



GUAM POWER AUTHORITY

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March 6, 2024

VIA EMAIL & HAND-DELIVERY

Honorable Therese M. Terlaje

Speaker

I Mina'trentai Siette Na Liheslaturan Guåhan

163 Chalan Santo Papa

Hagåtña, Guam 96910



37GL-24-1723

Messages and Communications

RECEIVED

Committee on Rules

March 6, 2024

11:04 a.m.

Beatrice Cruz

Re: Letter from Dooik Eng Co. dated March 4, 2024, re Bill 206-37

Dear Madam Speaker:

GPA is responding to a letter from Dooik Eng Co., Ltd., dated March 4, 2024, to the Speaker, in which Dooik urges the Legislature to reject Bill 206-37 in support of GPA's temporary power project. Dooik's reasoning is based on a misapprehension of the facts. Dooik's flawed reasoning has necessarily led it to an incorrect conclusion regarding the need for Bill 206-37. The Legislators should therefore reject Dooik's viewpoint.

1. Factual background.

GPA issued a bid for the Yigo Diesels performance management contract (PMC) in 2020 through a multi-step invitation for bids (IFB). After the lowest bidder dropped out, GPA decided to cancel the 2020 bid in order to change the specifications.

During the ensuing two years, GPA continued on its own to operate and maintain the Yigo Diesel generators. During this time, GPA gained additional insight into the need for staffing the Yigo Diesels PMC with appropriately trained personnel, as well as other issues. GPA rebid the Yigo Diesels PMC in January 2023. This time, bidders could not be guaranteed the use of GPA staff to perform the contract.

Dooik did not meet the new specifications and achieved a failing score. This prevented Dooik from advancing to the next step in the bid process. Around the time of Typhoon Mawar in May 2023, Dooik protested its losing scores based on its contention that, since it had succeeded in the earlier bid, it should therefore win this bid as well. Dooik's illogical argument ignored the changes in the bid specifications. GPA therefore denied Dooik's bid protest. In the meantime, the need for additional power generation capacity intensified due to damage at the Ukudu Power Plant and the Yigo combustion turbine.

Dooik appealed the denial of its bid protest to the OPA in September 2023, triggering an automatic stay of the procurement. In addition to Dooik's puzzlement over how it could

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lose a bid despite new specifications, Dooik's appeal argued that the use of appropriately trained personnel to carry out the Yigo Diesels PMC was a mere cost factor, as well as other minor issues. Even if the island had not found itself in a time of great need for power generation capacity, GPA considered Dooik's reasons to overturn the award unpersuasive.

GPA moved to dismiss the appeal and at the same time moved to lift the stay on the procurement as being in the substantial interests of Guam. GPA requested the Attorney General's assistance to have the stay lifted, but the Attorney General did not respond. The OPA denied GPA's motion to dismiss and refused to lift stay in the substantial interests of Guam without the Attorney General's input.

The OPA matter proceeded to a merits hearing. At the hearing, the OPA brought up its recent decision in the airport case. The airport case started out as emergency procurement for the baggage handling system, for which the airport sought repeated contract extensions. The OPA ruled that the airport could not keep extending an emergency procurement indefinitely to procure foreseeable services, i.e., baggage handling.

Neither the Attorney General nor the OPA saw the need for the Yigo Diesels as an emergency. Unlike the airport procurement, the Yigo Diesels PMC started as an IFB, not an emergency procurement. Having recently experienced the loss of a 50MW solar project despite repeated rulings in GPA's favor throughout the course of the litigation, GPA foresaw that the Yigo Diesels PMC bid protest might drag on for years, from the OPA to the Superior Court, and then from the Superior Court to the Guam Supreme Court.

GPA took opportunity to reconsider how to deal with the urgent need for power generation capacity. GPA began thinking that an emergency procurement of temporary power offered the best way out of the predicament. GPA moved to dismiss the matter before the OPA, stating:

GPA interpreted the [OPA's airport] decision as suggesting that in the absence of a determination of substantial interest in this case, it would be better to cancel an allegedly flawed procurement than to pursue a potentially years-long appellate process. In addition, GPA obtained authorization to proceed with the procurement of temporary power, necessitating the reconfiguration of the Yigo diesel generators PMC project.

GPA's Motion to Dismiss, Case No. OPA-PA-23-004 (Dec. 26, 2023). GPA issued cancellation letters to the bidders and the OPA dismissed Dooik's appeal as moot in December 2023.

GPA initially intended to locate the temporary power project at its site in Piti, as reflected in the first version of Bill 206-37 introduced by Senator Parkinson in late November 2023. However, the Piti site lacked a Guam EPA permit suitable for operating the Temporary Power units. Because obtaining a new permit is a time-consuming process, GPA decided

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to locate the temporary power project at the Yigo Diesels site, which already had the correct type of permit in place.

Locating the temporary power project on the site of the Yigo Diesels meant that the Yigo Diesels would have to be relocated. Due to their condition, some were capable of overhaul or repair, while others would need to be replaced. The relocation of the Yigo Diesels and a reduction in the number of units would change the scope of work for the Yigo Diesels PMC and consequently change the bid specifications.

In December 2023, GPA issued a Certificate of Emergency and Determination of Need. The Certificate of Emergency contemplated the procurement of temporary power and the repair and replacement of the Yigo Diesels. The appended Determination of Need specified swift alleviation of load shedding as the underlying emergency.

In a request for quotations, GPA advertised for and solicited 22 potential bidders capable of supplying temporary power. From the 22 potential bidders GPA received four proposals. Of the four proposals, only one was able to meet GPA's 100-day timeline, Aggreko. Since Aggreko had sold GPA the Yigo Diesels, Aggreko was intimately familiar with the equipment and could evaluate the units and tell GPA how to fix them or make repairs.

The temporary power project has not yet been awarded as GPA awaits legislative action. Due to a near doubling in the cost of temporary power since GPA last procured such services, GPA has continued to consider ways to maximize the potential of the Yigo Diesels for increased power generation capacity. GPA asked the CCU for permission to relocate the Yigo Diesels and to procure a contract to maintain and operate them at a new site. GPA then used the CCU's favorable resolution to successfully petition the PUC for leave to relocate the Yigo Diesels and procure an operation and maintenance contract for them.

The PUC issued an order late last month, granting GPA permission to relocate the Yigo Diesels and issue procurement for their operation and maintenance. The procurement of the PMC for the Yigo Diesels is a project entirely separate from temporary power. Because GPA was granted permission to move forward only last week, this PMC project has not yet gone out to bid.

2. The procurement of temporary power through an emergency procurement is legal and proper, and no other method of source selection is appropriate.

Dooik alleges "issues" and "illegalities" with GPA's emergency procurement for temporary power. According to Dooik, GPA should have foreseen the threats outlined in GPA's Certificate of Emergency and Determination of Need and used reasonable and prudent management procedures to address those threats through other procurement methods of source selection. Dooik's allegations make no sense.

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Dooik's claim means that GPA should have predicted that a typhoon would flatten the aboveground storage tanks under construction at the new 198MW Ukudu Power Plant, causing a significant setback in that plant's commissioning date. Dooik's claim means that GPA should have predicted that a typhoon would damage the rotor of the 20MW Yigo CT, which can only be repaired at a facility in Texas and which it can travel to and from only by sea, at great cost in terms of time. Dooik's claim means that GPA should have predicted that Dooik would bid on the Yigo Diesels PMC, obtain low scores, protest after a damaging typhoon, and appeal to the OPA at a time when the island was starved for power generation capacity. Dooik's allegations defy logic and should therefore be given no weight.

3. GPA has at all times treated Dooik fairly and will continue to do so.

The emergency procurement law requires the procuring agency to conduct the procurement in a competitive manner and solicit at least three bids. GPA has adhered to the law.

In this case, GPA solicited and advertised for 22 potential bidders, which led to four proposals. GPA advertised on its website, in the local newspaper, and on the GovGuam portal. Nothing stopped Dooik from bidding on the temporary power project other than its own lack of initiative.

Supplying temporary power and conducting a PMC are two different types of project that differ in kind and scope. GPA had no obligation to solicit for a project to supply temporary power from those vendors who do not ordinarily supply temporary power. Dooik performs PMCs but does not supply temporary power. Therefore, GPA had no obligation to solicit Dooik for the temporary power project.

The procurement law requires GPA to solicit vendors who have been responsive within the last twelve months. Dooik claims that, under this provision, it has never before been overlooked by GPA for projects "similar" to the temporary power project. GPA cannot fathom what similar projects Dooik is referring to. GPA has issued no procurements for temporary power since 2015, following the extraordinary explosion and fire that shut down the Cabras 3 & 4 baseload power plants.

GPA's treatment of Dooik in the procurement process has been fair. GPA will continue to treat Dooik fairly. Dooik's allegations of unfair treatment do not reflect reality and should be ignored.

4. GPA has the authority to repair or replace twenty of the Yigo Diesels.

Dooik contends that GPA has worked out a "deal" for Aggreko to replace or repair eighteen of the existing Yigo Diesels. GPA has made no such deal.

As a complement to temporary power, GPA presented the Yigo Diesels matter to the CCU at the regular board meeting in January 2023. The CCU approved the project. Based on

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the CCU's support, GPA petitioned the PUC for approval. On February 29, 2023, the PUC granted GPA permission to relocate twenty of the thirty-nine Yigo Diesels to the Tenjo plant site and issue the procurement for their repair, replacement, relocation, installation, commissioning and operation.

Thus, the "PMC" for the to-be-relocated Yigo Diesels is still in the very early stages. When GPA puts that project out to bid, Dooik will be able to participate in that procurement just like any other vendor. Dooik's allegations of discrimination ring false and therefore deserve no attention.

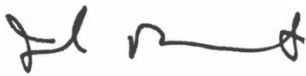
5. Although GPA believes the OPA saw flaws in the Yigo Diesels PMC, GPA did not agree with the OPA.

Dooik claims that GPA canceled the Yigo Diesels PMC because the procurement had flaws. GPA disagrees with Dooik's characterization. What GPA actually said was that it was canceling the procurement because of "alleged flaws".

When OPA did not swiftly dismiss Dooik's appeal based on flaws that GPA viewed as meritless, GPA saw that the protest could drag on. GPA is entitled to reevaluate its needs at any time and cancel and issue procurements as appropriate and where necessary, which it did in this case. Dooik lacks insight into the workings of GPA, so Dooik's claims of what GPA was thinking and doing amount to mere speculation, which should be lent no credence.

In summary, Dooik makes a host of claims based on a distorted view of the facts that does not reflect the truth. Based on this distorted reality, Dooik incorrectly believes the Legislature should reject Bill 206-37. The Legislature should pay Dooik no mind but should instead pass Bill 206-37, a badly needed piece of legislation that will go far to alleviate load shedding in the coming warmer months.

Very truly yours,



John M. Benavente, P.E.
General Manager