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OFFICE OF PUBLIC ACCOUNTANTS  
PROCUREMENT APPEALS  
DATE: 02109 12023  
TIME: 3:49 PM BY: KMSB  
REF ID: OPA-PA-23-001

*Attorney for the Guam Power Authority*

OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-23-001
	)	
JMSI Electrical Guam LLC,	)	AGENCY REPORT
	)	
Appellant.	)	
_____	)	

Appellee GUAM POWER AUTHORITY (GPA), by and through its attorney, D. GRAHAM BOTHA, ESQ., hereby submits its Agency Report in the form required under 2 G.A.R. §12105:

- (a) A copy of the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on January 27, 2023, by GPA.***
- (b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on January 27, 2023, by GPA.***
- (c) A copy of the solicitation, including the specification or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on January 27, 2023, by GPA.***
- (d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on January 27, 2023, by GPA.***
- (e) Any other documents which are relevant to the protest, including the contract, if one has been awarded, pertinent amendments, and plans and drawings: ***Previously submitted to the Office of the Public Auditor ("OPA") on January 27,***

**2023, by GPA.**

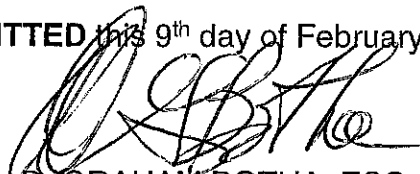
(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: ***Previously submitted to the Office of the Public Auditor (“OPA”) on January 27, 2023, by GPA.***

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal: ***Please see attached.***

(h) If the award was made after receipt of the protest, the report will include the determination required under 2 G.A.R. §9101(e): ***Not applicable.***

(i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding: ***Previously submitted to the Office of the Public Auditor (“OPA”) on January 27, 2023, by GPA.***

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of February, 2023, by:

  
D. GRAHAM BOTHA, ESQ.  
GPA General Counsel

**STATEMENT ANSWERING ALLEGATIONS OF APPEAL**

(As required by 2 G.A.R. §12105(g))

**I. RELEVANT BACKGROUND**

**A. GPA SOLICITS QUOTES FOR RFQ-34372, ADDITIONAL ACCESS CONTROL SYSTEM FOR THE LOBBY ELEVATOR AND STAIRWELL #3**

On November 3, 2020, Guam Power Authority (“GPA”) issued RFQ-34372, ADDITIONAL ACCESS CONTROL SYSTEM FOR THE LOBBY ELEVATOR AND STAIRWELL #3, (Tab “28). Multiple vendors were provided with the RFQ-34372 and were notified of a Non-Mandatory Site Visit (Tab “23”). JMSI and Solutions Guam, its subcontractor, attended the site visit on September 5, 2020. Four vendors responded, but only one quote was received from Oceania Elevator LLC (dba JMSI Electrical Guam LLC), as shown on the Abstract of Quotes (Tab “22”). Oceania Elevator LLC provided a response to the Request for Quotation with an attached Price Schedule on November 25, 2020 (Tab “23”). A Notice to Proceed was issued on December 3, 2020, with a commencement date of 1/6/2021 to expire on March 30, 2021 (Tab “20”). All vendors were provided with a copy of the Scope of Work for Additional Access Control System for the Lobby Elevators and Stairwell #3 dated September 2020 (Tab “20”). Amendment 1 of the Purchase Order was issued May 10, 2021 to extend the expiration from March 30, 2021 to May 19, 2021 (Tab “16). Amendment No. 2 of the Purchase Order was issued June 18, 2021 to extend the expiration from May 19, 2021 to June 21, 2021 (Tab “15”). The Manger of Engineering issued a Memo for Amendment No. 3 on August

6, 2021 to extend until September 27, 2021. (Tab "10"). Amendment No. 4 was issued to extend from September 30, 2021 to September 30, 2022 (Tab "2"). A Notice of Delivery Default and to Cure was issued on November 23, 2021 (Tab "6").

JMSI wrote a letter to GPA on November 10, 2022 regarding the dispute and for payment under the purchase order (Tab "2"). JMSI filed its appeal to the OPA on January 19, 2022 (Tab "2").

## II. DISCUSSION

### A. JMSI CLAIMS THE SCOPE OF WORK HAS BEEN COMPLETED AND HAS DEMONSTRATED THE PANEL WORKS

The Scope of Work was clearly defined in the Request for Quotes and was provided to all vendors, including JMSI. JMSI insists that the work was complete despite clear and convincing evidence to the contrary, as set forth in the emails between the parties, contained in the procurement record. The work is not complete and has never been complete, contrary to the assertions of JMSI counsel. The JMSI letter of September 21, 2022 is clear evidence to the contrary, as JMSI includes a "\$5,000 refund to cover work that could not be done on elevator due to existing conditions and boards that do not seem to be working." Those "boards" were installed by JMSI and were required to work. The contract has been extended numerous times to give JMSI a chance to complete the work required under the contract scope of work. Numerous emails were sent to JMSI regarding the deficiencies in their work, and numerous in person meetings were held at GPA to resolve different issues.

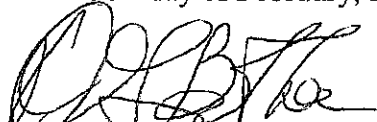
The bottom line is that the access control reader installed by JMSI don't work as required. JMSI asserted incorrectly that there was an issue with the GPA network somehow not

communicating with the access car readers installed by JMSI. GPA proved that was incorrect and notified JMSI that the ACS card reader on the 1<sup>st</sup> floor stairwell was working through existing ACS panel (i.e. old GPA panel), and requested JMSI on August 30, 2022 to troubleshoot the newly installed ACS panel. Unfortunately, despite the additional time provided JMSI was never able to make the installed equipment work. JMSI sent a letter on September 21, 2022, and GPA responded on September 23, 2022 asking questions about the remaining work and warranty, which were never addressed by JMSI. GPA can't pay for equipment not properly installed as provided for under the Request for Quotes and Scope of Work. GPA has paid JMSI more than the Payment Schedule provides, despite the equipment not working.

#### CONCLUSION

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

**RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of February, 2022, by:



D. GRAHAM BÖTHA, ESQ.  
GPA General Counsel