



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

April 30, 2015

John M. Benavente, P.E.
Interim General Manager
Guam Power Authority
P.O. Box 2977
Hagatna, Guam 96932
VIA FACSIMILE: (671) 648-3290

Re: Notice of Receipt of Appeal – OPA-PA-15-006

Dear Mr. Flores,

Please be advised that IP&E Holdings, LLC (IP&E) filed an appeal with the Office of Public Accountability (OPA) on April 29, 2015 regarding the Guam Power Authority (GPA) procurement actions related to GPA IFB-005-15 for the Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded for the GPA Transportation Fleet. OPA has assigned this appeal case number OPA-PA-15-006.

Immediate action is required of GPA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Thursday, May 7, 2015**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for the procurement solicitation cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, May 14, 2015**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to IP&E. OPA respectfully asks that GPA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require

only one copy. The three procurement record copies requested by OPA are distributed as follows:
Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Clariza Roque at 475-0390 ext. 216, or croque@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Yuka Hechanova, CPA, CIA, CGFM, CGAP, CGMA
Deputy Public Auditor

Enclosure: Notice of Appeal – OPA-PA-15-006

Cc: Attorney Steven Carrara, IP&E Holdings, LLC General Counsel

Steven Carrara, Esq.
IP&E Holdings LLC
P.O. Box 2881
Barrigada, Guam 96921
Telephone No. (671) 646-1222
Fax No. (671) 646-4723
E-mail: Steven.Carrara@itehq.net

Attorney for Appellant
IP&E Holdings, LLC

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of) NOTICE OF PROCUREMENT APPEAL
)
IP&E HOLDINGS, LLC.,) Docket No. OPA-PA 15-006
)
Appellant.)

Appellant Information:

IP&E Holdings, LLC. (IP&E)
646 Chalan San Antonio
Tamuning Guam 96913-3644

Tel: 647-0123
Fax: 649-4353

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 4/24/15
TIME: 10:15 AM PM BY: CP
FILE NO OPA-PA: 15-006

Appeal Information:

- A) Guam Power Authority ("GPA"), Consolidated Commission on Utilities ("CCU").
- B) Invitation for GPA IFB-005-15 for the Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded for the GPA Transportation Fleet.
- C) Decision being appealed is the GPA Denial of Protest, dated April 17, 2015, but received on April 24, 2015.
- D) Appeal is made from a decision on protest of notice of award.

E) Names of Competing Bidders: Mobil Oil Guam, Inc. and South Pacific Petroleum Corporation

Form and Filing:

On or about October 30, 2014, GPA issued Invitation for Bid GPA -005-15 for the procurement of diesel and automotive fuel for the GPA Fleet. Bid opening occurred on January 13, 2015.

Section G of the IFB GPA-005-15 clearly instructed bidders to provide copies of the required insurance policies as part of the bid documentation and this was also clarified by GPA's response to Question 14 which stated that "GPA requires a copy of the insurance policies.", as a bid qualification. (The relevant pages of the IFB are included as Exhibit A)

Section 3 of the IFB requires that the "bids should respond in organized fashion to all the requirements of this Invitation for Bids. Bidders must submit along with their bid package, the fully executed (signed) and completed Contract and Offer, Bid Bond, and other information pertaining to the responsibility of Bidder. Failure to submit any of these bid documents shall be grounds to declare a bid non-responsive."

Section 7 titled "Award" further provides that "Bids will be reviewed and evaluated by GPA and will determine the lowest and most responsive bidder that will be most advantageous to GPA. A written Letter of Award (acceptance of offer) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the offer shall be deemed to result in a binding Contract without further action by either party. GPA reserves the right to waive informalities and minor irregularities in bids received."

Based on a plain reading of the above-cited sections, it is clear that copies of the certificates were required at the time of bid submission because GPA contemplated the award of a contract without further discussion. The fact that two of the three bidders provided the required information further supports the argument that Mobil simply failed to provide copies of the requested policies and that its bid is non-responsive and should be rejected in accordance with Section 7(b).

Apparently, GPA also realized that Mobil's bid was non-responsive and must have had serious internal concerns because on January 29, 2015, it issued a second letter requesting all bidders to provide confirmation of the required insurance. (Exhibit B) Had the insurance not been part of the responsiveness criteria there would have been no need to confirm further compliance prior to award. This letter effectively allowed Mobil to modify its bid in contravention to Section 5 which prohibits modification of bids after bid closing.

In a letter sent by hand delivery to GPA on February 13, 2015, IP&E filed an agency protest with GPA, challenging the responsiveness of the Mobil Bid. (Exhibit C) GPA denied the protest via letter dated August 17, 2014 but received via email by IP&E on April 24, 2015. (Exhibit D)

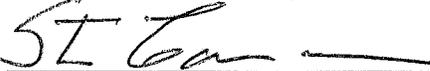
It is IP&E position that GPA's denial of its protest is incorrect and that the OPA should direct award of the overall contract to IP&E because the bid submitted by Mobil was non-responsive to the IFB for failure to include information on the required insurance policies.

Declaration regarding court action:

IP&E confirms that an action in court has not been commenced.

Dated this 28th day of April, 2015.

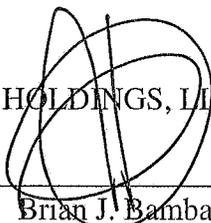
IP&E HOLDINGS, LLC.

By: 
Steven Carrara
General Counsel

VERIFICATION

I Brian J. Bamba, Managing Director, for IP&E Holdings LLC, hereby declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct of my own knowledge, except as to those matter alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 28th day of April 2015

IP&E HOLDINGS, LLC.
By: 
Brian J. Bamba
Managing Director

GUAM POWER AUTHORITY
P.O. Box 2977
Hagatna, Guam 96932-2977

ATTN: Supply Management Administrator

TELEPHONE: (671)648-3054/3055

TELEFAX: (671)648-3165

(By Courier)

GUAM POWER AUTHORITY
Procurement Office
1911 Army Drive
Harmon, Guam 96913

ATTN: Supply Management Administrator

TELEPHONE: (671)648-3054/3055

TELEFAX: (671)648-3165

"The sealed submittal envelope shall be marked on the lower left corner **"SEALED BID"**,
"DIESEL FUEL OIL NO.2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED SUPPLY,
IFB NO. GPA-005-15, BID OPENING, 2:00 P.M., December 04, 2014".

3. FORM.

All bids must be in writing and must be signed by an officer of the bidder having authority to submit such bids. Offers submitted in response to this solicitation shall be in terms of United States Currency and in the English language. The bids should respond in organized fashion to all the requirements of this Invitation for Bids. Bidders must submit along with their bid package, the fully executed (**signed**) and completed Contract and Offer, Bid Bond, and other information pertaining to the responsibility of Bidder. Failure to submit any of these bid documents shall be grounds to declare a bid non-responsive.

7. AWARD.

Bids will be reviewed and evaluated by **GPA** and will determine the lowest and most responsive bidder that will be most advantageous to GPA. A written Letter of Award (acceptance of offer) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the offer shall be deemed to result in a binding Contract without further action by either party. **GPA** reserves the right to waive informalities and minor irregularities in bids received.

A. In the evaluation process, the following factors will be considered (although not necessarily in the order of importance):

- (1) Price and contract cost;
- (2) Whether the bidder's ultimate offer meets and conforms with the announced requirements of **GPA** in all material respects;
- (3) Previous Experience in meeting requirements of a similarly sized or larger contract;
- (4) Financial Strength and
- (5) Overall clarity and presentation of bid and plan to supply fuel to GPA, i.e. how supplier will obtain fuel, how fuel will be delivered to GPA, alternative supply source, etc.;
- (6) Whether the bidder has:
 - (a) the appropriate financial, material, equipment, facility, and personnel resources and expertise, necessary to indicate its capability to meet all Contractual requirements;
 - (b) satisfactory references;
 - (c) qualified legally to Contract with the territory; and

B. Bidder is responsible for providing adequate information on operating experience and on financial status (i.e. annual report with audited financial statements) and references for use in evaluating its capabilities.

C. In addition to the evaluation criteria, GPA may require submission of descriptive literature,

G. CERTIFICATE OF INSURANCE:

The Contractor shall furnish GPA with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs B, C, D, E, and F above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage required in Paragraph C., Subparagraph 2. above. Such certificate shall specifically state that the insurance company or companies issuing such insurance policies shall give GPA at least thirty (30) days written notice in the event of cancellation of or material change in any of the policies. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Contract, the Contractor shall furnish a Certificates of Insurance evidencing renewal of such coverage to GPA. The Certificates of Insurance shall clearly show this Contract number.

The Contractor shall provide a copy of their Insurance Policy to GPA as part of the bid requirements. All updates or revisions after contract commencement shall also be forwarded to GPA.



GUAM POWER AUTHORITY

ATURIDÂT ILEKTRESEDÂT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

December 12, 2014

AMENDMENT NO.: II

TO

INVITATION FOR BID NO.: GPA-005-15

FOR

**DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED
FOR THE GPA TRANSPORTATION FLEET**

Prospective Bidders are hereby notified of the following changes and response to inquiries received from Mobil Oil Guam dated 11/25/14, IP&E Guam dated 12/01/2014, and SPPC dated 12/01/2014:

CHANGES:

1. On page 1 of 68, Description is changed *FROM*: "Diesel Fuel Oil No.2 and Automotive Gasoline, Regular Unleaded for the GPA Transportation Fleet to *NOW* read: "Fleet Fuels Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded Supply."
2. On page 2 of 68, Bid for is changed *FROM*: "Diesel Fuel Oil No.2 and Automotive Gasoline, Regular Unleaded for the GPA Transportation Fleet to *NOW* read: "Fleet Fuels Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded Supply."
3. On page 3 of 68, Description is changed *FROM*: "Diesel Fuel Oil No.2 and Automotive Gasoline, Regular Unleaded for the GPA Transportation Fleet to *NOW* read: "Fleet Fuels Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded Supply."
4. On page 4 of 68: Description is changed *FROM*:

"For Supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded for Transportation Fleet and Heavy Equipment" to *NOW* read:

"For Supply of Fleet Fuels and Automotive Gasoline, Regular Unleaded for Transportation Fleet and Heavy Equipment."
5. **PART A**
On page 8 of 68, **Section I: Background and Summary of Solicitation:** Second paragraph is changed *FROM*: "Diesel Fuel Oil No.2" to *NOW* read:
"For Supply of Fleet Fuels and Automotive Gasoline, Regular Unleaded for Transportation Fleet and Heavy Equipment."
6. On page 8 of 68, **Section II: Item 2: ADDRESS**, on last paragraph:

Delete: "DIESEL FUEL OIL NO.2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED SUPPLY"

And replace with: "FLEET FUELS SUPPLY (DIESEL FUEL OIL NO.2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED)"

7. On page 17 of 68, **Section III: BID BOND**, Delete: "Low Sulfur Diesel Fuel Oil No.2 and Automotive Gasoline Regular (Unleaded)" and replace with: "Fleet Fuels (Diesel Fuel Oil No.2 and Automotive Gasoline, Regular Unleaded)."
8. On page 20 of 68, **IV: PERFORMANCE BOND**, Delete: "Low Sulfur Diesel Fuel Oil No.2 and Automotive Gasoline Regular (Unleaded)" and replace with: "Fleet Fuels (Diesel Fuel Oil No.2 and Automotive Gasoline, Regular Unleaded)."
9. **PART B**
On page 26 of 68, Item II: Delete: "Fuel Oil" and replace with: "Fleet Fuels."
10. Page 33 of 68, **Section 2.01: Product and Quality**, DIESEL FUEL OIL NO.2, Typical Characteristics Table On the Alternate Method column for Sulfur, Insert: "D7039-13"
11. Page 36 of 68, **Section 3.02: Government Laws and Regulations**
Delete in its entirety and replace with:
"Section 3.02: Government Laws and Regulations
(a) *If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent GPA from utilizing the type of fuel to be supplied hereunder, GPA shall use its best efforts to obtain an exemption. In the event GPA cannot obtain an exemption from such laws and regulations, CONTRACTOR shall use his best efforts to furnish GPA substitute fuel which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute fuel causes an increase or decrease in CONTRACTOR's cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of CONTRACTOR for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by CONTRACTOR of the notification of substitute fuel in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Governing Law and Disputes"(Section 5.08). However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract fuel specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which CONTRACTOR is to furnish such substitute fuel, and CONTRACTOR refuses to provide such substitute fuel at the Contract price set out herein shall GPA then have the option of purchasing from other sources fuel at a lower price than that offered by CONTRACTOR in such negotiations which complies with such laws and regulations, but in any event, the CONTRACTOR shall have no recourse, other than those specified herein.*
(b) **CONTRACTOR shall at all times comply with all applicable laws and regulations of the Territory of Guam and the Federal Government and their respective agencies."**
12. Page 39 of 68, **Section 3.09: Alternate Supplies**, on the 1st paragraph: Delete: "Fleet's Fuel" and replace with: "Fleet Fuels."
13. Page 39 of 68, **Section 3.11: Disputes**, Delete entire clause.
14. Page 43 of 68, **Section 3.13 : Insurance**, Item J (Indemnity):
Delete: "Diesel Engine Cylinder Lubrication Oil" and replace with: "Fleet Fuels."
15. Page 43 of 68, Item K (Oil Spill Responsibilities), Delete: "Diesel Engine Cylinder Lubrication Oil" and replace with: "Fleet Fuels."

16. Page 51 of 68, **Section 5.08: Governing Law**, Delete in its entirety and replace with:

"Section 5.08: Governing Law and Disputes:

- (a) *All controversies between GPA and the CONTRACTOR which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by GPA pursuant to Guam Procurement laws and regulations.*
- (b) **CONTRACTOR** may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.
- (c) *The CONTRACTOR shall comply with any decision of GPA and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract; provided, however, that in any event the CONTRACTOR shall proceed diligently with the performance of the Contract where the General Manager of GPA has made a written determination that continuation of work under the Contract is essential to the welfare of the territory.*

This Contract is made under, and shall be governed and construed in accordance with, the laws, statutes and regulations of the Territory of Guam, to the exclusion of all other legal systems. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified.

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The CONTRACTOR agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims including but not limited to, claims for consequential, special or punitive damages. Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The CONTRACTOR waives all rights against GPA to claim consequential, special or punitive damages."

17. Please note, new address for bid submittals:

Guam Power Authority
GPA Procurement Division
1st. Floor, Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

Mobil Oil Guam Inquiry dated November 25, 2014:

QUESTION:

- 1. Contract Section 1.04: Fleet Fuels to be purchased. At the beginning, it should be all Fleet Fuels.

RESPONSE:

"Fleet Fuels" have been referenced in Amendments 1 & 2.

QUESTION:

- 2. Contract Section 1.06: Warranties and Claims. The last sentence in this section is incomprehensible and suggest to consider amending to " If Fleet Fuels fail to meet the specification herein, Contractor shall be liable for any direct damages which shall not affect other remedies provided for in the contract"

RESPONSE:

GPA shall maintain the verbiage except for the change of "fuel oil" to "fleet fuels".

QUESTION:

3. Contract Section 3.02: Government Laws and Regulations. The section is, in the first paragraph, duplicative of, and the second paragraph somewhat inconsistent with, Section 5.08 Governing Law.

RESPONSE:

Section 3.02: Government Laws and Regulations will be deleted in its entirety and replaced with:

"Section 3.02: Government Laws and Regulations:

(a) If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent GPA from burning the type of fuel to be supplied hereunder, GPA shall use its best efforts to obtain an exemption. In the event GPA cannot obtain an exemption from such laws and regulations, CONTRACTOR shall use his best efforts to furnish GPA substitute fuel which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute fuel causes an increase or decrease in CONTRACTOR's cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of CONTRACTOR for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by CONTRACTOR of the notification of substitute fuel in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Governing Law and Disputes" (Section 5.08). However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract fuel specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which CONTRACTOR is to furnish such substitute fuel, and CONTRACTOR refuses to provide such substitute fuel at the Contract price set out herein shall GPA then have the option of purchasing from other sources fuel at a lower price than that offered by CONTRACTOR in such negotiations which complies with such laws and regulations, but in any event, the CONTRACTOR shall have no recourse, other than those specified herein.

- (b) CONTRACTOR shall at all times comply with all applicable laws and regulations of the Territory of Guam and the Federal Government and their respective agencies."*

Section 5.08: Governing Law

The entire clause will be deleted in its entirety and replace with:

"Section 5.08: Governing Law and Disputes:

- (a) All controversies between GPA and the CONTRACTOR which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by GPA pursuant to Guam Procurement laws and regulations.*
- (b) CONTRACTOR may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.*
- (c) The CONTRACTOR shall comply with any decision of GPA and proceed diligently with*

performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract; provided, however, that in any event the CONTRACTOR shall proceed diligently with the performance of the Contract where the General Manager of GPA has made a written determination that continuation of work under the Contract is essential to the welfare of the territory.

This Contract is made under, and shall be governed and construed in accordance with, the laws,

statutes and regulations of the Territory of Guam, to the exclusion of all other legal systems. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified.

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The **CONTRACTOR** agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims including but not limited to, claims for consequential, special or punitive damages. Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The **CONTRACTOR** waives all rights against **GPA** to claim consequential, special or punitive damages."

QUESTION:

4. Contract Section 3.09: Alternate Supplies. The reference to fleet's fuels on the third line should be change to Fleet Fuels.

RESPONSE:

Amendment 2 shall delete "Fleet's Fuels" and replaced with "Fleet Fuels".

QUESTION:

5. Contract Section 3.13(K): Oil Spill Responsibilities. The section refers to diesel engines, cylinder lubrication and oil deliveries. It is not applicable to a Fleet Fuels Contract and should be excised from this contract.

RESPONSE:

Amendment 1 deleted "diesel engine cylinder lubrication oil" and replaced with "fleet fuels".

QUESTION:

6. Contract Section 4.1: Failure to Supply. This also deals with diesel engine, cylinder lubrication oil and need to be excised from the contract or substantially revised.

RESPONSE:

Amendment 1 deleted "diesel engine cylinder lubrication oil" and replaced with "fleet fuels".

QUESTION:

7. Contract Section 4.2: Failure to Pay. This section in subsection (b) refers to fuel oil supplies and should either be excised from the contract or revised to refer to Fleet Fuels.

RESPONSE:

Amendment 1 deleted "fuel oil" and replaced with "fleet fuels".

QUESTION:

8. Contract Section 4.4: Default. Throughout this section, there is reference to fuel oil supplies. The reference needs to be changed to Fleet Fuels.

RESPONSE:

Amendment 2 deleted "fuel oil" and replaced with "fleet fuels".

QUESTION:

9. Contract Section 4.6: Termination for Convenience. Subsection (b) need be revised. It refers to fuel oil supplies. The reference need to be changed to Fleet Fuels.

RESPONSE:

Amendment 2 deleted "fuel oil" and replaced with "fleet fuels".

SPPC Inquiry dated December 01, 2014:

QUESTION:

10. Bidder Financial Responsibility: Audited financial Statement & Annual Report of what year(s)?

RESPONSE:

Audited Financial Statement and Annual Report for the last five (5) years.

QUESTION:

11. History of Past GovGuam Supply Contracts: How far back beginning what year?

RESPONSE:

Supply Contracts for the last five (5) years.

QUESTION:

12. Diesel Fuel No.2: No longer supplied on Guam. Guam Law requires supply of Ultra Low Sulfur Diesel Product.

RESPONSE:

No change. ULSD still fall under the Diesel Fuel Oil No.2 category (Ref: ASTM-975-12a).

IP&E Inquiry dated December 01, 2014:

QUESTION:

13.

1). Part II FUEL SUPPLY CONTRACT, SECTION 3.13 Insurance, F. Excess Liability stipulates Contractor must carry Excess Liability of \$5,000,000. Will GPA accept increasing General Liability from \$2,000,000 to \$7,000,000 in lieu of Excess Liability?

RESPONSE:

Please submit a copy of the insurance coverage for GPA's review.

QUESTION:

14.

2). Part II FUEL SUPPLY CONTRACT, SECTION 3.13 Insurance, G. Certificate of Insurance requires Contractor to provide two (2) Copies of a Certificate of Insurance in GPA's favor. As part of the bid requirements, GPA is requesting the bidder's Insurance Policy(ies) as part of the bid requirements. Will Certificate of Insurance in GPA's favor with maximum Insurance Limits for items in paragraphs B, C, D, & E suffice in lieu of Insurance Policy(ies)?

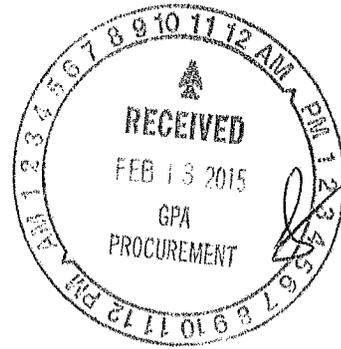
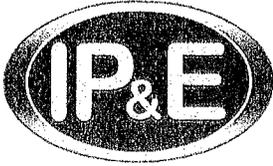
RESPONSE:

No. GPA requires a copy of the insurance policy(ies).

All other Terms and Conditions in the bid package shall remain unchanged and in full force.


JOHN M. BENAVENTE, P.E.
Interim General Manager

John



J. Z...

Mr. John M. Benavente, P.E.
Interim General Manager

Guam Power Authority
P.O. Box 2977
Hagåtña Guam, 96932

Subject: GPA IFB GPA-005-15

Topic: Formal Bid Protest

Attn: Mr. John Benavente, P.E. - Interim General Manager

Dear Mr. Benavente:

I write this letter in regards to IFB GPA-005-15 bid submission, which occurred January 13, 2015 at 2:00pm.

IP&E believes GPA should disallow the acceptance and consideration of Mobil's fleet bid as non-compliant pursuant to the IFB specific requirement of including insurance policy documentation as part of the IFB package.

The GPA contract documents provided to bidders clearly states insurance documentation is an IFB requirement as called out in **Section 3.13 Insurance, Item G.**, last paragraph.

The inclusion of insurance documentation in the bid submission is further clarified in: **Amendment #2, page 6, Question 14** dated December 12, 2014, which states that insurance documentation is required at as part of the IFB documentation at the time of bid submittal.

Per the **Abstract of Bids**, dated January 13, 2015, Mobil's bid submission did not comply with GPA's instruction requiring insurance documentation.

IP&E is then the lowest qualified bidder and should be awarded the GPA fleet fuel supply.

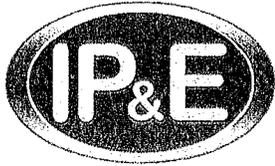
IP&E Holdings, LLC.
dba: IP&E Guam
Suite 100, 643 Chalan San Antonio
Tamuning, Guam 96913-3644
Tel: 671-647-0000 | Fax: 671-649-4353
Email: corporate@ipehq.com



Shell Licensee

Q

Shell trademarks used under license.



I look forward to resolving this issue and should you have any questions, please contact me at your convenience.

Regards,

A handwritten signature in black ink, appearing to read 'F. Keller'.

Fred Keller
Director of Sales

F.keller@ipehq.com
1-671-797-0337 (cell)
1-671-647-0123 ext.102 (work)

C/C - GPA Procurement Manager, Jaime Pangelinan, GPA Assistant General Manager Operations, Melinda Cruz

C/C - Steven Carrara IP&E Legal Counsel

Attachments: GPA Contract excerpt section 3.13 Insurance Item G,
GPA IFB 005-15 Amendment II page 6 of 6,
GPA 005-15 Abstract of Bids dated 01/13/2015, 2:00pm

Shell trademarks used under license.

IP&E Holdings, LLC.
dba: IP&E Guam
Suite 100, 643 Chalan San Antonio
Tamuning, Guam 96913-3644
Tel: 671-647-0000 | Fax: 671-649-4353
Email: corporate@ipehq.com



Shell Licensee



GUAM POWER AUTHORITY

ATURIDAT ILEKTRESEDAT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Tel: (671) 648-3225; Fax: 648-3290

DENIAL OF PROCUREMENT PROTEST

April 17, 2015

VIA FAX: 649-4353

Mr. Fred Keller
Director of Sales
IP&E Holdings, LLC
643 Chalan San Antonio, Ste 100
Tamuning, GU 96913

RECEIVED

APR 28 2015

**IP&E Holdings, LLC
(dba IP&E GUAM)**

RE: Guam Power Authority's Response to IP&E Holdings, LLC's Protest dated February 13, 2015, for GPA-IFB-005-15, Diesel Fuel Oil No. 2 and Automotive Gasoline

Dear Mr. Keller:

I have reviewed your protest letter dated February 13, 2015, protesting the Guam Power Authority's (GPA) proposed award to Mobil Oil Guam Inc. ("Mobil"). Your Protest is hereby denied for the following reasons:

1. You indicated in your letter that you believe that Mobil's bid should not be considered as you allege that the Mobil bid is non-compliant with the insurance documentation required by the bid. The actual items required at the time of the IFB submission are indicated in the Special Reminders to Prospective Bidders and include the bid guarantee, statement of qualification, and various affidavits regarding shareholders, non-collusion, no gratuities, ethical standards, wage determination, and sex offenders. There is no requirement anywhere in this document to provide any insurance certificates or policies. Section 3.13 of the supply contract form states that "the

contractor shall not commence work under this contract until he has obtained all insurance required under this section and **such insurance has been approved by GPA**, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained." GPA requires any winning bidder to provide the appropriate insurance policies to GPA upon notification of the award of the contract. An insurance policy which lists GPA as an insured party can't be provided until after a contract is awarded. Therefore, your protest is denied on these grounds. GPA reviewed the bid packages and provided a notice of intent to award to the lowest responsible and **responsive** bidder. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).

2. GPA has determined that Mobil should be awarded the bid for Diesel Fuel Oil No. 2 and Automotive Gasoline, as they were deemed to be the lowest, responsive and responsible bidder. The Mobil bid was responsive to the IFB and complied with the specifications set forth in the IFB. Therefore, GPA hereby finds that there is no merit to the IP&E Holdings, LLC's claim that their bid was the lowest **responsive** bid, and the IP&E Holdings, LLC's bid was properly rejected due to high price.

IP&E Holdings, LLC is hereby ON NOTICE that this is the Guam Power Authority's final decision concerning IP&E Holdings, LLC's February 13, 2015, protest for the above described IFB. You are hereby advised that IP&E Holdings, LLC has the right to seek judicial review.

Sincerely,


JOHN M. BENAVENTE, P.E.
Interim General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Tel: (671) 648-3225; Fax: 648-3290

DENIAL OF PROCUREMENT PROTEST

April 17, 2015

VIA FAX: 649-4353

Mr. Fred Keller
Director of Sales
IP&E Holdings, LLC
643 Chalan San Antonio, Ste 100
Tamuning, GU 96913

RE: Guam Power Authority's Response to IP&E Holdings, LLC's Protest dated February 13, 2015, for GPA-IFB-005-15, Diesel Fuel Oil No. 2 and Automotive Gasoline

Dear Mr. Keller:

I have reviewed your protest letter dated February 13, 2015, protesting the Guam Power Authority's (GPA) proposed award to Mobil Oil Guam Inc. ("Mobil"). Your Protest is hereby denied for the following reasons:

1. You indicated in your letter that you believe that Mobil's bid should not be considered as you allege that the Mobil bid is non-compliant with the insurance documentation required by the bid. The actual items required at the time of the IFB submission are indicated in the Special Reminders to Prospective Bidders and include the bid guarantee, statement of qualification, and various affidavits regarding shareholders, non-collusion, no gratuities, ethical standards, wage determination, and sex offenders. There is no requirement anywhere in this document to provide any insurance certificates or policies. Section 3.13 of the supply contract form states that "the

D

contractor shall not commence work under this contract until he has obtained all insurance required under this section and **such insurance has been approved by GPA**, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained." GPA requires any winning bidder to provide the appropriate insurance policies to GPA upon notification of the award of the contract. An insurance policy which lists GPA as an insured party can't be provided until after a contract is awarded. Therefore, your protest is denied on these grounds. GPA reviewed the bid packages and provided a notice of intent to award to the lowest responsible and **responsive** bidder. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. 5 GCA §5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2).

2. GPA has determined that Mobil should be awarded the bid for Diesel Fuel Oil No. 2 and Automotive Gasoline, as they were deemed to be the lowest, responsive and responsible bidder. The Mobil bid was responsive to the IFB and complied with the specifications set forth in the IFB. Therefore, GPA hereby finds that there is no merit to the IP&E Holdings, LLC's claim that their bid was the lowest **responsive** bid, and the IP&E Holdings, LLC's bid was properly rejected due to high price.

IP&E Holdings, LLC is hereby ON NOTICE that this is the Guam Power Authority's final decision concerning IP&E Holdings, LLC's February 13, 2015, protest for the above described IFB. You are hereby advised that IP&E Holdings, LLC has the right to seek judicial review.

Sincerely,


JOHN M. BENAVENTE, P.E.
Interim General Manager

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	John M. Benavente Interim General Manager Guam Power Authority	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Fax:	(671) 648-3290	Pages:	22 (including cover page)
CC:	Steven Carrara, Esq. Attorneys for IP&E Holdings, LLC Phone: (671) 646-1222 Fax: (671) 646-4723	Date:	April 30, 2015
		Phone:	475-0390 x. 216
		Fax:	472-7951

Re: OPA-PA-15-006 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Clariza Roque

Audit Staff

croque@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

TRANSACTION REPORT

APR/30/2015/THU 09:21 AM

BROADCAST

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	APR/30	09:13AM	6483290	0:04:43	22	MEMORY OK	SG3 2968
002		09:18AM	6464723	0:03:44	22	MEMORY OK	SG3 2968
TOTAL				0:08:27	44		

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	John M. Benavente Interim General Manager Guam Power Authority	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Fax:	(671) 648-3290	Pages:	22 (including cover page)
CC:	Steven Carrara, Esq. Attorneys for IP&E Holdings, LLC Phone: (671) 646-1222 Fax: (671) 646-4723	Date:	April 30, 2015
		Phone:	475-0390 x. 216
		Fax:	472-7951

Re: OPA-PA-15-006 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Clariza Roque

Audit Staff

croque@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.