

OPA-PA-09-007

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Guam Education Financing Foundation
Statement For Hearing on October 23, 2009

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FILE No. OPA-PA 09-007
Presented by - GEFF
Mr. Phil Flores at
9AM Motions
Hearing

OPENING STATEMENT:

First, Mr. Inman would like to apologize for not being available on this hearing by telephone but he had surgery today. The surgery was not scheduled when Mr. Inman attended the October 9, 2009 Status and Scheduling Conference. GEFF asked for a continuance of one day but Hearing Officer Camacho did not grant the continuance. The Board of GEFF has asked me to attend and to read the following statements into the record:

The Office of the Public Auditor (OPA) has stated that its mission "is to achieve independent and nonpartisan assessments that promote accountability and efficient, effective management throughout the Government of Guam. We seek to serve the public interest by providing the Governor of Guam, the Guam Legislature, and the People of Guam with dependable and reliable information, unbiased analysis, and objective recommendations on how best to use government resources in support of the well being of our island and its constituents. "

In this matter GEFF's objective is help the OPA to achieve its mission. We seek to bring out "dependable, reliable information". We expect that the OPA will render "unbiased analysis and objective recommendations" on how best to see that the people of Guam are getting the best value for their money. We offer our information and testimony in the hope that the Public Auditor will evaluate the proposed school to be built by IBC and the proposed cost and evaluate whether it represents the best value when compared to the school proposed by GEFF.

In response to the motions being heard, **GEFF is opposed to the Purchasing Agency's Motion to Seal Portions of the Procurement Record and GEFF is opposed to the Purchasing Agency's Declaration of Substantial Interest.** Our specific arguments in support of our positions are articulated below, and may be read into the record now, or during the discussion of these particular motions.

1. Motion to Seal portions of the Procurement Record. At this point, GEFF has provided evidence of IBC's costs and scope of work based upon the Preliminary Official Statement issued by GEDA on their behalf. We understand the gravity and importance of truthfulness in official statements and public disclosures as required by the SEC. We understand that it is the agency's position that the Official Statement is inaccurate and the procurement bid

documents are more accurate in terms of disclosing costs and scope of work proposed by IBC.

This information is exactly what is at issue in connection with GEFf's Protest and Appeal and GEFf's ability to defend its position is significantly limited without access to this information. GEFf does not have any way to verify the size of the school IBC is proposing except from publically available information since DPW will not disclose the information deeming it confidential. GEFf believes in transparency and has no objection to fully disclose all of the information in each proposal so every stakeholder can access the value derived from the dollars spent. GEFf does not understand why the size of the school should be "confidential" since the school to be built should be public knowledge and not considered "confidential". If the motion to keep information confidential is upheld, then GEFf must rely on the OPA to accurately access the plans of the IBC proposal and determine if the comparison of GEFf is accurate or not.

The OPA's mission also states that the OPA will "Perform our work with diligence, conscientiousness, and due professional care". We assume who ever is reviewing the plans for OPA is knowledgeable about reading plans and calculating the square feet of enclosed space since the cost to construct a building is significantly more than the cost of covered walkways and a covered pavilion. Further, the annual rental cost to the GDOE due to IBC is one of the most relevant factors and as we stated earlier IBC's additional rent is significantly higher than GEFf's. We respectfully request the OPA to disclose who and what analysis they intend to perform in judging the appropriateness of GEFf's appeal.

Furthermore, GEFf believes that more, not less, public disclosure is generally in the best interest of Guam and in the promotion of a fair and equal process. **Therefore, GEFf is opposed to this Motion to Seal and is willing for DPW to disclose any portion of GEFf's proposal provided it discloses such information for all proposals.** The information has been disclosed in the Official Statement in connection with the financing. If an open and transparent process is to be followed in connection with its appeal, GEFf does not see how or why the size and design of the schools to be built must be kept confidential. While GEFf assumes the OPA will have access to this information and will accurately access it, we also believe the public should also have access to see how their dollars are being spent.

2. Opposition to Purchasing Agency's Declaration of Substantial Interest.

The Purchasing Agency is requesting to essentially set aside the appeal process and move ahead with IBC notwithstanding the appeal process under the argument that time is of the essence and the appeal is not worthy of due consideration. We respectfully disagree. First of all, the government of Guam has signed a long-term lease for temporary space for the JFK students to alleviate the immediate need for school space. The Government has committed to this space at a great expense to Guam and as we understand it, cannot be cancelled if the new JFK opens in the next 12 months. Therefore, the urgency to start construction is less than it was when the RFP was originally issued.

Furthermore, if time is of the essence, why has it taken the Procurement Office 7 months to “negotiate” and close the financing? If this process has taken 7 to 8 months, it seems prudent to spend a couple of weeks figuring out why the Government is paying \$41 – 70 million more to build JFK. If the process can save GovGuam \$70 million, the savings seem substantial and worth taking the time to verify the process.

According to the Official Statement, IBC is proposing to build a school about half as large as GEF that will not meet GPSS’ needs for the current JFK population. No wonder its bid was cheaper initially. But through the “negotiation process” IBC’s bid increased from \$38 million to \$69 million. **Now IBC is proposing to spend \$11 million more than GEF to build a much smaller school.** GEF’s bid was to build a 236,000 square foot school for \$58 million compared to IBC’s proposal to build 144,000 square feet for \$69 million. If GEF builds a 144,000 square foot school, our all-in cost would be \$42 million, \$27 million less than IBC. IBC’s cost per square foot is \$479 per square foot nearly double GEF’s \$245 per square foot. **In fact, GEF could deliver the same school IBC is proposing and have enough money left over to build three more elementary schools.** Why did negotiations with IBC continue when its costs increased to 50% more than another bidder? IBC’s proposed 30 year financing makes this difference worse when compared to GEF’s 20 year financing. **Assuming the same interest rate and work scope, IBC would require total payments of \$83 million more over the 30-year term than GEF.** The Agency has argued that it does not need to look at the bids on cost-per-foot or other side-by-side basis, but we propose that is exactly what the OPA or someone in charge of defending the public trust should do – compare on price per foot basis, compare the sum of the lease payments over the term of the deal assuming the same interest rate for a side-by-side comparison of costs as it appears that some participants in the process are trying to obscure the facts versus disclosing the facts.

Further, when we reviewed the POS once more in this review process, it also states that IBC is charging \$1.8 million a year in “additional rent” to maintain and insure the school (See POS Page D-9 of the Lease Exhibit). This is \$1.2 million more per year or almost 3 times what GEF was proposing to charge to provide maintenance and insurance for the school, so IBC’s rent payment will be much higher than GEF with this vastly higher additional rent number. This additional rent will cost GovGuam an additional **\$36 million vs. GEF’s proposal** over the life of the deal in addition to the higher costs GEF has already noted. Why would the committee agree to this extra expense? Given the materiality of these numbers, it seems imprudent to brush this appeal aside and move forward with IBC notwithstanding the appeal. Finally, we highly doubt that any underwriter can close financing with an unresolved appeal pending anyway. So granting DPW a right to proceed while the appeal is underway will not speed up the closing of the financing at all. As stated earlier **GEF is opposed to the Purchasing Agency’s Declaration of Substantial Interest.**

CLOSING STATEMENT.

We cannot see how either of these motions promotes the mission of the OPA “to achieve independent and nonpartisan assessments that promote accountability “. Allowing DPW to state that the only Official Statement produced in connection with this project is incorrect and that they have the correct information but intend to keep it confidential produces an environment of distrust and secrecy that obscures independent and nonpartisan assessments and provides no accountability for how the money of the people of Guam is being spent. Given DOE and GovGuam’s shortage of funds, we believe it makes sense to make sure that IBC is delivering the best value to Guam and to take a brief moment and evaluate whether the people of Guam are paying a minimum of \$47 million too much for an undersized facility. If the differences were not so material, we would agree that in the interest of time, the process should move forward without delay.

If the OPA intends to provide “the People of Guam with dependable and reliable information, unbiased analysis, and objective recommendations on how best to use government resources” we do not see how they can agree with either of these motions. If the information is released everyone can quickly conclude whether GEF’s arguments are valid or not. This is clearly the most time efficient and transparent process.

Also granting the Motion of Substantial Interest is clearly not addressing the OPA mission “how best to use government resources in support of the well being of our island and its constituents. “ First there is no way to determine the rationality of the selection and negotiating process without access to the information that is being kept confidential. Second the apparent difference in cost is material in terms of the cost of the buildings that is at least \$11 million and the cost to insure and maintain the buildings that is at least \$1.2 million per year. Third, there are options for educating the JFK students in the short term leased facility or in double sessions and finally, GEDA can not conclude its financing for the project until the appeal is resolved so granting the motion of substantial interest will serve no purpose to expedite the project.

GEFF wants he JFK stakeholders to have a new home as soon as possible but we want them to have a home they can be proud of, a home that will meet there needs and that will last. But we also want to be stewards of the public trust and we want to make sure the people of Guam are receiving value for the funds expended. That is why we have filed our appeal. If we can be proved wrong we will gladly drop our appeal but to date we have seen nothing that convinces us that if we drop our appeal anyone will consider the facts we have highlighted. We want to thank the OPA for its efforts and diligence and hope to help them achieve their mission of unbiased analysis, and objective recommendations on how best to use government resources in support of the well being of our island and its constituents.