

**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. ) ORDER  
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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.<sup>1</sup>

**BACKGROUND**

2. GPA petitions the PUC to review and approve a “multi-step procurement for a new 180MW power plant.”<sup>2</sup>
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.<sup>3</sup>
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.<sup>4</sup>
5. Resolution No. 2017-39 sets forth the proposed three-step bid process, which includes a “Request for Qualifications” step.<sup>5</sup>
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.”**<sup>6</sup>

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

<sup>2</sup> Id. at p. 1.

<sup>3</sup> Id.

<sup>4</sup> 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.

<sup>5</sup> Id. at p. 1.

<sup>6</sup> Id. at p. 2.

7. GPA has attached to its Petition its proposed “REQUEST FOR QUALIFICATIONS OF BIDDERS FOR DEVELOPMENT OF A 120-180MW POWER PLANT IN GUAM ON A BUILD, OPERATE, TRANSFER (BOT) BASIS.”<sup>7</sup>
8. The RFQ indicates the Project Scope and Bidder Qualifications.<sup>8</sup> 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.<sup>9</sup>
9. 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.<sup>10</sup>
10. 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.<sup>11</sup>
11. On November 25, 2017, PUC Counsel submitted his Report herein. The PUC adopts the Statement of Background and the Recommendations contained in the Report.
12. On November 14, 2017, the PUC Counsel submitted a “PUC REQUEST FOR INFORMATION” to GPA.<sup>12</sup>
13. On November 22, 2017, GPA Legal Counsel submitted the Response of GPA to the PUC Request for Information.<sup>13</sup> A true and correct copy of said Response is attached to the PUC Counsel Report as Exhibit “1”.<sup>14</sup>

## DETERMINATIONS

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<sup>7</sup> 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.

<sup>8</sup> Id. at p. 2.

<sup>9</sup> Id. at p. 4.

<sup>10</sup> Id.

<sup>11</sup> Id. at p. 2.

<sup>12</sup> PUC Request for Information, GPA Docket 18-02, dated November 14, 2017.

<sup>13</sup> PUC Counsel Report, GPA Docket 18-02, dated November 25, 2017.

<sup>14</sup> GPA Response to PUC Request for Information, GPA Docket 18-02, dated November 22, 2017, attached hereto as Exhibit “1”.

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.”<sup>15</sup>
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.”<sup>16</sup>
16. Numerous aspects of GPA’s proposed project plan are unsettled. GPA’s purchase of the proposed Harmon site has not been completed and may take at least three to four more months.<sup>17</sup>
17. Neither the Guam Legislature nor the Guam Land Use Commission has approved the rezoning of the proposed plant site.<sup>18</sup>
18. PUC could conceivably alter the scope of GPA’s technical proposal after it is submitted. 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.
19. 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.”<sup>19</sup>
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.<sup>20</sup>
22. There is an issue as to 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.

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<sup>15</sup> GPA Response to PUC Request for Information No. 16.

<sup>16</sup> CCU Resolution No. 2017-39, adopted September 26, 2017, at p. 2.

<sup>17</sup> Id.

<sup>18</sup> GPA Response to PUC Request for Information, Request No. 15.

<sup>19</sup> PUC Supplemental Order, New Generation Combined Cycle Units, April 27, 2017, Ordering Provision No. 1.

<sup>20</sup> Id. at Ordering Provision No. 6.

23. 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.
24. GPA admits that it has never previously used the three part multi-step bid process requested herein.<sup>21</sup> 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.<sup>22</sup>
25. However, GPA has submitted legal authority which appears to authorize GPA to conduct a two-step technical first phase in 2 GAR [Guam Administrative Regulations], Chap. 3, §3109(r), and a provision which authorizes the Request for Qualifications process in 5 GCA §5211(h).
26. 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.”<sup>23</sup>
27. GPA also 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.....”<sup>24</sup>
28. GPA should be accorded some discretion and deference in its procurement process. As the PUC has previously recognized, it does not sit as a Procurement Review Board nor generally make determinations concerning issues of procurement law.
29. Although there are concerns about the procurement process suggested by GPA, in this case GPA has presented a sufficient justification to authorize it to proceed ahead, but only with the issuance of the Request for Qualifications.
30. However, as a condition of approval, GPA agreed at the meeting to revise the RFQ in accordance with the revisions of Commissioner Niven in Exhibit “2” (attached hereto). The RFQ, as written, did not comply with the requirements in the PUC Order of April 27, 2017 (GPA Docket 15-05) that GPA allow technical proposals to be submitted by bidders with any technology or power/fuel source that can provide efficient, reliable and least cost baseload capacity.

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<sup>21</sup> GPA Response to PUC Request for Information No. 7.

<sup>22</sup> GPA Response to PUC Request for Information No. 8.

<sup>23</sup> GPA Response to PUC Request for Information No. 9.

<sup>24</sup> GPA Response to PUC Request for Information No. 10.

## ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA, the PUC Legal Counsel Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

1. GPA is authorized to issue a Request for Qualifications for the 120-180MW power plant which implements the revisions of Exhibit "2".
2. Upon submission by GPA of its completed technical plan with full project details, such plan shall be reviewed by PUC pursuant to the Contract Review Protocol.
3. Nothing contained by GPA in the RFQ shall bind the PUC in its subsequent review of GPA's technical procurement.
4. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 30th day of November, 2017.

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Jeffrey C. Johnson  
Chairman

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Rowena E. Perez  
Commissioner

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Joseph M. McDonald  
Commissioner

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Michael A. Pangelinan  
Commissioner

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Filomena M. Cantoria  
Commissioner

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Andrew L. Niven  
Commissioner

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Peter Montinola  
Commissioner