ENGIE.

41. Guam law requires that the Affidavit Disclosing Ownership and Commissions requires the proposer to identify all "persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring and

¹¹¹ *Matter of Amec Earth & Env'tl., Inc.*, B-401961 (Dec. 22, 2009) (in context of negotiated procurements)

assisting in obtaining business related to the bid or proposal for which this affidavit is submitted ... " [CITATION]

42. No disclosure of Mr. Burlingame's financial benefit from an award to ENGIE was included in the procurement record, and no other offeror could have reasonably known about the connection until GPA engineer Sablan testified about Mr. Burlingame, his position with EPS, and EPS's consulting role with GPA on this procurement.

43. Once the technical proposals were received, GPA should have immediately recognized the significant variation between the bids on, what ultimately, were the same projects being built upon the same land.

44. The lack of uniformity in the numerous bids submitted to a very detailed IFB with numerous specific technical requirements should have been a clear indicator that the IFB had failed to be competitive.

45. If prior to award it is determined that a solicitation or proposed award of a contract is in violation of the law, then the solicitation or proposed award shall be: (Quoted from 5 GCA §5451 of the Guam Procurement Act.) (1) cancelled; or (2) revised to comply with the law. 2 GAR Div 4 § 9105.¹¹²

46. While GPA may have created ambiguity in its bid specifications and kept a woefully inadequate record of procurement, the fact remains that GlidePath, as the lowest priced responsive bidder, should be made the awardee of the IFB. *In the Appeal of Guam Publications, Inc.*, OPA-PA-08-007, pg. 16-17 (Sept. 2008).

¹¹² 2 GAR Div 4 § 9105.

CONCLUSION

GPA issued an IFB for a complex, one of a kind, procurement of renewable energy that contained several technical specifications that were tied to each other. GPA issued amendments creating a mandatory 145% link to the total PV system size. This meant that the project included an installed solar capacity threshold, but GPA is now ignoring that standard. The effect of GPA's technical amendments, and the refusal by GPA recognize those amendments for the system requirements that they were, is that only one bidder was responsive to the technical specifications actually issued by GPA. GlidePath should be made the awardee of GPA-IFB-007-018 as the only responsive bidder.

In the alternative, it has become clear that proceeding with an award to ENGIE means that the ratepayers of Guam will be purchasing solar energy from a sole source provider whose offered price could not intelligently be compared to any other offeror. Based on the foregoing the procurement and notice of award to ENGIE should be cancelled due to GPA's failings to properly issue specifications regarding the renewable energy sought under Phase III, the material disarray of the record procurement required to be kept under Guam law, and GPA's failure to provide sufficient clarifications that could have addressed any ambiguity it created with Amendment XIII. Furthermore, if GPA intends on proceeding with the reissuance of a procurement vehicle to secure renewable energy under Phase III, GPA must, as is common practice of authorities around the country when faced with complex procurements, engage and utilize the services of an experienced

engineering consultant to oversee the development of technical specification and amendments for the procurement, communications and clarifications with bidders, review of the technical responsiveness of those bidders, and proper maintenance of the procurement record.

Submitted this 11th day of August, 2020.

RAZZANO WALSH & TORRES, P.C.

By: 

JOSEPH C. RAZZANO
JOSHUA D. WALSH
Attorneys for Appellant
GlidePath Marianas Operations, Inc.