

Steven Carrara
General Counsel
IP&E Holdings LLC
P.O. Box 2881
Barrigada, Guam 96921
Telephone No. (671) 646-1222
Fax No. (671) 646-4723
E-mail: Steven.Carrara@itehq.net

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Attorney for Appellant
IP&E Holdings, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of) APPELLANT'S CLOSING BRIEF
)
IP&E HOLDINGS, LLC.,) Docket No. OPA-PA-14-008
)
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).

The procurement record and the testimony provided at the hearing by the witnesses for both GPA and IP&E Holdings LLC ("IP&E") demonstrated that IP&E provided the lowest overall lowest bid for plants identified in the IFB. The IP&E bid was approximately \$147,000 lower than Mobil on an annual basis. A summary of the referenced bids and variances from the bid abstract is as follows:

Plant Description	Bid Volume	IP&E Bid	IP&E Total	Mobil Bid	Mobil Total	IP&E/ Mobil Total Variance	IP&E/ Mobil Unit Variance	IP&E/ Mobil Annual Variance
Base Load	200,000	\$3.198	\$639,600	\$3.190	\$638,000		(\$0.008)	(\$1,600)
Dededo & C/T	1,500,000	\$3.198	\$4,797,000	\$3.170	\$4,755,000		(\$0.028)	(\$42,000)
Fast Track	1,000,000	\$3.198	\$3,198,000	\$3.170	\$3,170,000		(\$0.028)	(\$28,000)
Tenjo Vista	2,000,000	\$3.198	\$6,396,000	\$3.310	\$6,620,000		\$0.112	\$224,000
Temes CT	600,000	\$3.198	\$1,918,800	\$3.190	\$1,914,000		(\$0.008)	(\$4,800)
Total	5,300,000	\$3.198	\$16,949,400	\$3.206	\$17,097,000	(147,600)		\$147,600

The testimony of the GPA representative responsible for the procurement also demonstrated that despite the IFB language about overall award to the lowest overall bidder, GPA only intended to make award on a per plant basis and only evaluated the competing bids on a per plant basis without regard to the overall lowest bid price. Testimony was also provided from GPA that it would be administratively efficient to procure its fuel from one supplier.

The total estimated volume of fuel for this procurement was 5,300,000 gallons. Of all the plants covered in the procurement, Tenjo Vista was the single largest by volume with an estimated volume of 2,000,000 gallons. It was also the undisputed testimony that of all the identified plants Tenjo Vista is the most expensive plant to deliver fuel. This is also supported by the fact Mobil's Tenjo Vista bid price is substantially higher (\$.12 per gallon) than Mobil's own next highest cost site which is more easily accessible.

The testimony provided that in past procurements GPA utilized a per plant basis for award and changed its methodology for this procurement. According to Appellant's Exhibit 2, in the prior GPA procurement the Award criteria provided that "Bids will be reviewed and evaluated by GPA and will determine the lowest and most responsive bidder for each items (sites) as indicated, and that will be most advantageous to GPA." In contrast, the instant procurement which advised that award would be made to the **BIDDER** that offered the lowest overall amount. It would reward poor procurement practice and be poor policy to allow GPA to argue that it really meant bidder by referencing an obscure contract provision which completely changes the nature of the procurement.

In reliance on the revised GPA procurement language, which differed substantially from previous procurements, IP&E provided an overall weighted average of \$3.198 across all plants. A weighted average had the overall net effect of lowering the price for the more expensive to deliver to Tenjo Vista plant and also increases IP&E's bid price for the more easily accessible plants.

As a result, the IP&E price on Tenjo Visto, with the most volume and hardest delivery requirement, was substantially lower than the unit cost provided by Mobil and saves over \$200,000 per year over the Mobil price. Given the closeness of the bid prices for the remaining sites, this fact alone demonstrates that IP&E, as directed by the IFB, submitted its bid on an overall award basis. The remaining sites which had an estimated total volume of 3.2 million gallons only results in a theoretical savings of \$76,400. The vast majority of savings for GPA in this procurement are derived from the Tenjo Vista savings which was based on an overall weighted average.

IP&E also testified, which was not disputed, that had it not been for the overall award language in the IFB, based on its pricing model, its bid price on Tenjo Vista on a per plant basis would have been at least \$.07 cents higher to accommodate for the additional burden of delivery. The higher delivery costs for Tenjo Vista in essence was applied across all remaining plants.

It is noted that the overall weighted average had the effect of increasing IP&E's bid price of the remaining plants in which there was a razor thin difference in price. Had an weighted price not been used those plants would been awarded to IP&E given the razor thin differential. The price differential between the remaining sites was no greater than .01 cents whereas the price differential on Tenjo Vista was more than 10 times higher at .11 cents.

It is unclear why GPA changed its procurement approach when it was clear from the testimony that it always intended to make award on a per plant basis and apparently did not understand the award methodology it wished to apply in the instant procurement. There is nothing in either the procurement record or testimony disputing the fact that IP&E submitted its bid as part of an overall procurement package based on the IFB language that award would be made to the Lowest Overall Bidder and that this adversely impacted its Tenjo Vista bid by making it artificially low with a price differential of 10 times that of the other plants. This would have also had the effect of lowering its overall bid on the remaining plants which were GPA proposes to award to Mobil.

IP&E fully complied with the procurement's stated evaluation criteria and provided GPA the overall lowest bid price and consequently award should be directed to IP&E. It is further clear and undisputed by the record and testimony that the only reason that the Tenjo Vista plant differential was so great is because that bid price was generated as the result of an overall weighted average applied to all sites with the understanding that award would be made to the lowest overall bidder. No other plausible theory has been proffered, nor could one be proffered, to explain the huge price differential on the Tenjo Vista site.

Had GPA intended to make award on a per plant basis, which it said was its intent at the hearing, there was no need to change the tried and true procurement language it has used in the past. Having created this now apparently ambiguity, GPA should not be allowed to benefit from the artificially lower weighted price for Tenjo Vista and ignore the totality of IP&E's bid which provided the overall lowest price.¹ Alternatively, if OPA does not rule in IP&E favor on this

¹ It was undisputed from the testimony that IP&E believed there was no ambiguity and that award would be made to the lowest overall bidder for all sites and submitted its weighted average bid accordingly.

point, the OPA is requested to direct GPA to allow IP&E to increase its Tenjo Vista by \$.07 cents to reflect what would have been IP&E's per plant price.

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 30th day of September 2014.

By: _____



Steven Carrara
IP&E General Counsel

Certificate of Service

I, Steven Carrara, do hereby certify that on the 30th day of September 2014, I caused to be served by email and personal delivery a copy of the IP&E's Closing Brief upon the following:

Purchasing Agency: D. Graham Botha
General Counsel
Guam Power Authority

Mobil Guam Inc. R. Marsil Johnson
Blair Sterling Johnson & Martinez