

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
) GPA Docket 18-02
)
The Application of the Guam Power Authority to Approve the Procurement for the 180MW Power Plant.) PUC COUNSEL REPORT
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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 Procurement for the 180MW Power Plant.¹

BACKGROUND

2. GPA petitions the PUC to review and approve a “multi-step procurement for a new 180MW power plant.”²
3. GPA intends to use a three-part multi-step process that requires bidders to be prequalified based on experience and financial capability in order to receive the technical bid documents and submit a technical and price proposal.³
4. In Guam Consolidated Commission on Utilities Resolution No. 2017-39, the CCU authorized GPA to petition the PUC for approval of the proposed three-step bid process for the 180MW Power Plant.⁴
5. Resolution No. 2017-39 explains the proposed three-step bid process as follows:

“**Step 1** Experience & Financial Qualification is the period from this Request for Qualification (RFQ) announcement through Notification of Qualified Bidders. This step established a Qualified Bidders List (QBL) based on acceptable submitted Qualification Proposals.

¹ GPA Petition to Approve the Procurement for the 180MW Power Plant, GPA Docket 18-02, filed October 12, 2017.

² Id. at p. 1.

³ Id.

⁴ Guam Consolidated Commission on Utilities Resolution No. 2017-39, Authorizing the Management of the Guam Power Authority to Petition the Public Utilities Commission for the Approval of the Bid Process for 180MW Power Plant, adopted September 26, 2017.

Step 2 Technical Proposal Qualification is the period from Invitation for Bid (IFB) provided to the bidders identified on the QBL to the selection of qualified Technical proposals. During this step, only Qualified Bidders are allowed to obtain the Invitation for Bid which contains the technical and evaluation criteria for the bid proposals.

Step 3 Cost Evaluation is the period from the start of evaluation of submitted Priced Proposals to the date of issuance of the letter of award and invitation to negotiate the Contract to the first ranked Bidder. Only bidders whose technical proposal met the requirements of the IFB will be evaluated...⁵

6. The Resolution further clarifies that GPA is requesting that the PUC approve the multi-step bid process **“and to initiate the Request for Qualifications to establish a bidders list.”**⁶
7. GPA has attached to its Petition it’s proposed **“REQUEST FOR QUALIFICATIONS OF BIDDERS FOR DEVELOPMENT OF A 120-180MW POWER PLANT IN GUAM ON A BUILD, OPERATE, TRANSFER (BOT) BASIS.”**⁷
8. The RFQ indicates the Project Scope: the Project will consist of power generating facility with capacity of approximately 120-180MW which will operate on Ultra-Low Sulfur Diesel (ULSD) and, in the future, LNG-derived natural gas.⁸ The RFQ indicates other aspects such as Project Schedule, Fuel Procurement, Power Plant Evacuation, and Environmental Requirements.⁹
9. In particular, the RFQ establishes **“BIDDER QUALIFICATION”**.¹⁰ A **“qualification submission”** is designed to show that the bidder has sufficient experience and technical capability to develop the project. It will also be required to demonstrate financial capacity, in terms of net worth, working capital, profitability, and bonding capacity, to demonstrate that it will be able to access and provide sufficient project equity and debt financing as well as working capital for the execution and construction of the project.¹¹

⁵ Id. at p. 1.

⁶ Id. at p. 2.

⁷ GPA Request for Qualifications of Bidders for Development of 120-180MW Power Plant in Guam on Billed, Operate, Transfer (BOT) Basis, September 2017, attached to GPA’s Petition.

⁸ Id. at p. 2.

⁹ Id. at p. 3.

¹⁰ Id. at p. 4.

¹¹ Id. at p. 4.

10. The Bidder Qualifications Criteria are further set forth in Table 2.1, which is attached to the Request for Qualifications.¹²
11. The Criteria include Project Development Experience, which, *inter alia*, require that the qualified bidder has been a lead developer in at least two fossil fuel fired green field projects that achieved commercial operation within the last 10 years and were in the range of 100MW each. Under certain circumstances, the bidder may include at least one project with no less than 80MW.¹³
12. The qualified bidder must indicate its lead developer's previous successful experience in raising sufficient debt, greater than \$100M and substantial equity participation of greater than \$50M, for at least two fossil fuel fired projects of 100MW or larger.¹⁴
13. On November 14, 2017, the PUC Counsel submitted a "PUC REQUEST FOR INFORMATION" to GPA.¹⁵ On November 22, 2017, GPA Legal Counsel submitted the Response of GPA to the PUC Request for Information. A true and correct copy of said Response is attached hereto as Exhibit "1".¹⁶

ANALYSIS

14. In its Response to the PUC Requests for Information, GPA clarified that, at the present time, it was only asking for approval for the issuance of a Request for Qualifications. It is not seeking approval of any other aspect of the bid, and "would return to the PUC for approval of the technical specifications."¹⁷
15. It would not be appropriate for the PUC to now approve the entire multi-step bid process for the 180MW plant. GPA admits that it has not yet developed the "Technical Proposal Qualifications" for Step 2 of the proposed three-step multi-bid process: "the ...technical requirements for the bid documents are still being developed which includes final details on the plant site."¹⁸
16. Numerous aspects of GPA's proposed project plan are unsettled.
17. GPA is negotiating with land owners for the purchase of land at the proposed Harmon site, but it estimates that the land purchase process will take at least three to

¹² Table 2.1, Bidder Qualification Criteria, attached to the RFQ.

¹³ Id.

¹⁴ Id. at p. 2.

¹⁵ PUC Request for Information, GPA Docket 18-02, dated November 14, 2017.

¹⁶ GPA Response to PUC Request for Information, GPA Docket 18-02, dated November 22, 2017, attached hereto as Exhibit "1".

¹⁷ GPA Response to PUC Request for Information No. 16.

¹⁸ CCU Resolution No. 2017-39, adopted September 26, 2017, at p. 2.

four more months.¹⁹ Thus, the ability of GPA to utilize the site location is speculative at the present time.

18. Not only is GPA unable to proceed with the bid for the 180MW plant, neither the Guam Legislature nor the Guam Land Use Commission has approved the rezoning of the proposed plant site. GPA is seeking legislative rezoning approval; there is presently no indication of how long that process might take.²⁰ Legislative approval, and/or GLUC approval of the rezoning, will be necessary before GPA can proceed with issuing its technical bid.
19. There is a legitimate question as to whether GPA should proceed with its Request for Qualifications before it finalizes its site and project plans. The project scope and other details set forth in the proposed RFQ could well change before the technical proposal is finalized and approved by the PUC. The PUC may also address whether the technical proposal approved by GPA is broad enough to allow bidders with diverse technologies to apply for the bid.
20. In its Order dated April 27, 2017, the PUC held 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
21. The PUC also reserved the right to further consider whether 180MW should be the proposed capacity of the new plant, or whether a lesser capacity would suffice, upon GPA’s submission of the procurement for approval.²²
22. The issue is whether GPA can presently issue a proper Request for Qualifications when fundamental aspects of its technical plan have not been resolved and approved by the PUC.
23. Under the approach GPA takes in this docket, PUC will need to address this procurement on two separate occasions; first with the RFQ, and then later again when GPA returns to PUC for approval of the technical proposal. It would be more efficient for PUC to consider the entire procurement process at one time.

¹⁹ Id.

²⁰ GPA Response to PUC Request for Information, Request No. 15.

²¹ PUC Supplemental Order, New Generation Combined Cycle Units, April 27, 2017, Ordering Provision No. 1.

²² Id. at Ordering Provision No. 6.

24. The major procurement issue which PUC must decide in this docket is whether the PUC should approve the issuance of a Request for Qualifications as part of the three-step multi bid process. As GPA envisions this bid, the proposed first phase will include the determination of qualified bidders through the RFQ, and then submission by qualified bidders of technical proposals. The third step would be submission of price proposals.
25. PUC Counsel has numerous concerns about the propriety of using a three-step procurement process. GPA admits that it has never previously used the three part multi-step bid process requested herein. While it has done many “two-step multi-step sealed bidding processes”, it has never used more than a one-step technical first phase, rather than the two-step technical first phase it proposes herein.²³ GPA is not aware that any other entities or agencies of the government of Guam have ever used the “three-part multi-step” bid process that GPA proposes in this Docket.²⁴
26. In response to PUC’s request for legal authority which authorizes GPA to conduct a two-step technical first phase in the Procurement Law, GPA references 2 GAR [Guam Administrative Regulations], Chap. 3, §3109(r).
27. That Regulation provides as follows:
- “Multi-step sealed bidding is a two-phase process consisting of a technical first phase **composed of one or more steps** in which bidders submit unpriced technical offers to be evaluated by the territory, and second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their priced bids considered.”
28. 5 GCA §5211(h), Multi-step Sealed Bidding, also appears to authorize the prequalification of bidders before they may submit offers and responses to an Invitation for Bids: “When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.”
29. There are also certain provisions which require bidders to submit information concerning experience and expertise, as well as appropriate financial resources, in GAR §3116(a).

²³ GPA Response to PUC Request for Information No. 7.

²⁴ GPA Response to PUC Request for Information No. 8.

30. Nevertheless, there is still some uncertainty as to whether the procurement process allows this specific type of three-step bid process. Counsel has a concern that such a process could be an impediment to the procurement and possibly lead to procurement protests.
31. However, GPA does not believe that the three-step process would create “any greater potential of protests than a normal high dollar procurement, for example the Phase II solar bid which was protested to the OPA and used a normal multi-step bid process.”²⁵
32. GPA believes that the three-part multi-step bid process is necessary because it “would screen for bidders with the capacity and experience to complete a power plant this size and magnitude proposed by GPA, up to 180MW, and would allow the bidders to demonstrate their qualifications with a minimal expenditure by the bidder, rather than requiring the bidders to develop and cost out a response to the full technical bid, which bidders have previously advised GPA could cost the bidders more than \$300,000 to prepare the entire technical bids.”²⁶
33. This may be a situation where GPA should be accorded some discretion and deference in its procurement process. This is GPA’s Bid. As the PUC has previously recognized, it does not sit as a Procurement Review Board nor generally make determinations concerning issues of procurement law.
34. Although there are concerns about the procurement process suggested by GPA, in this case GPA has presented enough of a justification to authorize it to proceed ahead, but only with the issuance of the Request for Qualifications.
35. There must be further review of GPA’s technical plans as soon as they have been completed by GPA and its consultant, Stanley Consultants. A full review of GPA’s technical plan and the details of the project should be undertaken at a later time when GPA submits all of its procurement documents.

RECOMMENDATION

36. Counsel recommends that the PUC, for now, only approve the issuance of a Request for Qualifications.
37. No other aspect of GPA’s three-step procurement process should be approved at present; nothing contained by GPA in the RFQ pertaining to the scope of the project or the nature of the technology sought to be employed should be binding upon the PUC in its subsequent review of GPA’s technical procurement.

²⁵ GPA Response to PUC Request for Information No. 9.

²⁶ GPA Response to PUC Request for Information No. 10.

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

Dated this 25th day of November, 2017.

Frederick J. Horecky
PUC Legal Counsel