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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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DATE: May 05, 2017  
TIME: 4:03  AM  PM BY: AR  
FILE NO OPA-PA: 17-006

*Attorney for the Guam Power Authority*

OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-17-006
	)	
America's Best Electricmart, Inc.,	)	<b>AGENCY REPORT</b>
	)	
Appellant.	)	
_____	)	

Appellee GUAM POWER AUTHORITY (GPA), by and through its attorney, D. GRAHAM BOTHA, ESQ., hereby submits its Agency Report in the form required under 2 G.A.R. §12105:

(a) A copy of the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on April 28, 2017, by GPA.***

(b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on April 28, 2017, by GPA.***

(c) A copy of the solicitation, including the specification or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on April 28, 2017, by GPA.***

(d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on April 28, 2017, by GPA.***

(e) Any other documents which are relevant to the protest, including the contract, if one has been awarded, pertinent amendments, and plans and drawings: ***Previously submitted to the Office of the Public Auditor ("OPA") on April 28, 2017,***

**by GPA.**

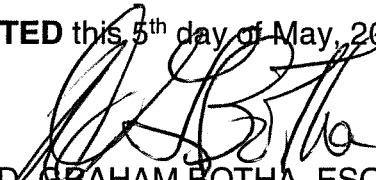
(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: ***Previously submitted to the Office of the Public Auditor (“OPA”) on April 28, 2017, by GPA.***

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal: ***Please see attached.***

(h) If the award was made after receipt of the protest, the report will include the determination required under 2 G.A.R. §9101(e): ***Not applicable.***

(i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding: ***Previously submitted to the Office of the Public Auditor (“OPA”) on April 28, 2017, by GPA.***

**RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of May, 2017, by:

  
D. GRAHAM BOTHA, ESQ.  
GPA General Counsel

## **STATEMENT ANSWERING ALLEGATIONS OF APPEAL**

(As required by 2 G.A.R. §12105(g))

### **I. RELEVANT BACKGROUND**

#### **A. GPA SOLICITS BIDS FOR IFB GPA-005-17, LUMINAIRE UNITS AND PHOTO ELECTRIC CONTROLS**

On October 20, 2016, Guam Power Authority (“GPA”) issued Invitation for Bid, GPA-005-17, Luminaire Units and Photo Electric Controls. Procurement Record, Tab ”2”. Eight companies submitted bids in response to the IFB, Canton Construction, R&D Marketing, Lins Hardware, Benson, Americas Best, Sam Jiu, JMI Edison, and Kolta. Prior to submission of the sealed price proposals, the eight bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I and II in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab “2-4”.

On November 10, 2016, the sealed bid proposals of the eight bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the line item bids for items 1, 2, and 3. The bid abstract, containing the bidders’ prices, is contained in the procurement record at Tab “5.” Each of the eight bidders submitted a price, but one bidder, Americas Best Electrimart, Inc., submitted a primary and an alternative bid.

On November 30, 2016, the evaluation committee met and requested clarification from five of the eight bidders, including the alternate bid of Americas Best, regarding clarification from the bidders regarding the specifications and the bidders’ compliance with the specifications. (Tab 7). On December 27, 2016, the committee made a recommendation to cancel the bid and

revise the specifications, and cancellation letters were sent to all bidders. On or about January 17, 2017, Americas Best sent a protest letter to GPA. (Tab 11). GPA denied the protest on March 31, 2017, Procurement Record, Tab "13". GPA revised the specifications and issued a rebid of IFB-005-17, on April 13, 2017. (Tab 15). Americas Best filed a protest with the Office of Public Auditor on April 20, 2017. (Tab 18). On April 25, 2017, GPA issued a Stay of Procurement, and letters were sent to registered bidders. (Tab 19).

## II. DISCUSSION

- A. THE GUAM POWER AUTHORITY DECISION TO CANCEL THE IFB WAS PROPER AS PROVIDED FOR IN 5 GCA §5225, AND NO DETERMINATION WAS MADE BY THE EVALUATION COMMITTEE THAT THE ALTERNATIVE BID OF AMERICAS BEST MET THE SPECIFICATIONS IN THE IFB.

Procurement law allows GPA to cancel Invitations for Bids or Requests for Proposals.

“An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Territory in accordance with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the contract file.” 5 GCA §5225. In this matter, after opening the bids and determining that clarifications were needed on five of the eight bids, including the alternative bid submitted by Americas Best, GPA determined that the specifications needed to be revised. In fact, from a comparison of the original bid and the re-bid in IFB-005-17, it is clear that GPA revised the specifications. (Tab 15, pgs. 48, 49). GPA revised the specifications to change the nominal rating requirements for the 150W and 250W LED luminaires, and changed the cost evaluation procedures to include total life energy cost, and total cost of ownership as a method of evaluation. GPA has met the test set forth in 5 GCA

§5225 to cancel the bid, and to rebid with revised specifications.

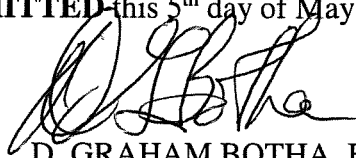
Americas Best states that the bid should not be cancelled and it should be awarded the bid, as it believes that it was the lowest responsive bidder. No such determination was made by GPA, and the alternative bid submitted by Americas Best was one of five bidders that clarification was requested from the bidders. A closer examination of the Abstract would reveal that the primary bid of Americas Best, simply on a numerical review, was 4<sup>th</sup> for Item 1, 6<sup>th</sup> for Item 2, and 2<sup>nd</sup> for Item 3. If the alternative bid was non-responsive, the primary bid submitted by Americas Best would be highly unlikely to be the lowest bid for Items 1 and 2.

Procurement law requires that GPA award to the lowest responsible and **responsive** bidders. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). Further, any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c). No determination was made by the GPA evaluation committee that the alternative bid submitted by Americas Best was the lowest responsible and responsive bidder. Instead, GPA after reviewing the submissions of the eight bidders, as authorized by 5 GCA §5225, made a determination that it was in the best interests of the territory to cancel the bid and re-bid with revised specifications.

CONCLUSION

GPA requests that the appeal of Americas Best Electricmart, Inc., be dismissed, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

**RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of May, 2017, by:

A handwritten signature in black ink, appearing to read 'D. Botha', written over the printed name below.

D. GRAHAM BOTHA, ESQ.  
GPA General Counsel