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OPA-PA-24-005 In the Appeal of Pacific Federal Management, Inc. - Appellant's Hearing brief

R. Marsil Johnson <rmarsjohnson@bsjmlaw.com>

Wed, Jan 15, 2025 at 4:58 PM

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Dear Mr. Hernandez:

Please see attached **Appellant's Hearing Brief** for e-filing in the above-referenced matter. Kindly confirm receipt via return e-mail.

Should you have any questions or concerns, please let us know.

Thank you,

R. Marsil Johnson

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2025.01.15 - Appellant's Hearing Brief re PFM OPA-PA-24-005.pdf
248K

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8
9 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
10 **PROCUREMENT APPEAL**

11 **In the Appeal of**) Docket No. OPA PA-24-005
12)
13 **PACIFIC FEDERAL MANAGEMENT,**) **APPELLANT’S**
14 **INC.,**) **HEARING BRIEF**
15)
16 **Appellant.**)
17 _____)

18 **COMES NOW**, Pacific Federal Management, Inc. (“PFM”) and, under the January 10, 2025
19 Amended Scheduling Order, submits this Appellant’s Hearing Brief.

20 **INTRODUCTION**

21 Under Guam’s procurement law, a responsible bidder is a “a person who has the capability
22 in all respects to perform fully the contract requirements, and the integrity and reliability which will
23 assure good faith performance.” 5 G.C.A. § 5201(f). A responsible bidder is “a person who has
24 submitted a bid which conforms in all material respects to the Invitation for Bids.” 5 G.C.A. §
25 5201(g).

26 When a government agency issues an invitation for bids, the “contract shall be awarded with
27 reasonable promptness by written notice to the lowest responsible bidder whose bid meets the
28 requirements and criteria set forth in the Invitation for Bids and whose bid amount is sufficient to
comply with Article 13 of this Chapter, if applicable.” 5 G.C.A. § 5211(g).

1 Guam’s procurement law also requires that government agencies draft procurement
2 specifications to meet certain standards. For example, “[a]ll specifications shall seek to promote
3 overall economy for the purposes intended and encourage competition in satisfying the Territory’s
4 needs, and shall not be unduly restrictive.” 5 G.C.A. § 5264. Further, “[s]pecifications shall not
5 include requirements, such as but not limited to restrictive dimensions, weights or materials, which
6 unnecessarily restrict competition, and shall include only the essential physical characteristics and
7 functions required to meet the Territory’s minimum needs.” 5 G.C.A § 5268(a).
8

9
10 These requirements are not mere platitudes or empty statements. They are written directly
11 into the underlying purposes and policies of Guam’s procurement law, found in the very first section
12 of the law at 5 G.C.A. § 5001. Guam’s procurement law requires that the government interpret it in
13 such a way as to promote the purposes and principals set forth therein. 5 G.C.A. § 5001(a).
14

15 Those purposes and policies include the following:

16 (3) to provide for increased public confidence in the procedures followed in public
17 procurement;

18 (4) to ensure the fair and equitable treatment of all persons who deal with the
19 procurement system of this Territory;

20 (5) to provide increased economy in territorial activities and **to maximize to the
21 fullest extent practicable the purchasing value of public funds of the Territory;**

22 5 G.C.A. § 5001(b)(5) (emphasis added).
23

24 The Guam International Airport Authority (“GIAA”) issued Invitation for Bid No. GIAA-
25 C07-FY24, Project No. GIAA-FY22-02-1, AIP No. 3-66-0001-TBD, concerning the bid for the
26 Terminal Building Roof Replacement and Renewable Energy System – Phase I at GIAA (the “IFB”)
27 on May 22, 2024.
28

\\

\\

1 Three bids were submitted to GIAA in the following amounts:

Bidder	Total Bid Amount
Green Community Development dba Surface Solutions	\$7,898,800.00
Pacific Federal Management, Inc.	\$15,922,865.41
Core Tech International Corporation	\$20,068,296.00

5 Notably, GIAA did not award the contract to the lowest bidder. Instead, GIAA awarded the
6 contract to the highest bidder.
7

8 GIAA awarded the contract to Core Tech International Corporation (“Core Tech”), who bid
9 \$20,068,296.00. Core Tech’s bid was \$4,145,430.59 higher than PFM and \$12,168,496.00 higher
10 than Green Community Development dba Surface Solutions (“Surface Solutions”).
11

12 In rejecting PFM’s bid, GIAA held that it “was found to be nonresponsive and not
13 responsible as Bidder failed to submit and does not hold all required Contractor’s License
14 classifications required in the IFB Package, Special Reminders (Bidder failed to submit and does
15 not hold C-8, C-41, C-42, C-48).
16

17 If the OPA rules in favor of GIAA, the result of this procurement will be that GIAA will
18 have succeeded in awarding this contract to the highest bidder, a party that bid \$4,145,430.59 more
19 to do the work than PFM, despite PFM being qualified to perform the same work under its CLB
20 licenses.
21

22 The award of this contract to the highest bidding party, despite the two lowest bidding parties
23 holding contractors licenses which allow them to do the work specified in the IFB, violated Guam’s
24 procurement law and violates the purposes and principles of Guam procurement law as set forth in
25 5 G.C.A. § 5001(b). GIAA’s actions do not provide for increased public confidence in the procedures
26 followed in public procurement, they do not ensure the fair and equitable treatment of all persons
27 who deal with the procurement system of Guam, and they most certainly do not provide for increased
28

1 economy in territorial activities or fully maximize practicable the purchasing value of Guam’s public
2 funds. Instead, GIAA will waste millions of dollars paying the highest bidder to perform work that
3 two lower bidders were licensed to perform, largely because GIAA does not understand Guam’s
4 contractor’s license board statute and regulations.
5

6 **ARGUMENT**

7 **A. CORE TECH WAS NOT THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER AND SO**
8 **SHOULD NOT HAVE BEEN AWARDED THE CONTRACT**

9 **1. PFM’S BID WAS RESPONSIBLE AND RESPONSIVE**

10 PFM was responsive to the procurement. It provided copies of all licenses necessary to do
11 the work specified in the IFB.

12 Guam’s contractor license law explicitly permits the grant of contractor’s license board “A
13 Licenses” to General Engineering Contractors who, by statutory definition, are “contractor[s] whose
14 principal contracting business is in connection with fixed works requiring specialized engineering
15 knowledge and skill, including the following divisions *or* subjects: **airports and airways.**” 21 GCA
16 § 70106(b) (emphasis added).
17

18 PFM is a licensed General Engineering Contractor, an “A License” holder.

19
20 Therefore, PFM is licensed under Guam’s contractor license law to engage in a principal
21 contracting business in connection with fixed works requiring specialized engineering knowledge
22 and skill, including on airports and airways. GIAA operates Guam’s only commercial airport and
23 the roof is part of the airport. Therefore, PFM is licensed to perform contracting work on fixed works
24 requiring specialized engineering knowledge and skill on GIAA’s airport facility roof.
25

26 Since the IFB sought a contractor qualified to perform construction contracting work on its
27 roof and needed a licensed contractor to do that work, PFM was licensed to perform the work
28 solicited under the IFB.

1 Further, the list of skills and trades General Engineering Contractors (“A License” Holders)
2 can perform is found in 25 GAR §12106(a)(1). That list specifically includes the most of the skills
3 and trades for which GIAA identified “C Licenses.” The list of skills and trades includes: Cement
4 Concrete, Reinforcing Steel, Structural Steel, Water Proofing, and Welding.
5

6 PFM holds a General Building Contractor license (also known as a “B License”). The list of
7 skills and trades General Building Contractor (“B License” Holders) can perform is found in 25
8 GAR §12106(a)(2). That list includes most of those skills and trades as well: Cement Concrete,
9 Reinforcing Steel, Roofing Contractor, Structural Steel, Waterproofing, and Welding. For ease of
10 reference:
11

- 12 • A C-8 license is a Cement Concrete Contractor license.
- 13 • A C-41 license is a Reinforcing Steel Contractors license.
- 14 • A C-42 license is a Roofing Contractor license.
- 15 • A C-48 license is a Structural Steel Contractor license.
- 16 • A C-55 license is a Waterproofing Contractor license.
- 17 • A C-56 license is a Welding Contractor license.

18 PFM also submitted copies of CLB licenses of its subcontractor: Guam Pacific Mechanical
19 & Electrical, LLC (“GPME”). GPME holds the following CLB licenses: C-13, C-37, and C-51.

20 The requirement of any specific licenses, which require more testing and more fees to obtain,
21 when it is even possible to obtain those licenses, is extraneous and unnecessary. Most importantly,
22 the requirement of such licenses constitutes a violation of Guam’s procurement law on the part of
23 GIAA because when a government agency issues an invitation for bids, the government’s
24 procurement specifications must not be unduly restrictive. *See* 5 G.C.A. § 5264 (“All specifications
25 shall seek to promote overall economy for the purposes intended and encourage competition in
26 satisfying the Territory’s needs, **and shall not be unduly restrictive.**” (emphasis added)).
27
28

1 **2. CORE TECH’S BID WAS NOT THE LOWEST**

2 Core Tech’s bid was not the lowest because Core Tech’s \$20,068,296.00 bid was
3 \$4,145,430.59 higher than PFM’s \$15,922,865.41 bid.

4 **3. BECAUSE CORE TECH’S BID WAS NOT THE LOWEST BID FROM A RESPONSIVE
5 AND RESPONSIBLE BIDDER, IT SHOULD NOT HAVE BEEN AWARDED THE
6 CONTRACT**

7 Under Guam law, a responsible bidder is a “a person who has the capability in all respects to
8 perform fully the contract requirements, and the integrity and reliability which will assure good faith
9 performance.” 5 G.C.A. § 5201(f). A responsible bidder is “a person who has submitted a bid which
10 conforms in all material respects to the Invitation for Bids.” 5 G.C.A. § 5201(g).

11 When a government agency issues an invitation for bids, the “contract shall be awarded with
12 reasonable promptness by written notice to the lowest responsible bidder whose bid meets the
13 requirements and criteria set forth in the Invitation for Bids and whose bid amount is sufficient to
14 comply with Article 13 of this Chapter, if applicable.” 5 G.C.A. § 5211(g).

15 Both PFM and Core Tech met the requirements of being responsible and submitting
16 responsive bids. However, PFM’s bid was clearly lower than Core Tech’s. As a result, Guam law
17 dictates that the award should not have gone to Core Tech.

18 **B. THE GUAM CONTRACTOR LAW EXPLICITLY STATES THAT GENERAL ENGINEERING
19 CONTRACTORS (“A LICENSE” HOLDERS) ARE LICENSED TO PERFORM WORK REQUIRING
20 SPECIALIZED ENGINEERING KNOWLEDGE AND SKILL ON AIRPORTS AND AIRWAYS**

21 PFM is a licensed General Engineering Contractor (an “A License”) holder. The term
22 General Engineering Contractor (an “A License” holder) is defined by 21 GCA § 70106(b) to:
23

24 (b) A *General Engineering Contractor* is a contractor whose principal contracting
25 business is in connection with fixed works requiring specialized engineering
26 knowledge and skill, including the following divisions *or* subjects: irrigations,
27 drainage, water, power, water supply, flood control, inland waterways, harbors,
28 docks and wharves, shipyards and ports, dams and hydroelectric projects, levees,
river control and reclamation works, highways, streets and roads, tunnels, **airports**

1 **and airways**, sewer, sewage disposal plants and systems, waste reduction plants,
2 bridges, overpasses, underpasses and other similar works, pipelines and other
3 systems for the transmission of petroleum and other liquid *or* gaseous substances,
4 parks, playgrounds and other recreational works, refineries, chemical plants and
5 similar industrial plants requiring specialized engineering knowledge and skill,
6 **powerhouses, power plants and other utility plants and installations, mines
and metallurgical plants**, land leveling and earth-moving projects, excavating,
grating, trenching, paving and surfacing work and **cement and concrete works in
connection with the above-mentioned fixed works.**

7 (emphasis added). This statutory definition of a General Engineering Contractor (an “A License”
8 holder) specifically states that “[a] General Engineering Contractor is a contractor whose principal
9 contracting business is in connection with fixed works requiring specialized engineering knowledge
10 and skill, including ... **airports and airways.**” 21 GCA § 70106(b) (emphasis added).

12 GIAA freely admits that PFM is licensed as a General Engineering Contractor (an “A
13 License” holder). Since PFM holds a General Engineering Contractor license (an “A License”), it is
14 licensed to perform work on fixed works requiring specialized engineering and skill, including
15 airports and airways. Any determination by GIAA that PFM is not licensed to perform work on
16 airports and airways, including on the Guam International Airport Authority, is thus contrary to
17 Guam law.

18
19
20 **C. GIAA’S POSITION THAT “A LICENSE” OR “B LICENSE” HOLDERS MUST HOLD SEPARATE
SPECIALTY LICENSES IS NOT SUPPORTED BY THE STATUTES CITED BY GIAA OR ANY
21 OTHER SECTION OF THE GUAM CONTRACTORS LAW; IT ALSO RENDERS THE “A
LICENSE” AND THE “B LICENSE” USELESS**

22 GIAA’s position that “Guam law makes it clear that an A or B license holder, is required to
23 separately or specifically be designated as a specialty licensee” is not supported by the Guam
24 contractor law, any CLB rules and regulations, or any case law. The statutes cited by GIAA in
25 support of its position are inclusive, not restrictive, and support the correct interpretation of Guam’s
26 contractor law and regulations, that “A License” and “B License” holders are allowed by their
27
28

1 licenses to perform nearly all trade and craft work included in the “C License” subclassifications and
2 nearly all the work required for the IFB.

3 Title 21 G.C.A. § 70106(c), is cited by GIAA. It is the definition of a General Building
4 Contractor (a “B License” Holder). It states that:
5

6 (c) A General Building Contractor is a contractor whose principal contracting
7 business is in connection with any structure built, being built or to be built, for the
8 support, shelter and enclosure of persons, animals, chattels or movable property of
9 any kind, requiring in its construction the use of more than two (2) unrelated
10 building trades or crafts, or to do or superintend the whole or any part thereof.

11 The above statute does not at all require that a “B License” holder be “required to separately
12 and specifically be designated as a specialty licensee.” It simply states that a General Building
13 Contractor (a “B License” Holder) is a contractor who works structures “requiring in [their]
14 construction the use of more than two (2) unrelated building trades or crafts, or to do or superintend
15 the whole or any part thereof.” *Id.* There is nothing restrictive in that definition. The part that states
16 “more than two (2) unrelated building trades and crafts” instead means that a General Building
17 Contractor (a “B License” Holder), by definition, “is involved in using more than two (2) unrelated
18 building trades or crafts.” *Id.* There is also nothing in that section which discusses specialty
19 contracting requirements.
20

21 GIAA also cited 21 G.C.A. § 70107(b). That statute allows a contractor that holds one license
22 to obtain a license for a different category in addition to the license it currently holds. There is
23 nothing 21 G.C.A. § 70107(b) that requires an “A License” holder or a “B License” holder to also
24 obtain a license in a “C License” subclassification to do any work they are already licensed to
25 perform under their existing “A License” or “B License.” The fact an “A License” holder or a “B
26 License” holder may need to obtain licenses to do other work makes sense given that not all trades
27 and crafts listed in 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) are included in the list of trades
28

1 and crafts listed in 25 GAR Ch. 12 § 12106(a)(2) (“B Licenses”). Therefore, an A License Holder
2 who wishes to do work listed in the trades and crafts afforded by 25 GAR Ch. 12 § 12106(a)(2) (“B
3 Licenses”) and that are not included in the list located at 25 GAR Ch. 12 § 12106(a)(1) (“A
4 Licenses”) may also sign up and qualify for the additional “B License” to do that work also.
5

6 This interpretation also makes sense in the context of “C Licenses” because there are very
7 limited “C License” subclassifications that are not covered in the lists of trades and crafts covered
8 by 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) and 25 GAR Ch. 12 § 12106(a)(2) (“B Licenses”).
9 Important examples of these are the C-13 Electrical Contractor, C-37 Plumbing Contractor, and the
10 C-51 Warm Air Heating, Ventilating and Air Conditioning Contractor licenses (electricians,
11 plumbers, and HVAC contractors). These three licenses were identified by the IFB but are not
12 included in the lists found in 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) and 25 GAR Ch. 12 §
13 12106(a)(2) (“B Licenses”). Thus, if an “A License” holder wishes to also do electrical, plumbing,
14 or HVAC work, they must obtain a “C License” in that subclassification. The C-13 (Electrical
15 Contractor), C-37 (Plumbing Contractor), and C-51 (Warm Air Heating, Ventilating and Air
16 Conditioning Contractor) are the only C License subclassification trades and crafts that are not
17 included in the list of licenses specified by GIAA in the IFB. Because PFM did not have a C-13
18 (Electrical Contractor), a C-37 (Plumbing Contractor), or a C-51 (Warm Air Heating, Ventilating
19 and Air Conditioning Contractor) license, it subcontracted that work to another company that had
20 those specialty licenses: Guam Pacific Mechanical & Electrical, LLC.
21
22
23
24

25 The rest of the C License category trades and crafts listed by GIAA in the RFP are included
26 in the lists of trades and crafts found in 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”) and 25 GAR
27 Ch. 12 § 12106(a)(2) (“B Licenses”). The overlap between the trades and crafts required by the IFB
28 and the trades and crafts listed under 25 GAR Ch. 12 § 12106(a)(1) (“A Licenses”), 25 GAR Ch. 12

§ 12106(a)(2) (“B Licenses”), and 25 GAR Ch. 12 § 12106(a)(3) (“C Licenses”) is shown in the following table:

Table 1: Trades Overlap Table

25 GAR §12106(a)(1) General Engineering Contractor “A License”	25 GAR §12106(a)(2) General Building Contractor “B License”	25 GAR §12106(a)(3) Specialty Contractor “C Licenses”
Cement Concrete	Cement Concrete	C-8 Cement Concrete Contractor
		C-13 Electrical Contractor
		C-37 Plumbing Contractor
Reinforcing Steel	Reinforcing Steel	C-41 Reinforcing Steel Contractors
	Roofing Contractor	C-42 Roofing Contractor
Structural Steel	Structural Steel	C-48 Structural Steel Contractor
		C-51 Warm Air Heating, Ventilating and Air Conditioning Contractor
Water Proofing	Waterproofing	C-55 Waterproofing Contractor
Welding	Welding	C-56 Welding Contractor

This also means GIAA’s claim that PFM was somehow acting in violation of 21 GCA § 70108(a) completely inapplicable to this matter. PFM was not advertising as a specialty contractor without a license when it submitted its bid. PFM was acting well within the trades and crafts afforded to it under 25 GAR §12106(a)(1) as an “A License” holder and the trades and crafts afforded to it under 25 GAR §12106(a)(2) as a “B License” holder (as shown in the table above) when it submitted its bid. PFM also made clear that its subcontractor, Guam Pacific Mechanical & Electrical, LLC, was the entity that held the necessary C-13, C-37, and C-51 licenses because it also submitted the CLB license of Guam Pacific Mechanical & Electrical, LLC.

If GIAA’s interpretation of the law is to be believed, then “A License” and “B License” holders have no real authority to perform any contracting work at all. They would be required to obtain “C License” subclassifications to do any work under their “A Licenses.” That is an absurd interpretation. For example, it would mean that a General Engineering Contractor (an “A License” holder), who under the definition of “General Engineering Contractors,” is a “contractor whose principal contracting business in connection with fixed works requiring specialized engineering

1 knowledge and skill, including ... hydroelectric projects ... airports and airways ... power plants
2 and other utility plants and installations ... and cement and concrete works in connection with the
3 above-mentioned fixed works” is required to obtain a C-8 Cement Concrete Contractor license to
4 perform cement and concrete works, which they are statutorily defined to be able to perform. *See* 21
5 GCA § 70106(b) (“cement and concrete works in connection with the above-mentioned fixed
6 works”). Again, this would be an absurd result.
7

8 **D. “A LICENSES”, “B LICENSES”, AND “C LICENSES” ARE NOT EXCLUSIVE. THE CLB RULES
9 DO NOT DISTINGUISH BETWEEN THREE LISTS OF LICENSES, THEY ONLY DISTINGUISH
10 BETWEEN WHAT SKILLS AND CRAFTS MAY BE PERFORMED UNDER EACH LICENSE AND
11 THOSE SKILLS AND CRAFTS OVERLAP GREATLY.**

11 There is a great deal of overlap between the lists of trades and crafts found under under 25
12 GAR Ch. 12 § 12106(a)(1), (2), and (3). Part of this overlap is shown in “Table 1: Trades Overlap
13 Table” above, which shows the overlap only involving the licenses specified in the IFB.
14

15 The full overlap between the 25 GAR Ch. 12 § 12106(a)(1), (2), and (3) is far more extensive.
16 It is with this context in mind that 25 GAR Ch. 12 § 12107(a)(4) must be understood. Title 25 GAR
17 § 12107(a)(4), states that:

18 (4) Any person who qualifies by written examination after the effective date of
19 these rules for a contractors license in the general engineering contractor
20 classification shall automatically be deemed to hold or be qualified for a license in
21 the specialties listed under §12106(a).

22 The fact that there is overlap between the trades and crafts specified in 25 GAR Ch. 12 §
23 12106(a)(1), (2), and (3) is exactly why this section exists. There would be no reason for a contractor
24 to take a separate examination or apply for a separate “C License” for a trade or craft that is already
25 subsumed in the list of trades and crafts included in the “A License” or “B License” the contractor
26 has already obtained. To do so would be redundant. This is exactly why when PFM submitted copies
27 of its “A License” and its “B License” that there was no need for it to submit a copy of “C Licenses”
28

1 for the categories of trades and crafts it was already licensed to perform under its “A License” and
2 “B License”. To do so would be redundant, because it is already licensed to do that work (see “Table
3 1: Trades Overlap Table”) and, under 25 GAR § 12107(a)(4), it is already deemed to hold a license
4 in those C License subclassifications.
5

6 Further, 25 GAR Ch. 12 § 12107(a)(4) cites to the broader 25 GAR Ch. 12 § 12106(a), not
7 the specific 25 GAR Ch. 12 § 12106(a)(1), (2), and (3). This supports PFM’s interpretation of how
8 this statute should be read.
9

10 **E. TITLE 25 GAR § 12107(b)(4) IS NOT PROOF A SEPARATE LICENSE IS REQUIRED FOR B
11 LICENSE HOLDERS TO DO SEPARATE WORK, IT IS CONFIRMATION THAT B LICENSE
12 HOLDERS DO NOT NEED A SEPARATE C LICENSE TO PERFORM HOME IMPROVEMENT
13 AND RENOVATION WORK**

14 GIAA cites 25 GAR § 12107(b)(4) for the position that “A License” holders and “B License”
15 holders “are still required to obtain specialty C licenses to perform work requiring such licenses with
16 specific and limited exceptions.” GIAA’s decision to cite 25 GAR § 12107(b)(4) is curious given
17 than this section explicitly states that a General Building Contractor (a “B License” holder) “**need**
18 **not** have a C-30 Limited Home Improvement and Renovation contractor’s license to engage in home
19 improvement and renovation contracting in their own field.”

20 The fact 25 GAR § 12107(b)(4) explicitly emphasizes that a General Building Contractor (a
21 “B License” holder) need not have a C-30 Limited Home Improvement and Renovation “C License”
22 makes sense given that the definition of a General Building Contractor (a B License holder)
23 specifically defines it include principal contracting work in connection with any structure built for
24 the support, shelter, and enclosure of persons, chattels, or moveable property:
25

26 (c) A General Building Contractor is a contractor whose principal contracting
27 business is in connection with any structure built, being built or to be built, for the
28 support, shelter and enclosure of persons, animals, chattels or movable property of
any kind, requiring in its construction the use of more than two (2) unrelated
building trades or crafts, or to do or superintend the whole or any part thereof.

1 Why would a contractor already licensed to do work under a “B License” in connection with
2 any structure built for the support, shelter, and enclosure of persons, chattels, or moveable property
3 also need a “C License” to undertake “Limited Home Improvement and Renovation?” It wouldn’t.
4 Such a license would be superfluous.
5

6 Thus, the language of 25 GAR § 12107(b)(4) does not support GIAA’s position at all. It
7 supports PFM’s argument that “A License” and “B License” holders should be allowed to perform
8 work they are licensed to perform without needlessly obtaining redundant “C Licenses.”
9 Specifically, this language supports the argument made by PFM in Section A above that PFM is
10 licensed to do all the work required by the RFP because it is a licensed General Engineering
11 Contractor (an “A License” holder) and therefore is already licensed to perform contracting work
12 “in connection with fixed works requiring specialized engineering knowledge and skill, **including**
13 **... airports and airways.**” 21 GCA § 70106(b) (emphasis added). Because GIAA is a licensed
14 General Engineering Contractor, it does not need any additional “C Licenses” to do work at airports.
15 Any of those licenses are unnecessary and redundant because it is already licensed to do that type of
16 work. Any determination by GIAA that PFM is not licensed to perform work on airports and airways,
17 including those within the purview of the Guam International Airport Authority is thus contrary to
18 Guam law.
19

20
21
22
23 **F. REQUIRING BIDDERS TO HOLD ALL CONTRACTOR LICENSES LISTED BY THE**
24 **SOLICITATION AT THE TIME OF BID SUBMISSION LIMITS COMPETITION IN**
25 **CONTRAVENTION OF GUAM LAW.**

26 GIAA’s position that an agreement must be signed at bid submittal and that PFM signed the
27 agreement is baseless. The agreement itself does not set an immediate effective date and, in fact, it
28 does not. The effective date of the agreement, because none is explicitly stated, is defined as the date
the agreement is signed and delivered by the last of the parties to sign and deliver.

1 1.37 EFFECTIVE DATE OF THE AGREEMENT. The date indicated in the
2 Agreement on which it becomes effective, but if no such date is indicated, it means
3 the date on which the Agreement is signed and delivered by the last of the parties
to sign and deliver.

4 *See* IFB No. GIAA-C07-FY24, General Provisions, page 4 of 57.

5 Given that the agreement is not effective as of the date the bid is submitted, there is no reason
6 for a contractor to hold all licenses on the date it signs the agreement, particularly if GIAA is insisting
7 on the needless formality of a contractor obtaining a paper license to show it can do work it is already
8 licensed to perform under its existing licenses.

10 GIAA's needless and superfluous requirement that a contractor have a paper license for all
11 C License subspecialties for work that it and its subcontractors are already licensed to perform does,
12 in fact, violate the policy that Guam procurement law must be interpreted to "foster effective broad-
13 based competition within the free enterprise system" and to "provide increased economy in territorial
14 activities and to maximize to the fullest extent practicable the purchasing value of public funds of
15 the Territory." *See* 5 GCA §§ 5001(b)(5) and (6). Specifications should further seek to "encourage
16 competition" and "shall not be unduly restrictive." 5 GCA § 5265.

19 Rather than following this policy, GIAA rejected bidders who did not submit paper copies of
20 "C Licenses" for work their "A Licenses" and "B Licenses" already authorized them to perform at
21 the time of bid submission. That unduly and unnecessarily limits competition. Requiring licensure
22 at bid submission only enables parties who have gone through the full licensing process to bid, rather
23 than expanding competition to parties who are capable, yet have not yet expended the cost to pay
24 for an additional and needless C License, despite already being licensed to do the work.

26 Requiring needless and superfluous paper licenses for all C License subspecialties for work
27 that bidders and their subcontractors are already licensed to perform also violates another section of
28

1 Guam's procurement law that is meant to protection competition by requiring that specifications
2 seek to promote overall economy and encourage competition in satisfying Guam's needs without
3 being unduly restrictive. *See* 5 GCA § 5265 ("All specifications shall seek to promote overall
4 economy for the purposes intended and encourage competition in satisfying Guam's needs, and shall
5 not be unduly restrictive.").

7 GIAA has failed to provide for increased economy in territorial activities and maximize the
8 purchasing value of local funds in how it has interpreted Guam's procurement law. GIAA's failure
9 to abide by the policies and principals of Guam procurement law and 5 GCA § 5265 are
10 demonstrated by the fact that GIAA now seeks to vigorously defend its award of this contract to a
11 bidder who submitted a bid that is so much higher than the two other bids that were submitted for
12 this IFB:
13

14 Notably, Core Tech International Corporation's bid was nearly three times the amount of the
15 lowest bid. The fact the two lowest bidders, who bid so much lower than the winning bidder, were
16 dismissed on the technical requirement cited by GIAA alone, shows how the IFB was not issued and
17 awarded with the intent to provide increased economy in territorial activities and maximize the
18 purchasing value of local funds or encourage competition in satisfying Guam's needs.
19
20

21 **RULING REQUESTED**

22 PFM respectfully requests that the Office of Public Accountability ("OPA") issue an order
23 declaring the following:
24

25 1. That PFM submitted proof of valid Contractor's license showing that it held licenses
26 in all required categories;

27 2. That Core Tech International Corporation was not the lowest responsive and
28 responsible bidder;

