

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



# FAX

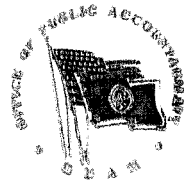
<b>To:</b>	<b>John M. Benavente, P.E.</b> <b>General Manager</b>  <b>D. Graham Botha, Esq.</b> <b>General Counsel</b> Guam Power Authority Tel: (671) 648-3225/3203/3002 Fax: (671) 648-3290/648-3165	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
<b>CC:</b>	<b>Daniel J. Berman, Esq</b> Attorney for Appellant Shanghai Electric Power Japan Co., Ltd. and Terra Energy, Inc. Berman O'Connor & Mann Tel: (671) 477-2778 Fax: (671) 477-4366	<b>Pages:</b>	21 (including cover page)
<b>CC:</b>	<b>Vincent C. Camacho, Esq</b> Attorney for Interested Party Hanwha Energy Corporation Camacho Calvo Law Group LLC Tel: (671) 472-6813 Fax: (671) 477-4375	<b>Date:</b>	December 7, 2017
<b>CC:</b>	<b>Anita Arriola, Esq.</b> <b>Mark E. Cowan, Esq.</b> Attorney for Interested Party: KEPCO and LG CNS Co. Ltd. Consortium Arriola, Cowan & Arriola Tel: (671) 477-9730/33 Fax: (671) 477-9734	<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951

**Re:** OPA-PA-17-008 Decision

For Review     
  Please Comment     
  Please Reply     
  Please Recycle

**Comments:** 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,  
 Jerrick Hernandez, Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)



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

**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

IN THE APPEAL OF

SHANGHAI ELECTRIC POWER JAPAN  
CO., LTD. AND TERRA ENERGY, INC.,

Appellant,

GUAM POWER AUTHORITY (GPA)

Purchasing Agency.

DOCKET NO. OPA-PA-17-008

**DECISION**

**I. INTRODUCTION**

This is the Decision of the Public Auditor for Procurement Appeal, OPA-PA-17-008. Appellant, SHANGHAI ELECTRIC POWER JAPAN CO., LTD. and TERRA ENERGY, INC. (hereinafter collectively referred to as "SEPJ") filed its appeal on August 21, 2017. SEPJ's appeal is made from a Decision on Protest of Method, Solicitation or Award. SEPJ appealed the Guam Power Authority's ("GPA") August 3, 2017 denial of SEPJ's Protest.

The Appeal was heard on October 24, 25, and 26, 2017, before Public Auditor Doris Flores Brooks, CPA, CGFM and Hearing Officer Peter C. Perez, Esq. Daniel J. Berman, Esq. and Bill R. Mann, Esq. appeared on behalf of SEPJ along with Diao Xu and Eddie Woo. D. Graham Botha, Esq., appeared on behalf of Purchasing Agency, GPA, along with agency representative Beatrice Limtiaco, GPA Assistant General Manager for Administration. Anita P. Arriola, Esq. appeared on behalf of Interested Party Korea Electric Power Corporation and LG CNS Co. Ltd. Consortium (hereinafter collectively referred to as "KEPCO") along with Chung Kook Choi and Sungho Ryu. Vincent C. Camacho, Esq. appeared on behalf of Interested Party, Hanwha Energy Corporation and

1 Pacific Petroleum Trading Corporation (hereinafter collectively referred to as “Hanwha”) along  
2 with Daejin Jeon and Andrew Park.

3 In its Notice of Procurement Appeal, SEPJ raised the following issues: (1) GPA’s acceptance  
4 of the Hanwha bids violated the Invitation for Bids (IFB); (2) GPA’s action in doubling the size of  
5 the procurement from 60 Megawatts (MW) to 120 MW of renewable capacity was improper and  
6 the procurement must be rebid; (3) a crucial portion of the specifications are ambiguous and unfair  
7 and the procurement must be rebid [the specifications regarding the installation of overhead versus  
8 underground transmission lines are ambiguous and unfair to SEPJ]; (4) the SolarCity bid ranked  
9 number 6 was not accepted by GPA [and the SEPJ bids were the first and second runner-up bids].  
10 In its Comments on Agency Report, SEPJ raised the additional issue that GPA’s Levelized Energy  
11 Adjustment Clause (LEAC) rate is not applicable.  
12

13  
14 SEPJ requested that the Public Auditor deem the Hanwha bid submission for both of its sites  
15 be disqualified and rejected, and that SEPJ as first and second runner-up be granted an award for  
16 its Site 2 and Site 1 in accordance with the terms stated in the SEPJ bid submission. Alternatively,  
17 SEPJ requested that the Public Auditor order a rebid of this procurement.

18 The Public Auditor holds that: (1) GPA’s acceptance of the Hanwha bids did not violate the  
19 IFB; (2) GPA’s award of 120 MW was proper and does not require a rebid. Furthermore, the award  
20 of 120 MW was in the best interests of the Territory; (3) The IFB Specifications were not  
21 ambiguous and unfair, and rebid of the procurement is not required. The IFB did not require  
22 underground transmission lines; (4) SEPJ did not establish that GPA improperly ranked the  
23 Hanwha, KEPCO and SEPJ bids, nor did SEPJ establish entitlement to an award for its Site 2 and  
24 Site 1; (5) SEPJ did not raise in its Notice of Procurement Appeal the issue of the applicability of  
25 the LEAC rate. Irrespective, the issue would not require a rebid; and, (6) Ratification or affirmation  
26 of the award is in the best interests of the Territory.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties, and has considered the testimony and arguments made during the hearings that were held on October 24, 25, and 26, 2017. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

### A. Context of this Procurement

1. Public Law (P.L.) 29-62 mandates that GPA establish renewable energy portfolio standard goals and add additional renewable capacity with each construction of a conventional base load unit, setting a 25% renewable energy goal by 2035.
2. This procurement involves the second of two phases for GPA to solicit proposals for RER, in which GPA intended to acquire 60 MW, but in its discretion authorized under the IFB, increased the amount to 120 MW of renewable capacity.
3. These projects are essential to Guam's power needs because the island's power grid had suffered significant damage, creating a critical need for new power sources.

### B. Procedural Background

1. On May 12, 2016, GPA issued Multi-Step IFB No. GPA-070-16, Renewable Energy Resource Phase II ("IFB"). [Procurement Record (PR) Tab 1]. The IFB stated that this IFB is an effort to comply with P.L. 29-62.
2. Prior to submissions of the technical proposals, all potential bidders had the opportunity to submit questions regarding the IFB.
3. SEPJ, Hanwha, and KEPCO all submitted questions.
4. GPA issued Amendments II to VII in response to these questions, as well as other amendments to clarify the IFB.
5. Twelve (12) companies submitted bids in response to the IFB.

- 1 6. On November 8, 2016, the Evaluation Committee met and recommended that seven (7) of  
2 the twelve (12) bidders be deemed qualified under the Phase I technical evaluation to  
3 proceed to Phase II price proposals, and that five (5) bidders be deemed not qualified under  
4 the Phase I technical evaluation.
- 5
- 6 7. On November 10, 2016, Amendment VIII and letters were sent to qualified bidders and  
7 Phase I letters were sent to the non-qualified bidders.
- 8 8. Amendments IX to XIII were sent to the Phase II qualified bidders.
- 9 9. On January 13, 2017, the sealed price proposals for the seven (7) Phase II qualified bidders  
10 and thirteen (13) project sites were opened in the presence of bidder representatives.
- 11 10. The Phase II Bid Abstract reflects:
  - 12 a. Hanwha Site 2 price: \$0.06245/kWh
  - 13 b. Hanwha Site 1 price: \$0.06599/kWh
  - 14 c. KEPCO Site A price: \$0.0855/kWh
  - 15 d. KEPCO Site B price: \$0.0855/kWh
  - 16 e. SEPJ Site 2 price: \$0.1280/kWh
  - 17 f. SEPJ Site 1 price: \$0.1613/kWh
- 18
- 19 11. On February 7, 2017, the Evaluation Committee recommended awarding 30 to 60 MW of  
20 Photovoltaics (PV) Solar Projects and possibly up to 120 MW subject to approvals from the  
21 Consolidated Commission on Utilities (CCU) and Public Utilities Commission (PUC). The  
22 Committee recommended notifying Hanwha and KEPCO that they were the successful  
23 bidders with the lowest and most responsive bids, and recommended to proceed with the  
24 System Impact Study for both bidders.
- 25
- 26
- 27
- 28

- 1 12. Specifically, the Evaluation Committee recommended award of Hanwha Sites 1 (30 MW)  
2 and 2 (30 MW) and KEPCO Sites A (30 MW) and B (30 MW) based on the price proposals  
3 submitted.
- 4 13. GPA issued Notice of Intent to Award letters, Bid Status letters, and Bid Analysis to all  
5 seven (7) Phase II Bidders.
- 6 14. On July 10, 2017, GPA issued a Bid Status to SEPJ advising that SEPJ's bid was rejected  
7 due to high price. The Bid Status stated that bid is recommended for award to Hanwha and  
8 KEPCO, each bidder having two (2) proposals for 30 MW solar PV projects totaling 120  
9 MW of solar PV capacity. [Notice of Procurement Appeal, EX 2].
- 10 15. On July 24, 2017, SEPJ timely filed a Protest with GPA. [Notice of Procurement Appeal,  
11 EX 4].
- 12 16. On August 3, 2017, GPA denied SEPJ's Protest. [Notice of Procurement Appeal, EX 1].
- 13 17. On August 21, 2017, SEPJ filed a Notice of Procurement Appeal with the Office of Public  
14 Accountability.
- 15 18. Hearings on the Appeal were held on October 24, 25, and 26, 2017.

### 18 **C. The Microgrid**

- 19 1. On August 10, 2016, GPA issued Amendment IV, which provided:

20 GPA's requirements for microgrid are informational. GPA will eventually  
21 develop plans for and execute projects to establish microgrids supporting  
22 major loads. GPA has communicated this opportunity and desire with some  
23 of its largest customers who might need additional energy security. Any cost  
information provided by Bidders is notional and not binding...

24 Until PROPONENTS specify a point of interconnection with GPA's power  
25 system grid, we cannot have a meaningful discussion on specifics. Each  
26 interconnection may have unique opportunities and issues for integration of  
27 the renewable energy and energy storage system. For firm power renewable  
energy systems, microgrids simply becomes providing the capability to  
serve a subset of distribution feeders served by the GPA substation the  
PROPONENT's facility interconnects with.

28 [SEPJ EX 1, page 5]

1 2. On November 10, 2016, GPA issued Amendment VIII, which provided:

2 For those proposals indicating capabilities or support for ancillary services  
3 including but limited to Microgrid Operation... please price these offerings  
4 as options that GPA may consider outside the main proposal.

5 a. GPA will consider the optional pricing provided as the initial starting  
6 point for negotiating for these ancillary services with a  
7 Proponent/Bidder receiving an award under the non-optional bid  
8 scope.

9 b. Any acceptance for ancillary services is at GPA's option.

10 [KEPCO EX 13]

11 3. Amendment VIII further provided, "The System Impact Study is the final determining  
12 authority for how proposed systems will interconnect to GPA's grid." [*Id.*].

13 4. All bidders had the option to submit price information for the microgrid. Pursuant to  
14 Amendment VIII, SEPJ, Hanwha, and KEPCO all submitted pricing information for a  
15 microgrid for each of their project sites. [SEPJ EX 6-11].

16 5. In an e-mail dated May 31, 2017, GPA's Assistant General Manager for Engineering and  
17 Technical Services John J. Cruz, Jr., PE wrote with respect to Hanwha, "GPA agrees to  
18 [a]ward microgrid option Fixed Annual Payment Contract Option." [SEPJ EX 2].

19 6. On June 6, 2017, the CCU adopted and approved Resolution No. 2017-25 which *inter alia*  
20 authorized GPA to petition the PUC for approval to award Phase II Renewable Energy  
21 Acquisition Bid of two 30 MW proposals each to Hanwha and KEPCO, and, subject to the  
22 System Impact Study and PUC approval, for GPA to contract with Hanwha and KEPCO.  
23 The Resolution also included the microgrid for Hanwha. [SEPJ EX 4].

#### 24 **D. GPA's Award of 120 MW**

25 1. The IFB Commercial Terms & Conditions provided:

26 In this Phase II acquisition re-bid, GPA intends to acquire a total of 60 MW  
27 of renewable energy capacity that can meet the following established  
28 requirements:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- The Bidder’s renewable resource project must [be] within a minimum nameplate capacity of 5 MW and a maximum nameplate capacity of 30 MW; this may be a combination of several generation units at one or more sites. [IFB, Vol I, p. 1].
2. The IFB Technical Qualification Proposal Requirements stated, “GPA seeks to acquire energy from renewable resource projects based on ‘an annual minimum quantity’ of energy under the terms of the Renewable Energy Purchase Agreement.” [IFB, Vol II, § 2.1.].
  3. The IFB appeared to limit each bidder’s submission to two (2) projects, and that each project may not exceed 30 MW per location. [IFB, Amendment III, Question 47, p. 5].
  4. Six (6) of the seven (7) Phase II qualified bidders submitted technical proposals for two (2) project locations consisting of 30 MW each, and one bidder submitted a proposal for one (1) project location with a 30 MW capacity.
  5. The IFB provided that GPA may elect to award one, more, or none among the bidders’ proposals, and it reserved the right to diversify its selections to provide a well-rounded portfolio of renewable resources.
  6. The IFB General Terms and Conditions, § 23 stated, “The government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after the original award.” [IFB, GSA Form 112].
  7. On February 7, 2017, the Evaluation Committee recommended awarding 30 MW to 60 MW of PV Solar Projects and possibly up to 120 MW subject to approvals from the CCU and PUC. The Evaluation Committee recommended notifying Hanwha and KEPCO that they are the successful bidders with the lowest and most responsive bids and that they have bids



1 with the lowest net present value based on the Base and High Fuel Cases priced proposals,  
2 for awards of 30 MW to 60 MW each respectively. [GPA EX M].

3 **E. Overhead v. Underground Transmission Lines**

4  
5 1. The IFB Technical Qualification Proposal Requirements, § 2.4.1. provided: “The Bidder  
6 will deliver renewable energy to a GPA-determined interconnection point on GPA’s 34.5  
7 Kilovolt (KV) transmission system. GPA will determine the exact location after completion  
8 of a detailed interconnection study.” GPA included cost estimates for transmission costs per  
9 mile for both overhead and underground transmission lines. It continued, “Bidders must  
10 include the cost for interconnection in their priced proposals as this may be negotiated with  
11 GPA during contract negotiations.” [IFB Vol II §2.4.1].

12  
13 2. On July 15, 2016, GPA issued IFB Amendment II. Although it recommended underground  
14 transmission lines, it allowed bidders to choose the type of interconnection, underground or  
15 overhead, that suited their project. It provided:

16 GPA strongly recommends underground lines for interconnection between  
17 the renewable generation and GPA power system for their substantially  
18 greater reliability, especially during destructive storms and typhoons Guam  
19 often experiences relative to overhead lines... The contractors who choose  
20 to build overhead lines to the interconnection point will have to put up new  
21 poles even if there are existing GPA power poles along the route or upgrade  
22 existing lines. But GPA has to consider that the cost of constructing  
23 underground lines is, in most cases, higher than cost of building overhead  
24 lines. The location of the new on-site substation, the distance to the  
25 interconnection point, the system reliability and the cost comparison  
26 between constructing underground and overhead lines will all have to be  
27 taken into account before making a decision. GPA will approach it in a case  
28 to case basis. [SEPJ EX 16, pages 4-5].

29  
30 3. The IFB Technical Qualification Proposal Requirements, §2.4.2 provided: “At the  
31 completion of the Priced Proposals evaluation and subject to the size and location of a  
32 Bidder(s)’ project, GPA will undertake a ‘System Integration Study’. The purpose of this

- 1 study is to determine the system impacts and upgrade requirements for integration of the  
2 selected project or projects into the GPA system.” [IFB, Vol II, p. 7-8].
- 3 4. After the selection of the winning bidder(s), GPA would conduct system integration studies,  
4 at the selected bidders’ expense, to determine system upgrades or improvements required  
5 and the associated cost necessary for the selected renewable resource’s integration into the  
6 GPA transmission system. [IFB, Vol I, p. 2].
- 7
- 8 5. IFB Amendments VIII and IX advised bidders that GPA would entertain a 34.5 KV  
9 overhead interconnection from the Dandan Substation to the Umatac Substation.  
10 [HANWHA EX F; KEPCO EX 9].
- 11 6. In a letter dated January 27, 2017, GPA wrote Hanwha to confirm that it included in its cost  
12 proposal infrastructure upgrade costs for new overhead lines for its Sites 1 and 2. [SEPJ EX  
13 32].
- 14
- 15 7. In response to a request for clarification dated February 1, 2017, GPA issued a letter dated  
16 February 3, 2017 stating, “GPA recommends underground installation for new transmission  
17 lines. Decreased reliability is associated with overhead lines due to exposure to natural  
18 elements such as high winds, rain, snakes, and other risks.” [SEPJ EX 17].
- 19
- 20 8. On February 6, 2017, KEPCO advised GPA that it “assumed to the extent feasible,  
21 ‘Overhead Lines’ can be used for the transmission lines.” [SEPJ EX 18].
- 22 9. On February 6, 2017, Hanwha advised GPA that its price proposal is all inclusive of the  
23 transmission costs and Umatac operational upgrade costs. [SEPJ EX 32].

24 **F. Ranking of Bidders**

- 25 1. GPA ranked the bidders accordingly:

26 Rank 1: Hanwha- Site 2

27 Rank 2: Hanwha- Site 1

1 Rank 3: KEPCO- Site A

2 Rank 4: KEPCO- Site B

3 Rank 5: SEPJ- Site 2

4 Rank 7: SEPJ- Site 1

5 [SEPJ EX 19; GPA EX O].

- 6
- 7 2. On July 10, 2017, GPA Buyer Supervisor I Jesse T. Reyes issued a bid analysis, which
- 8 recommended that Hanwha and KEPCO be deemed the lowest responsive bidders with
- 9 each bidder having two proposals for 30 MW each, and totaling 120 MW of solar PV
- 10 capacity. [GPA EX O].

11 **G. The LEAC Rate**

- 12 1. Under the IFB, GPA would evaluate price bids based on the most recent LEAC (Levelized
- 13 Energy Adjustment Clause) rate approved by the PUC. [IFB, Vol. II, p. 8]
- 14 2. The LEAC allows sharp market price fluctuations to be spread over a six-month period. It
- 15 also provides increased consistency to customer bills. [SEPJ EX 23].
- 16 3. P.L. 29-62's findings and intent stated:

17

18 The Levelized Energy Adjustment Clause, a provision in law, initially set

19 rate adjustments on a monthly basis. Subsequently, GPA requested to change

20 the cycle to a calendar year and reviewed every six (6) months. The fact that

21 oil is the sole source of our power production does not give GPA any

opportunity to diversify and hedge cost savings in the fuel component of its

cost structure. [Section 1].

- 22 4. On July 15, 2016, GPA issued IFB Amendment II, which amended the IFB Technical
- 23 Proposal evaluation from August 22, 2016 to September 2, 2016, and the IFB Priced
- 24 Proposal evaluation from October 20, 2016 to October 31, 2016. [SEPJ EX 22].
- 25 5. According to the Historical LEAC Summary, the LEAC rate for August 1, 2016 was
- 26 \$.0866/kWh, the LEAC rate for February 1, 2017 was \$0.105/kWh, and the LEAC rate for
- 27 August 1, 2017 was \$0.1157/kWh. [SEPJ EX 4(D)].
- 28

1 6. In response to the question, “does the starting price have to be BELOW the then current  
2 LEAC rate?” GPA stated, “No. But GPA would like to see bids close to or lower than the  
3 current LEAC.” [SEPJ EX 22].  
4

### 5 III. ANALYSIS

6 Pursuant to 5 G.C.A. §5703, the Public Auditor reviews GPA’s denial of SEPJ’s Protest *de*  
7 *novo*. The Public Auditor addresses SEPJ’s appellate issues as follows.

#### 8 **A. GPA’S ACCEPTANCE OF THE HANWHA BIDS DID NOT VIOLATE THE IFB**

9 GPA’s acceptance of the Hanwha bids did not violate the IFB. 5 G.C.A. §5211(e) provides:

10  
11 Bids shall be unconditionally accepted without alteration or correction,  
12 except as authorized in this Chapter. Bids shall be evaluated based on the  
13 requirements set forth in the Invitation for Bids, which may include criteria  
14 to determine acceptability such as inspection, testing, quality, workmanship,  
15 delivery and suitability for a particular purpose... The Invitation for Bids  
16 shall set forth the evaluation criteria to be used. No criteria may be used in  
17 bid evaluation that are not set forth in the Invitation for Bids.

18 The Phase II Bid Abstract reflects:

- 19 a. Hanwha Site 2 price: \$0.06245/kWh
- 20 b. Hanwha Site 1 price: \$0.06599/kWh
- 21 c. KEPCO Site A price: \$0.0855/kWh
- 22 d. KEPCO Site B price: \$0.0855/kWh
- 23 e. SEPJ Site 2 price: \$0.1280/kWh
- 24 f. SEPJ Site 1 price: \$0.1613/kWh

25 The IFB required bidders to provide microgrid pricing information for GPA’s consideration.  
26 See August 10, 2016 IFB Amendment IV and November 16, 2016 IFB Amendment VIII. Pursuant  
27 to the amendments, the microgrid pricing was included as part of the IFB. The IFB reserved with  
28 GPA the option to accept ancillary services, such as the microgrid services. All bidders, including  
SEPJ, Hanwha, and KEPCO submitted microgrid pricing information. Each of them received fair

1 and equitable treatment in having the opportunity to submit pricing information, and to being  
2 considered for an award of a microgrid, if in GPA's discretion that would facilitate the purposes of  
3 the procurement. 5 G.C.A. §5001(b)(4).

4 GPA determined that Hanwha and KEPCO were the lowest responsive and responsible bidders  
5 whose bids met the requirements and criteria set forth in the IFB. 5 G.C.A. §5211(g). Generally, in  
6 competitive sealed bidding, the contract shall be awarded to the lowest responsible and responsive  
7 bidder whose bid meets the requirements set forth in the IFB. 5 G.C.A. §5211(g), 2 G.A.R., Div.  
8 4, Chap. 3, §3109(n)(1). The term "responsible bidder" means a person who has the capability in  
9 all respects to perform fully the contract requirements, and the integrity and reliability which will  
10 assure good faith performance. 5 G.C.A. §5201(f), 2 G.A.R., Div. 4, Chap. 3, §3109(n)(2), 2  
11 G.A.R., Div. 4, Chap. 3, §3116. The term "responsive bidder" means a person who submitted a bid  
12 which conforms in all material respects to the IFB. 5 G.C.A. §5201(g), 2 G.A.R., Div. 4, Chap. 3,  
13 §3109(n)(2).

14  
15  
16 Thereafter, the System Impact Study commenced. The preliminary information derived from  
17 the System Impact Study indicated that there were issues relating to the stability and reliability of  
18 power on one or both of Hanwha's sites, and recommended a microgrid for the Hanwha project.  
19 Consequently, GPA recommended award to Hanwha of the microgrid.

20  
21 It was undisputed by the parties that the amounts for the microgrid would be added to the  
22 bidders' base bid. The amounts priced for the microgrid were not considered in the bidders' base  
23 bid proposals. Bidders were not penalized or given extra points in submitting microgrid pricing  
24 information.

25  
26 Ultimately, SEPJ's bid prices for its sites are higher than Hanwha's bid prices, even with the  
27 addition of a microgrid for the Hanwha projects. SEPJ's assertion that Hanwha received preferential  
28 treatment was not substantiated by the evidence presented at the Hearing. Had SEPJ been given the

1 award, and had the award included the microgrid, SEPJ would likely not have demurred. SEPJ's  
2 appeal on this asserted basis is DENIED.

3 **B. GPA'S AWARD OF 120 MW WAS PROPER AND DOES NOT REQUIRE A**  
4 **REBID. FURTHERMORE, THE AWARD OF 120 MW WAS IN THE BEST**  
5 **INTERESTS OF THE TERRITORY.**

6 GPA's award of 120 MW was proper and does not require a rebid. P.L. 29-62 mandates that GPA  
7 establish renewable energy portfolio standard goals, setting a 25% renewable energy goal by 2035.  
8 The intent of the law is to require the development of renewable energy production and decrease  
9 the island's total reliance on oil for electricity production. This procurement involves the second of  
10 two phases for GPA to solicit proposals for RER in which GPA intended to acquire 60 MW, but in  
11 its discretion authorized under the IFB, increased the amount to 120 MW of renewable capacity.  
12 These projects are essential to Guam's power needs because the island's power grid had suffered  
13 significant damage, creating a critical need for new power sources.

14  
15 The IFB reserved to GPA the discretion to award the 120 MW. It provided that GPA may elect  
16 to award one, more, or none among the bidders' proposals, and it reserved the right to diversify its  
17 selections to provide a well-rounded portfolio of renewable resources. The IFB General Terms and  
18 Conditions, § 23 stated, "The government reserves the right to increase or decrease the quantity of  
19 the items for award and make additional awards for the same type items and the vendor agrees to  
20 such modifications and additional awards based on the bid prices for a period of thirty (30) days  
21 after the original award." The Public Auditor has recognized that this language confers upon the  
22 procuring entity the discretion to increase procurement quantities, provided the procuring entity  
23 rather than the awardee makes the increase. *In the Appeal of Town House Stores*, OPA-PA-11-02  
24 [13:20-14:07].

25  
26 The IFB appeared to limit each bidder's submission to two (2) projects, and that each project  
27 may not exceed 30 MW per location. [IFB, Amendment III, Question 47 at p.5]. Consequently, all  
28

1 bidders were limited to 30 MW per project for a total of 60 MW. Six (6) of the seven (7) Phase II  
2 qualified bidders submitted technical proposals for two (2) project locations consisting of 30 MW  
3 each, and one bidder submitted a proposal for one (1) project location with a 30 MW capacity. All  
4 bidders received fair and equitable treatment in submitting their bids. 5 G.C.A. §5001(b)(4).

5  
6 GPA determined that Hanwha's prices of \$0.06245/kWh and \$0.06599/kWh and KEPCO's  
7 price of \$0.0855/kWh were very competitive and well below the Phase I NRG Energy price of  
8 \$0.1960/kWh. After learning of these very competitive prices, GPA awarded 120 MW to hedge  
9 fuel costs for the people of Guam. On February 7, 2017, the Evaluation Committee recommended  
10 awarding 30 MW to 60 MW of PV Solar Projects and possibly up to 120 MW subject to approvals  
11 from the CCU and PUC. The Evaluation Committee recommended notifying Hanwha and KEPCO  
12 that they are the successful bidders with the lowest and most responsive bids and that they have  
13 bids with the lowest net present value based on the Base and High Fuel Cases priced proposals, for  
14 awards of 30 MW to 60 MW each respectively.

15  
16 No bidder was disadvantaged by the additional proposed award of an additional two 30 MW  
17 projects. All bidders were treated the same. 5 G.C.A. §5001(b)(4). The increase in quantity  
18 increased economy in the territorial activities and maximized to the fullest extent practicable the  
19 purchasing value of the public funds of the Territory. 5 G.C.A. §5001(b)(5). GPA's award of 120  
20 MW achieved these requirements, advanced the underlying policies articulated in P.L. 29-62, and  
21 did so fairly and equitably to all bidders.

22  
23 Assuming *arguendo*, SEPJ's assertion was correct, that GPA's action in doubling the size of  
24 the procurement was improper, affirmation of the award is in the best interests of the Territory.  
25 Guam law provides, "any type of contract which will promote the best interests of the Territory  
26 may be used..." 5 G.C.A. §5235. "[A] contract for supplies or services may be entered into for any  
27 period of time deemed to be in the best interests of the Territory." 5 G.C.A. §5237. "If after an  
28

1 award it is determined that a solicitation or award of a contract is in violation of law, then... if the  
2 person awarded the contract has not acted fraudulently or in bad faith... the contract may be ratified  
3 or affirmed, provided it is determined that doing so is in the best interests of the Territory.” 5 G.C.A.  
4 §5452(a)(1)(A). There is no evidence that either Hanwha or KEPCO acted fraudulently or in bad  
5 faith. GPA’s award of 120 MW was in the best interests of the Territory. The very competitive  
6 pricing from Hanwha and KEPCO benefits rate-payers, maximizes the purchasing power of public  
7 funds, and enables GPA to hedge fuel costs for the people of Guam. P.L. 29-62 stated, “The fact  
8 that oil is the *sole* source of our power production does not give GPA any opportunity to diversify  
9 and hedge cost savings in the fuel component of its cost structure.” [Section 1]. The Hanwha and  
10 KEPCO pricing provided GPA with a unique opportunity to hedge fuel costs. The resulting  
11 increased power supply advances the public policies in reaching renewable energy goals and  
12 addresses the island’s critical power needs.

13  
14  
15 SEPJ’s appeal on this asserted basis is DENIED.

16 **C. THE IFB SPECIFICATIONS WERE NOT AMBIGUOUS AND UNFAIR AND**  
17 **REBID OF THE PROCUREMENT IS NOT REQUIRED. THE IFB DID NOT**  
18 **REQUIRE UNDERGROUND TRANSMISSION LINES.**

19 The IFB Specifications were not ambiguous and unfair regarding whether the IFB required  
20 underground or overhead transmission lines. The IFB Technical Qualification Proposal  
21 Requirements, §2.4.1. provided: “The Bidder will deliver renewable energy to a GPA-determined  
22 interconnection point on GPA’s 34.5 KV transmission system. GPA will determine the exact  
23 location after completion of a detailed interconnection study.” GPA included cost estimates for  
24 transmission costs per mile for both overhead and underground transmission lines. It continued,  
25 “Bidders must include the cost for interconnection in their priced proposals as this may be  
26 negotiated with GPA during contract negotiations.” [SEPJ EX 15].  
27  
28



1 On July 15, 2016, GPA issued IFB Amendment II. Although it recommended underground  
2 transmission lines, it allowed bidders to choose the type of interconnection, underground or  
3 overhead, that suited their project. It provided:

4 GPA strongly recommends underground lines for interconnection between  
5 the renewable generation and GPA power system for their substantially  
6 greater reliability, especially during destructive storms and typhoons Guam  
7 often experiences relative to overhead lines... The contractors who choose  
8 to build overhead lines to the interconnection point will have to put up new  
9 poles even if there are existing GPA power poles along the route or upgrade  
10 existing lines. But GPA has to consider that the cost of constructing  
11 underground lines is, in most cases, higher than cost of building overhead  
12 lines. The location of the new on-site substation, the distance to the  
13 interconnection point, the system reliability and the cost comparison  
14 between constructing underground and overhead lines will all have to be  
15 taken into account before making a decision. GPA will approach it in a case  
16 to case basis. [SEPJ EX 16, p. 4-5].

17 IFB Amendments VIII and IX advised bidders that GPA would entertain a 34.5 KV overhead  
18 interconnection from the Dandan Substation to the Umatac Substation. [HANWHA EX F; KEPCO  
19 EX 9].

20 The IFB bid specifications did not require that a bidder use underground lines. The IFB bid  
21 specifications did not provide a bidder with credit if the bidder proposed underground lines. The  
22 use of underground or overhead transmission lines was not an evaluation criteria used by GPA.  
23 Each bidder could evaluate whether to propose underground or overhead lines or a combination  
24 thereof. It was up to each bidder to propose a transmission line design.

25 SEPJ did not establish that GPA's determination that SEPJ, Hanwha, and KEPCO's bids were  
26 responsible and responsive was in error. SEPJ agreed that it had the option to submit a bid with  
27 overhead or underground transmission lines or a combination of both. Although the IFB contained  
28 language recommending the use of underground transmission lines, all parties to this Appeal,  
including SEPJ, GPA, Hanwha and KEPCO, agreed that the IFB did not require that a bidder use  
underground transmission lines, and GPA advised all bidders that they could use overhead lines.  
SEPJ's appeal on this asserted basis is DENIED.

1 **D. SEPJ DID NOT ESTABLISH THAT GPA IMPROPERLY RANKED THE**  
2 **HANWHA, KEPCO, AND SEPJ BIDS NOR DID SEPJ ESTABLISH**  
3 **ENTITLEMENT TO AN AWARD FOR ITS SITE 2 AND SITE 1.**

4 SEPJ did not establish that GPA's determination that SEPJ, Hanwha, and KEPCO's bids were  
5 responsible and responsive was in error. Nor, did SEPJ establish that GPA's ranking of the bidders  
6 was in error. Accordingly, GPA's bidders' ranking will not be disturbed.

- 7 • Rank 1: Hanwha Site 2
- 8 • Rank 2: Hanwha Site 1
- 9 • Rank 3: KEPCO Site A
- 10 • Rank 4: KEPCO Site B
- 11 • Rank 5: SEPJ Site 2
- 12 • Rank 7: SEPJ Site 1

13 [SEPJ EX 19; GPA EX O].

14  
15 On July 10, 2017, GPA Buyer Supervisor I Jesse T. Reyes, issued a bid analysis which  
16 recommended that Hanwha and KEPCO be deemed the lowest responsive bidders with each  
17 bidder having two proposals for 30 MW each totaling 120 MW of solar PV capacity. [GPA EX  
18 O].

19 The Public Auditor has already ruled above that GPA's acceptance of Hanwha's bids did not  
20 violate the IFB. SEPJ's request that Hanwha's bids be rejected is DENIED. SEPJ's argument that  
21 it becomes first and second runner-up and is therefore entitled to an award for its two (2) bids is  
22 moot. SEPJ's appeal on this asserted basis is DENIED.

23  
24 **E. SEPJ DID NOT RAISE IN ITS NOTICE OF PROCUREMENT APPEAL THE**  
25 **ISSUE OF THE APPLICABILITY OF THE LEAC RATE. IRRESPECTIVE, THE**  
26 **ISSUE WOULD NOT REQUIRE A REBID.**

27 In its Notice of Procurement Appeal, SEPJ did not raise the issue of the applicability of the  
28 LEAC rate. A Notice of Procurement Appeal is required to make "A concise, logically arranged,

1 and direct statement of the *grounds* for appeal.” 2 GAR §12104(b)(2). (Emphasis added).  
3 Irrespective, the issue would not require a rebid. Under the IFB, GPA would evaluate price bids  
4 based on the most recent LEAC rate approved by the PUC.

5 The LEAC allows sharp market price fluctuations to be spread over a six-month period. It also  
6 provides increased consistency to customer bills. [SEPJ EX 23]. On July 15, 2016, GPA issued IFB  
7 Amendment II, which amended the IFB Technical Proposal evaluation from August 22, 2016 to  
8 September 2, 2016, and the IFB Priced Proposal evaluation from October 20, 2016 to October 31,  
9 2016. [SEPJ EX 22].

10 According to the Historical LEAC Summary, the LEAC rate for August 1, 2016 was  
11 \$0.0866/kWh, the LEAC rate for February 1, 2017 was \$0.105/kWh, and the LEAC rate for August  
12 1, 2017 was \$0.1157/kWh. [SEPJ EX 4(D)]. On July 15, 2016, GPA issued IFB Amendment II.  
13 [SEPJ EX 22]. In response to the question, “does the starting price have to be BELOW the then  
14 current LEAC rate?” GPA stated, “No. But GPA would like to see bids close to or lower than the  
15 current LEAC.” [SEPJ EX 22].

16 The Hanwha price proposals of \$0.06245/kWh (Site 2) and \$0.06599/kWh (Site 1) and KEPCO  
17 price proposals of \$0.0855/kWh (Sites A and B) were both close to and lower than the LEAC rates  
18 for August 1, 2016, February 1, 2017, and August 1, 2017. GPA determined that all four (4) of the  
19 Hanwha and KEPCO price proposals were below the applicable LEAC rate.  
20

21 The SEPJ price proposals exceeded the Hanwha and KEPCO price proposals and exceeded the  
22 LEAC rates for August 1, 2016, February 1, 2017, and August 1, 2017. SEPJ’s appeal on this  
23 asserted basis is DENIED.  
24  
25  
26  
27  
28



- 1 4. SEPJ did not establish that GPA ranked the bids improperly nor did SEPJ establish
- 2 entitlement to an award for its Site 2 and Site 1.
- 3 5. SEPJ did not raise in its Notice of Procurement Appeal the issue of the applicability of the
- 4 LEAC rate. Irrespective, the issue would not require a rebid.
- 5 6. Ratification or affirmation of the award is in the best interests of the Territory.
- 6 7. SEPJ's appeal is DENIED in its entirety.
- 7 8. The parties shall bear their respective costs and attorney's fees.

9 This is a Final Administrative Decision. The Parties are hereby informed of their right to appeal  
10 from a Decision of the Public Auditor to the Superior Court of Guam in accordance with Part D of  
11 Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final Administrative  
12 Decision. A copy of this Decision shall be provided to the Parties and their respective attorneys, in  
13 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA website at  
14 [www.opaguam.org](http://www.opaguam.org).

15  
16 **DATED this 7<sup>th</sup> day of December, 2017.**

17  
18 

19 **DORIS FLORES BROOKS, CPA, CGFM**  
20 **Public Auditor of Guam**