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10 **OFFICE OF THE PUBLIC AUDITOR**
11 **PROCUREMENT APPEALS**

12
13 IN THE APPEAL OF) **DOCKET NO. OPA-PA-21-002**
14)
15 TRACK ME GUAM, LLC,) **APPELLEE'S HEARING BRIEF**
16)
17 Appellant.)
18 _____)
19

20
21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22
23 record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the September 7, 2021,
24 hearing as follows.

25 **BACKGROUND**

26 On January 7, 2021, Guam Power Authority ("GPA") issued Invitation for Bid, GPA-IFB-
27 024-21, FLEET & FUEL MANAGEMENT SOFTWARE SERVICES FOR THE AUTHORITY'S
28 FLEET. Two bidders, Track Me Guam, LLC and PTI Pacifica, Inc. dba IT&E, expressed interest
29 in the IFB from January 7, 2021 to January 28, 2021, and both submitted bids in response to the
30 IFB. Prior to submission of the bids, the bidders had an opportunity to submit questions regarding
31 the IFB. GPA issued amendments I and II in response to these questions, and other amendments
32 to clarify the IFB.

33 On January 28, 2021, the bids were opened in the presence of company representatives.
34 The representatives were provided a copy of the Abstract of Bids which lists the two bids

1 submitted by Track Me Guam, LLC and PTI Pacifica, Inc. dba IT&E. The bid submitted by
2 **Track Me Guam, LLC was \$9,338.46 per month**, and the **PTI Pacifica, Inc. dba IT&E bid**
3 **was \$5,628.00 per month.**

4 On February 9, 2021, the evaluation committee met and requested clarification from PTI
5 Pacifica, Inc. dba IT&E. The evaluation committee requested further clarification on February 11,
6 2021, and February 19, 2021 from PTI Pacifica, Inc. dba IT&E. The evaluation committee met on
7 February 22, 2021, and determined that both bidders met the required bid specifications, and
8 recommends the lowest responsible and responsible bidder be awarded. The Bid Analysis dated
9 March 8, 2021, recommended that Line Item No. 1.0 be awarded to PTI Pacifica, Inc. dba IT&E in
10 the total amount of \$67,536.00 annually as being the lowest responsive and responsible bidder.
11 The Certification of Completed Procurement Record is dated March 10, 2021.

12 Track Me Guam, LLC filed a protest with GPA on March 12, 2021, which resulted in a
13 Stay of Procurement. A Bid Protest Supplement was filed on April 6, 2021. GPA denied the
14 protest on June 10, 2021, and there was a Lift of Stay when the protest was denied by GPA.
15 Track Me Guam, LLC filed an appeal to the OPA on July 1, 2021, and GPA filed a Stay of
16 Procurement on July 1, 2021.

17 II. DISCUSSION

18 A. THE IT&E BID WAS RESPONSIVE, AND THE AWARD FOR FLEET & FUEL
19 MANAGEMENT SOFTWARE SERVICES FOR THE AUTHORITY'S FLEET WAS
20 PROPERLY AWARDED TO IT&E AS IT&E MET THE SPECIFICATIONS IN THE
21 IFB.

22 Procurement law requires that GPA award to the lowest responsible and **responsive**
23 bidders. A responsive bidder is a person who has submitted a bid which conforms in all material
24 respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).
25

1 Further, any bidder's offering which does not meet the acceptability requirements shall be rejected
2 as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

3 Two bidders submitted bids which were opened by GPA on January 28, 2021. The
4 evaluation committee requested clarification from PTI Pacific, Inc. dba IT&E, and reviewed the
5 clarification. Track Me Guam, LLC sent a letter to GPA alleging the PTI Pacifica, Inc. dba IT&E
6 did not meet the bid specifications. In its protest, Track Me Guam, LLC alleges, without
7 substantiation, that the IT&E solution "can only fulfill the requirement of the IFB by integrating
8 the software proposed by IT&E with a Russian partner hardware solution from a Russian Partner
9 unprepared to do work in the United States market." The basis for this unsupported allegation is
10 not disclosed in the protest, or in the protest letters submitted to GPA. Further allegations from
11 Track Me Guam, LLC are not supported by documents showing that the IT&E submission does
12 not meet the GPA bid specifications.

13 The GPA evaluation committee carefully reviewed the submissions of the both bidders,
14 and determined that the submissions of both bidders met the GPA bid specifications. There was no
15 determination made as to which bid proposed a superior product, but only a determination that the
16 bid specifications were met. It is not reasonable to expect the bid evaluation committee to be an
17 expert on Russian hardware and software, which the Track Me Guam, LLC President claims to be
18 an expert on. A review of the bid abstract indicates a substantial difference in price between Track
19 Me Guam, LLC and PTI Pacifica, Inc. dba IT&E. The bid submitted by Track Me Guam, LLC was
20 \$9,338.46 per month, and the PTI Pacifica, Inc. dba IT&E bid was \$5,628.00 per month.

21 5 GCA §5211(g) provides that "Award. The contract shall be awarded with reasonable
22 promptness by written notice to the lowest responsible bidder whose bid meets the requirements
23 and criteria set forth in the Invitation for Bids ..." as cited in *Pacific Data Systems, Inc. vs.*

1 *General Services Agency, OPA-PA 15-012. In the Appeal of I-A Guam WEBZ, OPA-PA 16-002*
2 also addresses the issue of bid evaluation and stated that “the invitation for bids shall set forth the
3 evaluation criteria to be used and no criteria may be used in bid evaluation that are not set forth in
4 the Invitation for bids.” 5 GCA §5211(e) and 2 GAR, Div 4, Chap 3, §3109(n)(1).

5 Procurement law requires that GPA award to the lowest responsible and **responsive**
6 bidders. A responsive bidder is a person who has submitted a bid which conforms in all material
7 respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).
8 GPA properly awarded Line Item No. 1 to IT&E as the lowest responsible and responsive bidder.
9 The price proposal evaluation and bid abstract clearly demonstrate that the IT&E bid was the
10 lowest bid. The bid was evaluated and awarded based on the bid specifications and evaluation
11 criteria.

12 CONCLUSION

13 GPA requests that the appeal of Track Me Guam, LLC be dismissed, and that the Public
14 Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

15 **RESPECTFULLY SUBMITTED** this 3rd day of September, 2021.

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19 D. GRAHAM BOTHA, ESQ.
20 GPA General Counsel