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PROCUREMENT APPEALS

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FILE NO OPA-PA: 19-010

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of

GlidePath Marianas Operations Inc.,

Appellant.

Docket No. OPA-PA-19-010

**MOTION TO EXTEND TIME TO
FILE COMMENTS ON AGENCY
REPORT**

MOTION

GlidePath Marianas Operations, Inc. (“GlidePath” or “Appellant”) respectfully moves the Office of Public Accountability for an Order confirming that GlidePath’s comments to the Guam Power Authority Agency Report filed on November 29, 2019, will not be due until after the procurement record kept in accordance with 5 GCA §5249 is provided to the Appellant, and a scheduling conference has been held to determine appropriate dates to adhere to as this procurement appeal moves forward. This Motion is supported by the following Memorandum In Support of Motion and the record already before the Office of Public Accountability.

MEMORANDUM IN SUPPORT OF MOTION

I. RELEVANT PROCEDURAL HISTORY

GlidePath filed its Notice of Appeal on November 13, 2019. On November 14, 2019, the Office of Public Accountability (“OPA”) directed the General manager of the Guam Power Authority (“GPA”) to provide copies of the procurement record kept in accordance with 5 GCA

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§5249 to the Appellant and the OPA by Thursday, November 21, 2019. The Public Auditor also ordered that the Agency Report outlined in 2 GAR, Division 4, §12105 should be filed by November 29, 2019.

On November 21, 2019, the parties submit a joint stipulation seeking an order from the OPA allowing GPA until November 29, 2019, to produce the procurement record. The purpose of the extension of time was to: (1) allow GPA the additional time it needed to compile the voluminous procurement record, and (2) allow GlidePath and interested party ENGIE Solar (“ENGIE”) time to work toward a mutually satisfactory resolution to ENGIE’s November 15, 2019, motion seeking to prevent disclosure of its technical proposal as part of the procurement record.

On November 22, 2019, the OPA issued an email order extending the procurement record filing deadline to November 29, 2019, and setting the due date for GPA’s Agency Report to Friday, December 6, 2019. On November 29, 2019, the parties submitted a further joint stipulation allowing GPA until December 12, 2019, to submit the procurement record as the parties continued their efforts to resolve the ENGIE’s claimed need for confidentiality protection. On the same day that stipulation was filed, GPA went ahead and filed its agency report, as well as a request for a hearing on the matter of the Procurement Record. No actual record was produced.

II. A REGULATORY DEADLINE HAS BEEN TRIGGERED AND GOOD CAUSE EXISTS TO MODIFY THAT DEADLINE.

Guam law sets certain dates for the occurrence of the parties’ filings during the course of a procurement appeal. The Agency’s procurement record is to be provided within five working days of the receipt of the Notice of Appeal. 2 GAR Div 4 §12104(c)(3). An Agency Report based upon that record and answering the Notice of Appeal is due within 10 working days of receipt of the Notice of Appeal. 2 GAR Div 4 §12104(c)(3). The Agency Report and the procurement record are inextricably linked, as the applicable regulations command that Agency Report include the procurement record,

which contains “...a copy of the bid or offer that is being considered for award or whose bid or offer is being protested...” 2 GAR Div 4 §12105(b). The Appellant and any interested party—here GlidePath and ENGIE—shall provide their comments on the Agency Report within ten (10) days after the Public Auditor's receipt of the report. Since GPA submitted its Agency Report on November 29, 2019, comments on that report would be due under the applicable regulatory clock on December 10, 2019.¹

The OPA has adopted a good cause standard when deciding to extend the time for appellants to file comments on an agency report, and has provided such extensions freely. *See, e.g., In the Appeal of Eons Enterprises, Corp.* OPA—PA—10—003, Order Re Appellant’s Motion to Extend Time to File Comments on Agency Report (June 18, 2010). Good cause exists here to extend the deadline as the Appellant seeks.


Simply put, comments on an Agency Report are impossible to craft so long as GPA does not provide the Procurement Record. The Agency Report provided by GPA makes numerous references to the IFB, clarifications, and proposals received that make up the procurement record, but the Appellant does not have possession of that record. GlidePath would be severely prejudiced if compelled to furnish its comments on an Agency Report based upon a procurement record that remains in GPA’s sole possession. Accordingly, GlidePath respectfully requests that the OPA issue an order confirming that GlidePath’s comments to the GPA Agency report filed on November 29, 2019, will not be due until after the procurement record kept in accordance with 5 GCA §5249 is provided to the Appellant, and a scheduling conference has been held to determine appropriate dates to adhere to as this procurement appeal moves forward.

¹ Monday, December 9, 2019, is the feast day of *Santa Marian Kamalen*, and a Government of Guam observed holiday.

Given the compressed regulatory timelines that have been triggered by GPA's decision to submit an Agency Report without a Procurement Record, an expedited decision on this Motion is requested. Both counsel for GPA and interested party ENGIE have been informed, via email, of this Motion being filed, and have not expressed opposition to the extension that is being sought.

Respectfully submitted on December 6, 2019.

CIVILLE & TANG, PLLC

By: 

JOSHUA D. WALSH
Attorneys for Appellant
GlidePath Marianas Operations, Inc.

CERTIFICATE OF SERVICE

I, JOSHUA D. WALSH, do hereby certify as follows:

On December 6, 2019, via hand delivery, I caused to be served a true and correct copy of the **MOTION TO EXTEND TIME TO FILE COMMENTS ON AGENCY REPORT** upon the following:

D. Graham Botha
GPA General Counsel
Guam Power Authority
688 Route 15, Suite 302
Mangilao, GU 96913
Attorneys for Appellant Guam Power Authority

R. Marsil Johnson
Blair Sterling Johnson & Martinez, P.C.
238 Archbishop Flores St., Suite 1008
Hagatna, GU 96910
Attorneys for Appellant ENGIE Solar

Executed December 6, 2019, at Hagåtña, Guam.

CIVILLE & TANG, PLLC

By: 

JOSEPH C. RAZZANO

Attorneys for Appellant

GlidePath Marianas Operations Inc.

CERTIFICATE OF SERVICE

I, JOSHUA D. WALSH, do hereby certify as follows:

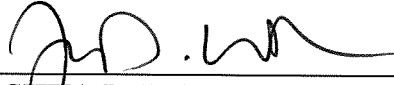
On December 6, 2019, via hand delivery, I caused to be served a true and correct copy of the **MOTION TO EXTEND TIME TO FILE COMMENTS ON AGENCY REPORT** upon the following:

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GlidePath Marianas Operations Inc.