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Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

IN THE APPEAL OF)	DOCKET NO. OPA-PA-19-010
)	OPA-PA-20-001
GlidePath Marianas Operations, Inc.,)	
)	REBUTTAL TO GLIDEPATH'S
Appellant.)	COMMENTS ON AGENCY REPORT
_____)	

COMES NOW, the GUAM POWER AUTHORITY, by and through its counsel of record, D. GRAHAM BOTHA, ESQ., and hereby files its rebuttal to GlidePath's comments on the Agency Report. GlidePath submitted comments to the Agency Reports filed on November 29, 2019 and January 31, 2020.

BACKGROUND

On November 28, 2017, Guam Power Authority ("GPA") issued Multi-Step Invitation for Bid, GPA-IFB-007-018, RENEWABLE ENERGY RESOURCES PHASE III. Multiple bidders expressed interest in the IFB from November 28, 2017 to June 3, 2019. Six companies submitted bids in response to the Multi-Step IFB, ENGIE, AES, KEPCO/Hanwha, Glidepath, X-Elio, and Global Sources. All bidders, except for Global Sources, submitted bids for both sites, Naval Base Guam and South Finegayan. Prior to submission of the technical proposals, the bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments II to XIX in response to these questions, and other amendments to clarify the IFB. Procurement Record.

On June 3, 2019, the sealed technical proposals of the six bidders were opened in the presence of company representatives. The representatives were provided a copy of the Abstract of Bids which lists the technical proposals for the six bidders. Each of the six bidders submitted technical proposals for either one site or two sites.

On August 12, 2019, the evaluation committee met and recommended that five of the six bidders be deemed qualified under the Phase I technical evaluation, and one of the six bidders be deemed not qualified under the Phase I technical evaluation to proceed to Phase II – price proposals. Five bidders with twelve project sites were qualified, ENGIE, AES, KEPCO/Hanwha, GlidePath, and X-Elio. One bidder was not qualified in the Phase I technical proposal, Global Sourcing USA, Inc.

Amendment No. XXIII and letters were sent to the qualified bidders on August 14, 2018. Phase I letters were sent to the non-qualified bidders on August 14, 2018. Amendment XX to XXIII and clarifications were sent to Phase II bidders. On September 10, 2019, the sealed price proposals for the five bidders and ten project sites were opened in the presence of company representatives. The price proposal evaluation was completed and determined that the lowest responsive bidder for Naval Base Guam and South Finegayan was ENGIE. The evaluation committee recommended award of Naval Base Guam (NBG) and South Finegayan (SF) sites based on the technical price proposals submitted. The Phase II – Bid Abstract and evaluation committee memo reflect the NBG site price of **\$110.90/MWh** and the SF site price of **\$108.90/MWh**; AES prices for NGB of **\$169.00/MWh** and SF of **\$158.90/MWh**; GlidePath prices for NGB of **\$196.00/MWh** and SF of **\$191.50/MWh** and GlidePath (Alternate) prices for NGB of **\$176.00/MWh** and SF of **\$176.00/MWh**. The alternate bid reflected the GlidePath demand that it be awarded both sites.

GlidePath filed a protest with GPA which resulted in a Stay of Procurement, and a Lift of Stay when the protest was denied by GPA. GlidePath filed an appeal to the OPA on November 13, 2019, and GPA filed a Stay of Procurement on November 15, 2019. GlidePath filed a second appeal to the OPA on January 21, 2020.

DISCUSSION

Five bidders submitted technical price proposals for ten sites which were opened by GPA on September 10, 2019. The evaluation committee recommended award of the two lowest site proposals each consisting of a renewable energy and battery project. The committee evaluation memo and the Bid Abstract – Phase II clearly sets forth the prices of the bidders, including ENGIE, GlidePath and AES. Based on the bid abstract, the two proposals submitted by ENGIE, NGB and SF, based on price are the #1 bidder for both sites, at a first-year price of \$110.90/MWh for NGB and \$108.90/MWh for SF. This compares with the AES price of \$169.00/MWh for NGB and \$158.90 for SF, and the GlidePath (Alternate) price of \$176.00/MWh for NGB and \$176.00/MWh for SF.

GlidePath first appeal states that “ENGIE’s projects have included more solar generation capacity than allowed by the technical requirement of the IFB. Based on the significantly higher Guaranteed Net Annual Generation (“GNAG”) included, the ENGIE Priced Proposals when compared to the proposal submitted by GlidePath and all the other bidders, GlidePath’s technical experts are concerned that ENGIE may not have followed all of GPA’s technical requirements.” The ENGIE proposal meets the GPA bid requirement that “the MW rating of the ESS shall be equal to or greater than the 145% of the MW rating of the PV charging system.” GlidePath claims that GPA’s technical requirements limit solar system capacity to 20.7MW_{DC}. GPA’s bid did not limit the capacity of the PV installation, but does restrict the delivery of energy at the

interconnection point which is 30MW_{ac}. Volume II- Technical Qualification Proposal Requirement, Section 1 Overview (pg 52 of 501) states: “1. The bidder’s renewable resource project shall have a **maximum export capacity of 30MW_{ac}**; this may be a combination of several generation units at one site.” Section 2.3.1. Minimum and Maximum Project Capacity (pg 56 of 501) states “there is no minimum nameplate project capacity that a Bidder may offer, **however the maximum export capacity shall be 30MW.**”

GlidePath itself sought clarification on this issue on February 11, 2019, which was addressed in Amendment XVII (pg. 2 of 17) in which GlidePath asks “what is the maximum procurement under this bid, could GPA select two 30MW_{ac} projects at each site for a total procurement of 60MW_{ac}? The GPA response was “Yes.”

GlidePath states that the GPA limit on the ESS size to 30MW at each project site together with the 145% requirement effectively caps the size of the PV system to 20.7MW_{ac}. The IFB states that the intent of the 145% requirement is to require the ESS charge and discharge be asymmetrical, with ESS discharge power required to be 30MW_{ac} at the point of connection and ESS charge power not to exceed 20.7MW. This requirement limits the maximum AC PV charging power on each site to 1/1.45 of the maximum AC export capacity. The “MW rating of the PV charging system” in ENGIE’s proposal, is equal to the power rating of the DC/DC converters, and is capped at 20.7MW (i.e. 1/1.45 of 30MW AC), in full compliance with the IFB requirements. Clarifications were provided in Amendment XVII for both GlidePath and ENGIE regarding the increased delivery period.

GlidePath also claims that “except for the ENGIE proposals, all bidders are, in fact, within a similar Guaranteed Net Annual Energy (“GNAG”) range.” For the Naval Base location, the percentage difference between ENGIE and KEPCO is 28.5%, and between KEPCO

and X-Elio is 34%. For South Finegayan, the difference between ENGIE and AES is 16.5%, which is close to the gap between GlidePath and AES. There clearly appears to be significant variation between the GNAG values among the bidders. In addition, there is no direct correlation between the GNAG and tariff, i.e. a higher GNAG does not necessarily correspond to a lower tariff: X-Elio offered a 25% lower GNAG than AES, but at virtually the same tariff (\$170 vs. \$169).

GlidePath next claims that GPA's technical specifications somehow misled GlidePath and that there was a "flawed procurement where every offeror other than ENGIE was led astray into submitting bids that were limited by specifications that did not actually exist." It appears that GlidePath sought to file an additional appeal on multiple grounds in case the first appeal was not successful, given that all parties, including GlidePath, had many opportunities to seek clarification at all steps in the bidding process, to ensure that they understood the technical specifications, and any restrictions contained within those specifications. It is clear that through the question and amendment process, that GlidePath and other bidders submitted and received answers to the questions submitted to GPA.

GlidePath attempts to bring up an issue regarding an alleged violation of the automatic stay. This issue was never raised in any of the two appeals brought before the OPA, and it not properly brought before the Public Auditor for adjudication.

GlidePath's main contention in its comments to the Agency Report appears to be that it is a question of whether or not GPA understood the technical requirements of the IFB. The only party in this case that appears to be confused about the technical specifications is GlidePath, despite having ample opportunities to seek clarification from GPA during the bidding process. No matter how many times GlidePath attempts to restate its issues for appeal, the only issue

before the Public Auditor is whether the ENGIE bid, as submitted, met the technical specifications of the Phase III solar IFB in Multi-step bid, GPA-IFB-007-018. If the ENGIE bid complies with the GPA technical specifications, then the GlidePath appeals should be denied. The procurement process was not rushed or expedited, as the IFB was issue on November 16, 2017, and a notice of intent to award to ENGIE was issued on October 4, 2019, almost two years later.

CONCLUSION

GPA requests that the Public Auditor deny the appeals of GlidePath and authorize GPA to award the bid to the lowest responsible and responsive bidder, which is ENGIE.

RESPECTFULLY SUBMITTED this 24th day of February, 2020, by:



D. GRAHAM BOTHA, ESQ.
GPA General Counsel