

Steven Carrara
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

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 09-21-16
TIME: 3:00 AM PM BY: [Signature]
FILE NO OPA-PA: 16-013

Attorney for Appellant
IP&E Holdings, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of) NOTICE OF PROCUREMENT APPEAL
)
IP&E HOLDINGS, LLC.,) Docket No. OPA-PA 16-013
)
Appellant.)

Appellant Information:

IP&E Holdings, LLC. (IP&E)
646 Chalan San Antonio
Tamuning Guam 96913-3644

Tel: 647-0123
Fax: 649-4353

Appeal Information:

- A) Guam Water Authority (“GWA”), Consolidated Commission on Utilities (“CCU”).
- B) Invitation for Bid NO. GPA 2016-09 for the Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline (Regular Unleaded) for GWA Transportation Fleet and Heavy Equipment.
- C) Decision being appealed is the GWA Denial of Protest, dated September 16, 2016.
- D) Appeal is made from a decision on protest of notice of award.
- E) Names of Competing Bidders: Mobil Oil Guam, Inc., South Pacific Petroleum Inc.

Form and Filing:

On or about August 8, 2016, GWA issued an invitation for bid GPA -2016-09 for the procurement of diesel (50,000 gallons) and automotive fuel (115,000) for the GWA Fleet.

Bid opening was initially scheduled for August 25, 2016 but extended by GWA amendment No. 1 to September 7, 2016. On or about September 14, 2016, GWA issued its intent to make award to Mobil Oil Guam.

On or about September 16, 2016, IP&E filed its agency protest with the contracting officer that based on the estimated quantities provided in the IFB, IP&E was the lowest bidder. (Attachment A). On September 16, 2016, GWA denied the protest taking the position that award was based on current trends rather than the quantities set forth in the IFB. (Attachment B).

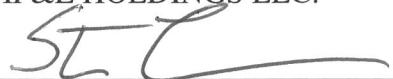
It is IP&E position that GWA was required to use the estimated quantities provided in the IFB for evaluation and award rather than unknown factors which were stated in the agency response. The use of this unstated award criteria in clearly in contravention of the IFB terms and Guam procurement law. Had the quantities changed within the three month cycle of this procurement, the estimates could have easily been addressed through IFB modification.

Declaration regarding court action:

IP&E confirms that an action in court has not been commenced.

Dated this 21st day of September 2016.


IP&E HOLDINGS LLC.

By: 
Steven Carrara
General Counsel

VERIFICATION

I, David Wisher, Chief Financial Officer, for IP&E Holdings LLC, hereby declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct of my own knowledge, except as to those matter alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 21st day of September 2016.


David Wisher



Miguel Bordallo, P.E.
 General Manager
 Guam Waterworks Authority
 Gloria B. Nelson Public Service Building
 688 Route 15
 Mangilao, Guam 96913
 Email: mcbordallo@guamwaterworks.org
 PH: (671) 300-6845

RE: Formal Bid Protest

IFB 2016-09 Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded

Dear Mr. Bordallo,

IP&E Guam received the above referenced facsimile at 3:25pm September 14, 2016. The document advised IP&E was not successful in the bid due to high price. Please see calculation below based on IFB volumes listed on Part A., Solicitation, **Fuels to Be Supplied**, Items a & b Page 10 and Bid Abstract dated September 7, 2016 10:00 am:

Company	Product	IFB Quantity	Total Price	Total IFB Annual Cost	Total IFB Term Cost
SPPC	Diesel	50,000.00	\$ 1.71	\$ 85,500.000	\$ 256,500.000
SPPC	Mogas	115,000.00	\$ 1.96	\$ 225,745.000	\$ 677,235.000
				\$ 311,245.000	\$ 933,735.000
Mobil Oil Guam	Diesel	50,000.00	\$ 1.34	\$ 66,750.000	\$ 200,250.000
Mobil Oil Guam	Mogas	115,000.00	\$ 1.52	\$ 175,145.000	\$ 525,435.000
				\$ 241,895.000	\$ 725,685.000
IP&E Guam	Diesel	50,000.00	\$ 1.32	\$ 66,000.000	\$ 198,000.000
	Mogas	115,000.00	\$ 1.53	\$ 175,720.000	\$ 527,160.000
				\$ 241,720.000	\$ 725,160.000
				\$ (175.000)	\$ (525.000)

Shell trademarks used under license.

IP&E Holdings, LLC.

dba: IP&E Guam

Suite 100, 643 Chalan San Antonio

Tamuning, Guam 96913-3644

Tel: 671-647-0000 | Fax: 671-649-4353

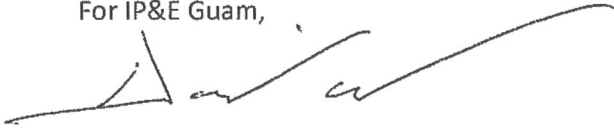
Email: corporate@ipehq.com



Shell Licensee

Per bid abstract IP&E conformed to all other bid requirements and is the lowest bidder. Therefore, IP&E should be awarded GWA IFB 2016-09. Please retract intent to award immediately.

For IP&E Guam,

A handwritten signature in black ink, appearing to read 'David Wisler', written over a horizontal line.

David Wisler, Chief Financial Officer

CC: Vince Guerrero, Supply Management Administrator, Kelly Clark, GWA Legal Counsel, Steven Carrara, IP&E Legal Counsel

Attachments

- 1). IFB 2016-09 Page 10
- 2). GWA Bid Abstract for IFB 2016-09 dated September 7, 2016 10:00am
- 3). GWA Facsimile Transmittal dated September 14, 2016

independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.

When a solicitation is canceled or rejected prior to final award, notice of cancellation or rejection shall be sent to all bidders and all bid bonds shall be returned. The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

(b) **Rejection of Individual Bids.** Any individual bid may be rejected in whole or in part when in the best interest of the Territory of Guam as determined by GWA in its sole discretion. Reasons for rejecting a bid include, but are not limited to:

- (1) The bidder is non-responsive pursuant to Guam's procurement laws, rules and regulations;
- (2) The bid is not responsive, as it does not conform, in all material respects, to the Invitation for Bids;
- (3) The quantity and/or quality supply or service offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications set forth in the Invitation for Bids or other acceptability criteria set forth in the Invitation for Bids. Upon request, unsuccessful bidders shall be advised of the reasons for rejection;
- (4) The bid is not the lowest responsive bidder, which meets the requirements, criteria set forth in the Invitation for Bids;
- (5) The bidder has failed to submit to the GWA procurement office, the necessary licenses, permits and authorizations when requested by the Procurement Officer prior to the award.
- (6) Any changes as initiated by the bidder to the attached Contract form constitute a basis to declare the bid submittal as non-conforming.

8. **Fuels To Be Supplied.**

Bidder agrees to furnish and GWA agrees to accept and pay for all of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded (both fuels referred to in the solicitation as Fleet Fuels) requirements for the Authority's transportation fleet for the term of the Contract. **Estimated** total quantity for the fleet's fuel shall be:

- (a) *Diesel Fuel Oil No. 2: approximately 50,000 gallons per year (estimated).*
- (b) *Automotive Gasoline, Regular Unleaded: approximately 115,000 gallons per year (estimated).*

The fleet fuels supply shall be provided from Bidder's service stations (or from designated stations if so agreed upon between the Contractor and GWA Procurement/ Supply Administrator). The commencement of the Fleet's fuel procurement shall be as soon as possible following award of bid and signing of Contract.

GUAM WATERWORKS AUTHORITY

BID ABSTRACT

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR# 1 *SPPC*

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SUERTY BOND: CURRENT CERTIFICATE OF AUTHORITY(POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED

1.0	BID PRICE PER GALLON		
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.710	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.953	PER GALLON

BID ABSTRACT

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR# 2 *Mobil oil Guam*

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SUERTY BOND: CURRENT CERTIFICATE OF AUTHORITY(POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED *Enabled*

1.0	BID PRICE PER GALLON		
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.335	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.523	PER GALLON

GUAM WATERWORKS AUTHORITY

BID ABSTRACT

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR# 3 *1740*

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SURETY BOND: CURRENT CERTIFICATE OF AUTHORITY (POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED

1.0	BID PRICE PER GALLON		
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.3200	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.5280	PER GALLON

BID ABSTRACT

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR# 4

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SURETY BOND: CURRENT CERTIFICATE OF AUTHORITY (POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED

1.0	BID PRICE PER GALLON		
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.3200	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.5280	PER GALLON

Guam
Waterworks
Authority

facsimile transmittal

To: IP&E Holdings, LLC Fax: 649-4353
Attn: Tasi Peddicord PH: 647-0000

From: Stephen Mondina Date: September 14, 2016
300-6027 (PH)
649-3750 (FX)

Re: BID STATUS Pages: 02

CC:

Urgent For Review Please Comment Please Reply Please Recycle

REF: IFB 2016-09
Diesel Fuel Oil No.2 and Automotive Gasoline,
Regular Unleaded

Please sign the bid status form and forward back to me.

Thank you,
Stephen Mondina



GUAM WATERWORKS AUTHORITY

"Better Water. Better Lives."

Gloria B. Nelson Public Services Building
688 Route 15, Mangilao, Guam 96913

BID STATUS

Date: SEP 14 2016

IP&E Holding, LLC
Suite 100. 643 Chalan San Antonio
Tamuning, Guam 96913-3644
Tel: 671-647-0000
Fax: 671-649-4353

Bid Invitation No. GWA IFB 2016-09

Description: Invitation for Bid No 2016-09 Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for GWA Transportation Fleet. in GWA IFB. NO. 2016-09.

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

Not Awarded base on the following:

- Late submission of bid
- No bid security or insufficient bid security amount submitted as required by Section 11 of the General Terms and Conditions
- Not meeting the delivery requirement as stated in the IFB
- Non-conformance with the specifications
- Inability to provide future maintenance and services to the equipment
- High price


Bid is recommended for award to:

Mobil Oil Guam

For Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded.

Remarks:

Thank You for your interest!


Miguel Bernaldo, PE
General Manager



GUAM WATERWORKS AUTHORITY

"Better Water. Better Lives."

Gloria B. Nelson Public Service Building | 688 Route 15, Mangilao, Guam 96913

P.O. Box 3010, Hagatna, Guam 96932

Tel. No. (671) 300-6846/48 Fax No. (671) 648-3290

September 16, 2016

Mr. David Wisher
Chief Financial Officer
IP&E Guam
643 Chalan San Antonio, Ste 100
Tamuning, Guam 96913

RECEIVED

SEP 16 2016

IP&E Holdings, LLC
(dba IP&E GUAM)

RE: Notice of Decision relative to GWA IFB 2016-09 Diesel Fuel Oil No. 2 and
Automotive Gasoline, Regular Unleaded

Dear Mr. Wisher,

The award of contract for this IFB is based on the Authority's procurement committee analysis of actual use calculations as shown in attachment "A". Based on the actual use of diesel and gasoline for FY 2016 and future use trending down or remaining flat, the committee determined that the pricing submitted by Mobil was the most advantageous to GWA and in the best interest of the Territory of Guam.

Your company has the right to administrative and judicial review.

Sincerely,



Miguel C. Bordallo, P.E.
General Manager

MCB/ada

ATTACHMENT A

Transportation

Month	Regular		Price Per Gallon (est.)	Diesel Gallons	Price Per Gallon (est.)	Diesel Gallons	Price Per Gallon (est.)	Premium		Price Per Gallon (est.)	TOTAL GALLONS	YTD TOTAL COST	YTD TOTAL GALLONS
	Unleaded	Gallons						Unleaded Gallons	Unleaded Gallons				
Oct-13	\$ 37,188	10,222	\$ 3.64	5,471	\$ 3.84	61	\$ 16	\$ 3.79	\$ 58,265	15,710	\$ 58,265	15,710	
Nov-13	\$ 31,314	8,764	\$ 3.57	7,839	\$ 3.82	-	-	-	\$ 39,152	10,817	\$ 97,417	26,527	
Dec-13	\$ 33,109	9,215	\$ 3.59	2,329	\$ 3.85	31	8	\$ 3.70	\$ 42,097	11,552	\$ 139,514	38,079	
Jan-14	\$ 33,970	9,228	\$ 3.68	9,617	\$ 3.88	-	-	-	\$ 43,587	11,715	\$ 183,101	49,794	
Feb-14	\$ 31,754	8,719	\$ 3.64	10,338	\$ 3.77	-	-	-	\$ 42,091	11,462	\$ 225,193	61,257	
Mar-14	\$ 35,139	9,510	\$ 3.70	7,710	\$ 3.79	-	-	-	\$ 42,848	11,542	\$ 268,041	72,798	
Apr-14	\$ 37,385	10,131	\$ 3.69	9,013	\$ 3.75	-	-	-	\$ 46,397	12,536	\$ 314,438	85,334	
May-14	\$ 38,774	10,409	\$ 3.72	7,592	\$ 3.80	-	-	-	\$ 46,366	12,406	\$ 360,805	97,741	
Jun-14	\$ 34,495	9,258	\$ 3.73	8,715	\$ 3.77	-	-	-	\$ 43,210	11,572	\$ 404,014	109,312	
Jul-14	\$ 36,657	9,602	\$ 3.82	24,517	\$ 3.75	-	-	-	\$ 61,175	16,133	\$ 465,189	125,446	
Aug-14	\$ 36,357	9,640	\$ 3.77	10,634	\$ 3.70	270	70	\$ 3.85	\$ 47,261	12,580	\$ 512,450	138,026	
Sep-14	\$ 33,980	9,625	\$ 3.53	19,230	\$ 3.65	-	-	-	\$ 53,211	14,888	\$ 565,661	152,914	
	\$ 420,122	114,322	\$ 3.67	145,177	\$ 3.78	362	95	\$ 3.78	\$ 565,661	152,914	\$ 565,661	152,914	

FY2014

Month	Regular		Price Per Gallon (est.)	Diesel Gallons	Price Per Gallon (est.)	Diesel Gallons	Price Per Gallon (est.)	Premium		Price Per Gallon (est.)	TOTAL GALLONS	YTD TOTAL COST	YTD TOTAL GALLONS
	Unleaded	Gallons						Unleaded Gallons	Unleaded Gallons				
Oct-14	\$ 32,390	9,857	\$ 3.29	9,440	\$ 4.54	108	32	\$ 3.35	\$ 41,830	11,936	\$ 41,830	11,936	
Nov-14	\$ 23,066	7,085	\$ 3.26	4,811	\$ 3.25	-	-	-	\$ 27,986	8,597	\$ 69,815	20,534	
Dec-14	\$ 23,144	7,827	\$ 2.96	6,904	\$ 3.06	-	-	-	\$ 30,047	10,080	\$ 99,863	30,613	
Jan-15	\$ 19,515	8,005	\$ 2.44	6,261	\$ 2.57	24	9	\$ 2.54	\$ 25,800	10,449	\$ 125,662	41,062	
Feb-15	\$ 17,510	7,758	\$ 2.26	5,909	\$ 2.39	33	14	\$ 2.37	\$ 23,452	10,247	\$ 149,114	51,309	
Mar-15	\$ 21,292	8,311	\$ 2.56	14,941	\$ 2.60	-	-	-	\$ 36,232	14,055	\$ 185,347	65,364	
Apr-15	\$ 20,166	7,759	\$ 2.60	4,704	\$ 2.56	-	-	-	\$ 24,870	9,596	\$ 210,217	74,960	
May-15	\$ 21,655	8,148	\$ 2.66	22,199	\$ 2.58	-	-	-	\$ 43,854	16,756	\$ 254,071	91,715	
Jun-15	\$ 20,647	7,262	\$ 2.84	6,623	\$ 2.74	-	-	-	\$ 27,270	9,682	\$ 281,341	101,398	
Jul-15	\$ 20,462	7,243	\$ 2.83	13,656	\$ 2.65	-	-	-	\$ 34,118	12,386	\$ 315,458	113,784	
Aug-15	\$ 19,690	7,427	\$ 2.65	5,159	\$ 2.46	-	-	-	\$ 24,848	9,523	\$ 340,307	123,307	
Sep-15	\$ 16,693	6,979	\$ 2.39	30,086	\$ 2.28	-	-	-	\$ 46,779	20,192	\$ 387,086	143,499	
	\$ 256,229	93,661	\$ 2.73	130,692	\$ 2.81	165	56	\$ 2.75	\$ 387,086	143,499	\$ 387,086	143,499	

FY2015

Month	Regular Unleaded	Regular Gallons	Price Per Gallon (est.)	Diesel	Diesel Gallons	Price Per Gallon (est.)	Premium Unleaded	Premium Unleaded Gallons	Price Per Gallon (est.)	Total Cost	Total Gallons	YTD Total Cost	YTD Total Gallons
Oct-15	\$ 16,779	7,047	\$ 2.38	\$ 4,035	1,755	\$ 2.30	\$ -	-	2.47	\$ 20,814	8,802	\$ 20,814	8,802
Nov-15	\$ 14,334	6,074	\$ 2.36	\$ 3,138	1,368	\$ 2.29	\$ 52	21	2.47	\$ 17,523	7,463	\$ 38,338	16,265
Dec-15	\$ 15,595	6,928	\$ 2.25	\$ 4,587	2,061	\$ 2.23	\$ -	-	-	\$ 20,182	8,988	\$ 58,519	25,253
Jan-16	\$ 14,179	6,469	\$ 2.19	\$ 4,390	2,205	\$ 1.99	\$ -	-	-	\$ 18,569	8,674	\$ 77,088	33,927
Feb-16	\$ 14,524	7,123	\$ 2.04	\$ 3,808	2,140	\$ 1.74	\$ -	-	-	\$ 18,332	9,263	\$ 95,420	43,190
Mar-16	\$ 13,751	7,215	\$ 1.91	\$ 4,602	2,551	\$ 1.80	\$ -	-	-	\$ 18,354	9,766	\$ 113,774	52,956
Apr-16	\$ 14,150	6,738	\$ 2.10	\$ 3,718	1,904	\$ 1.95	\$ 31	14	2.21	\$ 17,899	8,656	\$ 131,674	61,612
May-16	\$ 14,568	6,773	\$ 2.15	\$ 3,593	1,769	\$ 2.03	\$ -	-	-	\$ 18,161	8,542	\$ 149,835	70,154
Jun-16	\$ 14,947	6,664	\$ 2.24	\$ 4,577	2,110	\$ 2.17	\$ 27	12	2.37	\$ 19,551	8,786	\$ 169,386	78,939
Jul-16	\$ 14,143	6,247	\$ 2.26	\$ 4,194	1,879	\$ 2.23	\$ -	-	-	\$ 18,337	8,126	\$ 187,723	87,065
Aug-16	\$ -	-	\$ -	\$ -	-	\$ -	\$ -	-	-	\$ -	-	\$ -	-
Sep-16	\$ -	-	\$ -	\$ -	-	\$ -	\$ -	-	-	\$ -	-	\$ -	-
	\$ 146,970	67,277	\$ 2.19	\$ 40,642	19,741	\$ 2.07	\$ 111	47	\$ 2.35	\$ 187,723	87,065	\$ 187,723	87,065

8,706
104,477.90
0.82

IP&E
1.528 31,270.32 diesel based on projected FY2016 actuals
159,642.23 unleaded based on projected FY2016 actuals
1.4896 190,912.55
Composite price

Mobil
1.335 31,625.66 diesel based on projected FY2016 actuals
1.523 159,119.84 unleaded based on projected FY2016 actuals
1.4883 190,745.50
Composite price

Composite based on proportional weighting of diesel and unleaded price to respective % of total fuel purchases projected to end of FY2016