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Attorney for Appellant
IP&E Holdings, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
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IP&E HOLDINGS, LLC.,)
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)
Appellant.)
)

It is a matter of Guam procurement law that a government "contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and the criteria set forth in the Invitation for Bids and whose bid amount is sufficient to comply with Article 13 ..." 5 CGA § 5210(g). It is IP&E's position that under the criteria set forth in the IFB that it is the lowest responsible bidder for the contract and thus GPA is required to make award to IP&E.

As noted in the Bid Abstract, IP&E provided the lowest overall yearly price of \$16,949,400 and Mobil provided a yearly price of \$17,097,000. Thus, on an overall aggregate bid basis IP&E provided an annual cost savings of \$147,000 and a savings of \$442,800 over the entire contract period. Protest Letter Ex E.

It is GPA's position that, notwithstanding the bid language, it retained the ability to issue multiple awards and that a multiple award of the contract line items between the bidders (Mobil \$10,477,000) and (IP&E \$6,396,000) results in the lowest cost to GPA in the amount of \$16,873,000. Thus, representing a potential savings of \$76,400, or less than ½ of 1 percent, as compared the awarding the lowest overall aggregate bid of \$16,949,400 submitted by IP&E.

As noted above, IP&E contends that award should be directed to IP&E as the lowest overall bidder. The Comptroller General which has jurisdiction of procurements for federal agencies has sustained a protest on this same argument in *Northeast Construction Co.* 61 Comp. Gen. 317, 82-1 CPD ¶293 (1982). In *Northeast* there were several contract lines items for bid for construction services. Although it would have been less expensive to award individual contract line items to multiple vendors, the Department of Defense in that case was directed by the Comptroller General to award to the sole bidder that, like IP&E in this case, provided the lowest overall price.

In *Northeast* the bid required that the "low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount..." The bid also provided language similar to the instant procurement stating that "[a]ward will be made to the Responsible Bidder whose bid is Most Advantageous to the Government, price and other factors considered, and that the Government may accept any item or items or combination of items of a Bid absent a provision to the contrary..." *Id.*

The Comptroller General in *Northeast* also specifically noted that in that case because the difference in amount was minor, as it is here – less than ½ of 1 percent, and that because the bids had publically opened that re-solicitation was not proper and sustained the protest and directed award to the lowest overall bidder.


GPA's argument that it notified bidders that it reserved the right to make awards on a per plant basis, must fail as it did in Northeast because in this particular instance the bidders were advised that award would be made to the **BIDDER** that offered the lowest overall amount. As noted by the Comptroller General in *Northeast* the failure to include multiple awards in the evaluation factors further indicates that the agency in that case did not contemplate making multiple awards at the time was issued. *Id.*

Had GPA intended or desired to make multiple awards on a per plant basis it should have been specifically included that in the evaluation factors but failed to do so. In this regard, IP&E refers the OPA to Response Attachment A, and found on line, which is an excerpt from the previous GPA procurement which specifically provided for award on a per site basis rather than the overall methodology employed in this procurement. Had GPA wished to do the same here it clearly could have done so. Finally, because IP&E always, and continues to believe, that GPA would make award on an overall basis based on the IFB language, it had no reason to question the clearly stated award criteria in advance of the Notice of Award.

CONCLUSION

Based on the stated evaluation criteria IP&E requests that the OPA sustain the IP&E protest and direct award to IP&E and award all legal and equitable remedies that IP&E may be entitled to as a result.

Respectfully Submitted this 19th day of September 2014.

By: 
Steven Carrara
IP&E General Counsel

4. **RECEIPTS, REGISTRATION OF BIDS AND CONFIDENTIALITY.**

The sealed bids shall be opened publicly on _____, 2009 at 2:00 P.M., in the Guam Power Authority Procurement Conference Room.

For the purposes of this solicitation and bids submitted thereunder, the laws, rules and regulations of Guam concerning confidentiality shall govern. If the Bidder does not want trade secrets or other proprietary data he submitted disclosed to the public or used by the GPA for any purpose other than the evaluation of his bid, he shall designate such trade secrets or other proprietary data to be confidential and the title page with the following legend; "This data furnished in connection with our bid for supply of fuel oil shall not be disclosed outside the GPA or disclosed in whole or in part or any purpose other than to evaluate the proposal; provided, that if a Contract is awarded to this bidder as a result of, or in connection with the submission of this data, the GPA shall have the right to duplicate, use, or disclose the data to the extent provided in the Contract." This restriction does not limit the GPA's right to use information contained in the data if it is obtained from another source without restriction. The General Manager of GPA or his designee shall examine the bids and determine the validity of any requests for non-disclosure of data as requested by the above legend and he shall take such other action as he is required to by Section 3-202.12.3 of the Guam Procurement Regulations. Bids and modifications shall be time-stamped upon receipt and held in a secure place until the established opening date.

5. **MODIFICATION OR WITHDRAWAL OF BIDS.**

Bids may be modified or withdrawn by written notice received in the office of GPA prior to the time and date set for the opening scheduled for _____, 2009, at 2:00 P.M.. [There shall be no modifications and/or withdrawals after the opening date of bids].

6. **LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS.**

Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after 2:00 P.M., _____, 2009, is late. No late bid, late modification, or late bid, late modification, or late withdrawal will be considered.

7. **AWARD.**

Bids will be reviewed and evaluated by GPA and will determine the lowest and most responsive bidder for each item (sites) as indicated, and that will be most advantageous to GPA. A written Letter of Award (acceptance of offer) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the offer shall be deemed to result in a binding Contract without further action by either party. GPA reserves the right

to waive informalities and minor irregularities in bids received.

A. In the evaluation process, the following factors will be considered (although not necessarily in the order of importance):

- (1) Price and contract cost;
- (2) Whether the bidder's ultimate offer meets and conforms with the announced requirements of **GPA** in all material respects;
- (3) Previous Experience in meeting requirements of a similarly sized or larger contract;
- (4) Financial Strength and
- (5) Overall clarity and presentation of bid and plan to supply fuel to GPA, i.e. how supplier will obtain fuel, how fuel will be delivered to GPA, alternative supply source, etc.;
- (6) Whether the bidder has:
 - (a) the appropriate financial, material, equipment, facility, and personnel resources and expertise, necessary to indicate its capability to meet all Contractual requirements;
 - (b) satisfactory references;
 - (c) qualified legally to Contract with the territory; and

B. Bidder is responsible for providing adequate information on operating experience and on financial status (i.e. annual report with audited financial statements) and references for use in evaluating its capabilities.

C. In addition to the evaluation criteria, GPA may require submission of descriptive literature, technical data, or other material. It may also require accomplishing any of the following prior to award:

- (1) inspection or testing of a product prior to award for such characteristics, as quality or workmanship;
- (2) examination of such product as to compatibility, grade, appearance, texture, or
- (3) other examinations to determine whether it conforms with any other purchase description requirements.