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Attorneys for: **Appellant**

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA 09-0005
)	
)	MEMORANDUM RE:
GUAM COMMUNITY IMPROVEMENT)	DECLARATION OF SUBSTANTIAL
FOUNDATION, INC.)	INTEREST
)	
Appellant.)	
_____)	

A Declaration of Substantial Interest was submitted to your office by Benjamin M. Abrams, Assistant Attorney General. Attached to that filing was a Declaration of Substantial Interest which is signed by Lawrence P. Perez and others. They have set forth a number of assertions that set forth a substantial interest which the Protestor hereby responds.

- (1) The Organic Act of Guam certainly requires the Government to maintain and operate public schools. It does not say that you must maintain and operate John F. Kennedy High School at the location where it is currently located. Indeed, there is an interim John F. Kennedy High School in operation where the students are being educated.
- (2) Guam law defining adequate public education is met by the facility where the students are being educated at the Tiyan facility.

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- (3) The closure of JFK High School in June of 2008 and the Declaration of State of Emergency in August of 2008 was to facilitate a timely solution. We are now more than one year the Declaration of the State of Emergency. The students are being educated at a facility.
- (4) Although here the law required the RFP to be out within thirty (30) days, the RFP was not out within thirty (30) days as required. They are now more than 10 months since the passage of Public Law 29-114 and at the time of the filing of the protest, no contract had yet been awarded. Protestors did not cause the delay of ten months in completing the procurement process. The Governor in his transmittal letter to the Speaker in regard to Public Law 29-114 (attached), found it troubling that the time frames were mandated by law and may not be attainable, and that one of the vendors (IBC) who submitted an unsolicited proposal may be favored.
- (5) The Guam Education Policy Board's Resolution. The Board's support for a leaseback design demolish and build arrangement pursuant to Public Law 29-114 is certainly commendable, but it does not require the award of the contract to be issued to protect the substantial interest to Guam.
- (6) Hardship on educational communities. That hardship has past, and the schools are not enduring split sessions any longer.
- (7) Both schools' communities have endured disruption. That certainly is something that has occurred in the past, and a solution was found by the Government and they have placed the students in an interim JFK High School facility.

- (8) JFK's delay because of the problems with the temporary campus. The Government has known since June of 2008 that they did not have a campus for the JFK students. Their delay in taking adequate action does not create a substantial interest to Guam. For this contract, the Government's initial delays cannot be held to create a substantial interest.
- (9) Public disruption and the efforts undertaken by IBC in the Municipal Bond market. IBC was to have their financing in place when they turned in their proposal. The costs have already increased because their proposal could not be met and the reviewers of the proposal should have been aware that IBC could not meet the financial proposals they had provided.
- (10) The inability to bring a successful conclusion to the efforts of IBC and its partner, the Government of Guam. Government of Guam bonds have been issued in the past and are sold almost immediately because of our poor image. The Government's position publicly has been that they are just assisting IBC and it is not their bonds. Now, they are claiming that the Government's image as a stable business partner will be damaged. If the Government cannot enter procurements properly, their image in the market will also be damaged. The Government's past failures should not be cause to find a substantial interest.
- (11) Labor and Material Prices Will Likely Escalate Overtime. Is the Government saying that IBC will do the job and does not have the manpower to do so? If that is the case, they will not have the manpower, then they should not be awarded the project.

CONCLUSION

From the date of the letter addressed to the Protestor that they had not been selected as a proposer in February of 2009, it was seven months and IBC was unable to potentially locate financing.

One would presume that having a government that can enter into procurement properly and expeditiously will certainly be a significant substantial interest to Guam. Protestor believes that the Public Auditor should not execute the confirmation of such determination as requested.

Respectfully submitted this 3 day of September, 2009.

CUNLIFFE & COOK
A Professional Corporation
Attorneys for Appellant
Guam Community Improvement
Foundation, Inc.

By 
F. RANDALL CUNLIFFE, ESQ.



Office of the Governor of Guam

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Felix P. Camacho
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Michael W. Cruz, M.D.
Lieutenant Governor

2008 OCT 30 PM

20 OCT 2008

Handwritten notes: 29-08-2789, Oct 29, 2008, 10:46 am

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Bente Nuebi Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Please find attached Bill No. 363 (EC), "AN ACT TO ADD A NEW CHAPTER 58A TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CONSTRUCTION OF THE JOHN F. KENNEDY HIGH SCHOOL," which I have signed into law as Public Law 29-114.

The authorization contained in Bill No. 363 will allow the government to construct the John F. Kennedy High School ("JFK"). However, in our effort to rebuild the school, we need to make sure we construct a safe structure for our students, teachers, administrators and visitors to the school.

Mandating rather than authorizing the issuance of a Request for Proposal within 30 days of enactment of this Act puts the government at a great disadvantage and exposes the government to a very costly construction project. Further, the requirement that occupancy of the JFK facility take place within nine months after execution of the contract may compromise the structural integrity of the facility, causing greater harm because of a quickly and poorly constructed facility. This provision also seems to favor a certain vendor that claimed to meet this requirement through an unsolicited offer, which is contrary to procurement law. We have a responsibility to ensure the facility is well constructed.

Finally, the government may not be able to pledge Section 30 funds as authorized in the Bill. The following loans/issues are pledged with Section 30 revenues:

12/1/01 Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A, (Water System Revenue Bond), Maturity Date 12/1/11, Balance \$35,365,000, Annual Payment \$9,823,750

9/20/02 Government of Guam \$10 million loan, per Public Law 26-84, Maturity Date 10/1/12, Balance \$5,942,612, Annual Payment \$1,281,818

07/17/08 Government of Guam \$13.8 million loan per Public Law 29-82, Maturity Date 7/1/12, Balance \$13,800,000, Annual Payment \$4,197,474

Section 30 is a viable cash source for the government of Guam. It is the cash lifeline for the government through the fiscal year, especially when other revenue sources do not materialize as anticipated.

Further, the Receiver in the federal consent decree case has recommended a revenue bond with Section 30 as a pledge to finance the closure of Ordot and the opening of the new landfill. If the government proceeds with the Receiver's recommended financing option, Section 30 will not be available as a future pledge.

With the imminent need to close Ordot and open a new landfill, coupled with the court imposing sanctions and contempt for noncompliance, the government must prioritize the financing of the consent decree projects. As such, and in light of the District Court's order adopting the Receiver's timeline, the government may not be able to pledge Section 30 for the financing for the construction of the John F. Kennedy High School.

We need to proceed cautiously with government financing, future expenditures and obligations of the government. The Administration is committed to working collaboratively with the Legislature to resolve these matters.

Sins eru yan Magåhet,



FELIX P. CAMACHO

I Maga'låhen Guåhan
Governor of Guam

Attachment: copy of Bill

cc: The Honorable Tina Rose Muña Barnes,
Senator and Legislative Secretary