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October 14, 2009

Mr. Anthony Camacho
Hearing Officer
Office of Public Accountability
Suite 401 Pacific News Building
238 Archbishop Flores Street
Hagatna, Guam 96910

RE: OPA-PA-09-007

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

OCT 15 2009

TIME: 10:30 AM
BY: AC
FILE No. OPA-PA 09-007

Dear Mr. Camacho:

First, I would like to thank you for the time you spent at the recent hearing explaining the process to Mr. Alvarez and me. As we stated then, GEFF is a non-profit without a funds for legal services so we are forced to handle this appeal pro se. The purpose of this letter is to provide written responses requested by you at the Hearing held October 9, 2009 including GEFF's response to DPW's agency report, GEFF's position on the Protective Order, GEFF's position on the Motion of Substantial Interest and GEFF's interest in combining its appeal with Core Tech's appeal, OPA-PA-09-005.

RESPONSE TO THE AGENCY REPORT

GEFF asserts that the school to be built by IBC is smaller and more expensive than GEFF's proposal. GEFF believes the Agency Report obscures the relevant information and the AG defends DPW's position based on the argument that GEFF's Appeal is flawed because GEFF does not have access to information that DPW is keeping confidential. The AG responds that:

"The assertion by GEFF is simply incorrect and is apparently based upon information that is inaccurate."

More specifically, the report claims that the Preliminary Official Statement ("POS") produced by underwriter Piper Jaffray & Co. is not accurate and that actually IBC is proposing to build the same size school as GEFF and is doing it for less money. First of all, underwriters do not go to market with Preliminary Official Statements that have large and material inaccuracies regarding cost and scope of a project and in fact underwriters typically require that an official of the Government of Guam sign an SEC Form 15c2-12 that confirms that the disclosures in the POS are accurate. Therefore, it is true that we are basing our comparison on the information revealed in the POS. However, we are well aware of the financing process and the presumption of accuracy of a POS. The POS clearly indicates "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." Nowhere does it indicate that the square footage numbers do not include



the library or cafeteria or the gymnasium. DPW's initial response to the protest affirmed the POS but indicated that the school's external walkways and gym provided the necessary square footage to house 2,700 students. If the POS states that IBC is constructing 144,000 square feet and they are really constructing 233,000 then it constitutes a material misstatement of fact in the POS and opens the Government of Guam to potential liability to investors. *However, even if IBC is building a school of comparable size, the GEFf proposal is still \$11 million cheaper which is 16% lower than IBC's total project cost and will result in a lower annual rent.*

The second argument made is that GEFf's costs would be higher once the government requirements placed on financing were incorporated. This is not accurate. GEFf is in touch with our underwriter, who is in touch with the market every day. Therefore, GEFf is aware of and included capitalized interest and prudent reserves for debt service and Insurance and Maintenance cost increases in its proposal and GEFf stands by those numbers today. Since the RFP asked the proposer to provide the financing, the amount and sufficiency of reserves should be an issue between the Developer and its investors, and the Government of Guam should have no concern or input into these figures. The Government is leasing a finished product and should only be concerned with annual rent. Again, this strikes at the matter of involvement of the Government in IBC's financing process.

GEDA responded that it imposed the 30-year amortization schedule, which GEFf points out increases the total interest paid and thus exacerbates the discrepancy in pricing over the life of the deal. GEDA responded that it required the 30-year financing to lower the annual lease payment. However, when we revisited the POS, it also states that IBC is charging \$1.8 million a year in "additional rent" to maintain and insure the school. This is \$1.2 million more or almost 3 times what GEFf was proposing to charge, so IBC's rent payment will be much higher than GEFf with this vastly higher additional rent number. This additional rent will cost GovGuam an additional \$36 million vs. GEFf's proposal in addition to the higher costs GEFf has already noted. GEFf believes that these material differences warrant further examination.

GEff believes it can deliver a lower cost of capital, but that assumption was not included in its cost comparisons with IBC costs. However, we certainly included the prudent reserves required of capital markets and our costs, even if building a similar building, came out \$11 million less than IBC's number, as disclosed in the POS. We seriously doubt that the final Official Statement for the certificates of Participation will have a cost number that is \$11 million less than the POS. If the government is adding requirements to IBC's financing process that are not required of the private capital markets, and these requirements raise the cost \$11 million, perhaps the OPA should question the prudence of these requirements.

We note that the Agency's response relies largely on undisclosed information. GEFf's information is based upon the disclosure in the POS for the IBC Certificates of Participation. If our information is inaccurate then the POS disclosure is inaccurate. If DPW would disclose the schematic plans and size of the school being built by IBC, GEFf



would be able to more accurately assess the competitiveness of its proposal. But based on the Agency's prior responses to our protest and the disclosures in the POS, it would appear that IBC is not building the same scope as GEFF proposed, unless as the AG claims, the POS is not accurate in which case the Government of Guam is warranting something that is not true.

GEFF understands that the RFP did not call for a cost per square foot assessment but we believe cost per square foot of enclosed space is an appropriate metric for analyzing costs of buildings with different designs. We cannot say whether the evaluation committee considered the cost per square foot of the proposals but we would encourage the OPA to consider this metric as an accurate measure of whether the people of Guam are receiving the best value for the dollars they are expending.

The AG alleges that GEFF has not gone to the market with these agreements and did not know what the costs are to finance this package, including capital reserves and capitalized interest. As a matter of fact, the documents that GEDA proposes to utilize for IBC were developed by GEFF in connection with the previous financing of the four new schools. Further, GEFF has gone to the market with the documents and went to the market prior to submitting its proposal and bid an accurate all-in cost of the financing so the AG's statements that GEFF's costs would be higher are simply not accurate.

GEFF believes that its current offer is significantly lower than IBC and DPW should have terminated its negotiations with IBC and started negotiations with GEFF. The AG asserts that in a professional services RFP, price is not the only criteria however if IBC is building an equivalent building to GEFF, it is still paying over \$11 million more, a 16% difference. The RFP evaluation committee rated GEFF 621 out of 700 points and IBC 628 so with this slight difference GEFF believes an \$11 million difference in cost is large enough for DPW to terminate negotiations with the 628-point proposal and move to the 621-point proposal at a dramatic improvement in price. Couple that with the extra \$1.2 million per year or \$36 million total that IBC proposes to charge to insure and maintain the schools, and GEFF believes that no rational decision process could determine that IBC's proposal is better for Guam.

MOTION FOR PROTECTIVE ORDER

The AG on behalf of DPW is asking for a protective order to keep the substantive portions of all bids confidential. 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. 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. If the information was disclosed all parties could perform their own assessment and the evaluation would not fall solely upon the OPA. Interestingly, DPW does not provide a breakdown of uses of funds, and doesn’t account for the spending of approximately \$11 million of funds. It also does not disclose the development fee paid to IBC. We think it would be helpful for the OPA to request this information from GEDA, IBC, or the underwriter.

Furthermore, GEFF believes that more, not less, public disclosure is generally in the best interest of Guam and in the promotion of a fair process. **Therefore, GEFF is opposed to this Protective Order and is willing for DPW to disclose any portion of GEFF’s proposal provided it discloses such information for all proposals.** If an open and transparent process is to be followed, 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.

DECLARATION OF SUBSTANTIAL INTEREST

The DPW through the AG has asked the OPA to declare that the DPW can proceed with the IBC contract regardless of the appeal. **GEFF opposes this motion.** The students have a temporary home, substantial monies are being spent and there is a significant difference in GEFF’s proposal versus what we believe IBC’s proposal to be. GEFF is prepared to move rapidly through the process and does not know why its appeal cannot be concluded in 3 to 4 weeks. We believe three to four weeks is not too long to save the people of Guam \$47 million to \$65 million. GEFF also understood the OPA’s role as one of a defender of the public trust. We would hope that OPA would take the initiative to examine this process and determine if the best interests of Guam are served. GEFF is not likely to spend non-profit funds to further a process driven by non-disclosed information that is kept from the appellants through legal nuance.

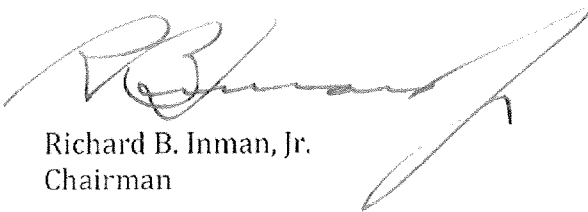
COMBINING GEFF’S APPEAL WITH OPA-PA-09-005

GEFF does not want to combine its appeal with OPA-PA-09-005 because GEFF wants the ability control its costs and to withdraw its appeal if it wants to without having to worry about its co-appellant and second GEFF’s arguments are substantially different from the arguments advanced by the other appeal.



Thank you for your consideration of GEF's positions. Please email if GEF can answer any questions about the above. GEF's case is based solely on the POS, the RFP materials and the responses that have already been provided to the OPA, therefore we attach no further witness list or additional exhibits.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Inman, Jr.", written in a cursive style.

Richard B. Inman, Jr.
Chairman

Cc Doris Flores Brooks, Public Auditor
Lawrence Perez, Director of Public Works
Benjamin M. Abrams, Esq., Assistant Attorney General
Joyce C.H. Tang, Esq.
Randy Cunliff, Esq.