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

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14 IN THE APPEAL OF ) DOCKET NO. OPA-PA-19-008  
15 )  
16 PTI Pacifica Inc., dba IT&E, ) **APPELLEE'S CLOSING BRIEF**  
17 Appellant. )  
18 \_\_\_\_\_ )  
19 )

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21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of  
22  
23 record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the August 21, 2019,  
24 hearing as follows.

**ARGUMENT**

25  
26 Guam Power Authority (GPA) submits that the GPA decision to negotiate with the best  
27 qualified bidder, Docomo Pacific Inc., was made properly as provided for in 5 GCA §5216(e).  
28 Procurement law requires that an “award shall be made to the offeror determined in writing by the  
29 head of the purchasing agency or a designee of such officer to be best qualified based on the  
30 evaluation factors set forth in the Request for Proposals, and negotiation of compensation  
31 determined to be fair and reasonable.” 5 GCA §5216(e). “If compensation cannot be agreed upon  
32 with the best qualified offeror, the negotiations will be formally terminated with the selected  
33 offeror. If proposals were submitted by one or more other offerors determined to be qualified,  
34 negotiations may be conducted with such other offeror or offerors, in the order of their respective

1 qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified  
2 if the amount of compensation is determined to be fair and reasonable.” 5 GCA §5216(e).

3 IT&E now makes an untimely argument, not mentioned in its initial appeal, that instead of  
4 an RFP, that GPA should have used a multi-step IFB process. The procurement record is clear that  
5 IT&E signed up for amendments with the procurement office through its employee, Leonard  
6 Ofeciar on February 21, 2019. Similarly, it is undisputed that IT&E and the other bidders had an  
7 opportunity to ask questions, and in Amendment 1, GPA responded to those questions from  
8 Docomo and Rack 59. There were no questions, technical or procedural or otherwise, from IT&E  
9 during the bid process. Instead, IT&E submitted as one of the two bidders for the RFP for data  
10 services. In Flame Tree Freedom Center, Inc. vs. GHURA, OPA-PA-19-006, the appellant waited  
11 until the bid award announcement to protest, and did not protest in a timely manner when the  
12 agency first put out the bid.

13 IT&E argues that GPA should be compelled to accept a price proposal from IT&E in the  
14 absence of termination of negotiations with the best qualified offeror, Docomo Pacific Inc., is  
15 legally incorrect, and in fact prohibited by the Guam procurement code and regulations. 2 GAR  
16 §3114(j), Selection of the Best Qualified Offerors, provides that “after the conclusion of validation  
17 of qualifications, evaluation, and discussion ... the head of the agency conducting the procurement  
18 ... shall select, in the order of their respective qualification ranking, no fewer than three acceptable  
19 offerors (or such lesser number if less than three acceptable proposals were received) deemed to be  
20 the best qualified to provide the required services.” “The offeror determined to be best qualified  
21 shall be required to submit cost or pricing data to the head of the agency conducting the  
22 procurement at a time specified prior to the commencement of negotiations.” 2 GAR §3114(k). 2  
23 GAR §3114(l), Negotiation and Award of Contract, provides that “the head of the agency  
24 conducting the procurement or a designee of such officer shall negotiate a contract with the best

1 **qualified offeror** for the required services at compensation determined in writing to be fair and  
2 reasonable.”

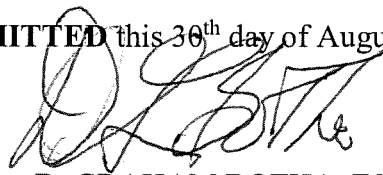
3 The GPA selection committee found both Docomo and IT&E qualified, but determined  
4 that Docomo Pacific, Inc. was the best qualified offeror, and prior to the protest was negotiating a  
5 contract for the required services at compensation determined in writing to be fair and reasonable,  
6 as required by 5 GCA §5216(e) and 2 GAR §3114(l). GPA can only accept a price proposal from  
7 IT&E if negotiations have in fact been terminated with the most qualified offeror, Docomo Pacific  
8 Inc., which has not occurred. If GPA does not determine that the Docomo price for services is fair  
9 and reasonable, then GPA would begin negotiations with IT&E to determine whether GPA could  
10 reach agreement with IT&E.

11 Guam procurement law and regulations require that “an award shall be made to the offeror  
12 determined in writing by the head of the purchasing agency or designee of such officer to be best  
13 qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of  
14 compensation determined to be fair and reasonable.” 5 GCA §5216(e). The evaluation committee  
15 memorandum indicates that Docomo Pacific Inc. was selected as the best qualified offeror, and  
16 negotiations were properly begun with Docomo Pacific, Inc. prior to the protest filed by IT&E.

17 CONCLUSION

18 GPA requests that the appeal of PTI Pacifica Inc. dba IT&E, be dismissed, and that the  
19 Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

20 **RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of August, 2019, by:

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23 D. GRAHAM BOTHA, ESQ.  
24 GPA General Counsel