

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)	
)	GPA Docket 18-02
)	
The Application of the Guam Power Authority to Approve the Technical Specifications for the Procurement of the 180MW Power Plant.)	PUC COUNSEL REPORT
)	
)	

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Petition of the Guam Power Authority [“GPA”] for Approval of the Technical Specifications for the Procurement of the 180MW Power Plant.¹

BACKGROUND

2. In this Docket, PUC previously authorized GPA to pursue a 3-step bid process for the procurement of a 180MW Power Plant.²
3. GPA was first authorized to issue a Request for Qualifications for qualified bidders for the power plant. Thereafter, upon selection of qualified bidders, GPA was required to submit its completed technical plan and specifications for the Power Plant to the PUC for approval.³
4. Subsequent to PUC authorization, GPA selected seven qualified bidders to proceed to the technical proposal step.⁴
5. In the present Petition, GPA requests that the PUC approve the technical bid documents for the procurement of the new power plant, and the technical specifications for such plant.⁵

¹ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018.

² PUC Order, GPA Docket 18-02, dated November 30, 2017.

³ Id. at p. 5.

⁴ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018, at p. 1.

⁵ Id.

6. Should the PUC approve the bid documents and the technical specifications, GPA will issue those to the seven prequalified bidders in Step 2 of the technical bid process.
7. The technical specifications address the requirement that the project be a Build, Own/Operate, and Transfer (BOT) contract using an Independent Power Producer (IPP) model.⁶
8. The power plant must be capable of dual firing for ultra-low sulfur diesel (USLD) or natural gas, and must meet GPA reliability criteria and minimum reliability requirements, as well as all federal and local environmental requirements.⁷
9. The award will be made to the bidder providing the lowest present value cost, after bidders have met the requirements in the technical specifications.⁸
10. In Resolution No. 2018-015, the Guam Consolidated Commission on Utilities approved the Bid Documents and Technical Specifications for Multi-Step Bid GPA-034-18 for the Build, Own/Operate & Transfer (BOT) Contract for 120-180MW New Generation Capacity.⁹

ANALYSIS

11. GPA has submitted a copy of the Bid Documents and Technical Specifications for IFB GPA-034-18 along with its Petition.
12. The Bid Documents and Technical Specifications were prepared by GPA's Consultant Stanley Consultants Inc. and K&M Advisors, a Sub-Consultant.
13. The documents are broken down into four Sections, Sections A-D, and the Proposed Contract, as follows:
 - A. Information for Bidders;
 - B. Instructions to Bidders;
 - C. Functional Technical Specifications;

⁶ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018, at p. 2.

⁷ Id.

⁸ Id.

⁹ CCU Resolution No. 2018-015, Authorizing the Management of the Guam Power Authority (GPA) to Petition the Public Utilities Commission for the Approval of the Multi-Step Bid BOT Specification for New 120-180MW generation capacity, adopted July 24, 2018.

D. Forms; and
Energy Conversion Agreement between GPA and Project Company.

14. The Project Company selected will be responsible for developing, constructing, owning and operating a 180MW dispatchable power generating facility.¹⁰ However, GPA may consider evaluating proposals that are within plus/minus 10% of the preferred capacity.¹¹
15. The Project Company is required to give existing GPA employees a “first refusal for employment at the new power plant”, where such employees are “adversely affected or separated as a result of the commissioning of the new power plant...”.¹²
16. For fossil fuel generating facilities, the project company may be required to use ULSD and Natural Gas.¹³
17. The commercial operation date for Phase 2 of the plant is expected to be September 9, 2022.¹⁴
18. The Project Company will be required to build the Electrical Interconnection Facilities between the Facility and GPA’s 115kV Harmon Substation.¹⁵
19. Arrangements for financing the development and construction of the facility “shall be the *sole responsibility* of the Selected Bidder. GPA will not be a party to the signing of any document related to financing of the Project apart from the ECA, LLA, consent, conditional assignment, and/or multi-lateral lending documents.”¹⁶
20. Project Company will be responsible for building infrastructure and new pipelines for transport of ULSD and Natural Gas from the GPA Bulk Fuel Storage Facility to the plant site.¹⁷

¹⁰ Section A, Information for Bidders at §1.1.3.

¹¹ Id. at §5.2(a).

¹² Id. at §7.4.

¹³ Id. at §§9.1 and 9.2.

¹⁴ Id. at §12.

¹⁵ Section B, Instructions to Bidders, §3.2.3(b)(ii).

¹⁶ Section A, Information for Bidders, §5.1.

¹⁷ Section C, Functional Technical Specifications, §1.3.1.

21. The Project Company will also be responsible for designing and constructing the Interconnection Facilities between the existing GPA Harmon Substation and the facilities known as the "Point of Interconnection."¹⁸
22. The project includes a 115kV substation and transmission lines to the GPA system.¹⁹
23. The Functional Technical Specifications are extremely detailed and cover every aspect of the power generation facility, including engineering, design, mechanical plant and system requirements, plant piping systems, products, electrical plant, civil and structural requirements, structural loads, foundation and steel design, substation requirements, transmission requirements, and electrical requirements, etc.
24. With regard to each aspect of the plant, the Project Company is required to comply with all applicable local and federal codes, and the requirements of applicable professional organizations.
25. The specifications appear to be detailed and comprehensive, and seemingly address all relevant aspects of plant design, construction and operation.
26. The Guam Consolidated Commission on Utilities has represented that GPA completed the technical specifications documents for the 180MW New Generation Capacity bid, and that such specifications fully address the requirements for the following:
 - Build, Own/Operate and Transfer (BOT) contract
 - Specifications for 120MW - 180MW flexible generation to meet renewable integration requirements
 - Specifications for dual firing units for ultra-low sulfur diesel and natural gas
 - Architectural requirements and GPA involvement during design process
 - Federal and Local Environmental and Safety requirements
 - GPA Employee Hiring Opportunity
 - Bond & Security Requirements during bid and construction periods
 - PUC approval 1 day in 4.5 years reliability criteria
 - GPA minimum reliability requirements
 - Lowest present value cost as basis for award

¹⁸ Id. at §1.3.2.

¹⁹ Id. at §1.1.

- Draft contract²⁰

27. On August 23, 2018, Counsel met with GPA Legal Counsel, Chief Financial Officer, and Engineer Representatives. GPA Officials have represented that the technical specifications should be adequate to protect the interest of GPA and its ratepayers.
28. In addition, the CCU, by recommending approval of the Technical Bid Documents and the Functional Technical Specifications, have impliedly represented that such technical specifications are adequate to protect the interests of GPA and its ratepayers.
29. In this Docket, a main concern of the Public Utilities Commission has been that “GPA shall consider technologies other than combined cycle units in the procurement for new generation which it subsequently intends to issue. In accordance with a market approach, bidders should be able to offer technology solutions other than combined cycle units, which may include LNG, LPG, or other possible solutions which meet the necessary criteria.”²¹
30. Counsel’s review of the Bid Documents and Functional Technical Specifications indicates that they fully comply with the PUC requirement that GPA shall consider technologies other than combined cycle units in the procurement.
31. GPA’s Consultants Stanley and K&M Advisors, properly opened up the procurement to all types of technology, including fossil fuel technologies, renewable technologies, and hybrid technologies. The bid documents, in numerous places, make it clear that no one technology is favored, but that bidders may submit proposals from any technology that can satisfy the generation and other requirements of bid.
32. §1.1.2, Section A, Information for Bidders, states as follows:

This IFB allows Bidders to offer different technologies such as fossil fuel fired technologies, renewable technologies with storage, or hybrid technologies provided that the Project can serve as a reliable base load fully dispatchable Facility capable of meeting the functional requirements specified in the IFB documents. Any sections of the IFB documents referencing Fuel or Fuel related concepts and defined terms such as Heat Rate, Guaranteed Heat Rate, Fuel Charge, etc... are only applicable to Proposals based on Facilities that operate on fossil fuel.²²

²⁰ CCU Resolution No. 2018-015, at p. 1.

²¹ PUC Supplemental Order, GPA Docket 15-05, dated April 27, 2017, at p. 1.

²² Section A, Information for Bidders, §1.1.2.

33. Overall, the consultant drafters of the bid documents have done a good job in assuring that GPA has satisfied the requirement of PUC that the procurement be open to all technologies.
34. Of course, there is no assurance that renewable technologies, technologies other than fuel oil-based generation (such as reciprocating engine or combustion turbine) will be bid. From his discussions with GPA officials, Counsel notes that none of the seven bidders qualified under the Request for Qualifications referenced projects involving renewables. Although a few of the bidders have renewable experience, for the most part the qualifications proposals referenced fuel oil-based generation such as combined cycle, reciprocating engine, and combustion turbine.
35. Nevertheless, GPA certainly cannot ensure that bidders submit proposals based upon renewable energy. All that can be required is that the procurement allow for renewable proposals if prospective bidders desire to make such proposals.
36. The proposed contract form for the Energy Conversion Agreement between GPA and the Project Company appears to be adequate to protect the interest of GPA and its ratepayers.
37. The format for the Contract follows in some respects that previously done with Enron for the Piti 8 & 9 plants.
38. The financing requirement is that bidders put up at least 20% of the total funding for the project in the form of contributed equity.
39. Each bidder initially submits, as part of its submission a Proposal Security in the amount of \$3,000,000.²³
40. At the "Financial Close", GPA will return the Proposal Security to the project company. The Project Company is then required to provide GPA with a security deposit (the "Construction Security") in an amount equal to US \$75,000,000 to ensure Project Company's obligations to pay liquidated damages in accordance with the Contract.²⁴ Liquidated damages are payable by the Project Company for failure to complete the Phase 1 and Phase 2 facilities by the "Commercial Operation Date." Any delay damages will be deducted from the Construction Security.²⁵

²³ Section B, Instructions to Bidders, §4.8.

²⁴ Proposed Energy Conversion Agreement, §9.6(d).

²⁵ Id. at Article 9 (Liquidated Damages Payable by Project Company).

41. The construction will be completed in two phases, "Phase 1" and "Phase 2." Phase I means all work as required to put the Simple Cycle Unit in case of a combined cycle Facility or the first 50-70 MW of firm base load capacity in case of other technologies into commercial operation; Phase 2 means all work as required to complete the rest of the Facility and put the entire Facility into commercial operation.²⁶
42. The Project Company will also pay liquidated damages for failure to meet contracted facility capacity in a dollar amount, to be determined per kilowatt.²⁷
43. Once the construction is completed, the balance of the Construction Security will be returned to the Project Company. However, thereafter, GPA can offset any liquidated damages incurred against amounts which it owes to the Project Company.
44. The contract contains considerable insurance requirements that must be purchased by the Project Company, including cargo transportation insurance, contractors all risks policy, professional indemnity policy, properties insurance, workmen's compensation, and public liability insurance, etc.²⁸
45. There are mutual indemnification clauses where both GPA and the Project Company will indemnify and hold each other harmless for loses resulting from either's negligent or willful acts.²⁹
46. In cases of default by the Project Company, GPA will have the option to purchase the generation plant. If GPA terminates the contract for its convenience, it is obligated to purchase the plant.
47. Therefore, the contract provisions appear to be adequate to protect GPA's and ratepayer interests.
48. GPA submits that its request to proceed with the technical specifications for the procurement of a 180MW power plant "will be essential to ensuring compliance

²⁶ Section A, Information for Bidders, §2.63 and 2.64.

²⁷ Proposed Energy Conversion Agreement, Article 9(Liquidated Damages Payable by Project Company).

²⁸ Id. at Article 15 (Insurance Requirement).

²⁹ Id. at Article 16 (Liability and Indemnification).

with USEPA environmental regulations, and is reasonable, prudent, and necessary.”³⁰

49. For the foregoing reasons, PUC should approve GPA’s Bid Document for Multi-Step Bid GPA-034-18 and the Functional Technical Specifications.

RECOMMENDATION

50. Counsel recommends that the Bid Documents for Multi-Step Bid GPA-034-18 and the Functional Bid Specifications, as submitted by GPA in its Petition, should be approved.

51. GPA must obtain PUC approval of the final contract upon completion of the bid process.

52. A proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 25th day of August, 2018.

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³⁰ GPA Petition to Approve the Technical Specifications for the Procurement of the 180MW Power Plant, GPA Docket 18-02, filed August 10, 2018, at p. 2.