

EXHIBIT D1

EVALUATION FORM

Project Name: _____

Project No.: _____

Consultant Name: _____

Name of Evaluator "A": _____

Department: _____ Section: _____

Municipal Leasing and Financing Proposal				
Item No.	Evaluation Criteria	Percentage %	Grade Points	Remarks
a.	Term Sheet to include all interest charges, fee and expenses	10		
b.	Responsiveness of proposal.	10		
c.	Ability of Lessor to lease to Lessee the facilities described in the Technical Specification, Part II of the RFP.	15		
d.	Ability of Lessor to structure municipal leases from \$10,000,000.00 to over \$300,000,000.00. Please provide examples of the leases financed.	5		
e.	Ability of Lessor to offer suggestions on various arrangements for services and maintenance contracts in support of the upkeep and service of the lease facility. Please provide detail on suggested payment arrangement scenario.	10		
f.	Ability of Lessor to allow the purchase of the leased school facility by Lessee at any time during the lease period. Please provide detail on pre-payment arrangement scenario.	2		

REQUEST FOR PROPOSAL

Construction of New John F. Kennedy High School
 Finance, Demolition, Design, Build, Maintain, Leaseback (FDDBML) Part I
 Project No. 700-5-1020-L-TAM

Municipal Leasing and Financing Proposal				
Item No.	Evaluation Criteria	Percentage %	Grade Points	Remarks
g	<p>Ability of Lessor to allow Lessee to cancel the lease obligation, without penalty, at the end of the current fiscal year in which appropriations were last budgeted, or otherwise made legally available, in the event budgetary funds become unavailable in future years.(Event of non appropriation).</p> <p>Non-Appropriation Clause (defined): In the event that sufficient funds (a) are not appropriated by the governing body of the Government Body prior to the beginning of any Renewal Term for the payment of the Base Rentals on the Base Rental Payment Dates and reasonably estimated Additional Rentals payable during such Renewal Term, or (b) are otherwise not legally available for such purpose, then an Event of Non-appropriation shall be deemed to have occurred. If an Event of Non-appropriation shall occur, the Government Body shall not be obligated to make payment of the Base Rentals or Additional Rentals provided for herein beyond the last day of the Renewal Term during which such Event of non-appropriation occurs, except for the Government Body's obligation to pay Rentals which are payable prior to the termination of the Lease.</p>	5		

REQUEST FOR PROPOSAL

Construction of New John F. Kennedy High School
 Finance, Demolition, Design, Build, Maintain, Leaseback (FDDDBML) Part I
 Project No. 700-5-1020-L-TAM

Technical Specifications				
Item No.	Evaluation Criteria	Percentage %	Grade Points	Remarks
j.	Company's Experience: Company history, organization and experience in municipal leasing, demolition, design, construction, maintenance as per required in the RFP.	15		
k.	Resources and Availability: Architectural-Engineering designers, consultant, construction managers, contractors, subcontracts, quantity of personnel, equipments that will be assigned to projects as per required in the RFP.	15		
Total percentage/points for the Technical Specifications, Part II				
Total percentage/points for the Municipal Leasing and Financing, Part I and Technical Specifications, Part II				

Note: If necessary, those firms placed on a "short list" after review of technical, management, financial background and references, shall be personally interviewed. At this time each proponent shall be expected to introduce each Project Manager and Technical Manager proposed for the project. The Project Manager shall verbally review their technical plans and strategy for completing the work proposed.

Evaluator "A" Signature

Date

REQUEST FOR PROPOSAL

Construction of New John F. Kennedy High School
 Finance, Demolition, Design, Build, Maintain, Leaseback (FDDBML) Part I
 Project No. 700-5-1020-L-TAM

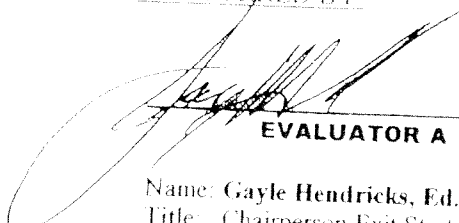
EXHIBIT D2


**CONSTRUCTION OF THE NEW JOHN F. KENNEDY HIGH SCHOOL
FINANCE, DEMOLITION, DESIGN, BUILD, MAINTAIN, AND
LEASEBACK (FDDBML) PART I AND PART II
PROJECT NUMBER 700-5-1020-L-TAM**

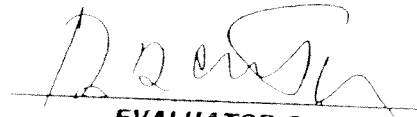
TALLY FORM


Candidate	Proposed Bid Amount							
	A	B	C	D	E	F	G	H
International Bridge Corporation (IBC)	98	98	90	69	95	90	88	628
Guam Education Financing Foundation (GEFF)	98	97	90	66	94	90	86	621
Guam Community Improvement Foundation Inc. (GCIFI)	90	91	92	82	89	78	84	606

CONCURRED BY:


EVALUATOR A
 Name: **Gayle Hendricks, Ed.D.**
 Title: Chairperson Exit Strategy Task Force
 Dept: GPSS


EVALUATOR B
 Name: **Eunice Aflague**
 Title: Member, Exit Strategy Task Force
 Dept: GPSS


EVALUATOR C
 Name: **Doreen Crisostomo, Ph.D**
 Title: Deputy Superintendent - Finance And Administrative Services
 Dept: GPSS


EVALUATOR D
 Name: **Jeri C. Calaor**
 Title: Engineer II
 Dept: DPW

CONSTRUCTION OF THE NEW JOHN F. KENNEDY HIGH SCHOOL
FINANCE, DEMOLITION, DESIGN, BUILD, MAINTAIN, AND
LEASEBACK (FDDBML) PART I AND PART II
PROJECT NUMBER 700-5-1020-L-TAM

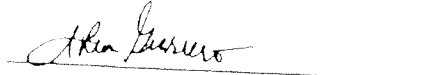
TALLY FORM


EVALUATOR E

Name: Dionisio M. De Leon
Title: Engineer III
Dept: DPW

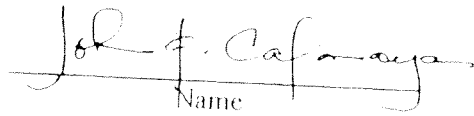

EVALUATOR F

Name: Geraldine James Ed.D
Title: Deputy Superintendent, Curriculum and
Instructional Improvement
Dept: GPSS

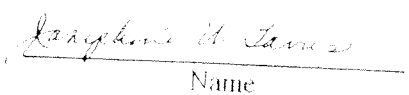

EVALUATOR G

Name: Antoinette Leon Guerrero
Title: Public Finance Officer
Dept: GEDA

WITNESSED BY:


Name

Title:
Dept: CIP / CONTRACT


Name

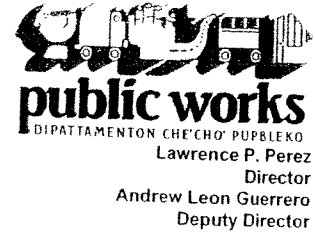
Title:
Dept: CIP / Contracts

EXHIBIT D3



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor

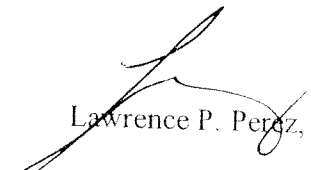


Lawrence P. Perez
Director
Andrew Leon Guerrero
Deputy Director

January 7, 2009


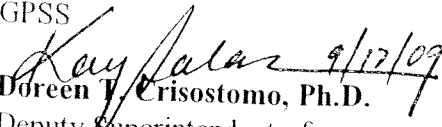
MEMORANDUM

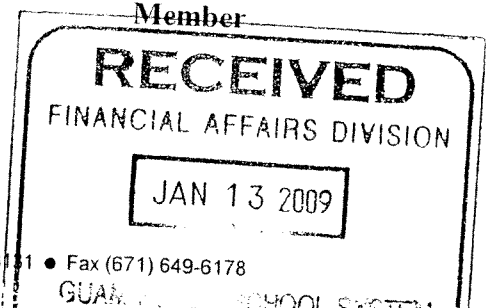
TO: Evaluation Committee
Department of Public Works

FROM:  Lawrence P. Perez, Director

SUBJECT: **REQUEST FOR PROPOSAL**
Construction of the New John F. Kennedy High School Finance,
Demolition, Design, Build, Maintain, and Leaseback (FDDBML)
Project No: 700-5-1020-L-TAM

Under the authority of the Guam Procurement Act, Section §2104(a), as the Director of the Department of Public Works and the Central Procurement Officer of Guam, with respect to construction, I hereby appoint the following personnel to serve as the evaluation committee members during the presentation and evaluation of the proposals for the aforementioned subject project.

- 1. **Andrew Leon Guerrero** **Chairperson**
Deputy Director
DPW
- 2. **Gayle Hendricks, Ed.D.**  **Member** 1/13/09
Chairperson, Exit Strategy Task Force
GPSS
- 3. **Eunice Aflague** **Member**
Member, Exit Strategy Task Force
GPSS
- 4.  **Member** 9/12/09
Doreen V. Crisostomo, Ph.D.
Deputy Superintendent of
Finance and Administrative Services
GPSS



5. **Jeri C. Calaor** **Member**
Engineer II, Division of Engineering
DPW
6. **Dionisio M. De Leon** **Member**
Engineer III, Division of Engineering
DPW
7. **Lester Carlson** *JM 1-13-09* **Member**
Special Assistant to the Administrator
GEDA
8. **Antoinette Leon Guerrero** *AL 1/13/09* **Member**
Public Finance Officer
GEDA

The Chairperson shall serve as the facilitator and is a non-voting member of the evaluation committee unless, it is necessary to break a tie in the final tally of the ratings.

The evaluation of proposals is scheduled to convene at 9:00 am, on Thursday, January 15, 2009, at the GEDA Conference Room, located on the 5th floor, Suite 511, at the GITC Building, Tamuning.

The evaluation of proposals is expected to last the entire day, however, if needed it shall extend to the following day to accommodate as much time as necessary to properly evaluate the proposals.

Members will be provided in advance, a copy of the "Request for Proposal" package for their review. The eight copies of the proposals received will be opened and provided on the day of the presentation and evaluation, together with the necessary evaluation forms for use by the committee members. The proposals shall remain in the conference room at all times and in the custody of the chairperson after the evaluation.

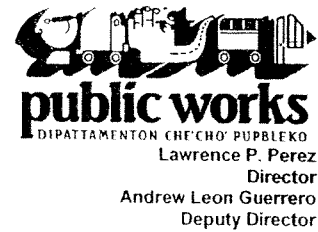
Please note that under the procurement regulations, it is prohibited to discuss or divulge any information regarding the proposals and the evaluation process outside of the committee. The release of such information rests with the Director of DPW, or his authorized representative.

Your cooperation and diligence is greatly appreciated.



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



January 15, 2009

MEMORANDUM

TO: Andrew Leon Guerrero
Chairperson
JFK – RFP

FROM: John F. Calanayan *JFC*
Facilitator

SUBJECT: Substitute Evaluator

Sir,

Mr. Lester Carlson, GEDA representative and Evaluator on the JFK -RFP Selection Committee scheduled for the Construction of the John F. Kennedy High School, has been excused from participating.

Ms. Geraldine James, GPSS Deputy Superintendent for Curriculum and Instructional Improvement will replace Mr. Lester Carlson.

Thank You

APPROVED: *Andrew Leon Guerrero* 1/15/09

EXHIBIT D4

PROPRIETARY DOCUMENTS

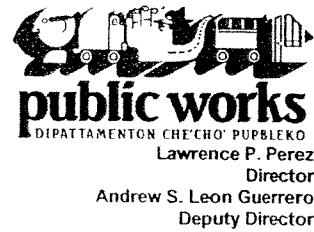
NOT FOR DISTRIBUTION

EXHIBIT E1



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



January 16, 2009

International Bridge Corporation

P.O. Box 21149

Guam Main Facility 96921

Attn: Mr. William Toelkes


**SUBJECT: CONSTRUCTION OF THE NEW JOHN F. KENNEDY HIGH SCHOOL
FINANCE, DEMOLITION, DESIGN, BUILD, MAINTAIN, AND
LEASEBACK (FDDBML) PART I AND PART II
PROJECT NUMBER 700-5-1020-L-TA**

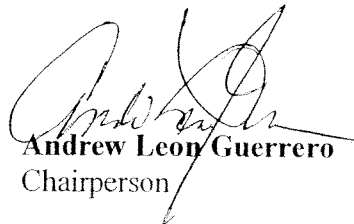
Dear Mr. Toelkes,

The JFK-RFP selection/evaluation committee has completed their evaluation of the proposals submitted in response to the advertised RFP. We are pleased to inform you that, **INTERNATIONAL BRIDGE CORPORATION (IBC)**, has been selected as the No. 1 ranking proposer, whose proposal has been determined to meet the needs of the Government of Guam to the best degree. Therefore, as the No. 1 ranking proposer, your corporation will be participating further in the Request For Proposal process, Contract Negotiations.

Thank you very much for the impressive RFP presentation as the time and effort your company and staff expended to respond to our selection / evaluation process is sincerely appreciated.

Congratulations! We look forward to working with a winning team!

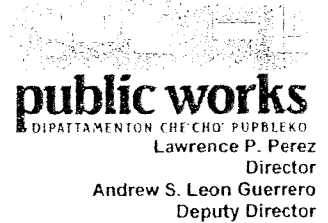
 3/4/09
Lawrence P. Perez
Director


Andrew Leon Guerrero
Chairperson

 3/4/09

The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



January 16, 2009

Guam Education Financing Foundation
Dededo, Guam

Attn: Mr. John R. Hand
President


**SUBJECT: CONSTRUCTION OF THE NEW JOHN F. KENNEDY HIGH SCHOOL
FINANCE, DEMOLITION, DESIGN, BUILD, MAINTAIN, AND
LEASEBACK (FDDBML) PART I AND PART II
PROJECT NUMBER 700-5-1020-L-TA**

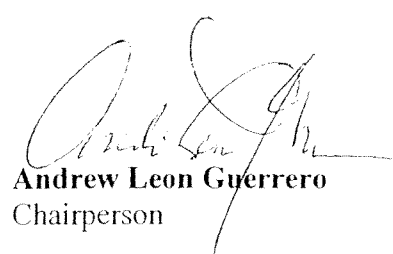
Dear Mr. Hand,


Thank you very much for your participation with your firms' Request for Proposal presentation. The time and effort your company and staff expended with the impressive presentation in response to our selection process is sincerely appreciated.

Upon the completion of the evaluation of the interviewed firms, we wish to inform you of the ranking of your firm as No. 2, by the selection/evaluation committee. Although your proposal will not be subject for contract negotiations at this time, please be advised that DPW wishes to retain your proposal as the initial evaluation may not exclude your proposal from further consideration.

Department of Public Works appreciates your interest with our Capital Improvement Projects and looks forward to your participation and future opportunities to work with your firm.

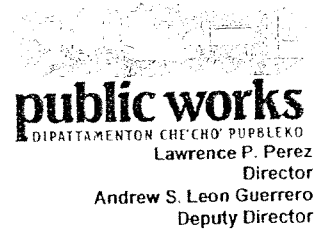

Lawrence P. Perez
Director


Andrew Leon Guerrero
Chairperson


3/5/09 Ac

The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



January 16, 2009

Guam Community Improvement Foundation Inc.
1900 Harmon Loop
Suite 107
Dededo, Guam 96929

Attn: Mr. Anthony Sgro, President


**SUBJECT: CONSTRUCTION OF THE NEW JOHN F. KENNEDY HIGH SCHOOL
FINANCE, DEMOLITION, DESIGN, BUILD, MAINTAIN, AND
LEASEBACK (FDDBML) PART I AND PART II
PROJECT NUMBER 700-5-1020-L-TA**

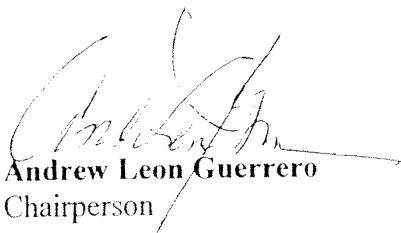
Dear Mr. Sgro,

Thank you very much for your participation with your firms' Request for Proposal presentation. The time and effort your company and staff expended with the impressive presentation in response to our selection process is sincerely appreciated.

Upon the completion of the evaluation of the interviewed firms, we wish to inform you of your firm ranking as No. 3, by the selection/evaluation committee. Although your proposal will not be subject for contract negotiations at this time, please be advised that DPW wishes to retain your proposal as the initial evaluation may not exclude your proposal from further consideration.

Department of Public Works appreciates your interest with our Capital Improvement Projects and looks forward to your participation with future opportunities to work with your firm.


Lawrence P. Perez
Director

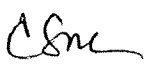

Andrew Leon Guerrero
Chairperson

RWD BY:

ALON STAMPARO

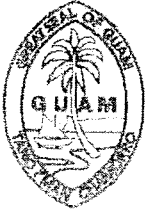
GUEI

3/05/09 2:45pm



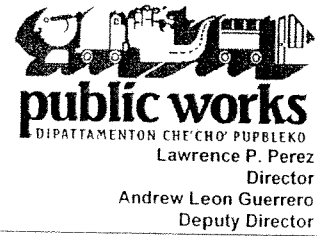
3-5-09

EXHIBIT E2



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



Memorandum

To: Administrator, GEDA

From: Andrew Leon Guerrero
Chairman, Selection Committee

Copies To: Selection Committee Members

Subject: *Financial Feasibility Analysis*

In compliance to Public Law 29-114, the Department Of Public Works solicited Request for Proposals for the Construction of the New John F. Kennedy High School's Finance, Demolition, Design, Build, Maintain and Leaseback Facilities.

Interested Offerors submitted their sealed Proposals on January 8, 2009. The Selection Committee, which is comprised of four members from Guam Public School System (GPSS), two members from Department of Public Works (DPW), and one member from Guam Economic Development and Authority (GEDA) has evaluated and ranked each of the submitted proposals & oral presentations on January 15, 2009.

The criteria subject to the evaluation procedure was based on two categories: Municipal Leasing & Financing and Technical Specifications. The RFP indicated that the Municipal Leasing and Financing would be given more weight based on a 70% factor as compared to the Technical Specifications based on a 30% weight factor.

Because the Financing of this RFP presents a major component for the best possible value at the lowest and best offer, with negotiating flexibility, we wish to request for the GEDA's expertise, financial analysis and guidance of the RFP submissions and the primary funding source as outlined in P.L. 29-114 - Section 30 Revenue Funds.

In anticipation of conducting negotiations to award this RFP, we wish to address the following for clarification purposes:

- What percentage of the Section 30 revenue funds can be pledged in support of this RFP with a 30 year leaseback contract? What is the equivalent dollar amount?*
- Are there other projects being funded from the same funding / revenue source, and of which should be of concerned to the Selection Committee?*
- As the annual commitment of Section 30 Revenues authorized is based on the sum of Section 30 Revenue available after the final payment on the Government of Guam*

Limited Obligation (Section 30) Bonds, Series 2001A, what is the allowable debt ceiling for the Section 30 funds?

- *How is the Debt Service Coverage for this RFP Lease determined?*
- *What alternative innovative financing techniques (if any) can be proposed?*
- *Could you be so kind in having your Bond Counsel & Underwriters assess the RFP submissions & presentations made by the three Offerors (please reference enclosures), and in providing our Selection Committee with further advise on our negotiations?*

The overall financial feasibility analysis should focus on an interface of two primary functions. The first is an analysis of the assumptions that affect the reasonableness and viability of this project. The second will combine the revenue availability forecast, costs and the financing theories.

We appreciate this valuable assistance and welcome any recommendations you may have as we proceed to conduct the negotiations for this RFP.

Because of the critical time factor assessed with this project, may we request that you respond within five (5) business days?

Thank you once again and we look forward to hearing from you.

Enclosures

EXHIBIT E3

PROPRIETARY DOCUMENTS

NOT FOR DISTRIBUTION

EXHIBIT E4

PROPRIETARY DOCUMENTS

NOT FOR DISTRIBUTION

EXHIBIT E5



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



public works
DIPATTAMENTON CHE'CHO' PUPBLEKO
Lawrence P. Perez
Director
Andrew S. Leon Guerrero
Deputy Director

**CONSTRUCTION OF THE NEW JOHN F. KENNEDY HIGH SCHOOL
FINANCE, DEMOLITION, DESIGN, BUILD, MAINTAIN, AND
LEASEBACK (Fddbml) PART I AND PART II
PROJECT NUMBER 700-5-1020-L-TAM**

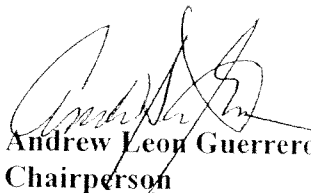
NEGOTIATION PHASE

DPW/JFK Selection Evaluation committee will reconvene on **Tuesday, February 24, 2009 at 11:00 am**, at the **GEDA Boardroom, Suite 511, GITC Building**.

The evaluation committee will be conducting the **Negotiation Phase – Municipal Leasing and Financing Proposal of International Bridge Corporation**.

The participation of your financial advisors and financial expertise with your subject proposal is encouraged.

Should you have any questions or require special accommodation please call our office at 646-3224.


2/17/09
Andrew Leon Guerrero
Chairperson

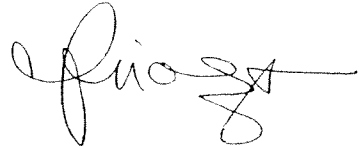

2.18.09

EXHIBIT F



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



public works
DIPARTAMENTON CHE'CHO' PUPLEKO
Lawrence P. Perez
Director
Andrew S. Leon Guerrero
Deputy Director

September 8, 2009

Guam Education Financing Foundation Inc.
(GEFF)
3060 Peachtree Road
Suite 1700
Atlanta, GA 30305

RECEIVED SEP 14 2009

Attn: Mr. John R. Hand, President

Subject: Procurement Protest of the Request For Proposal:
Construction of the New John F. Kennedy High School
Finance, Demolition, Design, Build, Maintain and Leaseback (FDDBML)
Project No. 700-5-1020-L-TAM

Dear Mr. Hand,

Before proceeding with addressing the issues of your protest, I wish to apologize for not responding in a timely manner. Thank you for giving us the benefit of the doubt by resubmitting your protest and submitting your letter dated August 31, 2009.

We appreciate your concerns regarding the aforementioned Request For Proposal (RFP). Upon subjecting a thorough perusal to the matters of concern in your protest, please allow me to render the substantiated perspectives which are supportive of my final determination.

INQUIRY #1:

"The Guam Education Financing Foundation Inc. ("GEFF") is sending this Procurement Protest to contest the selection and continued negotiation with International Bridge Corporation ("IBC") as the party that was chosen "first to negotiate" under that certain RFP number 700-5-1021-L-TAM,... While we have not been formally notified that we were not selected, by way of the Guam press, we have been informed that International Bridge Corporation ("IBC") was selected to negotiate first."

RESPONSE #1:

Procedurally, the conclusion of the evaluation process involves the ranking (in descending order) of the responsible offerors, according to the total overall scores in accordance with the relative weighted scores as assigned:

Part I Financial 70%
Part II Construction 30%

All responsible offerors are notified of their ranking through a letter from the Director of DPW. DPW Contracts section reports having an acknowledged receipt copy of GEFF's letter on file that was picked up and signed for by Mr. Jason Ralston, on March 5, 2009.

The highest scoring offeror as approved by the director proceeds to participate with the contract negotiations. Although the proposals of the non-selected offerors are not subject to the negotiations phase, it will be retained by DPW for future consideration with the negotiation process.

INQUIRY #2:

Substantial Price Increase: In summary, the protestor claims that the IBC costs have grown from less than \$38M to \$69M, and that this increased amount is \$11M more than the protestor's original cost for the project.

RESPONSE #2:

It is imperative to bring attention to the fact that the solicitation/award for this project is based as a Request For Proposal and not an Invitation for Bid - which is procedurally determined on awarding the contract to the lowest responsible bidder.

The ranking of the offeror's was based on all the selection criteria presented in the RFP documents, however, we confirm that the selected offeror's construction cost was less than \$38M, and that such proposed construction cost, and corresponding proposed facility met the minimum requirements of the RFP. The proposed total cost of the selected offeror, inclusive of all "design fees, soft costs, reserves, capitalized interest and financing expenses" was still millions of dollars less than GEFF's proposed cost. Any increase in costs over the original proposed amount have included only items requested by the Government to enhance the project, specifically debt service and other reserves, capitalized interest, etc., all of which would have been requested of all offeror's for the benefit of the government, therefore affecting all offeror's uniformly. The increases are fully within the requirements of the RFP and the procurement laws of Guam.

Therefore, in comparing the current offering amount for the IBC financing to the original GEFF proposed amount and the assertion that there is an \$11M difference in price is not accurate.

INQUIRY #3

"Non-Conforming Deliverables": In summary, the protestor asserts that the total square footage of the selected offeror's proposal, as gleaned from the "Preliminary Official Statement" (POS) for the selected offeror's financing, is inadequate to serve the required

student population. The protestor further states that his own proposal of 236,000 square feet can be built for \$11M less than has been offered by the selected offeror.

RESPONSE #3

The protestor's argument regarding non-conforming deliverables is predicated primarily on the cost claims addressed in Inquiry #2. As stated, the claimed price differential is inaccurate. However, to address the claims made regarding non-conformance of the IBC proposed facility, it is important to note that the information in the "Preliminary Official Statement" is accurate, but not all inclusive of all the elements of construction. Specifically, the 120,000 square feet of new building space listed in the POS was only for the classroom buildings footprint and is not inclusive of covered walkways, corridors, and gymnasium. The total square footage of the selected offeror's proposal inclusive of these areas is adequate to meet the capacity requirements as stated in the RFP (2700 students), and is in fact equivalent to the GEF facility as proposed.

Therefore, the IBC proposal is in conformance with the requirements of the RFP and at a lower cost than the GEF facility proposal.

INQUIRY #4

Failure to Provide Financing: The protestors asserts that the selected offeror's financing was contingent on the Government of Guam providing a AAA guarantee, and that ultimately the selected offeror failed to achieve financing for the project and was reliant on the Government assistance for the financing."

RESPONSE #4

The selected offeror did not require the Government to provide a guarantee for financing. Rather, the offeror provided three financing options in its proposal, one of which included the exploration of AAA-insured or equally enhanced transaction.

With regard to the failure of the selected offeror to provide the financing, the Government has already determined that this is NOT the case and therefore bears no merit. The selected offeror was only days away from pricing and closing on COPs when the initial protest was filed. The selected offeror has demonstrated its ability to obtain the financing and the Government is satisfied with the proposed financing terms and should be afforded the opportunity to move forward with the completion of the project.

INQUIRY #5

"The 5th-6th line of paragraph states: "At the time proposals were submitted in January, there were no AAA guarantors operating in the Guam financial markets and GovGuam does not have a AAA credit rating."

The underlined statement is false. At the time proposals were submitted, there were a few AAA rated bond insurers in the municipal market, one of which was familiar with

Guam credits – Financial Security Assurance (“FSA”). Although there presents an ambiguity with what the protester means by “Guam financial markets” we assume they mean the municipal market for Guam debt obligations. Regardless of whether there was availability of a guarantor, IBC proposed this as an option not as the single financing scheme.

REQUESTED REMEDY

Interestingly, it is anticipated that the JFK agreements would be patterned similar to the 2006 school contracts (GEFF – successful offeror) notwithstanding the lease conditions, the requisite indemnification clauses and other components.

Additionally, because of the success with these “previous school contracts”, it was suggested that the same bond counsel convene to satisfy the intent to refer these “previous school contracts” as a template.

GEDA assures us is that the method of securing the leaseback financing for the “previous schools” is also to be mirrored with the JFK RFP.

Having addressed and thoroughly reviewed the circumstances surrounding the concerns, as the Director of Department of Public Works, I wish to attest that the execution of the RFP procurement procedures were guided by the Guam Code Annotated, Chapter 5 – Guam Procurement Law, in addition to the complying to the mandates of Public Law 29-114, relative to the Construction of the New John F. Kennedy High School.

Further, protecting the government’s integrity while implementing essential standards of ethical conduct in such a manner as to foster public confidence in the administration of public service is given the highest consideration.

While deliberating conscientiously on the concerns presented, I failed to ascertain the substantiating significance to your inquiries that suggest ambiguity and conflict with the due process of the RFP, particularly in retrospect to “the selection of the firm.”

The conditions of your protest also warrants its untimely filing as pursuant to 5 GCA 5425(a). I have determined your claims as baseless and clearly without merit. Therefore, I wish to inform you of my decision to Deny the “Protest”.

Please be informed that you have the right to appeal this decision to the Office of the Public Auditor within 15 days after receipt of the Notice of Decision.

Respectfully submitted,


LAWRENCE P. PEREZ
Director

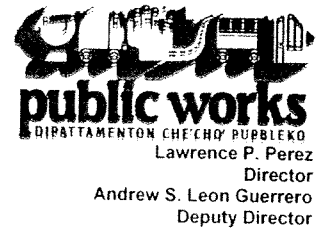
CC: Office of the Governor
Attorney General's Office
Office of the Public Auditor
Anthony Blaz, Administrator, GEDA
Nerissa Bretania Underwood, Supt. DOE
Robert Toelkes, Pres. IBC
M.C. Bordallo, Vice Pres. IBC
Ramon B. Padua, P.E. Chief Engineer DPW
Law Office of Cunliffe and Cook

EXHIBIT G1



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



Lawrence P. Perez
Director
Andrew S. Leon Guerrero
Deputy Director

October 5, 2009

Office of the Public Accountability
Doris Flores Brooks
Public Auditor

REF: OPA-PA-09-007

Department of Public Works – Agency Report

Hafa Adai yan Buenas!

In compliance with 2 GAR Chapter 12 § 12105 Procurement Appeals to the Public Auditor, Lawrence P. Perez, Director of the Department of Public Works (DPW) - Chief Procurement Officer, submits the following as an answer to Guam Education Financing, Inc's (GEFF) appeal in the form of a detailed Agency Report.

The submission of this report further substantiates protecting the government's integrity of the RFP in question while fostering public confidence in the administration of public service.

GEFF'S ASSERTION NO. 1:

"In January of 2009, the Guam Education Financing Foundation, Inc. ("GEFF"), a Guam Not-for-Profit Corporation, responded to an RFP issued by DPW for the redevelopment of JFK High School. The RFP required respondents to bid on the redesign, construction and financing of a new JFK High School on the existing site. We recently completed a very similar transaction involving the design, finance, construction and maintenance of 4 new schools in Guam, completing the last school in August of 2009. Therefore GEFF was intimately familiar with the requirements of the capital markets and the total costs to complete such a project including the costs and reserves associated with financing. GEFF has school design experts who assist with programming and sizing of schools, so GEFF is also familiar with the square footage requirements for various types of schools and student counts.

After submitting our bid and presenting our proposal, we learned through press reports that International Bridge Corporation (*IBC*) was chosen to negotiate first and we heard that *IBC*'s costs were significantly below *GEFF*'s. While we had doubts that a new high school could be designed, built and financed for much less than we bid (having recently completed the process), we withheld judgment on the matter until the

specifics of IBC's bid and transaction became public knowledge upon the issuance of an Official Statement by GovGuam for IBC's planned financing. The Official Statement outlines both the costs and the scope of work that IBC plans to deliver. Upon learning the facts of IBC's actual proposal, we submitted a letter of protest clearly delineating three reasons why IBC should not have been selected, or should have been excluded once their real numbers and scope were determined. We believe the response from DPW was insufficient to explain why they have elected to continue with IBC and worthy of appeal."

DPW'S RESPONSE NO. 1:

...Official Statement by GovGuam for IBC's planned financing. The Official Statement outlines both the costs and the scope of work that IBC plans to deliver.

The issuance of the "Preliminary Official Statement" was the document for the Certificate of Participation. As stated by the title of the document "Preliminary. GEFF misleadingly excluded this key word of the document and the information cited was taken out of context.



GEFF'S ASSERTION NO. 2:

"As clearly stated in our letter of protest filed on August 13, 2009, our total cost number was \$58 million, \$11 million less than IBC's all-in cost number of \$69 million., and we were pricing a much larger school that will accommodate the intended capacity."

DPW'S RESPONSE NO. 2:

On what basis was the determination of a "much larger school" made? This statement has been overly emphasized in the media by GEFF and one of our local senators. Not knowing and not being privy to the documents of negotiation, has tainted the image and integrity of the government procurement practice.

To be exact of the preliminary official statement context being referenced:

- *Construction of the facility will consist of a series of two-story buildings comprised of a fully-reinforced concrete structural system,*
- *Including 120,000 square feet of new construction and*
- *24,000 square feet of renovation.*

As you read further down the same page, the document goes on to list additional scope of work that will be done on the project, (i.e. cafeteria, library, gymnasium, corridors, and courtyard) noting it

doesn't elaborate the previous paragraph which GEFF is led to believe that the design size of appellant to be much larger than IBC's.

The total square footage of both IBC (232,528 SF) and GEFF facilities (235,720 SF) are practically identical, and therefore the assertion that GEFF was to construct a "much larger facility" is patently untrue.



GEFF'S ASSERTION NO.3

"Our RFP response and cost numbers included all design fees, construction costs, soft costs, collateral equipment cost, interest reserves, capital replacement reserves, capitalized interest and all requirements for financing, designing and building a new school. On a price per square foot basis, our cost was \$245 per foot and IBC's cost is \$479 per foot, approximately twice as much on a price per foot basis."

DPW'S RESPONSE NO.3:

IBC's construction cost for the project is \$190/SF; IBC's total project cost, including revised capitalized interest and reserves for the project as required by the government are \$296/SF, not \$479/SF as claimed erroneously by GEFF. Their use of partial information taken out of context is the sole basis for their claim that they are providing a school twice as big for half the cost. Their claim is unsubstantiated and untrue.



GEFF'S ASSERTION NO. 4:

"When we rerun our numbers based on 120,000 square feet of new space and 24,000 square feet of renovated square feet to compare the proposals side by side, the differences are staggering. Our all-in costs including all equipment, furniture, computers, technology, debt service reserves, capital replacement reserves, cost of issuance and capitalized interest, etc. total to \$44 million compared to IBC's \$69 million for the same deliverables, a difference of \$25 million, or 57% higher."

DPW'S RESPONSE NO. 4:

The cost of reserves cost of issuance and capitalized interest requirements that GEFF submitted as

part of its original proposal are roughly equivalent to the IBC numbers submitted based on the terms of the RFP. However, during the negotiations, the actual required costs were firmed up based on discussions with and requirements of the Government. As GEFf was not a party to such discussions or negotiations, they have not developed these costs and cannot be certain that the numbers they proposed initially will satisfy the requirements of the Government, and therefore would remain unchanged. The Government believes that GEFf's (and any other proposers) costs would be increased from their initial proposal, based on the requirements imposed by the Government during negotiations. GEFf has not taken this into consideration and has not revised their numbers in the presentation of their appeal.



GEFF'S ASSERTION NO. 5:

“The following chart highlights the differences in cost using similar scopes of work between the GEFf proposal and IBC:

	<u>IBC</u>	<u>GEFF</u>	<u>Variance</u>
Construction Costs	\$44,119,000	\$32,104,119	\$12,014,881
Financing Costs, Reserves, Capitalized Interest, etc.	\$24,881,000	\$12,420,881	\$12,460,119
Total Project Costs	\$69,000,000	\$44,525,000	\$24,475,000
Difference in Total Payments over Life	\$171,081,714*	\$87,351,096.65	\$83,730,617

* Assumes 7.5% rate for both financings and 29-year amortization period for IBC as indicated in the IBC Official Statement. GEFf amortization assumptions at 7.5% and 20 years, which GEFf believes is more prudent financing period for this type of asset.

As the chart clearly indicates, the IBC's costs are materially higher when the GEFf scope of work is reduced to IBC's intended deliverables. The difference is \$83 million over the life of the lease, as IBC proposes to spread the payments over 29 years, which increases the interest costs dramatically, all other things being equal. If you finance IBC's cost over 20 years at the same 7.5% rate, the total payments are would be \$135,367,224 for IBC's proposal, only \$48 million more than GEFf's total payments. We can't understand why IBC is using a 29-year amortization schedule, as it adds significant interest and capital replacement costs since the capital markets expect much larger maintenance reserves when the term of the financing extends past 20 years because of the significant increase in life cycle costs of the building and equipment. We can only speculate that this extended term was chosen in an effort to mask the true

cost by providing lower annual debt service costs.”

DPW'S RESPONSE NO. 5:

The terms of the financing as stated in the RFP and Public Law 29-114, allow for financing term of up to 30 years. IBC can provide financing at 20 years, however, the Government requested financing for the full 30 year term as allowed by Public Law 29-114. Again, any comparison to GEFF's proposal numbers cannot be considered an equitable, "apples to apples" comparison, as GEFF has not included the Governments financing requirements which affect the overall cost for the project. Further, additional rents to cover items other than debt service are not presented by GEFF, yet these costs also determine the overall value of the proposals and the final solution for the Government. Therefore, the chart and the conclusions drawn from it are irrelevant.



GEFF'S ASSERTION NO. 6:

“Our question or point of appeal is why is DPW selecting a firm to build a high school that will cost \$24 million more than a fully qualified, much lower cost proposal? Based on our experience, we could build nearly three additional elementary schools for the additional money DOE is going to spend to use IBC to rebuild JFK. We could build JFK and two more high schools if you compare the total cost over the life of the lease using identical interest rates. In a time when public funds are so precious and DOE's budget tight, we can't understand why DPW would elect to move forward with this transaction and overspend to this degree. According to the Official Statement, IBC's cost for the new JFK is \$69 million, and IBC only plans to build 120,000 square feet of new space and renovate 24,000 square feet for a total square footage of 144,000 square feet for the new school. The RFP calls for a school that can accommodate 2,300 students”

DPW'S RESPONSE NO. 6:

The above is again based on an erroneous application of building area taken out of context that does not reflect the true project proposed by IBC. The Government in its evaluation of all proposals was very thorough in its consideration of unit-based costs to establish equivalency for comparative purposes. The Government was also thorough in its evaluation of whether the proposals met the requirements of the technical specifications for the completed facility.

Using the correct numbers confirmed by the proposers, the unit-cost based evaluation clearly favored IBC for a facility that was compliant with the requirements of the RFP.



GEFF'S ASSERTION NO. 7:

“We have included with this appeal relevant pages of the Official Statement which establishes these numbers and the relevant pages from Addendum 2 of the RFP where the size of the required student population is reiterated. We recently designed and built Okkodu High School, and it was built with a *very* efficient floor plan and programmed for 1,200 students as originally requested. Okkodu High School consists of approximately 135,000 square feet. Currently, GDOE has placed 1,500 students at Okkodu and we are receiving complaints that the school is over-crowded for the number of students currently attending, which is understandable since GDOE is housing 300 more students than the original design capacity. The point is that the programming is accurate and the square footage is appropriate for 1,200 students, but doesn't work well for 1,500 students. IBC is planning to provide nearly the same square footage for almost twice as many students. In the response from DPW, Larry Perez counters that the 120,000 square feet of space is "only for the classroom buildings footprint and is not inclusive of covered walkways, corridors, and gymnasium" and that this square footage of classroom space is "adequate to meet the capacity requirements as stated in the RFP (2700 students)." We respectfully disagree. We also read the RFP to require capacity for either 2,210 students or 2,300 students depending on which section one refers to for stated capacity.

To build the capacity necessary at JFK, we formulated our construction costs numbers based upon a total square footage of 236,000 square feet, including 190,000 new square feet and renovation of another 46,000 existing square feet. This ratio is in line with national standards and our own experience. Okkodu's design includes approximately 112 square feet per student. In addition local architect and JFK task force member, Mark Ruth of Tanaguchi Ruth Makio Architects, also reviewed our scope and square footage confirmed that we included the correct if not the minimum square footage of new and renovated space to accommodate the required capacity.”

DPW'S RESPONSE NO. 7:

The Government has reviewed the space program of each proposal and confirmed that the number of classrooms and total square footage contained in IBCs proposal adequately meets the requirements of the scope of work and technical specifications in the RFP. Variances between the specific designs of each proposer can be expected. In addition, the space program and layout of each proposal were reviewed and scrutinized by the GPSS/DOE members of the evaluation committee. Based on the above and information in the IBC proposal, the Government confirmed that the proposed facility meets the requirements of the RFP at a lower base cost than the GEFF proposal, and was ranked higher in terms of design than the other proposals.



GEFF'S ASSERTION NO. 8:

"DPW rejected our protest, but the reasons for denial are not valid. As to the price increase from IBC's original bid to final disclosed number, DPW contends that the cost increase from a number actually below \$38 million originally to \$69 million, is attributable solely to requests from GovGuam to enhance the project including quote "specifically debt service and other *reserves*, capitalized interest, etc., all of which would have been requested of all offerors for the benefit of the government therefore affecting all offerors uniformly." The fact is the RFP called required at least two years of capitalized interest (the RFP explains that no Section 30 funds or payments would *be* available until 2011, requiring the capitalization of interest during this term) and any respondent who had arranged financing as required would have known that construction period interest and debt service and capital replacement *reserves* would have to be included. DPW's assertion that *every* bidder would have to add these items is not true because our cost number already included all of these items. We completed \$65 million of financing in 2006 to build the four new schools and

\$7.5million in 2008 for the collateral equipment so we are thoroughly familiar with capitalized interest and reserves required by the capital markets, which is why we emphasized from the start and in our protest letter that our costs included these items. So therefore, it would not be an additional item added to our bid. Mr. Perez's statement is simply not accurate. Our total cost number also included all desks, chairs, equipment and technology and a capital replacement reserve to cover replacement of roofs, air conditioning and other items over the term of the lease this was stated in our original cost proposal as well.

DPW further states that the increases are fully within the requirements of the RFP and the procurement laws of Guam, but also states that IBC's cost number without these costs included, which seems to have won them the initial right to negotiate, was also completely compliant with the process, yet it did not contemplate all of the financing costs and reserves. How can a proposal that requires a total "turn key" number and requires financing and thus required reserves if the numbers did not include these and other financing-related costs? How can a "winning" proposal leave out over \$31 million of costs and be compliant? How can this same proposal win an RFP that was based 70% on ability to bring financing and experience with municipal leasing? How can a proposal add \$31 million during the negotiating process, nearly doubling the initial cost proposal, and \$24 million more than the next proposer, on an "apples to apples" comparison and still be selected to move forward?"

DPW'S RESPONSE NO. 8:

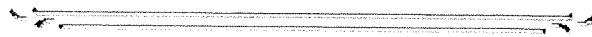
Comments on entire section: GEFF is basing their protest on speculation regarding IBC's written proposal and post-proposal negotiation with DPW/DOE, to which information they are not privy. It seems that this whole paragraph should get thrown out because GEFF should not be privy (and was not privy) to the information in IBC's proposal. They have no basis with which to compare the costs and terms outlined in the Preliminary Official Statement ("POS") and thus have no basis to determine that

there is a "substantial price increase". Furthermore, the POS is "preliminary" and the costs contained in that document should not be viewed as final.

The RFP explains that no Section 30 funds or payments would be available until 2012, requiring the capitalization of interest during this term; and the public law states the JFKHS FDDDBML will be secondary to existing lien. GEFF contends their cost included the finance and interests, but their construction cost was still higher than IBC's. Through financial meetings and negotiation talks, the availability of Section 30 Funds was clarified that it wouldn't be available until 2012; therefore GEFF's interest cost would have increased even more and the cost proposed in their proposal for debt reserves is substantial lower than what the Government of Guam required. In the end, after months of financial clarification by GEDA and negotiation efforts done with DOE, GEFF's proposed cost would be unrealistic and higher than the IBC's current negotiation costs with the government.

GEFF's comparison with the previous lease back financing source and the current one being proposed as the collateral source for the JFKHS FDDDBML are two different in its entirety. Compact Impact Funds versus Government of Guam's Section 30 Funds; it is evidentiary which funding source has a better credit rating these past 5 years.

All proposers who submitted their bids included collateral equipment in their proposals. The RFP called for collateral equipment to be included and it was one of the important components to be evaluated.



GEFF'S ASSERTION NO. 9:

"As to our concern about the scope of work, DPW concedes that the Official Statement disclosure is accurate, that IBC only plans to build 120,00 square feet, but that the 120,000 square feet only includes the classrooms and does not include the "corridors, covered walkways and gymnasium." Accordingly, when the corridors, walkways and gym are factored in, the school then has enough educational space to accommodate "2,700" students. We can document the required capacity and we would encourage the public auditor to discuss capacity with Okkodo's principal, but we don't see how 120,000 square feet with added exterior corridors and a gym equates to a school that can accommodate the stated requirement of 2,300 or 2,210 students (depending on which capacity number used from the RFP)."

DPW'S RESPONSE NO. 9:

It is my understanding that the capacity of the new school proposed by IBC can accommodate up to 2,700 students and GEFF was not privy to ongoing negotiations, nor did they have access to IBC's bid proposal to compare the specs proposed, nor were they privy to post-award negotiation of the specs. The Government was thorough in its evaluation of whether the proposals met the requirements of the

technical specifications for the completed facility.

Using the correct numbers confirmed by the proposers, the unit-cost based evaluation clearly favored IBC for a facility that was compliant with the requirements of the RFP.



GEFF'S ASSERTION NO. 10:

“Finally, as other bidders have protested, it would appear that IBC did not have adequate financing and enlisted the support of GEDA to help secure financing months after the selection. While we agree with this point that IBC did not come in with financing in place, the larger point here is that if IBC had financing,

a) it should have been able to close the transaction within a few months of selection

DPW's RESPONSE 10 (a):

To address this first scenario that “if IBC had financing it should have been able to close the transaction within a few months of selections” – The selected offeror proposed 100% financing of the project by offering Certificates of Participation in the financial markets, as a tax-exempt offering in accordance with the RFP and the Public Law 29-114. The Public law states that the Guam Legislature,

“desire to authorize the Government of Guam to enter into contracts for the financing, design, construction and long-term capital maintenance of the John F. Kennedy High School with private sector contractors who can provide long-term financing obtained through financing tax-exempt obligations or other competitive alternative financing based on long-term leasebacks to the Government of Guam.”

- 1) *With regard to the failure of the selected offeror to provide the financing, the Government has already determined such baseless statements to be of no merit (see response to protest by GCIFI). The selected offeror was only days away from pricing and closing on COPs when the initial protest was filed. The selected offeror has demonstrated its ability to obtain the financing and the Government is satisfied with the proposed financing terms and intends to move forward with completion of the project.*
- 2) *The RFP and Public Law 29-114 set a RFP timeline to be issued in 30 days and design phase completed with thirty (30) days and construction time completed within 270 calendar days AFTER a Notice to Proceed is issued. There is NO reference on both documents that stated a timeline for the Negotiation Phase and the corresponding Contract Execution.*

b) their cost number would have or should have included the costs of "capitalized interests and reserves," and other soft costs associated with financing. The RFP required bidders to assume 2 years of capitalized interest. The fact that DPW acknowledges that their RFP response did not include these items indicates to GEF that they did not approach the process with full information and accurate cost numbers. Also, there is no conceivable way that these costs could possibly exceed \$31 million for project that was bid by IBC to cost less than \$38 million. Currently, DPW cannot tell you what the true cost of IBC's proposal will be because the interest rate has not been set. Typically longer term issues such as the one IBC proposes must pay a higher interest premium to sell bonds with maturities beyond 20 years."

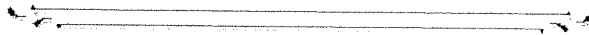
DPW'S RESPONSE 10 (b):

To address this second scenario:

This is completely false. The selected offeror and all the bidders were required to:

- a) Provide proof of ability to secure financing;*
- b) Present term sheet, examples and scenarios of financing ability.*

The offeror provided three financing options in its proposal, one of which included the exploration of AAA-insured or equally enhanced transaction.



GEFF'S ASSERTION NO. 11

"The correspondence between GEF and DPW also references timing of notices and protests. We filed our protests as soon as we learned the particulars of IBC's proposal in the Official Statement. We are not privy to IBC's original RFP response, so we do not know what or who originally was bid, or who the lessor in the Official Statement is or whether they are licensed to do business in Guam or whether they were a part of the original proposal. We do not believe though that a Guam agency can make an award based on an incomplete, low ball bid number, wait for the 15 day protest period to pass and then allow the bidder to double the cost to a number that is tens of millions of dollars more than the next lowest bidder, and then claim that the lowest bidder has lost the ability to protest the award when the bidder learns of the particulars of the transaction, especially prior to signing a definitive contract. We can't understand why DPW would not have gone to the next bidder when IBC's number doubled to build less school than GEF bid. For \$11 million less, they could build a school that is nearly twice as large and capable of housing the desired student capacity."

DPW'S RESPONSE NO 11:

The protestor's argument regarding non-conforming deliverables is predicated primarily on the cost

claims addressed in the "Preliminary Official Statement". As stated, the claimed price differential is inaccurate. However, to address the claims made regarding non-conformance of the IBC proposed facility, it is important to note that the information in the "Preliminary Official Statement" is accurate, but not all inclusive of the all elements of construction. Specifically, the 120,000 square feet of new building space listed in the POS was only for the classroom buildings footprint and is not inclusive of cafeteria, library, covered walkways, corridors, and gymnasium. The total square footage of the selected offeror's proposal inclusive of these areas is adequate to meet the capacity requirements as stated in the RFP (2300 students) plus an additional 402 enrollment, and are in fact equivalent to the GEFF facility as proposed.

Therefore, the IBC proposal is in conformance with the requirements of the RFP and at a lower cost than the GEFF proposal



This concludes the department's submission of the Agency Report.

Respectfully Submitted,



LAWRENCE P. PEREZ

DPW Director - Chief Procurement Officer

Date: 10/5/09

EXHIBIT G2



I MAGA' LAHEN GUAHAN
GOVERNOR OF GUAM
FELIX P. CAMACHO
I SEGUNDO NA MAGA' LAHEN GUAHAN
LT. GOVERNOR OF GUAM
MICHAEL W. CRUZ M.D.
ADMINISTRADOR
ADMINISTRATOR
ANTHONY C. BLAZ

Aturidã Inadilãnton Ikunumihan Guahan

October 2, 2009

Ms. Doris Flores Brooks, Public Auditor
OFFICE OF THE PUBLIC AUDITOR
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, GU 96910

RE: Guam Education Financing Foundation, Inc.

Dear Ms. Brooks:

Hafa Adai. I am writing to provide information to support your review and analysis of the Procurement Appeal filed by Guam Educational Facilities Foundation, Inc. ("GEFF" or the "Appellant") regarding the Request for Proposal ("RFP") for the construction of a new John F. Kennedy High School, Project No. 700-5-10-L-TAM.

The majority of GEFF's appeal is centered on the difference in cost between its original proposal and what is presumed to be the winning bidder's "final" costs. As the procurement process is still not completely finished and therefore the winning bidders' proposal is not public information, GEDA cannot provide comments comparing one proposal versus the other. Much of GEFF's argument lies in the assumption that the project cost information contained in the Preliminary Official Statement is final. The Preliminary Official Statement ("POS") was issued to the public market in connection with the proposed sale of the Certificates of Participation ("COP") which were to be sold to finance the JFK project. As the title of the referenced document indicates, the information included is based on **preliminary** estimates. A significant component of these costs is based on market conditions at the time of financing, and therefore would not be final until the project financing is complete.

Additionally, GEFF argues that certain terms of the winning bidder's financing are not prudent or reasonable. As DPW stated in its rejection of the Appellant's original protest, many of the terms of the financing, as outlined in the POS, were requested by GovGuam during the negotiation process. Such items include a longer amortization period for budgetary reasons, more capitalized interest and additional reserves. Hypothetically, these costs would have been added at the Government's request to any of the proposers' original estimates, including GEFF, had they been selected. GEFF additionally asserts that it does not understand why GovGuam would choose a bidder that amortized the financing of the project over a longer period of time, resulting in an overall higher interest cost over the life of the project.

While it is true that a longer term financing would cost more in interest, it *more importantly* provides budgetary relief on an annual basis compared to a shorter amortization. GovGuam is in a much tighter budgetary position currently than it was in 2006 when GEFf issued its COP financing. This year alone, the Government has incurred more than \$500 million in additional debt, which will cost over \$35 million annually beginning at approximately the same time as when the JFK lease payments would begin. In addition, with the construction techniques proposed by the winning bidder, the life of the asset is expected to be twice as long as GEFf asserts, and therefore it makes sense to finance the project over a longer period of time.

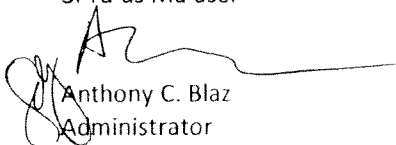
GEFF, in its appeal, continues to state the difference in its construction proposal versus the winning bidder's construction proposal. The fact remains that GEFf does not have access to the information contained in the winning bidder's original proposal, and presumes that what is contained in the POS, after months of negotiation with the Government, is what was originally proposed. GEFf should know, after dealing with GovGuam on its COP financing in 2006, that the end result does not always necessarily reflect the original proposal, as there are a number of unforeseen factors that could influence final costs, especially when dealing with market conditions for financing. GEDA notes that the winning bidder provided the *lowest* quoted construction cost out of the three respondents to the RFP. As you know, however, the project cost was only one of the many factors included in the evaluation of the proposals.

Lastly, similar to the first protest by Guam Community Improvement Foundation, GEFf suggests in its original protest letter that the RFP Scope of Work included a provision that the winning bidder was required to have funds in hand prior to the initial bid award. As GEDA has stated previously, the Government did not expect any of the bidders to have \$40-60 million in cash on hand prior to the award, especially given the state of the global economy and nationwide credit crunch. Rather, it was fully expected that each bidder would procure financing in accordance with the preliminary terms outlined in their respective proposals. The requirement in the RFP was the "ability" to provide financing. GEDA believes that the winning bidder met this requirement.

It remains GEDA's position that contrary to the Appellant's statements, the winning bidder was chosen according to the criteria in its proposal, has fully complied with all of the sections in the RFP and the authorizing legislation, from a financing standpoint, and was selected over the others based on the criteria of the RFP. We continue to believe that the winning bidder provided the best terms from which the Government could then negotiate and followed through with the Scope of Work in accordance with Guam law and the typical financing process associated with lease-lease back obligations, considering the overall context of the Government of Guam's financial condition.

GEDA stands ready to assist your office with any information necessary to support your review of this appeal. Please let me know if we can be of further assistance.

Si Yu'us Ma'ase.



Anthony C. Blaz
Administrator

cc: Assistant Attorney General Ben Abrams, Office of the Attorney General
Lawrence P. Perez, DPW Director

EXHIBIT H
(Not Applicable)

EXHIBIT I



Office of the Attorney General

Alicia G. Limtiaco

Attorney General of Guam

Civil Division

287 West O'Brien Drive

Hagåtña, Guam 96910 • USA

(671) 475-3324 • (671) 472-2493 (Fax)

www.guamattorneygeneral.com

Attorneys for the Department of Public Works

**BEFORE THE GUAM PUBLIC AUDITOR
Procurement Appeal**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA 09-007
)	
GUAM EDUCATION FINANCING)	
FOUNDATION, INC.)	DECLARATION RE COURT ACTION
)	
Appellant.)	
)	
)	

Pursuant to the Public Auditor Procurement Appeals Rules §12105(i), the undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commencing regarding this Appeal of the underlying procurement action.

Dated this 5th day of October, 2009.

OFFICE OF THE ATTORNEY GENERAL
Alicia G. Limtiaco, Attorney General

John Weisenberger
JOHN WEISENBERGER
Assistant Attorney General