

1 **D. GRAHAM BOTHA, ESQ.**
2 **Guam Power Authority**
3 **688 Route 15, Suite 302**
4 **Mangilao, Guam 96913**
5 **Ph: (671) 648-3203/3002**
6 **Fax: (671) 648-3290**

7
8 *Attorney for the Guam Power Authority*
9

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 06-23-17

TIME: 3:55 AM PM BY: JMY

FILE NO OPA-PA: 17-006

10 **OFFICE OF THE PUBLIC AUDITOR**
11 **PROCUREMENT APPEALS**

12
13
14 IN THE APPEAL OF) DOCKET NO. OPA-PA-17-006
15)
16 America's Best Electricmart, Inc.,) **APPELLEE'S HEARING BRIEF**
17 Appellant.)
18 _____)
19)

20
21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of
22 record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the June 27, 2017, hearing
23 as follows.
24

25 **ARGUMENT**

26 Guam Power Authority (GPA) submits that it's decision to cancel the IFB was made
27 properly as provided for in 5 GCA §5225. Procurement law allows GPA to cancel Invitations for
28 Bids or Requests for Proposals. "An Invitation for Bids, a Request for Proposals, or other
29 solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as
30 may be specified in the solicitation, when it is in the best interests of the Territory in accordance
31 with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the
32 contract file." 5 GCA §5225. In this matter, after opening the bids and determining that
33 clarifications were needed on five of the eight bids, including the alternative bid submitted by
34 Americas Best, GPA determined that the specifications needed to be revised. It is clear, from a
35 comparison of the original bid and the re-bid in IFB-005-17, that GPA revised the specifications.

1 (Tab 15, pgs. 48, 49). GPA revised the specifications to change the nominal rating requirements
2 for the 150W and 250W LED luminaires, and changed the cost evaluation procedures to include
3 total life energy cost, and total cost of ownership as a method of evaluation. GPA has met the test
4 set forth in 5 GCA §5225 to cancel the bid, and to rebid with revised specifications.

5 Americas Best states that the bid should not be cancelled and it should be awarded the bid,
6 as it believes that it was the lowest responsive bidder. No such determination was made by GPA,
7 and the alternative bid submitted by Americas Best was one of five bidders that clarification was
8 requested from the bidders. A closer examination of the Abstract would reveal that the primary
9 bid of Americas Best, simply on a numerical review, was 4th for Item 1, 6th for Item 2, and 2nd for
10 Item 3. If the alternative bid was non-responsive, the primary bid submitted by Americas Best
11 would be highly unlikely to be the lowest bid for Items 1 and 2. The evaluation committee did not
12 meet on either December 16 or December 19, 2016, and did not evaluate the clarification
13 responses received from the bidders. Tab 20.

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

23

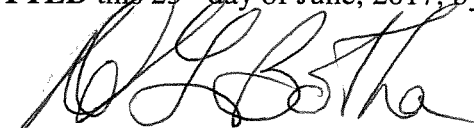
24

1
2
3
4
5
6
7
8

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 23rd day of June, 2017, by:


D. GRAHAM BÖTHA, ESQ.
GPA General Counsel