



1 GPA's new streetlight tariff, Rate Schedule F, does not correspond with GPA's power  
2 requirements for LED street lights specified in GPA Specification E-043. Specifically,  
3 the new tariff specifies LED wattage levels at 67 and 120 Watts for 150 and 250 Watts  
4 streetlights respectively. To ensure GPA is not under collecting, GPA specification E-  
5 43 has been updated to reflect the lower wattage requirements. Additionally, lumen  
6 levels have also been increased to reflect recent upgrades in LED technology.

7 Exhibit 11(PR at 290).

8 In a letter dated January 04, 2017, GPA informed ABE that the bid was canceled. Exhibit 5  
9 (PR at 273 through 289). GPA's reason for cancelling IFB GPA-005-17 is that "in compliance  
10 with the New Streetlight Tariff, the Authority has determined this bid canceled." Id.

11 In a letter dated January 6, 2017, ABE requests GPA expand on what specific compliance  
12 issue of the New Streetlight Tariff was not met. Exhibit 6 (PR at 296). GPA never responded to  
13 ABE's request for information. In an email dated January 6, 2017, Lin's Hardware requested to  
14 "know the reason that GPA determined this Bid canceled [sic]..." PR at 271. In a letter dated  
15 January 17, 2017, Lin's Hardware again requests "to know the reasons so [it] can understand what  
16 caused this cancellation ..." Exhibit 9 (PR at 248). In an email dated January 17, 2017, Canton  
17 Construction Corp. inquired as to "why the bid is cancelled" as "Canton has submitted clarifications  
18 per [GPA's]." PR at 250. The Procurement Record is devoid of any communications from the GPA  
19 to the Bidders in response to their inquiries as to the reason the bid was cancelled.

20 In a letter dated January 17, 2017 ("Protest Letter") ABE challenged the basis for the bid  
21 cancellation. Exhibit 7 (PR at 251-252).

22 In a letter dated March 31, 2017 by John M. Benavente, P.E., General Manger which was  
23 received by ABE via facsimile transmission on April 6, 2017, GPA states, in relevant part:

24 You indicated in your [January 17, 2017 protest] letter that you believe the streetlight  
25 tariff had nothing to do with the change in specification. This is not correct, as the  
26 previous tariff reflected HPS lights, and this has now been changed to reflect LED  
27 lights with different standards. In addition, GPA engineering has changed the technical  
28 specifications to reflect a cost evaluation based on the total cost of ownership (TOC)  
computed by addition the initial purchase price plus the total life energy cost. The

1 LED streetlight nominal power rating for the specified make, model, CCT, drive  
2 current, and IES classification will be utilized to calculate the GPA Total Cost of  
3 Ownership (TOC).

4 PR at 178-179. GPA denied ABE's protest and made no attempt to discuss the merits of ABE's  
5 protest or to explain which specific compliance issue of the New Streetlight Tariff was not met.

6 The IFB was re-issued on April 13, 2017 which included Specification No. E-043, Revision  
7 5. Exhibit 19 (PR at 39-78).

8 It is notable that the New Streetlight Tariff referenced in GPA's notice of cancellation of bid  
9 was implemented by Order of the Guam Public Utilities Commission (hereinafter "Order"), GPA  
10 Docket 16-01, became effective on October 27, 2016. Exhibit 12. In Resolution No. 2016-03,  
11 adopted on January 26, 2016 (hereinafter "Resolution"), the CCU authorized GPA to petition the  
12 PUC for approval to implement an interim streetlight tariff for energy efficient LED streetlights.  
13 Exhibit 13.

14  
15 Seven thousand six hundred twenty eight (7,628) LED streetlights had already been  
16 purchased by GPA prior to this bid.

17  
18 **2. Despite requests GPA "complete" the Procurement Record, it has failed to do**  
19 **so.**

20 5 GCA § 5249(a) requires each procurement officer to maintain a complete record of "the  
21 date, time, subject matter and names of participants at any meeting including government employees  
22 that is in any way related to a particular procurement." The Agency Report states "on November  
23 30, 2016, the evaluation committee met and requested clarification from the bidders..." No log  
24 was provided for the November 30, 2016. In an email dated June 6, 2017, GPA's counsel states this  
25 meeting did not happen.

26  
27 If this is true, how did the committee determine what clarifications were needed from the  
28 bidders? In addition, the Procurement Record does not include information from the evaluation

1 groups. Where are the notes, draft documents, and work product from the evaluation committee?  
2 There are no notes from the GPA's procurement officer to the evaluation committee regarding the  
3 completeness or incompleteness of the individual bids received.

4 5 GCA § 5249 (d) requires the procurement officer to maintain "brochures and submittals of  
5 potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman,  
6 and other papers or materials used in the development of specifications." The Procurement Record  
7 did not include brochures and submittals of the Bidders or manufacturers. The Procurement Record  
8 did not include all drafts, signed and dated by the draftsman, and other papers or materials used in  
9 the development of specifications.  
10

11 The Procurement Code requires "[t]he specifications contained in any invitation for bids or  
12 request for proposals, and any amendment thereto, for the procurement of supplies shall identify the  
13 person responsible for drafting the specifications and any persons, technical literature or  
14 manufacturer's brochures relied upon by the responsible person in drafting the specifications. " 5  
15 G.C.A. § 5267. Who within the GPA drafted the specifications for this IFB?  
16

17 **3. GPA has not satisfied the test to cancel a bid.**

18 The GPA's reason for cancelling IFB GPA-005-17 stated in the notice of cancellation to  
19 ABE and other Bidders is that "in compliance with the New Streetlight Tariff, the Authority has  
20 determined this bid canceled."  
21

22 The CCU Resolution 2016-003 and PUC Order do not address or discuss a new or updated  
23 LED specification. In fact, GPA already implemented an LED Streetlight Replacement program  
24 upgrading the technology of existing streetlights from High Pressure Sodium (HPS) to LED at the  
25 time the Resolution was issued. Exhibit 10. Furthermore, neither the Resolution nor the Order list  
26 any requirement of a change of specification for the actual LED streetlight.  
27  
28

1           However, in its Statement Answering Allegations of Appeal, the GPA claimed for the very  
2 first time the bid was cancelled because “”after opening bids and determining that clarifications  
3 were needed on five of the eight bids, including the alternative bid submitted by [ABE], GPA  
4 determined that the specifications needed to be revised.” GPA Stmt. at 2. Nowhere in the notice  
5 of cancellation is this reason intimated. In fact, the Procurement Record makes clear that ABE and  
6 two other bidders, Lin’s Hardware and Canton Construction, requested specifics as to why the bid  
7 was cancelled. Exhibits 6 and 9. The GPA never provided a response to either of the three  
8 inquiries and alleges this reason for cancellation for the very first time.  
9

10           These specifics were not prevalent in the clarification requests. The requests for clarification  
11 as to each bidder included:

12           1. Lin’s Hardware

- 13           • provide ANSI specifications for c78.377, c82.ssl1, and c82.77
- 14           • clarify IES classification, CTT, initial lumens, and CRI
- 15           • clarify wire connection
- 16           • clarify whether a terminal block will be provided

17           2. Benson

- 18           • clarify tools needed
- 19           • clarify if terminal block is included
- 20           • provide a photograph showing mounting bolts, terminal block location, and the  
21           tilt adjustment
- 22           • clarify tilt adjustment option
- 23           • provide photometric plots

24           3. Kolta Global PNB, Inc.

- 25           • clarify if photoelectric control receptacle is included
- 26           • clarify wire termination type and specifications

27           4. Canton Construction Corp.

- 28           • provide literature specific to each individual luminaires with model numbers and  
specified electrical and photometric information
- clarify if UL listed
- provide diagrams for the luminaires showing all components, descriptions of  
components, dimensions, weight, and wire connection details
- provide testing reports

- provide ANSI specifications
- clarify IES classification, CCT, initial lumens, CRI, voltage, and lumens/watts
- provide installation instructions
- provide photometric plots

5. America's Best Electricmart, Inc.

- provide detailed cut sheets showing mounting, tools required with sizes, hardware, terminal block, and luminaire leveling/tilt adjustments
- clarify model # offered, missing the light distribution pattern type in the model #. i.e. (GCJ2-20H-MV-NW-X-GY-900; what is the value for "X".

6. Samjin Wadaco, Inc.

- verify model # offered
- clarify if tilt adjustment provided
- clarify wire termination type and size of screw driver for the terminal block if provided
- clarify if photoelectric control receptacle is included
- clarify reference to Cree Xlamp for LM-80-08
- 

A review of the Evaluation Committee's requests, as summarized herein, for clarification from each of the Bidders generally involved hardware and tools needed to install said hardware. *See* Procurement Record Tab 7.

As for the items GPA's Evaluation Committee sought clarification from ABE, the requested information was already provided as part of ABE's (alternate) bid package. Exhibit 18. The catalog sheet was provided as part of ABE's bid. The Model # was designated as "X" to allow the GPA a choice between model #2 or #3 as to the light distribution pattern type, both of which fell within the required specifications.

The GPA further asserts "from a comparison of the original bid and the re-bid in IFB-005-17, it is clear that GPA revised the specifications." ABE's witness, Kristian Reyes, will testify the revised specifications are not that much different than those required under the initial IFB-005-17. For instances, the CCT under IFB-005-17 was 3800-4800K and under the Re-bid the CCT is

1 4,000+/- 300K. In addition, CRI under the original bid is >65 and under the Re-bid it is >68. These  
2 are not significant differences. All but one of the Bidders bid CCT of 4,000K.

3 ABE will show that its Alternate Bid was the lowest, responsible and responsive bid as  
4 defined in 5 GCA § 5201(g). The required bid documents were submitted. All technical  
5 requirements were met. Information requested in the clarification letter (tools required &  
6 explanation of “x” in the catalog number) were answered in initial bid and where quickly responded  
7 to in ABE’s best clarification response. Exhibit 18.

9 **3. Cancelling and re-bidding GPA005-17 is unfair to the bidders who submitted**  
10 **bids in good faith.**

11 One of the bidders initially suggested GPA consider evaluating the bids based on lighting  
12 efficiency or life-cycle cost of the fixture:

13 JMI Edison Inquiry dated 10/26/16:

14 **QUESTION:**

15 1. Given the speed that the LED technology is improving, it is very possible that  
16 bidders will be bidding on products that are much more efficient than what GPA’s  
17 specifications call for. Therefore, we think it is in GPA’s and Guam [sic] best interest  
18 to include lighting efficiency in the evaluation criteria, or possibly evaluate the bids  
19 based on the life-cycle cost of the fixtures.

18 **ANSWER:**

19 GPA Bid 005-17 will be awarded based on the lowest responsive bid, as outlined in  
20 GPA’s General Terms and Conditions. This is found on page 35 of 39 of the bid  
21 package for GPA-005-17. Additionally, GPA Specification E-043 is updated  
22 periodically to reflect advantages in LED Technology.

22 PR at 426-427.

23 GPA initially rejected the idea of including the very factors it now asserts, after opening the  
24 bids, should be included in the re-issued IFB. The “life-cycle cost” referenced in JMI’s inquiry is  
25 the equivalent of the “Total Ownership Cost/Total Cost Ownership “ referenced in John  
26 Benavente’s March 31, 2017 letter.  
27

1 GPA relies on factors that are unrelated to the new tariff schedule in justifying its  
2 cancellation of the IFB. More perplexing is that GPA knew of the new tariff schedule for the LED  
3 streetlights, the very item sought under the IFB, but yet proceeded to open the bids. If what GPA  
4 asserts is true, *arguendo*, GPA should have cancelled the IFB PRIOR to the opening of the bids and  
5 not a month and a half after the bids were opened and made public.  
6

7 ABE's Alternative bid was the lowest responsive bidder as outlined in the IFB.  
8 The prices offered by all bidders are now public providing bidders to the reissued IFB an advantage  
9 over ABE which offered a price significantly lower than the other qualified bidders. ABE and the  
10 other bidders submitted their bids based on good faith.

11 The GPA asserts that ABE is incorrect in its contention that it was the lowest responsive  
12 bidder as no such determination was made by the Evaluation Committee. The Procurement Record  
13 is devoid of any notes by the Evaluation Committee as to how far they got with regard to the  
14 evaluation process of each bid. We know that the Evaluation Committee went through each of the  
15 bids, otherwise, how else would they have known what clarifications were needed from each  
16 Bidder? Based on ABE's Alternate Bid as compared to the other bids submitted, it is undisputed  
17 that ABE's bid was the lowest. ABE's competitors now know its bid price which puts it a  
18 disadvantage in the event this IFB is reissued.  
19

20  
21 Why didn't the Evaluation Committee simply review the bids and apply the total cost of  
22 ownership ("TOC") calculation? Had they done so, they would have come to the conclusion that  
23 ABE's bid was still the lowest and its offered product was very close to the revised bid  
24 specifications that ABE's Alternative bid was responsive.

25 For these reasons, ABE's bid should be accepted.

26 **4. Cancelling and re-bidding the IFB is contrary to the strict delivery requirements set**  
27 **forth in the IFB.**



1           Guam law provides “[a]n Invitation for Bids...or other solicitation may be cancelled, or any  
2 or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation,  
3 when it is in the best interests of the Territory in accordance with regulations promulgated by the  
4 Policy Office.” 5 G.C.A. § 5225.

5           The IFB set out delivery requirements which reflect anticipated installation schedules to  
6 which GPA wanted to adhere:  
7

8           JMI Edison Inquiry Dated 10/26/16:...

9           QUESTION:

10          2. Many good established manufacturers of LED fixtures with proven record of  
11 competitiveness and reliability are swamped with current orders such that their  
12 production schedule is set and not subject to much change. While the delivery  
13 requirement of GPA may be reasonable to new and smaller companies, bigger  
14 companies may have a hard time meeting it. Thus, we suggest, as an example, a  
15 staggered delivery of possibly 1,000 fixtures per month, starting 8 weeks from award  
16 date.

17          ANSWER:

18          GPA’s delivery requirements are specified in the bid documents. The required  
19 delivery time reflect anticipated installation schedules.

20          PR at 427. A request was made by USA Contractors Inc. to extend the bid opening date from  
21 November 3 to November 17, 2016. PR 489-490. In response, Reuben C. Ulloa instructed Vince  
22 J.R. Barcinas to “please deny request for extension, LED’s urgently needed to support engineering  
23 projects.” PR at 489. *Also see* PR at 379. The initial delivery of 5,400 streetlights would have been  
24 due within 8 weeks after award with the remaining balance of 4,078 streetlights due no later than  
25 April 28, 2017 under the IFB. Under the re-issued IFB, said deliveries will be unduly delayed to  
26 the detriment of GPA and the ratepayers.

27          The cancellation of this IFB is not in the best interest of the Territory. In GPA’s own words  
28 “LED’s urgently needed to support engineering projects.” Cancelling and rebidding the IFB goes  
against the timely implementation of the replacement of less efficient HPS lights with energy  
efficient LED streetlights. The delayed replacement of less efficient HPS lights will in turn delay

1 savings to be realized by GPA and the ratepayers.

2 Furthermore, the SPEC No. E-043 Revision 3 was implemented on July 28, 2016 and  
3 Revision 4 was implemented on February 27, 2017. The revisions between Revision 3 and 4 did  
4 not change so dramatically or substantially as to render the LED lights or the technology offered  
5 under Revision 3 obsolete under Revision 4.


6  
7 7,628 LED streetlights had already been purchased by GPA prior to this bid therefore, the  
8 GPA's assertion that the specifications had changed requiring a cancellation of the bid is not logical  
9 nor financially responsible.

10 **Relief Requested**

11 ABE asks that this appeal reverse GPA's decision, that the OPA order GPA to execute the  
12 Alternate Bid offered by ABE without further delay, an award for reasonable attorney's fees and  
13 costs of this protest and appeal, and for such other relief that may be available.  
14

15 Submitted this 23<sup>rd</sup> day of June, 2017.

16 **BROOKS CONCEPCION LAW, P.C.**

17  
18  
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21 America's Best Electricmart, Inc.  
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