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BEFORE THE OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEAL

IN THE APPEAL OF) DOCKET NO. OPA-PA-09-005

GUAM COMMUNITY
IMPROVEMENT FOUNDATION,
INC.

DEPARTMENT OF PUBLIC
WORKS STATEMENT RE
REMEDIES

Appellant.

Now comes the Department of Public Works ("DPW"), by and through its attorneys, the Office of the Attorney General, and in response to the request by the Public Auditor, offers this statement concerning proper remedies in this appeal.

First, and foremost, DPW reasserts its position that there is no violation of law or regulation in the solicitation now under review. The Guam Community Improvement Foundation, Inc. ("GCIF") has failed to prove a violation of law in its protest. The violation

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1 asserted by GCIF, to quote from its protest letter of August 5, 2009 to Lawrence Perez, is that
2 “the protestor can only surmise one of two things. Either IBC did not comply, and cannot
3 comply with the financing requirements and therefore should be excluded from the bid, or the
4 Government has changed the request to exclude the financing which was an integral part of the
5 initial bids and DPW is going forward under those circumstances.”

6 GCIF has failed to provide any evidence in support of either surmise. In fact, the
7 evidence is clear, from both the testimony received in the hearing on this appeal, and in the
8 procurement record that 1) IBC has fully complied with the financing requirements set out in
9 the Request For Proposal, and with the financing plan set out in its proposal, and 2) DPW has
10 not, and did not change the financing provisions as set out in the Request For Proposal, and the
11 government of Guam has not assumed responsibility for acquiring financing in this
12 procurement.

13 So, accepting for purpose of this statement, that GCIF has even asserted a violation of
14 procurement law in its protest, GCIF has failed to prove any violation of the law. There being
15 no violation of procurement law, the provisions of the procurement law concerning remedies
16 are not applicable to this matter. 5 GCA §5450. The remedy provisions of the procurement
17 law only apply when a solicitation or award is in violation of the law. The proper remedy in
18 this case is to dismiss the appeal of GCIF.

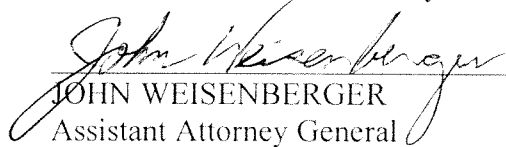
19 A brief reply to the statement filed by Interested Party International Bridge Corporation
20 Re Remedies is in order. The Department of Public Works has made a determination that the
21 three proposals received in response to the Request For Proposal for the Construction of the
22 New John F. Kennedy High School Finance, Demolition, Design, Build, Maintain and
23 Leaseback, Project No. 700-5-1020-L-TAM, (“RFP”) were, to varying extents, responsive
24 proposals. Being responsive, all three proposals were evaluated upon how closely they met the
25 terms and criteria stated in the RFP. The Public Auditor is invited to review the proposals to
confirm that each proposal provided information, as required, on the expected timelines for

1 completion of the various steps in the project. Because that information is available in each
2 proposal, the Public Auditor can confirm that the evaluation committee had information from
3 each proposer adequate to score the proposals on the basis of the nine month timeline, as well
4 as the other criteria established for evaluation.

5 A review of the procurement record, available only to the Public Auditor, will clearly
6 demonstrate full compliance with the procurement law in this matter. The Department of
7 Public Works joins the International Bridge Corporation in respectfully requesting that the
8 Public Auditor exercise the only remedy permitted by law and the evidence, and dismiss the
9 appeal of the Guam Community Improvement Foundation, Inc.

10 OFFICE OF THE ATTORNEY GENERAL
11 **Alicia G. Lintiaco, Attorney General**

12 By:

13 
14 JOHN WEISENBERGER
15 Assistant Attorney General