

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



FAX

To: Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165	From: Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
	Pages: 7 (including cover page)
CC: Mr. Steven Carrara General Counsel PTI Pacifica Inc., dba IT&E P.O. Box 2881 Barrigada, Guam 96913 Fax (671) 646-4723	Date: July 1, 2019
	Phone: (671) 475-0390 x. 208 Fax: (671) 472-7951

Re: OPA-PA-19-008 Notice of Receipt of Appeal

For Review

Please Comment

Please Reply

Please Recycle

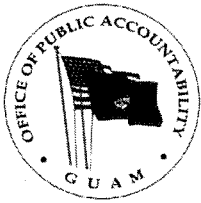
Comments:

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



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

July 1, 2019

John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977
Hagåtña, Guam 96932

VIA FACSIMILE: (671)648-3165

Re: Notice of Receipt of Appeal – OPA-PA-19-008

Dear Mr. Benavente,

Please be advised that PTI Pacifica Inc., dba IT&E (hereinafter referred to as “IT&E”) filed an appeal with the Office of Public Accountability (OPA) on June 28, 2019, regarding the Guam Power Authority’s (GPA) denial of IT&E’s protest related to the procurement for Data Center Services (RFP No. GPA 19-005). OPA has assigned this appeal case number OPA-PA-19-008.

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 first four pages of 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 appeal. 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), the submission of 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 is required no later than **Tuesday, July 9, 2019**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Division 4, Chapter 12, §12105, by **Tuesday, July 16, 2019**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to IT&E. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that you provide one original and two copies of the said record, which will be 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 Jerrick Hernandez at 475-0390 ext. 208 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,


Benjamin J.F. Cruz
Public Auditor

Enclosure: First Four Pages of the Notice of Appeal – OPA-PA-19-008

Cc: Steven Carrara, General Counsel for IT&E

Steven Carrara
PTI PACIFICA INC., dba IT&E
P.O. Box 2881
Barrigada, Guam 96913
Telephone No. (671) 646-1222
Fax No. (671) 646-4723
E-mail: Steven.Carrara@itehq.net

Attorney for Appellant
PTI PACIFICA INC. dba IT&E

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of

PTI PACIFICA INC.,

Appellant.

) NOTICE OF PROCUREMENT APPEAL
)
) Docket No. OPA-PA 19-008
)
)
)

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

Appellant Information:

PTI PACIFICA INC. (IT&E)
PO Box 28881
Barrigada, Guam 96913

Tel: 777 7252
Fax: 649-4353

DATE: 6-28-19
TIME: 3:45 AM PM BY: JND
FILE NO OPA-PA: 19-008

Appeal Information:

- A) Guam Power Authority ("GPA"), Consolidated Commission on Utilities ("CCU").
- B) Request for Proposals No. GPA 19-005 for Data Center Services for GPA.
- C) Decision being appealed is the GPA Denial of Protest, June 12, 2019 and received June 13, 2019.
- D) Appeal is made from a decision of denial of Agency level protest.
- E) Names of Competing Offerors: DOCOMO PACIFIC.

Form and Filing:

GPA issued RFP GPA-19-0005 for Data Center Services. The RFP is attached as Exhibit A. IT&E submitted its technical response to the RFP on March 21, 2019. On April 12, 2019, GPA performed a site inspection of the IT&E facilities in Harmon. At no time during the visit or via subsequent correspondence was IT&E advised that there were any deficiencies with its technical proposal and IT&E was never requested to submit a price proposal.

By letter dated, April 18, 2019, and served upon IT&E dated April 22, 2019, IT&E was advised that Docomo Pacific was selected as the best qualified offeror. Exhibit B. IT&E was not advised whether its offer was acceptable. IT&E requested a debriefing concerning whether its technical proposal was acceptable and why it was not requested to submit a pricing proposal, and if not acceptable, why. GPA staff advised that it no longer provided debriefings.

By letter dated May 3, 2019, IT&E filed a GPA agency level protest of the award to Docomo Pacific, failure to request a price proposal from IT&E and failure to provide a debriefing. Exhibit C. GPA in a letter dated June 12, 2019, and served electronically on IT&E on June 13, 2019, stated the IT&E's offer was acceptable GPA but presumably denied the protest and stated that it was only requiring a price proposal from Docomo Pacific. Exhibit D.

It remains 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. By essentially eliminating price as a universal factor applicable to all qualified and acceptable offerors, it appears that GPA is pursuing a multi-step RFP, despite there being no authorization in law to do so. Multi-step bids are permitted, 5 G.C.A. § 5211(h), but there is no equivalent provision in Guam law for Requests for Proposals. To the contrary, 2 G.A.R. § 3110(m)(1) expressly provides that: "The Request for Proposals shall state all of the evaluation


factors, including price, and their relative importance.” Thus it cannot be the case that price has no relevance.

If, therefore, price is to be one of the factors evaluated in the overall decision, and without a legal authorization to conduct a multi-step RFP, it should be the case, and IT&E assumed it would be so, that the purpose of the first step was to determine responsiveness after which all qualified offerors would be allowed to submit a price proposal. Alternatively, it may also be the case there was is not a legally justifiable reason for GPA to have pursued an RFP instead of an IFB, a multi-step IFB in particular. See 2 GAR § 3109(b) (“Competitive sealed bidding is the preferred method for the procurement of supplies, services, or construction.”); see also 2 GAR § 3109(r)(2)(a) (“Multi-step sealed bidding may thus be used when it is considered desirable to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements.”)

Page 26 of the RRP (Exhibit A) provides that a “Minimum Rating Required to Qualify is 90 points.” Having determined that IT&E was technically qualified, and that its offer was acceptable, there was no basis for GPA to not request a price proposal from IT&E as well. By soliciting a price proposal from the only remaining offeror GPA had no assurance that the proposed price was fair and reasonable or subject to competition.

Accordingly, without the benefit of a price proposal from IT&E, the only other qualified offer, GPA would be making a prohibited sole source award to Docomo. ITE respectfully protests that award and requests performance suspension until the protest is resolved.

Respectfully submitted,


Steven Carrara
General Counsel


Declaration regarding court action:

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

Dated this 28th day of June 2019.

PTI Pacifica Inc.

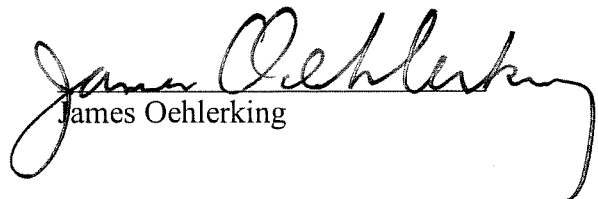
By:


Steven Carrara
General Counsel

VERIFICATION

I, James Oehlerking, CEO, for PTI Pacifica Inc dba IT&E 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 June 2019.


James Oehlerking

Broadcast Report

Date/Time 07-01-2019 09:59:28 a.m. Transmit Header Text
 Local ID 1 6714727951 Local Name 1 OFFICE OF THE PUBLIC AUDITOR

This document : Confirmed
 (reduced sample and details below)
 Document size : 8.5"x11"

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



FAX

To:	Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
		Pages:	7 (including cover page)
CC:	Mr. Steven Carraro General Counsel PTI Pacifica Inc., dba IT&E P.O. Box 2881 Barrigada, Guam 96913 Fax (671) 646-4723	Date:	July 1, 2019
		Phone:	(671) 475-0390 x. 208
		Fax:	(671) 472-7951

Re: OPA-PA-19-008 Notice of Receipt of Appeal

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

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.

Total Pages Scanned : 7

Total Pages Confirmed : 14

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	085	6483165	09:47:41 a.m. 07-01-2019	00:07:43	7/7	1	EC	HS	CP12000
002	085	6464723	09:47:41 a.m. 07-01-2019	00:02:32	7/7	1	EC	HS	CP4800

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct