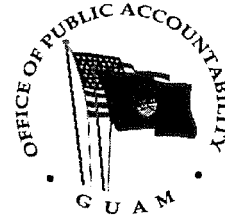


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	John M. Benavente, P.E. General Manager D. Graham Botha, Esq. General Counsel Guam Power Authority P.O. Box 2977 Agana, Guam 96932	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 648-3225/3203/3002 (671) 648-3290	Pages:	9 (including cover page)
CC:	Georgette Bello Concepcion, Esq Brooks Concepcion Law, P.C. Attorney for Appellant America's Best Electricmart, Inc. 247 Martyr Steet, Ste. 101 Hagatna, Guam 96910	Date:	April 21, 2017
Phone: Fax:	(671) 472-6848 (671) 477-5790	Phone: Fax:	475-0390 x. 208 472-7951

Re: OPA-PA-17-006 Notice of Receipt of Appeal

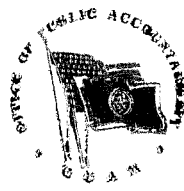
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 Jerrick Hernandez
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jhernandez@guamopa.org

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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

April 21, 2017

John M. Benavente
General Manager
Guam Power Authority
P.O. Box 2977
Hagatna, Guam 96932-2977

Re: Notice of Receipt of Appeal – OPA-PA-17-006

Dear Mr. Benavente,

Please be advised that America's Best Electricmart, Inc. ("ABE") filed an appeal with the Office of Public Accountability (OPA) on April 20, 2017 regarding the Guam Power Authority's (GPA) response to ABE's protest relative to Invitation for Bid No.: IFB GPA-005-17; a procurement solicitation for a LED Luminaire Units and Photo Electric Controls. OPA has assigned this appeal case number OPA-PA-17-006.

Immediate action is required of GPA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Friday, April 28, 2017**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Friday, May 5, 2017**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to ABE. In addition, OPA respectfully asks that the Legislature provide one original and two copies of the procurement record and agency report as the Guam Procurement Law and Regulations require only one copy. The three copies requested by OPA are

distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or jhernandez@guamopa.com, should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova
Deputy Public Auditor

Enclosure: First Six Pages of Notice of Appeal – OPA-PA-17-006

Cc: Georgette Bello Conception, ESQ, Attorney for ABE

1 C. Decision being appealed was made on March 31, 2017 by John M. Benavente, P.E.,
2 General Manger which was received by ABE via facsimile transmission on April 6, 2017.

3 D. Appeal is made from a Decision on Protest of Method, Solicitation or Award denying
4 ABE's Protest of GPA's cancellation of IFB-GPA-005-017 AFTER the opening of bids.

5 E. Names of Competing Bidders, Offerors or Contractors known to Appellant: Canton
6 Construction Corp, R&D Marketing, Lin's Hardware Store, Benson Guam, SamJin Wada Co. Inc.,
7 JMI Edison, KOLTA Global.

8 Statement Supporting the Appeal

9 1. Background

10 IFB GPA-005-17 was issued on October 20, 2016 by General Manager John M. Benavente,
11 P.E. Bids were due on November 3, 2016 at 2 p.m. **Exhibit 1.**

12 Amendment No. I to the IFB was issued on November 1, 2016 notifying prospective bidders
13 the bid opening date is changed from 2 p.m. November 03, 2016 to 2 p.m. November 10, 2016.

14 **Exhibit 2.**

15 Amendment No. II to the IFB was issued on November 4, 2016 notifying prospective
16 bidders of various changes and responses to inquires received from JMI Edison dated 10/26/16,
17 KOLTA Global PNB Inc. dated 10/31/2016, and Benson Guam Ent. Inc. dated 11/02/2016.

18 **Exhibit 3.**

19 Bids were opened on November 10, 2016.

20 In a letter dated January 04, 2017, GPA informed ABE that the canceled the bid. GPA's
21 reason for cancelling IFB GPA-005-17 is that "in compliance with the New Streetlight Tariff, the
22 Authority has determined this bid canceled." **Exhibit 4.**

23 In a letter dated January 6, 2017, ABE requests GPA expand on what specific compliance
24 issue of the New Streetlight Tariff was not met. **Exhibit 5.** ABE has yet to receive a response to
25 its request.
26
27
28

1 In a letter dated January 17, 2017 (“Protest Letter”) ABE challenged the basis for the bid
2 cancellation. **Exhibit 6.**

3 In a letter dated March 31, 2017 by John M. Benavente, P.E., General Manger which was
4 received by ABE via facsimile transmission on April 6, 2017, GPA states, in relevant part:
5

6 You indicated in your [January 17, 2017 protest] letter that you believe the streetlight
7 tariff had nothing to do with the change in specification. This is not correct, as the
8 previous tariff reflected HPS lights, and this has now been changed to reflect LED
9 lights with different standards. In addition, GPA engineering has changed the technical
10 specifications to reflect a cost evaluation based on the total cost of ownership (TOC)
11 computed by addition the initial purchase price plus the total life energy cost. The
12 LED streetlight nominal power rating for the specified make, model, CCT, drive
13 current, and IES classification will be utilized to calculate the GPA Total Cost of
14 Ownership (TOC).

15 **Exhibit 7.** GPA denied ABE’s protest and made no attempt to discuss the merits of ABE’s protest
16 or to explain the what specific compliance issue of the New Streetlight Tariff was not met.

17 The IFB was re-issued on April 13, 2017. **Exhibit 8.**

18 It is notable that the New Streetlight Tariff referenced in GPA’s notice of cancellation of bid
19 was implemented by Order of the Guam Public Utilities Commission (hereinafter “Order”), GPA
20 Docket 16-01, became effective on October 27, 2016. **Exhibit 9.** In Resolution No. 2016-03,
21 adopted on January 26, 2016 (hereinafter “Resolution”), the CCU authorized GPA to petition the
22 PUC for approval to implement an interim streetlight tariff for energy efficient LED streetlights.

23 **Exhibit 10.**

24 **2. GPA has not satisfied the test to cancel a bid.**

25 The CCU Resolution 2016-003 and PUC Order do not address or discuss a new or updated
26 LED specification. In fact, GPA already implemented an LED Streetlight Replacement program
27 upgrading the technology of existing streetlights from High Pressure Sodium (HPS) to LED at the
28 time the Resolution was issued. Exhibit 10. Furthermore, neither the Resolution nor the Order list
any requirement of a change of specification for the actual LED streetlight.

1 Given that GPA's basis for cancelling the bid is not supported by the Resolution or Order,
2 and GPA does not state any other grounds for canceling the IFB, ABE's bid must be reinstated and
3 accepted.

4 **3. Cancelling and re-bidding GPA005-17 is unfair to the bidders who submitted bids in**
5 **good faith.**

6 One of the bidders initially suggested GPA consider evaluating the bids based on lighting
7 efficiency or life-cycle cost of the fixture:

8 JMI Edison Inquiry dated 10/26/16:

9 QUESTION:

10 1. Given the speed that the LED technology is improving, it is very possible that
11 bidders will be bidding on products that are much more efficient than what GPA's
12 specifications call for. Therefore, we think it is in GPA's and Guam [sic] best interest
13 to include lighting efficiency in the evaluation criteria, or possibly evaluate the bids
14 based on the life-cycle cost of the fixtures.

15 ANSWER:

16 GPA Bid 005-17 will be awarded based on the lowest responsive bid, as outlined in
17 GPA's General Terms and Conditions. This is found on page 35 of 39 of the bid
18 package for GPA-005-17. Additionally, GPA Specification E-043 is updated
19 periodically to reflect advantages in LED Technology.

20 Exhibit 3 at 1-2.

21 GPA initially rejected the idea of including the very factors it now asserts, after opening the
22 bids, should be included in the re-issued IFB. GPA relies on factors that are unrelated to the new
23 tariff schedule in justifying its cancellation of the IFB. More perplexing is that GPA knew of the
24 new tariff schedule for the LED streetlights, the very item sought under the IFB, but yet proceeded
25 to open the bids. If what GPA asserts is true, *arguendo*, GPA should have cancelled the IFB
26 PRIOR to the opening of the bids and not a month and a half after the bids were opened and made
27 public.

28 The prices offered by all bidders are now public providing bidders to the reissued IFB an
advantage over ABE which offered a price significantly lower than the other qualified bidders.

1 ABE and the other bidders submitted their bids based on good faith. ABE was the lowest
2 responsive bidder as outlined in the IFB. Therefore, ABE's bid should be reinstated and accepted.

3 **4. Cancelling and re-bidding the IFB is contrary to the strict delivery requirements set**
4 **forth in the IFB.**

5 The IFB set out delivery requirements which reflect anticipated installation schedules to
6 which GPA wanted to adhere:

7 JMI Edison Inquiry Dated 10/26/16:...

8 **QUESTION:**

9 2. Many good established manufacturers of LED fixtures with proven record of
10 competitiveness and reliability are swamped with current orders such that their
11 production schedule is set and not subject to much change. While the delivery
12 requirement of GPA may be reasonable to new and smaller companies, bigger
13 companies may have a hard time meeting it. Thus, we suggest, as an example, a
14 staggered delivery of possibly 1,000 fixtures per month, starting 8 weeks from award
15 date.

16 **ANSWER:**

17 GPA's delivery requirements are specified in the bid documents. The required
18 delivery time reflect anticipated installation schedules.

19 Exhibit 3 at 2. The initial delivery of 5,400 streetlights are due within 8 weeks after award with the
20 remaining balance of 4,078 streetlights due no later than April 28, 2017 under the IFB. Under the
21 re-issued IFB, said deliveries will be unduly delayed to the detriment of GPA and the ratepayers.

22 Cancelling and rebidding the IFB goes against the timely implementation of the replacement
23 of less efficient HPS lights with energy efficient LED streetlights. The delayed replacement of less
24 efficient HPS lights will in turn delay savings to be realized by GPA and the ratepayers.

25 **Relief Requested**

26 ABE asks that this appeal reverse GPA's decision, that the OPA order GPA to execute the
27 bid offered by ABE without further delay, an award for reasonable attorney's fees and costs of this
28 protest and appeal, and for such other relief that may be available.

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Declaration re Court Action

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Dated: Hagatna, Guam 20, April, 2017.

BROOKS CONCEPCION LAW, P.C.



By: Georgette Bello Concepcion, Esq.
Attorneys for Appellant
America's Best Electricmart, Inc.

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FAX

To:	John M. Benavente, P.E. General Manager D. Graham Botha, Esq. General Counsel Guam Power Authority P.O. Box 2977 Agaña, Guam 96932	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone:	(671) 648-3225/3203/3002	Pages:	9 (including cover page)
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CC:	Georgette Bello Concepcion, Esq. Brooks Concepcion Law, P.C. Attorney for Appellant America's Best Electricmart, Inc. 247 Martyr Steet, Ste. 101 Hagatna, Guam 96910	Date:	April 21, 2017
Phone:	(671) 472-6848	Phone:	475-0390 x. 208
Fax:	(671) 477-5790	Fax:	472-7951

Re: OPA-PA-17-006 Notice of Receipt of Appeal

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 Jerrick Hernandez
 Auditor
jherandez@guanopa.org

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct