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11 **OFFICE OF THE PUBLIC AUDITOR**
12 **PROCUREMENT APPEALS**
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15 IN THE APPEAL OF) DOCKET NO. OPA-PA-09-008
16)
17 O&M ENERGY, S.A.) **REPLY TO O&M ENERGY RESPONSE**
18) **TO GUAM POWER AUTHORITY**
19 Appellant.) **MOTION FOR SUMMARY JUDGMENT**
20 _____)
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22 Comes now, Appellee GUAM POWER AUTHORITY (GPA), by and through its
23 attorney, D. GRAHAM BOTHA, ESQ., and submits its reply to the O&M Energy response
24 to Guam Power Authority’s Motion for Summary Judgement.

25 O&M having reviewed the motion for summary judgment, now attempts to argue that
26 additional matters not presented in the appeal should be considered. O&M argues that since in
27 its opinion that the “irrationality of such a price” must be considered as non-responsive on the
28 part of TEMES. O&M states that “such a plant cannot be operated with such a budget. This is
29 not speculation. This is based on industry standards and knowledge of the business in which
30 O&M Energy operates internationally.” Unfortunately, this is exactly speculation as to what the
31 amount of the bid should be on the part of TEMES. O&M bases its opinion on how it operates
32 other plants, but has no personal knowledge of how the Cabras 1&2 plants operate, or what
33 knowledge of the plants and their operation is known by the current operator, TEMES. It is

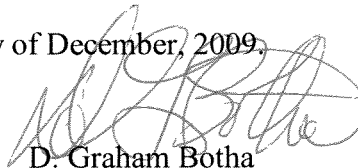
1 merely the opinion of TEMES that states that the plant cannot be operated on the budget
2 submitted. Certainly, O&M can offer its opinion that O&M is unable to operate the Cabras
3 plants with the budget presented by TEMES, but industry experience or not, it is just an opinion
4 by O&M that TEMES is unable to perform based on the TEMES budget.

5 Despite the opinions raised by O&M in its response, the facts remain unchanged.
6 Representative of O&M were present at the bid opening at which they were provided a copy of
7 the Abstract of Bids which lists the Net Present Value (NPV) of the three bidders. TEMES had
8 the highest 5 year NPV (\$9,394,142.33) followed by O&M (\$5,353,457.28), and then Korea East
9 (\$4,939,222.46).

10 GPA has received a bid bond from each of the bidders, and finding the bidders as
11 responsive it is required under Guam procurement law to take the lowest bid for the operation of
12 the Cabras plants. The lowest bid is that submitted by TEMES, the current PMC for Cabras
13 1&2. Numerous plant upgrades have taken place in the last five years that TEMES has operated
14 the plants, and the purpose of the upgrades and improvements was so that there would be
15 efficiencies in the operation of the plants. TEMES could certainly have priced its bid for future
16 operation of the plants with the understanding that it would have cost savings and efficiencies as
17 a result of previous improvements to the plants.

18 GPA submits that it is entitled to summary judgment as a matter of law, and that its
19 motion for summary judgment should be granted.

20 Respectfully submitted this 21st day of December, 2009.

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D. Graham Botha
GPA Legal Counsel