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**OPA-PA-23-004, In the Matter of the Appeal of Dooik Eng, Co., Ltd.**

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Mon, Dec 11, 2023 at 4:54 PM

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Hafa Adai Jerrick,

Camacho & Taitano LLP through Shannon Taitano, Esq., hereby submits this email filing regarding the above subject procurement appeal. This email consists of one (1) document, as follows:

- Dooik Eng Co., Ltd's Hearing Brief ( **11 pages**)

Please let me know if you have any questions. Enjoy the rest of your evening.

Thank you,  
Camarine

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 **Dooik's Hearing Brief.pdf**  
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7 **THE OFFICE OF PUBLIC ACCOUNTABILITY**

8 **IN THE MATTER OF THE APPEAL OF** )  
9 )

Docket No. OPA-PA-23-004

10 **DOOIK ENG CO., LTD.,** )  
11 )

**DOOIK ENG CO. LTD.'S  
HEARING BRIEF**

12 Appellant. )  
13 )  
14 )

15 **I. INTRODUCTION**

16 Dooik Eng Co., Ltd. (Dooik) seeks relief from the Guam Power Authority (GPA)  
17 for arbitrarily denying it the opportunity to compete in the procurement of a  
18 professional management contract (PMC) for the Yigo Diesel Generators. Based on  
19 Dooik's experience and qualifications, GPA previously recommended awarding Dooik  
20 a contract in a nearly identical procurement for the maintenance of the Yigo Diesel  
21 Generators. Dooik should again be deemed eligible for this year's procurement of a  
22 performance management contract for the Yigo Diesel Generators.  
23



1 and had nothing to do with the overhaul of the units as originally noted in the 2020  
2 cancellation. Dooik felt compelled to appeal the decision without any additional  
3 explanation from GPA, especially since its technical proposal did not include GPA  
4 staffing.

5  
6 **III. ISSUES PRESENTED**

- 7 1. Whether GPA acted arbitrarily when it determined Dooik’s technical proposal  
8 was unacceptable.
- 9 2. Whether GPA properly justified the use of Multi-Step Sealed Bidding.
- 10 3. Whether GPA violated the procurement law:
- 11 A. when it failed to include “potentially acceptable” as an evaluation  
12 criterion
- 13 B. when it designed a scoring rubric where “satisfactory” technical offers  
14 would be deemed “unacceptable”
- 15 C. when it failed to evaluate Dooik’s technical offer according to the  
16 published IFB instructions
- 17
- 18 4. Whether GPA violated 5 GCA § 5150 by not consulting with an assistant  
19 attorney general or designated assistant attorney general at every phase of the  
20 procurement.

21  
22 **IV. STANDARD OF REVIEW**

23 The Public Auditor has jurisdiction to review and determine de novo any matter  
24 properly submitted to him. 5 GCA §§5425(e) (2005). Under this *de novo* review,  
25 neither factual nor legal conclusions made by the procuring agency in denying a protest  
26

1 are entitled to deference. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020  
2 Guam 20.

3  
4 **V. ARGUMENT**

5 **A. GPA arbitrarily determined Dooik's technical proposal was unacceptable.**

6 Dooik is a seasoned company with experience managing and operating diesel  
7 power plants. Dooik's president, SB Moon, has managed and maintained other GPA  
8 generators. It is also a sales agent for a leading manufacturer of diesel engines and  
9 supplier of stationary diesel power plants. Based on Dooik's experience and  
10 qualifications, GPA previously recommended awarding Dooik a contract in a nearly  
11 identical procurement for the maintenance of the Yigo Diesel Generators.

12 Dooik understands that the fact that GPA previously recommended awarding it  
13 this contract does not guarantee award in this procurement. However, it defies logic to  
14 go from GPA recommending award to Dooik to GPA essentially determining that  
15 Dooik cannot provide the services requested. The arbitrariness of GPA's decision,  
16 unfortunately, is rooted in the fact that this procurement was flawed from its inception.

17  
18 Dooik scored 75% in the 2020 procurement for the PMC.<sup>1</sup> GPA claims that  
19 Dooik scored 52.5% in this procurement, nearly twenty percent (20%) below the  
20 seventy percent (70%) threshold it set for an acceptable bid. GPA claims that this  
21 difference is because of the change in scope with respect to staffing needs. Specifically,  
22 GPA has repeatedly tried to justify the over 20% drop in Dooik's score is because  
23  
24

25 \_\_\_\_\_  
26 <sup>1</sup> This controls for the evaluator who scored for categories with a maximum potential of 75 points instead of 1500 potential points.

1 bidders now needed to assume that they would need to completely staff the plant and  
2 that no GPA staff would be available.

3 First, GPA's position is not reflected in the express terms of the IFB. In  
4 particular, the IFB's scope on staffing included some of the following provisions:

5 Section 3.0 includes GPA staff assigned to augment staffing at the  
6 Yigo Diesel Generators, if any.

7 Section 3.7 provides that the organization will be composed of  
8 contractor management and *possibly* GPA Yigo Diesel staff.

9 Section 3.8 provides that GPA may assign GPA employees to operate  
10 and maintain the Yigo Diesel Generators. If GPA assigns employees  
11 for operations of the Yigo Diesel Generators, the contractor shall  
12 manage the GPA employees and ensure that the personnel receive  
13 appropriate training.

14 Section 3.9 provides that the contractor's disapproval of GPA  
15 employee requests for authorized absence shall be based solely upon  
16 scheduling needs to ensure the safe and efficient repair, management,  
17 operation, and maintenance of the Yigo Diesel Generators.

18 GPA arbitrarily weighed competing proposals on an ambiguous scope not clearly  
19 identified by the IFB. It is arbitrary to penalize bidders for an ambiguity that GPA  
20 created.

21 Second, GPA argues that Dooik should have known this because of GPA's  
22 responses to the bidder questions. An examination of GPA's answers, however, reveals  
23 that GPA again was not clear whether staffing was to be part of the technical proposal  
24 or part of pricing. As GPA points out in its Agency Report, GPA instructed bidders that  
25 they "shall assume that they will need to completely staff the plant, both in operations  
26 and maintenance and that no GPA staffing is available *when establishing their bid  
prices.*" Agency Report at p. 3 (emphasis added). Again, Dooik should not be penalized

1 because GPA created an ambiguity in the exact responsibilities a bidder had to include  
2 in its technical proposal.

3 An examination of Dooik's scores in the staffing portion of the scoresheets  
4 reveals that that change in scope alone could not justify the minimum 20% drop in  
5 Dooik's score from 2020. A 20% drop in score would require a reduction of 300 raw  
6 points for each evaluator, or 1,500 raw points across the five evaluators. Even under  
7 the most generous examination of GPA's scoresheet, staffing would only have a  
8 maximum potential of 267 raw points. So even if Dooik scored zeroes across all  
9 staffing requirements, it still would not justify the drop in score.  
10

11 But Dooik did not score zeros across all staffing requirements. In fact, Dooik  
12 scored satisfactory or higher in *every single* category that involved staffing for every  
13 evaluator (who actually completed the scoresheet). GPA's attempt at justifying it  
14 going from recommending award to Dooik to not even accepting Dooik's proposal is  
15 not convincing.  
16

17 This does raise another more fundamental flaw with GPA's procurement: a  
18 bidder could be rated satisfactory in every category and GPA would determine that the  
19 proposal would not be acceptable. Typically, an IFB is used to identify a qualified  
20 bidder who can provide the services. GPA's score sheet is not in line with that policy.  
21 Instead, GPA created a rubric with a range of zero (0) to five (5) with 5 as excellent and  
22 3 as average.<sup>2</sup> GPA then determined that a minimum score of 70% would be needed for  
23

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24  
25 <sup>2</sup> 5 is excellent and plentiful relevant qualifications and project experience and very highest client references; 3 is average relevant qualifications and  
26 project experience and average client references; 1 is poor relevant qualifications and few relevant projects and fair client references; and, 0 is no  
substantial relevant experience.

1 a proposal to be deemed acceptable. Mathematically, a bidder would need to score  
2 above average or excellent on multiple categories for GPA to even consider their bid.  
3 This is contrary to the policies of the Procurement Law.

4 As mentioned above, Dooik scored above average and average in the staffing  
5 category with scores of 3 and 4. Dooik scored above 60%, or above satisfactory, for  
6 every evaluator who scored the entire worksheet. It was only when GPA factored in the  
7 evaluator who only scored three categories.  
8

9 This is really where the flaw of this procurement truly comes out. As set forth  
10 below, having one of the five evaluators only score specific categories was not  
11 explained in the IFB. Furthermore, instead of controlling for the evaluator only scoring  
12 three categories, GPA appears to have used that point total against the total maximum  
13 points available. Specifically, the maximum total raw points for the three categories  
14 that the evaluator scored was forty-five points. Dooik scored thirty-three points out of  
15 the forty-five total points for an average of 73.3%. Instead, GPA appears to have given  
16 Dooik a score of 2.2%, or 33 points divided by the 1500 total points available. That  
17 appears to be the only method that GPA could have used to determine that Dooik had a  
18 score of 52.5% when every other evaluator rated Dooik satisfactory or above.  
19

20  
21 GPA erred in its evaluation of the technical category because the evaluation was  
22 arbitrary and capricious and contrary to the requirement that specifications (and  
23 evaluation of proposals in response to specifications) permit maximum practicable  
24 competition. GPA failed to treat Dooik fairly and equitably as part of the procurement  
25  
26

1 process, as required by statute. Dooik should qualify to compete in phase two of the  
2 multi-step procurement process.

3 B. GPA failed to properly justify its use of the Multi-Step Bid.

4 Guam's procurement regulations require a determination prior to use of  
5 competitive selection procedures. 2 GAR Div. 4 § 3114(c). Multi-Step Sealed Bidding  
6 may be issued when it is considered impractical to initially prepare a purchase  
7 description to support an award based on price. 5 GCA 5211(h). The procurement  
8 record did not include a written determination that the use of a multi-step sealed bid is  
9 the appropriate method of solicitation for a performance management contract. *See*  
10 GCA § 5216 and 2 GAR Div. 4 § 3114(c). GPA failed to justify the use of a multi-step  
11 sealed bid.  
12

13  
14 First, no statute authorizes GPA to procure a PMC through a multi-step sealed  
15 bidding process. GPA has the authority to enter into PMCs under 12 GCA 8104(o), but  
16 the statute does not provide the selection method, unlike another agency statute. For  
17 example, the Port Authority of Guam has the authority to issue a Request for Proposal  
18 (RFP), Multi-Step Bid (MSB), or Invitation for Bid (IFB) for a PMC. 12 GCA §10401.

19 Without specific statutory authorization, GPA has to follow Guam's  
20 Procurement Law, which requires all government contracts to be awarded by  
21 competitive sealed bidding except for the procurement of professional services. 5 GCA  
22 § 5210 and see also 5 GCA § 5211(a). The solicitation method for professional services  
23 is through a Request for Proposals. *See* 5 GCA § 5216.  
24

1 The procurement of a professional management contract to manage, operate,  
2 and maintain the Yigo Diesel Generators is for professional services. The PMC's scope  
3 of work will require the exercise of professional and significant business judgment. *See*  
4 *Fleet Serv., Inc. v. Dept. of Admin.*, 2006 Guam 6.<sup>3</sup> The PMC will oversee the  
5 implementation and completion of all operations and maintenance activities. The  
6 scope of work also includes the management of staff, budget, procurement, inventory  
7 management and control, and engineering and technical services required to operate  
8 and maintain the Yigo Diesel Generators, including providing and managing licensed,  
9 certified and experienced technicians. Since the procurement of a PMC is for  
10 professional services, GPA should have followed the RFP process.

11  
12 C. GPA violated several provisions of Procurement Law.

13  
14 Dooik first became aware of the procurement violations when GPA filed the  
15 procurement record and agency report with the Office of Public Accountability (OPA).  
16 The violations are not minor informalities that can be waived. These claims can impact  
17 whether Dooik and possibly more bidders can compete as the lowest bidder to this  
18 procurement.

19 1. Score sheets and scoring rubric.

20  
21 By failing to follow IFB instructions, GPA violated the procurement law. GPA  
22 erred in its selection process because it did not comply with the law mandating that the  
23 factors used in the evaluation and selection process must be described in the Multi-

24  
25 <sup>3</sup> In *Fleet*, the operation, management and maintenance of the Guam Public Transit System were not professional services. The Department of Administration  
26 planned all operations such as schedules, routes, fares and fare collection procedures, contractor was only expected to provide buses, drive them, repair them,  
and clean them; and also to sell tickets, but only in accordance with DOA's plan. Contractor was not expected to exercise any professional or significant business  
judgment in performing any of the services on behalf of government. The use of the RFP procedure was wrong, and thus the entire process invalidated.

1 Step IFB. *See* 2 GAR Div. 4 § 3114(f)(1)(H)(vi). All evaluation committee members  
2 were required to score according to the IFB. Otherwise, GPA should have disclosed in  
3 the IFB the method of how the controller would only evaluate and score the financial  
4 portion of the technical proposals and correspondingly reduce the weight attributed to  
5 the limited scoring to the total score of the technical proposals.  
6

7 Failing to follow the IFB instructions also impacted the flawed scoring rubric,  
8 as previously discussed above. These violations have negatively impacted Dooik’s  
9 final score.

## 10 2. Scoring Categories

11 GPA failed to follow procurement regulations by not including “potentially  
12 acceptable” as an evaluation category of technical proposals in the Multi-Step IFB.  
13 Guam Procurement Regulations require bidders’ unpriced technical offers to be  
14 evaluated solely in accordance with the criteria set forth in the IFB and that the  
15 unpriced technical offers be categorized as acceptable, potentially acceptable,  
16 reasonably susceptible to being made acceptable, or unacceptable. *See* 2 GAR §  
17 3109(t)(4). This omission could have permitted Dooik the opportunity to make its  
18 proposal acceptable as it did in the 2020 procurement and likely compete in phase two  
19 of the Multi-Step IFB process.  
20

## 21 3. 5 GCA § 5150

22 GPA failed to show that it complied with 5 GCA § 5150. The Guam  
23 Procurement Law requires that the Attorney General or designee serve as a legal  
24 advisor during all phases of the procurement process. 5 GCA § 5150. GPA contends  
25

1 that GPA had legal counsel when the bid was issued in January 2023 but did not  
2 provide the special assistant attorney general (SAAG) appointment for procurements  
3 over \$500,000 or the completed SAAG checklist for this specific procurement. GPA  
4 has not demonstrated that the appointed attorney acted as legal advisor during all  
5 phases of the procurement process as required by the statute.  
6

7 **CONCLUSION**

8 Based on the above, Dooik respectfully requests that Dooik’s technical proposal  
9 be deemed acceptable and qualified to compete in phase two of the Multi-Step IFB for a  
10 PMC for the Yigo Diesel Generators.

11 Dated: December 11, 2023.

12 **CAMACHO & TAITANO LLP**  
13 Attorneys for Appellant

14 By:   
15 **SHANNON TAITANO**