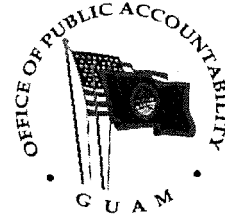


Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>John M. Benavente, P.E.</b> General Manager  <b>D. Graham Botha, Esq.</b> General Counsel Guam Power Authority P.O. Box 2977 Agana, Guam 96932	<b>From:</b>	<b>Yuka Hechanova</b> Deputy Public Auditor Office of Public Accountability
<b>Phone:</b> <b>Fax:</b>	(671) 648-3225/3203/3002 (671) 648-3290	<b>Pages:</b>	13 (including cover page)
<b>CC:</b>	<b>Georgette Bello Concepcion, Esq</b> <b>Brooks Concepcion Law, P.C.</b> Attorney for Appellant <b>America's Best Electricmart, Inc.</b> 247 Martyr Steet, Ste. 101 Hagatna, Guam 96910	<b>Date:</b>	July 27, 2017
<b>Phone:</b> <b>Fax:</b>	(671) 472-6848 (671) 477-5790	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 208 472-7951

**Re:** OPA-PA-17-006 Decision

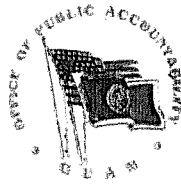
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OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**PROCUREMENT APPEALS**

IN THE APPEAL OF,	)	<b>APPEAL NO: OPA-PA-17-006</b>
	)	
AMERICA’S BEST ELECTRICMART, INC.,	)	<b>DECISION</b>
	)	
Appellant	)	

**I. INTRODUCTION**

This is the Decision of the Deputy Public Auditor for appeal number OPA-PA-17-006. The Deputy Public Auditor was designated by the Public Auditor to preside over this matter due to the Public Auditor’s April 24, 2017 Recusal in this matter and in accordance with 2 G.A.R.. Div. 4, Chap. 12, §12116. Appellant AMERICA’S BEST ELECTRICMART, INC., (Hereafter Referred to as “ABE INC.”) filed its appeal on April 20, 2017 regarding the GUAM POWER AUTHORITY’s (Hereafter Referred to as “GPA”) March 31, 2017 Decision denying ABE INC.’s January 18, 2017 protest of GPA’s cancellation of IFB No. GPA -005-17 (LED Luminaire Units and Photo Electric Controls) (Hereafter referred to as “IFB”). The Deputy Public Auditor holds that: (1) GPA’s cancellation of the IFB was untimely and violated 5 G.C.A. §5225 and 2 G.A.R., Div. 4, Chap. 3, §3115(d)(1)(B) because the cancellation occurred after the November 10, 2016 bid opening; (2) The IFB’s procurement record is incomplete because it does not contain a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement, and because it does not identify the person responsible for drafting the specifications used in the IFB or identify the persons, technical literature, or manufacturer’s brochures relied upon by the person drafting the specifications in violation of 5 G.C.A. §5249(b) and (d), and 2 G.A.R., Div. 4, Chap. 3, §3129(2) and (4), and 5 G.C.A. §5267 and 2 G.A.R., Div. 4, Chap. 4, §4108; and (3) GPA may reject the bids in whole or in part pursuant to 2

1 G.A.R., Div. 4, Chap. 3, §3115(d)(2)(A) . Accordingly, ABE INC.'s appeal in OPA-PA-17-006  
2 is hereby GRANTED in part and DENIED in part.

3  
4 **II. FINDINGS OF FACT**

5 The Deputy Public Auditor in reaching this Decision has considered and incorporates  
6 herein the procurement record and all documents submitted by the parties, and all arguments made  
7 during the hearing which was held on June 27, 2017. Based on the aforementioned record in this  
8 matter, the Deputy Public Auditor makes the following findings of fact:

9  
10 1. On or about October 20, 2016, GPA issued the IFB.<sup>1</sup>

11 2. The IFB stated, in relevant part, the following:

12 a. That the GPA was soliciting for eight-thousand-eight-hundred-thirty (8,830)  
13 150 Watt, LED Luminaire units that were compliant with GPA Specification E-043, Revision 3.<sup>2</sup>

14 b. That GPA was soliciting for six-hundred-forty-eight (648) 250 Watt LED  
15 Luminaire units that were compliant with GPA Specification E-043, Revision 3.<sup>3</sup>

16 c. That GPA was soliciting for nine-thousand-four-hundred-seventy-eight  
17 (9,478) Photo-Electric Control Units that were compliant with GPA Specification E-005,  
18 Revision 4.<sup>4</sup>

19 d. That the Chief Procurement Officer shall have the authority to award, cancel, or  
20 reject bids, in whole or in part for any one of more items if she determines it is in the public  
21 interest.<sup>5</sup>

22 e. That the bid submission deadline was on November 3, 2016 at 2:00 p.m.<sup>6</sup>

23  
24  
25  
26 <sup>1</sup> IFB Advertisement, Guam Daily Post dated October 20, 2016, page 554, TAB 1, Procurement Record filed on April 28, 2017.

27 <sup>2</sup> Item No. 1, page 517, Tab 2, Id.

28 <sup>3</sup> Item No. 2, page 518, Id.

<sup>4</sup> Item No. 3, page 519, Id.

<sup>5</sup> General Terms and Conditions, paragraph 23, Award, Cancellation, & Rejection, page 549, Id.

<sup>6</sup> Instructions to Bidders, page 516, Id.

1           3. On or about November 1, 2016, GPA issued IFB Amendment No. 1 which extended  
2 the bid submission deadline from November 3, 2016 to November 10, 2016 at 2:00 p.m.<sup>7</sup>

3           4. On or about November 4, 2016, GPA issued IFB Amendment No. 2 which  
4 incorporated GPA's answers to questions submitted by prospective bidders JMI EDISON,  
5 KOLTA GLOBAL PNB INC., and BENSON GUAM ENTERPRISES, INC., and which  
6 removed conflicting language from the descriptions for Item Nos., 1 and 2 of the IFB.<sup>8</sup>

7           5. Additionally, on or about November 4, 2016, the Guam Public Utilities Commission  
8 (Hereafter referred to as "PUC") approved a GPA petition to replace GPA's existing High  
9 Pressure Sodium streetlight system tariff to a new LED streetlight tariff. This would result in  
10 GPA estimating that it would cost approximately \$5,000,000 to replace the remaining HPS  
11 streetlights with the newer and more efficient LED streetlights.<sup>9</sup>

12           6. On or about November 10, 2016, GPA received bids from CANTON  
13 CONSTRUCTION CORP. (Hereafter Referred to as "CANTON"), R & D MARKETING  
14 (Hereafter Referred to and "R&D"), LIN'S HARDWARE STORE (Hereafter Referred to as  
15 "LHS"), BENSON GUAM (Hereafter Referred to as "BENSON"), ABE INC., SAMJIN WADA  
16 CO., INC. (Hereafter Referred to as "SAMJIN"), JMI EDISON (Hereafter Referred to as "JMI"),  
17 and KOLTA GLOBAL (Hereafter Referred to as "KOLTA").<sup>10</sup>

18           7. On November 10, 2016, GPA opened the bids and determined that CANTON bid  
19 \$148 per unit for Item No. 1, \$225 per unit for Item No. 2, and \$25 per unit for Item No. 3.  
20 R&D bid \$148.55 per unit for Item No. 1, \$212.52 per unit for Item No. 2, and \$4.99 per unit for  
21 Item No. 3. LHS bid \$219 per unit for Item No. 1, \$319 per unit for Item No. 2, and \$5.49 per  
22 unit for Item No. 3. BENSON bid \$293.40 per unit for Item No. 1, \$359.50 per unit for Item No.  
23 2, and \$5.95 per unit for Item No. 3. ABE INC. made primary and alternate bids at \$172.17 and  
24 \$127.97 respectively, per unit for Item No. 1, \$237.91 and \$198.28, respectively, per unit for

25 \_\_\_\_\_  
26 <sup>7</sup> Amendment No. I, page 514. NOTE: The date for this amendment is unreadable  
27 because it was positioned in the GPA letterhead. However, the OPA relied  
28 upon the fax transmission and ABE INC.'s Acknowledged receipt, Exhibit 2, of  
its Notice of Appeal to discern the November 1, 2016 amendment date.

<sup>8</sup> Amendment No. 2 dated November 4, 2016, pages 509-513, Id.

<sup>9</sup> GPA Press Release dated November 4, 2016, page 253, TAB 11, Id.

<sup>10</sup> Abstract of Bids, pages 369-373, Tab 5, Id.

1 Item No. 2, and one bid for \$5.42 per unit for Item No. 3. SAMJIN bid \$154 per unit for Item  
2 No. 1, \$180 per unit for Item No. 2, and \$15 per unit for Item No. 3. JMI made a primary bid of  
3 \$208.26 per unit and an alternate bid of \$193.99 per unit for Item No. 1, \$224.59 per unit for  
4 Item No. 2, and \$7.63 per unit for Item No. 3.<sup>11</sup>

5 8. On or about November 30, 2016, GPA's Evaluation Committee reviewed the bids and  
6 requested that GPA's Supply Management Administrator request that CANTON, LHS,  
7 SAMJIN, BENSON, ABE INC., and KOLTA clarify various parts of their bids.<sup>12</sup>

8 9. On or about December 6, 2016, JAMIE L.C. PANGELINAN, GPA's Supply  
9 Management Administrator issued requests for CANTON, LHS, SAMJIN, BENSON, ABE  
10 INC., and KOLTA, to clarify various parts of their bids.<sup>13</sup>

11 10. On or about December 27, 2016, GPA's Manager of Engineering, JOVEN G.  
12 ACOSTA, requested that the IFB be cancelled because GPA's new rate tariff for LED street  
13 lights does not correspond with GPA Specification E-043 and said specification was updated to  
14 reflect the new lower wattage requirements and to prevent GPA from under collecting and to  
15 increase the lumen levels to reflect recent upgrades in LED technology.<sup>14</sup>

16 11. On or about December 29, 2016, GPA's General Manager, JOHN M.  
17 BENAVENTE, approved ACOSTA's request to cancel the IFB.<sup>15</sup>

18 12. On or about January 4, 2017, GPA canceled the IFB and informed the bidders of the  
19 cancellation.<sup>16</sup>

20  
21  
22  
23 <sup>11</sup> Id.

24 <sup>12</sup> Memorandum from Evaluation Committee to Supply Management Administrator  
dated November 30, 2016, pages 348-349, TAB 7, Id.

25 <sup>13</sup> Letters from Supply Management Administrator to CANTON, LHS, SAMJIN,  
BENSON, ABE INC., AND KOLTA dated December 6, 2017, pages 323,328, 322,  
325,324, and 321, respectively, Id.

26 <sup>14</sup> Testimony of Joven G. Acosta on June 27, 2016, and Memorandum from Manager,  
Engineering to General Manager dated December 27, 2016, page 290, TAB 9,  
27 Procurement Record filed on April 28, 2017, Id.

28 <sup>15</sup> Id.

<sup>16</sup> Letters from John M. Benavente dated January 4, 2017 to bidders, pages 257-  
289, TAB 10, Procurement Record filed on April 28, 2017, and Testimony of  
Jaime L.C. Pangelinan on June 27, 2017.

1 13. On or about January 6, 2016, ABE INC. received notice that GPA canceled the  
2 IFB.<sup>17</sup>

3 14. Twelve (12) days later, on January 18, 2017, ABE INC. filed a protest with GPA  
4 alleging that: (1) The IFB cancellation is not specific and does not appear to relate to the LED  
5 Streetlight Specifications; (2) Cancelling and rebidding the IFB for issues unrelated to the  
6 technical specifications was unfair; (3) The IFB cancellation contradicts the timely  
7 implementation of the installation of LED streetlights; (4) The IFB cancellation delays the IFB's  
8 delivery schedule; and (5) The IFB cancellation and re-bid is unfair because the bidders' prices  
9 were made public.<sup>18</sup>

10 15. On March 31, 2017, GPA denied ABE INC.'s protest because: (1) The previous  
11 streetlight tariff reflected the HPS lights which was changed to reflect LED lights with different  
12 standards; and (2) GPA engineering has changed the technical specifications to reflect a cost  
13 evaluation based on the total cost of ownership based on LED streetlight nominal power rating.<sup>19</sup>

14 16. On April 7, 2017, ABE INC. received the GPA's Protest Decision.<sup>20</sup>

15 17. Thirteen (13) days later, on April 20, 2017, ABE INC. filed this appeal.

### 16 17 III. ANALYSIS

18 Pursuant to and 5 G.C.A. §5425(e) and 2 G.A.R., Div. 4, Chap. 12, §12103(a), the  
19 Deputy Public Auditor shall review GPA's March 31, 2017 Decision denying ABE INC.'s  
20 January 18, 2017 Protest *de novo*. ABE INC.'s appeal raises three (3) main issues: (1) Whether  
21 GPA satisfied the test to cancel a bid; (2) Canceling and re-bidding the IFB is unfair to the  
22 bidders who submitted bids in good faith; and (3) Cancelling and re-bidding the IFB is contrary  
23 to the strict delivery requirements set forth in the IFB. The Deputy Public Auditor will review  
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25

26  
27 <sup>17</sup> Fax Confirmation Report dated January 6, 2017, page 263, TAB 10,  
Procurement Record filed on April 28, 2017.

28 <sup>18</sup> Protest Letter dated January 17, 2017, page 251-252, TAB 11, Id.

<sup>19</sup> GPA's Protest Decision dated March 31, 2017, page 178, Tab 13, Id.

<sup>20</sup> Page 179, Id.

1 each of these issues to determine if they have any merit.

2  
3  
4 **A. GPA's Cancellation the IFB was Untimely.**

5 GPA asserts that it properly cancelled the IFB.<sup>21</sup> However, an invitation for bid may be  
6 cancelled as may be specified in the solicitation, when it is in the best interest of the government  
7 in accordance with procurement regulations, and the reasons therefore shall be made part of the  
8 procurement record. 5 G.C.A. §5225. Guam's Procurement Regulations specifically state that  
9 invitation for bids may only be cancelled prior to opening. 2 G.A.R., Div. 4, Chap. 3,  
10 §3115(d)(1)(B). Here, as stated above, GPA opened the bids submitted in response to the IFB on  
11 November 10, 2016 and then cancelled the IFB almost two (2) months later on January 4, 2017.  
12 Therefore, the Deputy Public Auditor finds that GPA's cancellation of the IFB was untimely and  
13 that it violated 5 G.C.A. §5225 and 2 G.A.R., Div. 4, Chap. 3, §3115(d)(1)(B) because the  
14 cancellation occurred after the November 10, 2016 bid opening. The Deputy Public Auditor  
15 further finds that because GPA's cancellation of the IFB was untimely, ABE INC.'s remaining  
16 issues concerning whether the IFB's cancellation was unfair to the bidders, and whether the  
17 cancellation violated the IFB's delivery requirements are moot and shall not be further  
18 considered in this decision.  
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23 **B. The Procurement Record is Incomplete**

24 ABE INC. alleges that GPA's procurement record for the IFB is incomplete because it  
25 does not have a communications log of the Evaluation Committee's meetings, it does not have  
26 the brochures or submittals of the bidders or manufacturers, and because it does not identify the  
27

28  

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<sup>21</sup> Statement Answering Allegations of Appeal, Paragraph II.A., Agency Report filed on May 5, 2017.

1 person responsible for drafting the specifications, and it does not identify the persons, technical  
2 literature, or manufacturer's brochures relied upon by the person drafting the specifications.<sup>22</sup>  
3 GPA must maintain a complete record of the IFB. 5 G.C.A. §5249 and 2 G.A.R., Div. 4, Chap.  
4 3, §3129. Additionally, for procurement appeals such as this one, the head of a purchasing  
5 agency shall submit to the OPA a copy of the procurement record relevant to the appeal within  
6 five (5) days working after receiving notice of an appeal. 2 G.A.R., Div. 4, Chap. 12,  
7 §12104(c)(3). Here, GPA did file a procurement record on April 28, 2017, and subsequently  
8 supplemented it with additional documents, specifically, the bids submitted in response to the  
9 IFB. After an exhaustive review of these documents, the Deputy Public Auditor will address  
10 each of ABE INC.'s allegations concerning the procurement record. Here, the procurement  
11 record has no log of communications. A complete procurement record requires a log of all  
12 communications between government employees and any member of the public, potential  
13 bidder, vendor or manufacturer which is in any way related to the procurement. 5 G.C.A.  
14 §5249(b) and 2 G.A.R., Div. 4, Chap. 3, §3129(2). The IFB's procurement record contains hard  
15 copies of correspondence between government employees, members of the public, and the  
16 bidders that is organized into various tabs. However, it does not contain a log of these  
17 communications as required by 5 G.C.A. §5249(b) and 2 G.A.R., Div. 4, Chap. 3, §3129(2).  
18 Here, the IFB's procurement record contains the brochures and bids submitted by the eight (8)  
19 bidders. A complete procurement record requires the brochures and submittals of potential  
20 vendors, manufacturers, or contractors. 5 G.C.A. §5249(d) and 2 G.A.R., Div. 4, Chap. 3  
21 §3129(4). These were not part of the procurement record submitted by GPA on April 28, 2017,  
22 however, GPA supplemented this record by providing copies of bids submitted in response to the  
23 IFB and these include the brochures and submittals of potential vendors, manufacturers, or  
24 contractors. Here, as stated above, the IFB contains GPA Specification Nos. E-043, Revision 3,  
25 and E-005, Revision 4. However, neither of these specifications identify the persons responsible  
26 for drafting them nor do they identify the persons, technical literature, or manufacturer's  
27

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28 <sup>22</sup> Page 3, lines 18 to page 4, line 16, ABE INC.'s Hearing Brief filed on June 23, 2017.



1 brochures relied upon by the persons drafting the specifications. A complete procurement record  
2 requires all drafts, signed by the draftsman and other papers or materials used in the development  
3 of specifications. 5 G.C.A. §5249(d) and 2 G.A.R., Div. 4, Chap. 3, §3129(4). Additionally, the  
4 specifications contained in any invitation for bids or requests for proposals shall identify the  
5 person responsible for drafting the specifications and any persons, technical literature or  
6 manufacturer's brochures relied upon by the responsible person in drafting the specifications.  
7 5 G.C.A. §5267 and 2 G.A.R., Div. 4, Chap. 4, §4108. Both specifications state that they were  
8 prepared by GPA's Engineering Department, and they have the initials or signatures, which are  
9 barely legible, of the persons who issued or approved them. Further, they both have a paragraph  
10 titled: "Applicable Publications." However, this paragraph merely identifies various publications  
11 containing standards that equipment must meet to comply with the respective specifications.<sup>23</sup>  
12 Albeit close to what the statute and regulations require, the specifications in the procurement  
13 record are not close enough. Based on the foregoing, the Deputy Public Auditor finds that the  
14 IFB's procurement record is incomplete because it does not contain a log of all communications  
15 between government employees and any member of the public, potential bidder, vendor or  
16 manufacturer which is in any way related to the procurement, and because it does not identify the  
17 person responsible for drafting the specifications used in the IFB or identify the persons,  
18 technical literature, or manufacturer's brochures relied upon by the person drafting the  
19 specifications as required by 5 G.C.A. §5249(b) and (d), and 2 G.A.R., Div. 4, Chap. 3,  
20 §3129(2) and (4), and 5 G.C.A. §5267 and 2 G.A.R., Div. 4, Chap. 4, §4108.

21  
22 **C. GPA may Reject the Bids in whole or in Part or Award the Contract.**

23 ABE INC. argues that GPA be ordered to execute the alternative bid offered by ABE  
24 INC. However, if prior to an award it is determined that a solicitation or proposed award of a  
25 contract is in violation of law, then the solicitation or proposed award shall be cancelled, or  
26 revised to comply with the law. 5 G.C.A. §5451 and 2 G.A.R., Div. 4, Chap. 9, §9105(a). Here,  
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<sup>23</sup> GPA Specification Nos. E-043, Revision 3, and E-005, Revision 4, IFB, pages 520-537, TAB 2, Procurement Record filed on April 28, 2017.

1 as shown above, there is no award or proposed award of the contract. Here, GPA's solicitation  
2 of the IFB violated Guam's Procurement Laws and Regulations. As shown above, GPA's  
3 cancellation of the IFB was untimely and violated 5 G.C.A. §5225 and 2 G.A.R., Div. 4, Chap. 3,  
4 §3115(d)(1)(B) because the cancellation occurred after the November 10, 2016 bid opening.  
5 Further, as shown above, the IFB's procurement record is incomplete because it does not contain  
6 a log of all communications, and it does not identify the person responsible for drafting the  
7 specifications, or the persons, technical literature, or manufacturer's brochures relied upon by the  
8 person drafting the specifications in violation of 5 G.C.A. §5249(b) and (d), and 2 G.A.R., Div.  
9 4, Chap. 3, §3129(2) and (4), and 5 G.C.A. §5267 and 2 G.A.R., Div. 4, Chap. 4, §4108.

10 Pursuant to 5 G.C.A. §5451 and 2 G.A.R., Div. 4, Chap. 9, §9105(a) GPA has two (2)  
11 alternatives instead of the one proposed by ABE INC. First, GPA may terminate the IFB after  
12 opening but prior to award, but GPA must follow the procedures for rejecting all bids in whole or  
13 in part set forth in Guam Procurement Regulations. 2 G.A.R., Div. 4, Chap. 3, §3115(d)(2)(A).  
14 Second, GPA could also revise the solicitation<sup>24</sup> to comply with the law by either: (a) Rejecting  
15 the bids in part, specifically Item Nos. 1 and 2, due to the revised specification E-043, and make  
16 an award for Item No. 3, which is based on specification E-005, Revision 4; or (b) Proceed with  
17 evaluating all the bids and make an award for items 1, 2, and 3, as is, and by resolving the IFB's  
18 procurement record deficiencies identified above. However, GPA would be prohibited from  
19 amending the IFB because such an amendment after opening would be untimely due to GPA  
20 having opened the bids. 2 G.A.R., Div. 4, Chap. 3, §3109(i)(3). If GPA chooses the first option  
21 and terminates the IFB by rejecting all the bids submitted in response to the IFB in whole or in  
22 part, GPA's general manager must issue a written determination articulating why such action is  
23 in the government's best interest. 2 G.A.R., Div. 4, Chap. 3, §3115(d)(2)(A). One of the  
24 reasons justifying the rejection of all the bids in whole or in part could be that the IFB had  
25

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26  
27 <sup>24</sup>The term "solicitation" is not limited to the method of solicitation, i.e.  
28 Invitation for Bid or Request for Proposal, and broadly encompasses the  
entire procurement process to include the actions of government employees,  
bidders, offerors, contractors, or other persons involved in the procurement  
process. 2 G.A.R., Div. 4, Chap. 9, §9104(a)(2).

1 inadequate specifications. 2 G.A.R., Div. 4, Chap. 3, §3115(d)(2)(A)(ii). Further, GPA must  
2 not be overzealous if it decides to terminate the IFB by rejecting all the bids in whole or in part.  
3 GPA is hereby reminded that preparing and distributing a solicitation requires the expenditure of  
4 time and funds and that businesses likewise incur expenses in examining and responding to  
5 solicitations, and although the issuance of a solicitation does not compel the award of a contract,  
6 a solicitation is to be terminated only when cogent and compelling reasons to believe that the  
7 solicitation is in the government's best interests. 2 G.A.R., Div. 4, Chap. 3, §3115(b). Thus, if  
8 GPA can retain the bids for any of the three (3) items it was soliciting for and make an award for  
9 them, despite the change in its streetlight tariff, it should do so by rejecting the bids in part and  
10 limiting the rejected parts to those actually affected by the change in the streetlight tariff.

#### 11 12 **IV. CONCLUSION**

13 Based on the foregoing the Deputy Public Auditor hereby determines the following:

14 1. GPA's cancellation of the IFB was untimely and violated 5 G.C.A. §5225 and 2  
15 G.A.R., Div. 4, Chap. 3, §3115(d)(1)(B) because the cancellation occurred after the November  
16 10, 2016 bid opening. Accordingly, GPA's January 4, 2017 cancellation of the IFB is hereby  
17 VACATED and of no further force and effect.

18 2. ABE INC.'s remaining issues concerning whether the IFB's cancellation was unfair  
19 to the bidders, and whether the cancellation violated the IFB's delivery requirements are moot as  
20 a result of the GPA's January 4, 2017 cancellation of the IFB being vacated because it was  
21 untimely.

22 3. The IFB's procurement record is incomplete because it does not contain a log of all  
23 communications between government employees and any member of the public, potential  
24 bidder, vendor or manufacturer which is in any way related to the procurement, and because it  
25 does not identify the person responsible for drafting the specifications used in the IFB or identify  
26 the persons, technical literature, or manufacturer's brochures relied upon by the person drafting  
27 the specifications in violation of 5 G.C.A. §5249(b) and (d), and 2 G.A.R., Div. 4, Chap. 3,  
28

1 §3129(2) and (4), and 5 G.C.A. §5267 and 2 G.A.R., Div. 4, Chap. 4, §4108. GPA shall correct  
2 these deficiencies no later than thirty (30) calendar days after this Decision is issued.

3 4. Pursuant to 5 G.C.A. §5451 and 2 G.A.R., Div. 4, Chap. 9, §9105(a), GPA may  
4 terminate the IFB solicitation by rejecting all bids, in whole, in accordance with 2 G.A.R., Div.  
5 4, Chap. 3, §3115(d)(2)(A), or it may proceed with the evaluation of the bids submitted in  
6 response to the IFB, in whole or in part in accordance with 2 G.A.R., Div. 4, Chap. 3,  
7 §3115(d)(2)(A), and award the IFB contract to the lowest responsible and responsive bidder in  
8 accordance with 5 G.C.A §5211(g) and 2 G.A.R., Div. 4, Chap. 3, §3109(n).

9 6. ABE INC.'s appeal is GRANTED in part and DENIED in part.

10 7. The Deputy Public Auditor finds that ABE INC. is entitled to its reasonable costs  
11 incurred in connection with the solicitation, including its bid preparation costs, for its January 18,  
12 2017 protest, excluding attorney's fees, pursuant to 5 G.C.A. §5425(h), because at the time of  
13 said protest there was a reasonable likelihood that ABE INC. may have been awarded the  
14 contract but for GPA's violations of 5 G.C.A. §5225 and 2 G.A.R., Div. 4, Chap. 3,  
15 §3115(d)(1)(B).

16 8. ABE INC.'s request for an award of its reasonable attorney fees is hereby DENIED.<sup>25</sup>  
17 Pursuant to 5 G.C.A. §5425(h), the protesting party is not allowed to recover its reasonable  
18 attorney fees.

19 This is a Final Administrative Decision. The Parties are hereby informed of their right to  
20 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with  
21 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative  
22 Decision. 5 G.C.A. §5481(a).

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<sup>25</sup> Page 10, line 13, ABE INC.'s Hearing Brief filed on June 23, 2017.

1 A copy of this Decision shall be provided to the parties and their respective attorneys, in  
2 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website  
3 [www.opaguam.org](http://www.opaguam.org).

4  
5 **DATED** this 27<sup>th</sup> day of July, 2017.

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7 

8  
9 **YUKARI HECHANOVA, CPA, CGFM, CIA, CGAP, CGMA**  
10 **DEPUTY PUBLIC AUDITOR**

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<b>Phone:</b>	(671) 648-3225/3203/3002	<b>Pages:</b>	13 (including cover page)
<b>Fax:</b>	(671) 648-3290	<b>Date:</b>	July 27, 2017
<b>CC:</b>	Georgette Bello Concepcion, Esq. Brooks Concepcion Law, P.C. Attorney for Appellant America's Best Electricmart, Inc. 247 Martyr Street, Ste. 101 Hagatna, Guam 96910	<b>Phone:</b>	475-0390 x. 208
<b>Phone:</b>	(671) 472-6848	<b>Fax:</b>	472-7951
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**Re:** OPA-PA-17-006 Decision

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