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To:	**Mr. John M. Benavente, P.E.** **General Manager** Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165 **Mr. D. Graham Botha, Esq** **General Counsel** Guam Power Authority 688 Route 15, Suite 302 Mangilao, Guam, 96913 Phone: (671) 648-3203/3002 Fax: (671) 648-3290	**From:**	**Benjamin J.F. Cruz** **Guam Public Auditor** Office of Public Accountability
		Pages:	8 (including cover page)
CC:	**Mr. Steven Carrara, Esq.** **General Counsel** **PTI Pacifica Inc., dba IT&E** P.O. Box 2881 Barrigada, Guam 96913 Fax (671) 646-4723	**Date:**	September 26, 2019
		Phone: **Fax:**	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-19-008 Decision

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Jerrick Hernandez, Auditor
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BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM

In the Appeal of PTI Pacifica Inc., dba IT&E, Appellant.	**Appeal No: OPA-PA-19-008** **DECISION**

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I. INTRODUCTION

This is the Decision of the Office of Public Accountability (OPA) for appeal number OPA-PA-19-008. Appellant PTI PACIFICA INC. dba IT&E (Hereafter Referred to as "IT&E" filed its appeal on June 28, 2019, regarding the Guam Power Authority's (Hereafter Referred to as "GPA") June 12, 2019 Decision denying IT&E's May 3, 2019 protest relative to GPA-RFP-19-005 (GPA Data Center Co-Location Services) (Hereafter Referred to as the "RFP"). The OPA holds that

IT&E's protest on the methodology of procurement is untimely, and GPA was not required to request a price proposal from IT&E as they were not deemed the best-qualified offeror. Accordingly, IT&E's appeal in OPA-PA-19-008 is hereby DENIED.

II. FINDINGS OF FACT

OPA, in reaching this Decision, has considered and incorporates herein the procurement record and all documents submitted by the parties, and all arguments made during the formal hearing held on August 21, 2019, and the Remedies Briefs filed by the parties on August, 29 and 30, 2019. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1. On or about February 14, 2019. GPA issued the RFP. (Procurement Record Tab 39)

2. The RFP stated, in relevant part, that "Only non-priced proposals are to be submitted by the proposal deadline. Priced proposals will be requested of the selected Proponent or Proponents at a later time." (Section 1.4 of the RFP, Tab 38 of the Procurement Record). The RFP also stated that:

> GPA will evaluate the Proponents qualifications for the RFP Scope in the following areas:
>
> A. General RFP Scope
> B. Staffing Requirements
> C. Cooling Requirements
> D. Physical Security Requirements
> E. Network Connection & Redundancy
> F. Fire Suppression
> G. Power Supply & Options
> H. Physical Infrastructure
> I. Reporting & Monitoring
> J. Managed Services Alert
> K. Service Level Agreements
> L. Monitoring and Professional Services

> A team composing of five (5) members will be chosen by the Authority to evaluate the proposals based on the above criteria. Each team member will rank each OFFEROR based on points received from the total points available. A final ranking will be determined by consolidating team members' ranking. (Procurement Record Tab 38)

3. On February 21, 2019, IT&E Representative Leonard Ofeciar downloaded a copy of the RFP from the GPA website. (Procurement Record Tab 35 and 37)

4. On March 11, 2019, GPA issued Amendment No. 1, which indicated a change in Closing Date and responses to inquiries received from two prospective bidders. (Procurement Record Tab 38)

5. On or about March 21, 2019, two bids were submitted in response to the RFP, one from IT&E and the other from Docomo Pacific LLC (Hereafter Referred to as the "Docomo"). (Procurement Record Tab 27, 28, and 29)

6. On April 3, 2019, the Evaluation Committee met to review the proposed offers for the RFP. It was decided that the committee would like to schedule Site visits with the two proposed vendors, as required per Part E of the RFP. (Procurement Record Tab 24 and 38)

7. Site visits were conducted on April 10, 2019, for Docomo and April 12, 2019, for IT&E (Procurement Record Tab 21 and 20)

8. On April 16, 2019, the Evaluation Committee met to complete its review of the proposals submitted. Based on the evaluation and the committees' scores, Docomo was selected as the best-qualified offeror. The Committee also recommended that Docomo submit their price proposal no later than close of business on April 23, 2019. (Procurement Record Tab 18)

9. On April 18, 2019, GPA sent a letter to Docomo notifying them that they were deemed the best-qualified offeror for the GPA Date Center Co-Location Services and requested them to submit a "sealed price proposal", no later than close of business on Friday, April 26, 2019. (Procurement Record Tab 17) On the same day, GPA also notified IT&E of GPA's selection of Docomo for the RFP. (Procurement Record Tab 16)

10. On May 2, 2019, the Evaluation Committee members met to review the price proposal submitted by Docomo. (Procurement Record Tab 15)

11. On May 3, 2019, IT&E submitted a Freedom of Information Act and Protest Letter related to the award of the RFP to Docomo. (Procurement Record Tab 14)

12. On June 12, 2019, GPA presumably denied IT&E's procurement protest and stated that IT&E's proposal was deemed acceptable, however, Docomo was deemed the best-qualified offeror and only the top-ranking proponent is required to submit a price proposal. (Procurement Record Tab 12)

13. On June 28, 2019, IT&E filed this appeal. (Procurement Record Tab 1)

III. ANALYSIS

Pursuant to 5 G.C.A. § 5703(a) and § 5425(e) and 2 G.A.R., Div. 4, Chap. 12, § 12103 (a), OPA shall review GPA's June 12, 2019 Decision denying IT&E's May 3, 2019, Protest de novo. This appeal concerns two main issues in that IT&E contends it should have been allowed to submit a price proposal to be used as a factor in the RFP evaluation, and that GPA should have issued an IFB or multi-step IFB instead of an RFP for this procurement.

IT&E contends that GPA should not have used an RFP for this procurement as they claim Data Center Co-Locations Services was essentially storage of computer equipment with no or very little technical Information Technology interaction by the contractor, which would not fall under 5 GCA § 5216, Competitive Selection Procedures for Services.

However, GPA argues that IT&E's argument of the procurement methodology is untimely. GPA made the decision to use an RFP for this procurement when it was issued on or around February 14, 2019, and IT&E picked up the RFP packet on February 21, 2019, when IT&E Representative Leonard Ofeciar downloaded a copy of the RFP from the GPA website. In addition, GPA argues that IT&E and the other bidders had an opportunity to ask questions, and in Amendment 1, GPA responded to those questions from bidders Docomo and Rack 59. There were no questions, technical

or procedural or otherwise from IT&E during the bid process. Instead, IT&E was one of the two bidders who submitted proposals for this procurement

GPA cites the decision for *Flame Tree Freedom Center, Inc. vs. GHURA, OPA-PA-19-006*, which dismissed the appeal as OPA lacked jurisdiction to hear the appeal because the appellant protesting the procurement methodology was untimely. OPA finds that the OPA-PA-19-006 decision is applicable to this appeal in that OPA lacks jurisdiction to hear this appeal because IT&E did not submit its protest within the 14 day limit of when they knew or should have known the issues, and therefore OPA should dismiss the appeal. GPA cites the February 14, 2019 issuance date of the RFP, where IT&E should have known that GPA Data Center Co-Location Services were going through the RFP process and not as an IFB or multi-step IFB, where the lowest price is the determining factor.

For an appeal to be properly before the Public Auditor, the Appellant must have filed its protest no later than fourteen days after it became aware that GPA was procuring GPA Data Center Co-Location Services through an RFP and not an IFB or multi-step IFB. IT&E became aware of this on February 21, 2019, when it picked up an RFP packet. Fourteen days after IT&E received a copy of the RFP packet would have been March 7th, however IT&E filed its letter of protest on May 3, 2019, only after it received notice on April 18, 2019, that Docomo was deemed the best-qualified offeror for the RFP, and not protesting the method of procurement used.

In IT&E's May 3, 2019 protest letter, they were inquiring as to why their technical proposal was not acceptable and why it was not requested to submit a price proposal. They continue to argue in their notice of appeal that it is "unclear how GPA determined the competitive range for further consideration or why GPA elected to continue negotiations with essentially a sole source offeror

and eliminating competition contrary to Guam procurement policy and regulations to promote competition." IT&E argues GPA should be compelled to accept a price proposal from IT&E.

GPA issued an RFP for this procurement and therefore made a determination of award to the best-qualified offeror as defined in 5 GCA § 5216 (e).

> Award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best-qualified offeror, the negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

As stated in Section 1.4 of the RFP, "Only non-priced proposals are to be submitted by the proposal deadline. Priced proposals will be requested of the selected Proponent or Proponents at a later time." The GPA evaluation committee reviewed and evaluated the technical proposals based on the factors identified in the RFP, and determined that although both proposals were qualified, Docomo was determined to be the best-qualified offeror. GPA then proceeded to request a price proposal from Docomo and proceed with negotiations as cited in the RFP and in line with 5 GCA § 5216 (e). Therefore a price proposal from IT&E was not required because they were not deemed the best-qualified offeror.

IV. CONCLUSION

Based on the foregoing, the Public Auditor hereby determines the following:

1. IT&E's protest on the methodology of procurement is untimely

2. GPA was not required to request a price proposal from IT&E as they were not deemed the best-qualified offeror.

3. IT&E's Appeal is hereby DENIED.

This is a Final Administrative Decision. The Parties are hereby informed of their right to appeal from a Decision by the OPA to the Superior Court of Guam, in accordance with Part D of Article 9, of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final Administrative Decision.

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website www.opaguam.org.

SO ORDERED this 26th day of September 2019 by:

Benjamin J.F. Cruz
Public Auditor of Guam

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