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 PROCUREMENT APPEALS
 DATE: 10/3/14
 TIME: 11:30 AM PM BY: JH
 FILE NO OPA-PA: 14-008

Attorneys for Party in Interest Mobil Oil Guam Inc.

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

In the Matter of)	Docket OPA PA-14-008
)	
IP&E HOLDINGS, LLC.,)	
)	
Appellant,)	INTERESTED PARTY
And)	MOBIL OIL GUAM INC.'S
)	REPLY TO PROTESTOR
GUAM POWER AUTHORITY,)	RESPONSE TO AGENCY
)	REPORT
Purchasing Agency.)	
)	

Interested party, Mobil Oil Guam Inc. (“Mobil”), hereby submits its Hearing Brief for the hearing in this matter.

In its Protestor Response to Agency Report, IP&E cites *Northeast Const. Co.*, 61 comp. Gen. 317, 82-1 CPD ¶293 (1982) (attached as Exhibit “A”). In doing so, IP&E argues that the GAO has sustained a protest awarding a contract awarded a single bidder when a government agency had issued an award at lower cost to multiple bidders. However, IP&E fails to address the fact that the decision of the GAO, which is not binding on the Office of the Public Auditor, relied heavily on strict procurement drafting rules found in the Defense Acquisition Regulations (“DAR”) that in no way apply to invitations for bids issued by the Guam Power Authority (“GPA”).

ORIGINAL

Unlike *Northeast*, IFB-GPA-029-14 did not contain an “additive and deductive items” clause. Nor was GPA required to include anything similar to the formal requirement set forth in DAR Sec. 7-2003.23(B) (DAC No. 76-26, December 15, 1980) in order to notify bidders that GPA had contemplated multiple awards. The “additive and deductive items” clause in *Northeast* explicitly stated that “[t]he low bidder for purposes of award shall be the conforming responsible bidder offering the **low aggregate amount** for the first or base bid item.” *See Northeast* at 318 (emphasis added). The GAO based its opinion on that explicit language:

Because the IFB ‘additive and deductive items’ clause clearly advised bidders that an aggregate award was contemplated, an award made under the IFB must be made to the low aggregate bidder.

Id. at 320. However, no such language was contained in IFB-GPA-029-14. Neither the words “aggregate” or “overall” were used in the describing how any award would be made. Instead, the language of IFB-GPA-029-14 explicitly states that the contract could “be awarded **in whole or per plant location** to the BIDDER¹ evaluated as being qualified and with the best price proposal.” (emphasis added). That language is nothing like the language contained in the “additive and deductive items” clause found in *Northeast*. The words “aggregate” or “overall” cannot be read into IFB-GPA-029-14 Section 2.13. Similarly, the words “per plant location” cannot be read out of IFB-GPA-029-14 Section 2.13. The language contained in IFB-GPA-029-14 Section 2.13 clearly advised the bidders that an award could be made “in whole or per plant location”, thus an award made under IFB-GPA-029-14 could be made in whole or per plant location.

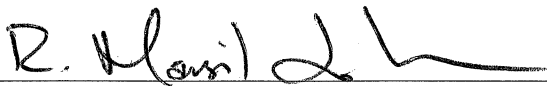
Lastly, IP&E attempts to downplay the fact that GPA’s award is \$76,400 cheaper than the overall bid made by IP&E by stating that difference in terms of the percentage of the total award.

¹ As already noted by GPA in its Agency Report, Section 5.1 of the IFB-GPA-029-14 states that “[w]herever used in these General Conditions or in the other Contract Documents, the terms used have the meanings indicated which are applicable to both the singular and plural thereof.” Therefore, IP&E was aware that awards made per plant location could be awarded to multiple bidders, because the term BIDDER was to have the meaning applicable to both the singular and the plural form of the term.

Regardless of the difference between the award made by GPA and the bid made by IP&E, the fact remains that the award made by GPA was lower. Even if the award made by GPA were only a dollar cheaper than the bid made by IP&E, the fact remains that the award made by GPA is cheaper for GPA and cheaper for its ratepayers. Awarding IP&E a contract that would ultimately cost GPA and the people of Guam more money than the award made by GPA would fly in the face of the policies that govern Guam's procurement law.

DATED this 3rd day of October, 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 3rd day of October 2014, I caused to be served a copy of **INTERESTED PARTY MOBIL OIL GUAM INC.'S REPLY TO PROTESTOR RESPONSE TO AGENCY REPORT** 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 3rd day of October, 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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AGENCY REPORT RE IPE HOLDINGS-GPA.DOCX