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PROCUREMENT APPEALS  
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FILE NO OPA-PA: 19-008

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

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

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

25 **ARGUMENT**

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 argues that GPA should be compelled to accept a price proposal from IT&E in the  
4 absence of termination of negotiations with the best qualified offeror, Docomo Pacific Inc., is  
5 legally incorrect, and in fact prohibited by the Guam procurement code and regulations. 2 GAR  
6 §3114(j), Selection of the Best Qualified Offerors, provides that “after the conclusion of validation  
7 of qualifications, evaluation, and discussion ... the head of the agency conducting the procurement  
8 ... shall select, in the order of their respective qualification ranking, no fewer than three acceptable  
9 offerors (or such lesser number if less than three acceptable proposals were received) deemed to be  
10 the best qualified to provide the required services.” “The offeror determined to be best qualified  
11 shall be required to submit cost or pricing data to the head of the agency conducting the  
12 procurement at a time specified prior to the commencement of negotiations.” 2 GAR §3114(k). 2  
13 GAR §3114(l), Negotiation and Award of Contract, provides that “the head of the agency  
14 conducting the procurement or a designee of such officer shall negotiate a contract with the **best**  
15 **qualified offeror** for the required services at compensation determined in writing to be fair and  
16 reasonable.”

17 The GPA selection committee found both Docomo and IT&E qualified, but determined  
18 that Docomo Pacific, Inc. was the best qualified offeror, and prior to the protest was negotiating a  
19 contract for the required services at compensation determined in writing to be fair and reasonable,  
20 as required by 5 GCA §5216(e) and 2 GAR §3114(l). GPA can only accept a price proposal from  
21 IT&E if negotiations have in fact been terminated with the most qualified offeror, Docomo Pacific  
22 Inc., which has not occurred.

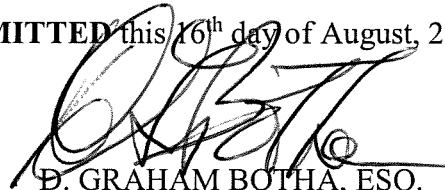
23 Guam procurement law and regulations require that “an award shall be made to the offeror  
24 determined in writing by the head of the purchasing agency or designee of such officer to be best

1 qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of  
2 compensation determined to be fair and reasonable.” 5 GCA §5216(e). The evaluation committee  
3 memorandum indicates that Docomo Pacific Inc. was selected as the best qualified offeror, and  
4 negotiations were properly begun with Docomo Pacific, Inc. prior to the protest filed by IT&E.

5 CONCLUSION

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

8 **RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of August, 2019, by:

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11 D. GRAHAM BOTHA, ESQ.  
12 GPA General Counsel