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5 *Mobil Oil Guam Inc.*

6 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
7 **PROCUREMENT APPEAL**

8 **In the Matter of**) **Docket OPA PA-14-008**
9)
10 **IP&E HOLDINGS, LLC.,**)
11 **Appellant,**) **COMMENTS**
12 **And**) **OF INTERESTED PARTY**
13)
14 **GUAM POWER AUTHORITY,**)
15 **Purchasing Agency.**)

16 On September 10, 2014, Mobil Oil Guam Inc. ("Mobil") received Guam Power
17 Authority's ("GPA") Agency Report in the present procurement appeal filed by IP&E
18 Holdings, LLC ("IP&E"). Mobil hereby submits the following comments.

19 Guam's procurement law provides, in the very first section of the statute, that one of the
20 purposes and policies governing Guam procurement is "to provide increased economy in
21 territorial activities and to maximize to the fullest extent practicable the purchasing value of
22 public funds of the Territory." 5 G.C.A. §5001(b)(5). The award made by GPA abides by this
23 policy. GPA's award, made per plant location, maximizes its purchasing capability and
24 provides the best overall price for Guam ratepayers.

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1 **A. The Invitation for Bid (“IFB”) Was Not Ambiguous**

2 GPA’s Agency Report makes clear that there can only be one logical interpretation and
3 that IP&E’s attempt to create ambiguity where none exists must fail. Section 2.13 of the IFB
4 clearly states that the “contract will be awarded in whole **or per plant location** to the BIDDER
5 evaluated as being qualified and with the best-priced proposal.” (emphasis added). Thus, IP&E
6 was on notice that the bid could be awarded to the parties in its entirety or per plant location.
7

8 While IP&E argues that it understood the term “BIDDER” to mean only the singular
9 form of the word, the clear language of the IFB, as stated in Section 5.1 states that “[w]herever
10 used in these General Conditions or in the other Contract Documents, the terms used have the
11 meanings indicated which are applicable to both the singular and the plural thereof.” Thus,
12 IP&E should have been aware that terms such as “BIDDER” could mean either the singular or
13 the plural form of the word. IP&E’s misunderstanding of the term “BIDDER” can not support
14 a legitimate challenge to GPA’s award under its IFB.
15

16 **B. IP&E’s Argument Ignores the Reality of the Award**

17 Rather than arguing against the award that was actually made by GPA, IP&E instead
18 insists that its bid was better than a scenario in which the award were made entirely to Mobil,
19 which it was not. IP&E claims that, had the contract been awarded to Mobil in its entirety
20 (which again, it was not), IP&E’s proposal would save GPA and the ratepayers of Guam
21 \$147,600 per year. However, this argument is irrelevant because GPA did not award the
22 contract to Mobil in its entirety. Instead, GPA awarded the contract between the bidders at the
23 best price to GPA per plant location.
24

25 IP&E’s bid is \$76,400 more expensive per year than the award made by GPA. Further,
26 over the course of the potentially five year contract, IP&E’s overall bid would be \$382,000
27
28

1 more expensive than the award made by GPA. The following table shows the difference
 2 between IP&E's bid and the award made by GPA:

Plant Description	Bid Volume (gals)	IP&E Bid		GPA Award	
		Bid	Total	Bid	Total
Baseload Plants	200,000	3.198	639,600	3.190	638,000
Dededo & CT	1,500,000	3.198	4,797,000	3.170	4,755,000
Fast Track	1,000,000	3.198	3,198,000	3.170	3,170,000
Tenjo Vista	2,000,000	3.198	6,396,000	3.190	6,396,000
Temes CT	600,000	3.198	1,918,800	3.10	1,914,000
Totals	5,300,000		16,949,400		16,873,000
Total GPA Award Savings					(76,400)
GPA Award Savings per Gallon					(0.01)

3 Mobil accepts the fact that, had the award been made entirely to Mobil, the end result
 4 would have been a higher cost to GPA than the award that was actually made. However, as
 5 stated in 5 GCA §5001(b)(5), one of the purposes of Guam's procurement law is to "maximize
 6 to the fullest extent practicable the purchasing value of public funds of the Territory." GPA's
 7 award does this. It should stand because it achieves the best price for GPA and for Guam's
 8 ratepayers.

9 **C. IP&E's Argument is based on the Faulty Premise that Per Plant Volume will**
 10 **Remain the Same**

11 The bid volumes per plant location, as provided in the IFB, were only estimates.
 12 Assuming, for argument's sake, that the contract should have been awarded in its entirety,
 13 fluctuating use of fuel between the plants could actually result in a higher cost to GPA if the
 14 award were made entirely to IP&E. Per plant, Mobil's bid was more expensive than IP&E's
 15 bid only for the Tenjo Vista plant, which accounted for the highest estimated volume of fuel, at
 16 2,000,000 gallons. If those amounts differ in reality, GPA might ultimately pay more if the bid
 17 were awarded in its entirety to one party.

1 Volumes I and II of the IFB are full of notices to the parties that the bid volumes are
2 only estimates. On page 3 of Volume 1, the IFB states that “[t]he **estimated** total diesel fuel
3 oil requirement per Plant location are as follows:” (emphasis in original). The table that follows
4 again provides a column header over the volume column, describing the volumes as “Estimated
5 Annual Requirements”. Also, page 8 of Volume II states that “[t]he **estimated** total fuel oil
6 requirement is listed in **Schedule B** and is subject to change. GPA shall reasonably notify the
7 Contractor for any changes in the fuel oil requirements.” (emphasis in original). Lastly,
8 Schedule B of Volume II is titled “Estimated Annual Diesel Requirements”. It is clear that the
9 volumes articulated in the IFB are merely estimates and not actual volumes.
10

11 Assuming that the actual volumes differ from the estimated volumes it is possible that
12 the volume used in the Tenjo Vista plant could decrease or the volume used in the other plants
13 could increase. This could lead to GPA ultimately purchasing a decreased volume of the fuel
14 it awarded at a lower rate for the Tenjo Vista plant or an increased volume of the fuel it awarded
15 at a higher price for the other plants. In such an event, an award made to IP&E in its entirety
16 could very well cost GPA more than the per plant award that was made. Awarding the contract
17 on a per plant basis protects against this possibility. Given the manner of the award, GPA will
18 continue paying the better price per plant location regardless of how much the actual volumes
19 differ from the estimates.
20

21 Conclusion

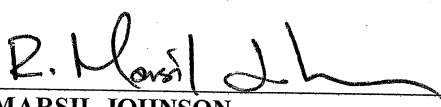
22 The award made by GPA was not the best possible outcome for IP&E or for Mobil, but
23 it was best for GPA and its ratepayers. It was best for GPA and its ratepayers because it
24 provides the best price given GPA’s volume estimates and it guards against the possibility that
25 reality may differ from those estimates. The IFB which led to that award was not ambiguous
26 and, if it were, IP&E had ample time and the opportunity to explore that ambiguity. Given
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these reasons, as explained above, Mobil respectfully requests that the Public Auditor deny IP&E's appeal.

DATED this 19th day of September, 2014.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

BY: 
R. MARSIL JOHNSON
Attorneys for Party in Interest
Mobil Oil Guam Inc.

CERTIFICATE OF SERVICE

I, R. Marsil Johnson, do hereby certify that on the 19th day of September 2014, I caused to be served a copy of Mobil Oil Guam Inc.'s **COMMENTS OF INTERESTED PARTY** to be served upon the following, via hand delivery:

Purchasing Agency: Joaquin C. Flores
General Manager
Guam Power Authority
1911 Rte 16
Harmon, Guam

Appellant: Steven Carrara
IP&E Holdings, LLC
646 Chalan San Antonio
Tamuning, Guam 96913-3644

DATED this 19th day of September, 2014.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

BY: 

R. MARSIL JOHNSON
Attorneys for Party in Interest
Mobil Oil Guam Inc.

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