



1 Purchasing Agency was represented by Assistant Attorney General Benjamin M. Abrams, Esq.,  
2 and John Weisenberger, Esq. Interested Party International Bridge Corporation (Hereafter  
3 Referred to as “IBC”) was represented by it’s Counsels of Record, Joyce C.H. Tang, Esq. After  
4 hearing the arguments of the parties, the Public Auditor hereby issues her Decision and Order on  
5 said Motion for Protective Order which is as follows:  
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### 7 8 **BACKGROUND**

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11 On or about June 9, 2008, John F. Kennedy High School (Hereafter referred to as “JFK”)  
12 was closed down by a Government of Guam health and safety task force. On November 21,  
13 2008, the Department of Public Works of the Government of Guam (Hereafter referred to as  
14 “DPW”) issued Request for Proposal for Project No. 700-5-1020-L-TAM (Construction of the  
15 New John F. Kennedy High School - Finance, Demolition, Design, Build, Maintain, and  
16 Leaseback (FDDBML) Part I and Part II (Hereafter referred to as “RFP”). On or about January  
17 16, 2009, DPW prepared the letter that selected “IBC” as the No. 1 ranking qualified offeror for  
18 the RFP. The selection letter dated January 16, 2009 was signed and released by DPW Director  
19 Lawrence Perez on March 4, 2009. On or about August 5, 2009 appellant lodged a protest with  
20 DPW. On or about August 11, 2009 and August 14, 2009 DPW denied Appellant’s protest. On  
21 August 26, 2009, Appellant filed this appeal. On September 18, 2009, the Purchasing Agency  
22 filed its Motion for Protective Order. On September 23, 2009, the Appellant filed its Opposition  
23 to the Purchasing Agency’s Motion for a Protective Order. On September 25, 2009, the  
24 Purchasing Agency filed its Reply.  
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1 **DISCUSSION**

2 The Purchasing Agency moves the Office of Public Accountability (OPA) to seal all  
3 proposals submitted by the offerors in response to the RFP which are a part of the Procurement  
4 Record submitted by the Purchasing Agency. The Appellant argues that the proposal of  
5 Interested Party IBC should not be sealed as they have been awarded the contract.  
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7 Generally, a procurement record is a public record and any person may inspect and copy  
8 any portion of the procurement record. 5 G.C.A. §5249 and §5251, and 2 G.A.R., Div. 4, Chap.  
9 3, §3129 and §3131. However, there are several exceptions to this general rule that are  
10 necessary to preserve the integrity of the procurement process 2 G.A.R., Div. 4, Chap.3, §3132.  
11 For requests for proposals, such as the RFP in this matter, proposals shall not be opened publicly  
12 nor disclosed to unauthorized persons. 2 G.A.R., Div. 4, Chap. 3, §3114(h)(1). A Registrar of  
13 Proposals must be established containing the name of each offeror, and this Registrar shall not be  
14 opened to public inspection until after award of the contract. Id. Proposals of offerors not  
15 awarded the contract shall not be opened to public inspection. Id. Further, the Purchasing  
16 Agency is prohibited from disclosing any information contained in any of the proposals until  
17 after an award of the contract is made and only the proposal of the offeror awarded the contract  
18 is opened to public inspection unless otherwise required by the contract. 2 G.A.R., Div. 4, Chap.  
19 3, §3114(i)(2). Thus, the Public Auditor finds that there can be no public inspection of the  
20 proposals in this matter until after an award has been made and only the proposal of the offeror  
21 awarded the contract can be inspected by the public.  
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25 Appellant argues that there has been an award of the contract because the negotiations  
26 between the Purchasing Agency and IBC have been completed despite no contract being  
27 executed by them. Generally, the request for proposal method of solicitation contains three (3)  
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1 phases which are the proposal stage, the price solicitation, negotiation and agreement stage, and  
2 the award stage. *TRC Environmental Corporation v. Office of the Public Auditor*, SP160-07,  
3 page 7, line 24, Decision and Order dated November 24, 2008 (Superior Court of Guam). The  
4 purchasing agency and the best qualified offeror can only go from the price solicitation,  
5 negotiation, and agreement stage to the award stage if compensation, determined to be  
6 reasonable, contract requirements, and contract documents can be agreed upon. 5 G.C.A.  
7 §5216(e) and 2 G.A.R., Div. 4, Chap. 3, §3114(1)(3). Here, Appellant readily admits that the  
8 Purchasing Agency and IBC have not entered into a contract.<sup>1</sup> No award was made in a request  
9 for proposal where the purchasing agency only gave notice that it had selected the best qualified  
10 offeror and that negotiations between the best qualified offeror and the purchasing agency  
11 regarding the terms and conditions of the contract were not complete at the time of the protest.  
12 *Guam Imaging Consultants, Inc., and Rads v. Guam Memorial Hospital Authority and Guam*  
13 *Radiology Consultant's, Inc.*, 2004 Guam 15, ¶130 (Superior Court of Guam). Further, receipt of  
14 a price offer in a request for proposals does not indicate that an agreement has been reached, nor  
15 that negotiations on such offer have begun. *TRC Environmental Corporation v. Office of the*  
16 *Public Auditor*, SP160-07, page 8, line 25, Decision and Order dated November 24, 2008  
17 (Superior Court of Guam). Thus, without an executed contract between the Purchasing Agency  
18 and Interested Party IBC, the Public Auditor finds that no award of the contract has been made  
19 and that the proposals of all the offerors which are part of the procurement record submitted by  
20 the Purchasing Agency may not be open for public inspection at this time. Additionally, the  
21 Public Auditor finds not disclosing the proposals at this time is necessary to preserve the  
22 integrity of the RFP process because, if the Purchasing Agency and Interested Party IBC are  
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28 <sup>1</sup> Appellant's Response to Motion for a Protective Order by Purchasing Agency dated September 23, 2009, page 2.


1 unable to agree on contract terms, then the Purchasing Agency will have to begin negotiations  
2 with the next best qualified offeror 2 G.A.R., Div. 4, Chap. 3, §3114(l)(4)(B). Disclosure of the  
3 proposals would provide the other offerors with an unfair advantage if they know the contents of  
4 each others' proposals.  
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6 Finally, the Public Auditor has determined that the proposals are not available for public  
7 inspection as stated above.  
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10 **CONCLUSION**

11 Based on the foregoing, the Purchasing Agency's Motion for a Protective Order is hereby  
12 granted. The proposals of the offerors submitted in response to the RFP are hereby sealed and  
13 are not available for public inspection or disclosure to the Appellant, Interested Parties, or the  
14 other offerors. Further, any documents in the procurement record that contain any information  
15 from said proposals shall have such information redacted by the DPW, the Purchasing Agency.  
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18 **SO ORDERED** this 21<sup>st</sup> day of October, 2009 by:  
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23 DORIS FLORES BROOKS, CPA, CGFM  
24 Public Auditor  
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