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Attorneys for the Government of Guam

RECEIVED
 OFFICE OF THE PUBLIC AUDITOR
 PROCUREMENT APPEALS

OCT 05 2009

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 FILE No. OPA-PA 09-007

BEFORE THE OFFICE OF THE PUBLIC AUDITOR
Procurement Appeal

IN THE APPEAL OF:)	DOCKET NO. OPA-PA 09-007
)	
GUAM EDUCATION FINANCING)	
FOUNDATION, INC.)	
)	<u>AGENCY REPORT</u>
)	[2GAR§§12104(c)(3) & 12105]
Appellant.)	
)	
)	

On November 18, 2008 the Department of Public Works (“DPW”) published its Request for Proposal for Construction of the New John F. Kennedy High School Finance, Demolition, Design, Build, Maintain and Leaseback (FDDBML) Part I and II, Project No. 700-5-1020-L-TAM (“RFP”). Proposals were due to be submitted in response to the RFP by January 8, 2009.

Three responsive proposals were received by DPW; those being from the International Bridge Corporation (“IBC”), the Guam Education Financing Foundation, Inc. (“GEFF”), and the Guam Community Improvement Foundation, Inc. (“GCIF”). As provided in the RFP, the three responsive proposals were evaluated by an evaluation committee made up of representatives of DPW, the Department of Education (“DOE”) and the Guam Economic Development Authority (“GEDA”). The RFP set out the evaluation factors upon which proposals would be assessed, weighting those evaluation

COPY

1 factors based on the importance assigned to each factor by DPW (with input on these
2 weightings by DOE and GEDA) at the time the RFP was originally developed.

3
4 An evaluation committee made up of four representatives from DOE, two
5 representatives from DPW and one representative from GEDA evaluated the three
6 proposals on January 15, 2009. Each of the three proposals was found to be responsive
7 and complete per requirements of the RFP. Each proposal was evaluated according to the
8 weighted values assigned to the criteria established in the RFP. See **Exhibit D-1** and **D-4**,
9 attached. The results of the evaluation committee, once tallied, awarded IBC 628 points
10 out of a possible 700; GEF 621 points out of a possible 700; and GICF 606 points out of
11 a possible 700. See **Exhibit D-2**.

12 Letters to the offerors announcing the results of the evaluation process were sent to
13 the three offerors on March 4, 2009. See **Exhibit E-5**. Prior to the release of these letters,
14 and subsequent to the actual evaluation and ranking of the proposals, the Director of DPW
15 exercised his prerogative to enter into pre-negotiation discussions between himself, the
16 evaluation committee (which would ultimately become the negotiation committee), the
17 administrator of GEDA, and IBC, to assure himself that he understood the offer being
18 made by IBC. Communications concerning the pre-negotiation discussions can be found at
19 **Exhibits E-1 through E-4**. Once satisfied that the proposal of IBC met the criteria
20 required by the RFP, and was in the best interest of the Territory of Guam, the Director of
21 Public Works commenced negotiations with IBC.

22 The negotiations with IBC were conducted between March 2009 and August 2009,
23 resulting in 1) a finalization of the design of the new John F. Kennedy High School, and
24 the cost of the school; 2) a finalization of the collateral equipment to be installed, and the
25 cost of this equipment; 3) a finalization of the agreement with IBC on the maintenance and
service obligations for the new John F. Kennedy High School, and the cost for such, for
the thirty year term of the lease arrangement; 4) a finalization of the ground lease and
lease-back agreements between the government and IBC for the thirty year term; and

1 finally, 5) the finalization of the financing, by IBC, for the cost of the new John F.
2 Kennedy High School, utilizing its proposed method of financing, tax exempt Certificates
3 of Participation. But for a protest being filed in this procurement on August 5, 2009, the
4 government of Guam was preparing to award the contract to IBC, and to execute the
5 numerous lease and related documents developed during these negotiations, once IBC had
6 placed the financing it had arranged for with a trustee bank agreed upon by all of the
7 parties, to include investors.

8 **I. GEFF asserts that the school proposed to be built by IBC is considerably**
9 **smaller than the school required by the RFP, required by Law, and offered by**
10 **GEFF.**

11 This assertion by GEFF is simply incorrect and is apparently based upon
12 information that is inaccurate. This is not surprising since the three offers are confidential,
13 as are the negotiations that have occurred between the government of Guam and IBC since
14 after the evaluation of the offers on January 15, 2009. In fact, the proposed school to be
15 built by IBC pursuant to its offer and subsequent negotiations is more than two hundred
16 and thirty thousand square feet (> 230,000 sq. ft.). See, **Exhibit E-4**. This is equivalent in
17 size to the school being offered by GEFF.

18 As a result, any comments by GEFF to a price per square foot, and an analysis
19 based upon the price per square foot are incorrect. Furthermore, the RFP did not ask for,
20 and the evaluation committee did not assess, a price per square foot for any of the three
21 offers. This was not a criterion established in the RFP. As such, price per square foot is
22 not a criterion that is appropriate to be considered in determining whether or not this
23 procurement has violated Guam Procurement Law or procedure.

24 **II. GEFF asserts that its offer is dramatically lower than the offer of IBC, and**
25 **should have earned it the opportunity to negotiate with the Government.**

1 GEFF's assertions concerning the offer by IBC to build John F. Kennedy High
2 School are inaccurate and based upon incomplete or incorrect information. As above, the
3 information about the IBC offer is confidential and, I presume, unknown to GEFF.
4 Further, GEFF's information about the negotiations between IBC and the government are
5 confidential and, I presume, unknown to GEFF.

6 In fact, the price offered by IBC to build the new John F. Kennedy High School
7 was lower than the price offered by GEFF. See, **Exhibit G-1** and review the offers made
8 by GEFF and IBC filed as proprietary procurement records in *In the Matter of Guam*
9 *Community Improvement Foundation, Inc.*, OPA-PA-09-005 on September 8, 2009.
10 Further, in a procurement of professional services, as in this one, that seeks the financing,
11 design, build, maintenance and lease-back of a school, the evaluation of the proposals, and
12 the ultimate selection of the entity to enter into a contract with is not based upon price
13 alone, but comprises the evaluation of other factors and considerations beyond just cost.
14 Those factors were clearly set out in the RFP and were fairly applied to each proposal by
15 the seven-person evaluation team. 2 GAR Div. 4, §3114(2).

16 GEFF did well in this evaluation process, scoring 88.7% (621 out of 700 points).
17 IBC did better, scoring 89.7% (628 out of 700 points). Consistent with Guam
18 procurement law, IBC earned the right to negotiate with the government for the award of
19 this contract. 5 GCA § 5216(e). In addition, in order to assure himself that IBC's offer
20 was consistent with the RFP, and to assure that negotiations with IBC would be useful, the
21 Director of Public Works entered into pre-negotiation discussions with IBC, assuring
22 himself that negotiations should commence with IBC. This is consistent with Guam
23 procurement law. 5 GCA §5216(d).

24 Ultimately, the price to be paid for professional services, procured as a result of a
25 Request For Proposal, as here, is determined in the negotiations that occur after the
evaluation and ranking of proposals. Those negotiations, although very close to
completion as of August 5, 2009, have not been completed. The procuring officer, in this

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1 collateral equipment (and does not know what IBC has negotiated), has not negotiated an
2 agreement on capital reserves and capitalized interest for 2010 and 2011 (and does not
3 know what IBC has negotiated). Of most importance, GEFF has not gone to the market
4 with these agreements and located the money necessary to fund the entire package. So,
5 although it is very likely that GEFF could have accomplished all of these things with the
6 government (after all, it had done so successfully in the past), the bottom line is, it did not
7 accomplish them and can not fairly state that it could do it for less money!

8 Only IBC has accomplished these steps toward an award. There can be no
9 comparison of what GEFF says it could have done with what IBC has actually
10 accomplished. There is simply nothing to compare. Further, Guam procurement law does
11 not require or allow such a comparison. Only one offeror enters into negotiations with the
12 government after the evaluation of proposals. Only after those negotiations fail, does the
13 government take up the second highest rated proposal in line. 5 GCA §5216(e).

14 The negotiations with IBC have not failed. In fact, the negotiations were
15 succeeding until stayed by protests in this matter. A review of the record will demonstrate
16 that the offer of IBC, and the negotiations that were proceeding from that offer were
17 consistent with the RFP, and consistent with Guam Procurement Law.

18 **Conclusion.**

19 The allegations raised by GEFF are necessarily based upon incomplete and
20 inaccurate information. This is so because all of the allegations are based upon
21 information or material that is not available to GEFF. The task of the Public Auditor in
22 this appeal is to review the record, much of which is not available to GEFF, and determine
23 three basic questions:

- 24 1) Is the proposal as submitted by IBC responsive to the RFP?

1 2) Was the evaluation process that commenced, and that resulted in a rating of the
2 three proposals, conducted consistent with the RFP and Guam procurement law?

3
4 3) Have the negotiations between IBC and the government of Guam been
5 conducted consistent with Guam procurement law, resulting in a series of agreements that
6 are consistent with the RFP, leading to production of a contract that is consistent with the
7 RFP and Guam procurement law?

8 The Department of Public Works and its partners, Department of Education and
9 the Guam Economic Development Authority, respectfully assert that the answer to each
10 question is 'yes'. This appeal should be dismissed and the procurement should be
11 permitted to proceed to conclusion.

12 Dated this 5th day of October, 2009.

13 OFFICE OF THE ATTORNEY GENERAL
Alicia G. Limtiaco, Attorney General

14 By: 
15

16 JOHN WEISNEBERGER
Assistant Attorney General

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**BEFORE THE GUAM PUBLIC AUDITOR
PROCUREMENT APPEAL**

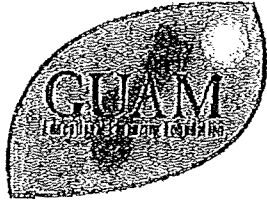
EXHIBIT LIST

<u>Exhibit</u>	<u>Description</u>	<u>Date</u>
A	Copy of the Protest. Letter to Mr. Lawrence P. Perez Re: Procurement Protest of the Request for Proposals for Project No. 700-5-1020-L-TAM Issued By Guam Department of Public Works Concerning the Redevelopment of JFK High School	8/13/09
B1	A copy of the Offer submitted by Appellant, Guam Education Financing Foundation, Inc., and a copy of the offer that is being considered for award, that by International Bridge Corporation	9/8/09
B2	A copy of the Offer submitted by Appellant, Guam Education Financing Foundation, Inc., and a copy of the offer that is being considered for award, that by International Bridge Corporation	9/8/09
C	Request for Proposal. Construction of the New John F. Kennedy High School School Finance, Demolition, Design, Build, Maintain and Leaseback (FDDBML) Part I and II Project No. 700-5-1020-L-Tam	11/18/08
D1	Blank Evaluation Form Request for Proposal Construction of New John F. Kennedy High School Finance, Demolition, Design, Build, Maintain, Leaseback (FDDBML) Part 1 Project No. 700-5-1020-L-TAM	
D2	Tally Form Construction of the New John F. Kennedy High School School Finance, Demolition, Design, Build, Maintain and Leaseback (FDDBML) Part I and II Project No. 700-5-1020-L-Tam	
D3	Memorandum to Evaluation Committee, Department of Public Works from Lawrence P. Perez, Director Re: Request for Proposal Construction of the New John F. Kennedy High School Finance, Demolition, Design, Build, Maintain, and Leaseback (FDDBML) Project No: 700-5-1020-L-TAM	1/7/09
	Memorandum to Andrew Leon Guerrero, Chairperson, JFK-RFP From John F. Calanayan, Facilitator Re: Substitute Evaluator	1/15/09

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<u>Exhibit</u>	<u>Description</u>	<u>Date</u>
D4	Completed Evaluation Forms	1/15/09
E1	Letters to Offerors Informing Them of Ranking and Letter To Best Qualified Offeror Inviting Negotiations	1/16/09
E2	Memorandum to GEDA from DPW Re: Financial Feasibility Analysis	No Date
E3	Letter to DPW from GEDA JFK RFP Financial Feasibility Analysis	2/3/09
E4	Letter to DPW from International Bridge Corporation Minutes of Negotiation Meeting and Term Sheet	No Date
E5	Memorandum Re: Negotiations	2/17/09
F	The decision from which Appeal is taken	9/8/09
G1	DPW Response to GEF Appeal	10/5/09
G2	GEDA Response to GEF Appeal	10/2/09
H	Not Applicable	
I	Declaration Re: Court Action	10/5/09

EXHIBIT A

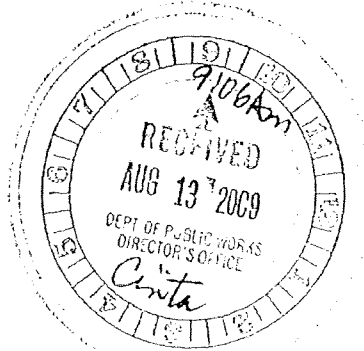


3060 Peachtree Road . Suite 1700 . Atlanta, GA 30305

office 404 . 504 . 2772 fax 404 . 504 . 2790

August 13, 2009

Mr. Lawrence P. Perez
Procurement Officer
Department of Public Works
542 North Marine Drive
Tamuning, Guam 96913



RE: Procurement Protest of the Request for Proposals for Project No. 700-5-1020-L-TAM Issued By Guam Department of Public Works Concerning the Redevelopment of JFK High School

Dear Mr. Perez:

The Guam Education Financing Foundation Inc. ("GEFF") is sending this Procurement Protest to contest the selection and continued negotiation with International Bridge Corporation ("IBC") as the party that was chosen "first to negotiate" under that certain RFP number 700-5-1020-L-TAM, as amended, which involved the redevelopment of JFK High School. While we have not been formally notified that we were not selected, by way of the Guam press, we have been informed that International Bridge Corporation ("IBC") was selected to negotiate first. To date, we are not aware of any final contract signing or development agreement with IBC, and we believe given the events that have come to light in the past 3 days, a protest of IBC's selection is warranted and, by this letter, timely filed.

We understand that the third bidder, Core Tech International, Inc. ("Core Tech"), through its affiliated special purpose entity, the Guam Community Improvement Foundation ("GCIF"), has also protested this award, but we are not privy to the text of their protest, so felt compelled to present our protestation separately.

We protest the selection of IBC for the following reasons:

1. **Substantial Price Increase.** Through information presented in the Guam press, we understood that IBC had presented a cost to redevelop JFK High School that was lower than GEFF's original proposal. We were surprised by this fact given our recent experience with school development and financing, and we suspected that they did not have a fully-priced proposal. While we are not privy to their original RFP submittal, we understood that IBC originally proposed an all-in cost of under \$38 million to redevelop JFK. We now have a copy of the preliminary Official Statement that has been issued by Piper Jaffray & Co. for Guam D.O.E. dated July 29, 2009 (the "Official Statement") and it calls for financing in the total amount of \$69 million. This amount is



nearly double IBC's original proposed price and \$11 million more than our original proposed development cost which included all design fees, soft costs, reserves, capitalized interest and financing expenses. The Official Statement is prepared by the Government of Guam, verified by underwriters and is reviewed and approved by numerous attorneys for accuracy and meeting required disclosures as required by SEC regulations, therefore we believe the numbers presented therein are accurate. From GEPF's standpoint, it doesn't seem like a good faith proposal to bid one number to get selected first and "negotiate" an increase to a number that is \$11 million higher than the next highest proposal and still be hired to complete the work. When comparing deliverables, this equates to a price per foot that is actually twice as much as our bid. (See Section 2 below). To support these facts, we refer to our original RFP submittal and the Official Statement, the relevant pages of which are attached as Exhibit A, and the full version is also included.

2. **Non-Conforming Deliverables.** The Official Statement indicates that IBC will need \$69 million to build and finance 120,000 square feet of new space and renovate 24,000 square feet of existing space. The RFP required that the new school be enlarged to accommodate 2,210 high school students (See Section 3 of the RFP, Technical Requirements, 1,700 students plus 30% growth factor = 2,210). At 144,000 square feet, this is only 65 square feet per student, which would be grossly undersized to meet the required capacity. Our proposal, which we would build for \$11 million less than IBC new cost numbers, included 190,000 square feet of new space and 46,000 square feet of renovated space for a total usable area of 236,000 square feet, nearly 100,000 more square feet than IBC's proposal. By way of comparison, at Okkodo High School, we designed and built 135,000 square feet for a school capacity of 1,200 students, or 112 square feet per student. Our JFK RFP response, given the much larger capacity required than Okkodo, included 236,000 square feet at \$58 million equating to \$245 per foot. IBC's current pricing would cost \$479 per foot, approximately twice as much on a cost-per-square-foot basis.
3. **Failure to Provide Financing.** The original RFP required all bidders to provide financing as well as construction and design services and evidence of financing was to be weighted at 70% of the decision criteria for selecting a bidder. We understand that IBC's original proposal required GovGuam to provide a AAA guarantee in order for IBC to provide financing. At the time proposals were submitted in January, there were no AAA guarantors operating in the Guam financial markets and GovGuam does not have a AAA credit rating. Even if there were such a guarantor, they would never provide their credit enhancement or insurance to a transaction of this type. Moreover, the RFP did not provide or contemplate any financial guarantees from GovGuam. If GovGuam were able to provide a AAA guaranty, we could have reduced our cost by several million dollars. While any firm can source financing



backstopped by a AAA guarantee, this requirement was completely unrealistic, unavailable and IBC's bid should have been rejected as non-conforming, as certainly, requiring a AAA guaranty would not satisfy the requirement of providing financing. In fact IBC's proposal, as we understand, did not even include a financing source or underwriting commitment. If the ability to provide financing was 70% of the weighting, how could IBC's score exceed that of bidders who were prepared to provide financing as the RFP required? Because the bid process is still ongoing, we do not have access IBC's original proposal, so DPW and the Auditor's office will need to confirm the items and pricing we believe were included therein.

In the 7 months since the RFP responses were submitted, we understand that IBC has tried and failed to source the financing, and eventually GEDA has stepped in to assist, but to date no financing has been provided or closed. It is now time to disqualify the IBC proposal. We believe that our protest is timely filed because only recently did new and factual information surface as to IBC's project cost, scope of work (the Official Statement is dated July 29, 2009 and was just made publicly available) and by the passage of time, confirmation of their inability to deliver financing. To determine otherwise would allow all procurement to be immune from appeal if the procuring officer simply waited 6 months after selection to change the terms and select a higher cost bidder, or accept a non-qualifying proposal.

Requested Remedy.

We have questioned the selection of IBC to rebuild JFK from the start and we have continued to question why the process of documenting the transaction has taken so long when timing was a major driver in the RFP. We questioned IBC's initial cost numbers as an impossibility given the student capacity requirements of the RFP, and we knew that a AAA guaranty was not available. While we can't explain why the JFK selection committee has chosen to overlook these and other fundamental flaws in IBC's proposal, we believe it is a miscarriage of fairness and justice to allow a firm with higher cost, inadequate deliverables and no financing to be awarded the project, especially in consideration of the disparate financial impact on the taxpayers of Guam. GovGuam has spent 7 months trying to make the IBC proposal work. Given the time sensitivity and the disruption on JFK students, we agree with Mr. Cunliffe, Core Tech's attorney, and JFK's principal, that it makes most sense to disqualify IBC's proposal and their current pricing, and award the project to GEF, the next highest-ranked bidder. GEF has proven its ability to generate it's own financing and our costs were materially lower than both Core Tech and what IBC is now proposing. We have pre-negotiated documents and the ability to move forward quickly. We don't believe it is in the best interest of GovGuam to start the RFP process all over again as we believe we can still meet the original requirements of the RFP at substantially similar terms and structure as originally presented. We don't believe the RFP was flawed, only the selection of a firm that has not held its price, is charging almost \$500 per foot to build, and has not met the fundamental terms of the RFP.



While we have strongly disagreed with the way the process has gone to date, in the interest of JFK students and getting a school built quickly, we have hesitated to intervene in the process with protestations, especially absent some substantiation of the rumors that have circulated to date. Given the existence of the Core Tech protest and inherent delays and the confirmation of facts from the Official Statement, we felt it prudent to also present our case and protest this selection if the matter is already under consideration.

We look forward to your decision in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Hand". The signature is fluid and cursive, with a large loop at the end.

John R. Hand,
President

CC: Office of The Guam Public Auditor



Exhibit A

Excerpts from the Official Statement

PRELIMINARY OFFICIAL STATEMENT DATED JULY 29, 2009

NEW ISSUE—FULL BOOK-ENTRY

RATING: S&P "B"

In the opinion of Orrick, Herrington & Sutcliffe LLP and William L. Zvara, P.A., Co-Special Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest evidenced and represented by the Certificates, paid by Lessee and received by the Owners thereof is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986. In the further opinion of Co-Special Counsel, interest evidenced and represented by the Certificates, paid by Lessee and received by the Owners thereof is not a specific preference item for purposes of the federal individual or corporate alternative minimum tax, nor is it included in adjusted current earnings when calculating corporate alternative minimum taxable income. Co-Special Counsel express no opinion regarding any other tax consequences related to the ownership or disposition of the Certificates, or the accrual or receipt of interest evidenced and represented by the Certificates, including in particular any payments received with respect to the Certificates following termination of the Lease due to the failure of Lessee to appropriate rental payments. See "TAX MATTERS" herein.

\$69,030,000*

SERIES 2009A CERTIFICATES OF PARTICIPATION

(John F. Kennedy High School Project)

Evidencing and Representing the Proportionate Interests

of the Registered Owners thereof in Base Rental payments to be made by

DEPARTMENT OF EDUCATION, GOVERNMENT OF GUAM

Dated: Date of Delivery

Due: December 1, as shown below

This official statement contains information relating to the above-referenced certificates of participation (the "Certificates"), each of which represents a fractional undivided interest in rental payments ("Base Rentals") to be paid by the Department of Education, a department of the executive branch of the Government of Guam ("Lessee") under a Lease Agreement, dated as of August 1, 2009 (the "Lease"), by and between Lessee and CaPPA Capital Corp. 2009A, a not-for-profit corporation organized under the laws of the State of Florida ("CaPPA" or "Lessor"). The obligation of Lessee to pay Base Rentals under the Lease is payable from any amounts appropriated by the Guam Legislature for the purpose of making payments of Base Rentals and Additional Rentals (as described herein) under the Lease, and any amounts held in the funds and accounts established pursuant to the Trust Agreement, dated as of August 1, 2009 (the "Trust Agreement"), by and between U.S. Bank National Association, as trustee (the "Trustee") and Lessor, and available to pay amounts due under the Lease. See "SECURITY FOR THE CERTIFICATES" herein.

The proceeds of the sale of the Certificates will be used to (i) finance the demolition, acquisition, construction and installation of facilities comprising the new John F. Kennedy High School to be located in Guam and to be leased to Lessee by Lessor pursuant to the Lease (the "Project"), (ii) fund a debt service reserve fund to be held under the Trust Agreement, (iii) fund capitalized interest for the Certificates to and including December 1, 2011, and (iv) pay certain delivery costs of the Certificates.

Interest on the Certificates is payable semiannually on each June 1 and December 1, commencing December 1, 2009. Principal, prepayment price of and interest on the Certificates will be payable initially to DTC by the Trustee. The Certificates are subject to prepayment as described in this Official Statement. See "THE CERTIFICATES—Prepayment of the Certificates" herein.

The Certificates are executed and delivered as book-entry Certificates, without coupons, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC") and will be available to ultimate purchasers ("Beneficial Owners") under the book-entry only system maintained by DTC through brokers and dealers who are, or act through, DTC Participants. Beneficial Owners will not be entitled to receive physical delivery of the Certificates. See "BOOK-ENTRY-ONLY SYSTEM" in Appendix F. Beneficial ownership of the Certificates may be acquired in denominations of \$5,000 or any integral multiple thereof. Capitalized terms used and not defined shall have the meaning given to such terms in "SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS" in Appendix D.

AN INVESTMENT IN THE CERTIFICATES INVOLVES CERTAIN RISKS, INCLUDING THOSE DESCRIBED HEREIN UNDER THE HEADINGS "INTRODUCTION," "SECURITY FOR THE CERTIFICATES," "GUAM FINANCIAL OPERATIONS" AND "CERTAIN INVESTMENT CONSIDERATIONS," IN APPENDIX A, AND ELSEWHERE IN THIS OFFICIAL STATEMENT. THIS COVER PAGE CONTAINS INFORMATION FOR REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

LESSEE SHALL NOT BE OBLIGATED TO PAY THE BASE RENTALS, EXCEPT FROM AVAILABLE FUNDS, AND THE FAITH AND CREDIT OF LESSEE IS NOT PLEDGED TO THE PAYMENT OF THE BASE RENTALS OR OTHERWISE TO THE PAYMENT OF THE PRINCIPAL, PREMIUM OR INTEREST WITH RESPECT TO THE CERTIFICATES. NEITHER THE OBLIGATION OF LESSEE TO PAY THE BASE RENTALS NOR THE CERTIFICATES CONSTITUTE A DEBT OF LESSEE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION.

LESSEE HAS NO OBLIGATION UNDER THE LEASE TO CAUSE THE GUAM LEGISLATURE TO APPROPRIATE MONEY FOR THE PAYMENT OF RENTALS. A TERMINATION OF THE LEASE WILL TERMINATE LESSEE'S RIGHTS OF USE AND OCCUPANCY OF THE PROJECT.

MATURITY DATES, AMOUNTS, INTEREST RATES AND PRICES OR YIELDS*

\$ 2,440,000*	___%	Term Certificates	Due December 1, 2014	Yield ___%	CUSIP# _____
\$ 5,625,000*	___%	Term Certificates	Due December 1, 2019	Yield ___%	CUSIP# _____
\$20,910,000*	___%	Term Certificates	Due December 1, 2029	Yield ___%	CUSIP# _____
\$40,055,000*	___%	Term Certificates	Due December 1, 2038	Yield ___%	CUSIP# _____

† CUSIP numbers have been assigned by an organization not affiliated with Lessor or Lessee and are included solely for the convenience of the public. None of Lessor, Lessee nor the Underwriter takes any responsibility for the accuracy of such numbers.

The Certificates will be offered when, as and if delivered by the Trustee and received by the Underwriter, subject to the approval of validity of Orrick, Herrington & Sutcliffe LLP and William L. Zvara, P.A., Co-Special Counsel in connection with the Certificates. Certain matters will be passed on for Lessee by the Attorney General of Guam, for Lessor by its counsel, Steven A. Rasmussen, Esquire, and for the Underwriter by its counsel, McCarriston Miller Mukai MacKinnon LLP, Honolulu, Hawaii. The Certificates, in book-entry form, will be available for delivery through DTC in New York, New York, on or about August __, 2009.

Piper Jaffray & Co.

Dated: _____, 2009

*Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

No Payment Obligation of Lessor

LESSOR WILL ASSIGN ALL ITS RIGHTS TO BASE RENTALS TO THE TRUSTEE. LESSOR SHALL NOT BE OBLIGATED TO PAY THE BASE RENTALS IN THE EVENT OF ANY DEFICIENCY IN BASE RENTAL PAYMENTS BY THE LESSEE. THE FAITH AND CREDIT OF LESSOR, THE CITY AND THE AUTHORITY IS NOT PLEDGED TO THE PAYMENT OF THE BASE RENTALS OR OTHERWISE TO THE PAYMENT OF THE PRINCIPAL, PREMIUM OR INTEREST WITH RESPECT TO THE CERTIFICATES. NEITHER THE ASSIGNMENT OF THE OBLIGATION OF LESSEE TO PAY THE BASE RENTALS NOR THE CERTIFICATES CONSTITUTE A DEBT OF LESSOR, THE CITY, THE AUTHORITY OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION.

THE PROJECT AND THE PRIVATE PARTICIPANTS

The information under this heading has been provided by Lessor. While the information is believed to be reliable, neither the Underwriter nor any of its respective counsel, members, directors, officers or employees has made any inquiry or review with respect thereto, has provided any of such information or makes any representations as to the accuracy or sufficiency of such information.

The Project

The Project will consist of the demolition of the existing John F. Kennedy High School ("JFKHS") and the acquisition, construction and installation of a new JFKHS facility, including site infrastructure and improvements and appurtenances attendant thereto. The existing JFKHS, located in Tumon, Guam, was built in 1958 and opened in September 1959 as Tumon Senior-Junior High School. JFKHS serves students from Tamuning, Hagåtña and portions of Dededo. In 2008, some of the existing JFKHS buildings were declared unsafe and, as a result, during the 2008-09 academic year, staff and students shared space with George Washington High School in separate sessions. During the 2009-10 academic year, it is anticipated that JFKHS will occupy an interim facility in Tiyan. The completion of the Project is expected to result in the restoration of JFKHS to its original campus location for the 2010-11 academic year. During the 2008-09 academic year, JFKHS had 2,131 enrolled students, an unusually low number attributable to the sharing of space with George Washington High School. During the 2007-08 school year, JFKHS had 2,494 enrolled students, and a similar number of enrolled students is expected for the 2009-10 academic year. The new JFKHS will have a maximum capacity of 2,700 enrolled students.

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. The structural system will be designed for the most stringent wind and seismic conditions, and will include pre-cast concrete walls; pre-cast concrete double-tees with reinforced concrete topping for the second floors, slabs and roof systems; and conventional cast-in-place, reinforced concrete, continuous spread footings.

The Developer will utilize a method of pre-cast concrete construction and finishing, in which separate work crews responsible for distinct elements of construction (e.g., foundations, pre-cast panel erection, windows/doors, painting, electrical, etc.) will work around the Site successively on one building module at a time, until each building is completed. This "work

train" approach facilitates schedule and quality control and is expected to allow the Developer to meet the requested completion schedule.

The concept for the new JFKHS as proposed is centered around a new "JFK Green Courtyard" that is a 200' x 200' square anchored at the entrance side by the Administration block, the gymnasium athletic center block located directly on the opposite side with the teaching blocks on the two respective sides. The "JFK Green Courtyard" features the amphitheatre and outdoor stage set off on one side with the large tree that remains as a symbol of the school's resilient community spirit.

Covered corridor walkways naturally ventilated will surround the courtyard. Stairs located at the four corners of the courtyard along with two elevators will provide access to the second floor. Secondary corridors and stairs will also provide access to classrooms. With smaller landscaped courtyards in the south teaching blocks, all classrooms will have access to both natural light and ventilation. There are five access and egress points to the school complex clearly located for security and monitoring purposes.

The cafeteria will be adjacent to the gym with food delivery service access off of the perimeter service access road. The library is located at the front of the school and is accessible from the main parking lot for ready community access.

In terms of sustainable design, the facility will include intelligent use of natural lighting and ventilation for reduced energy consumption, occupancy sensors for automated lighting control high efficiency lighting, air conditioning, and water heating equipment. In addition, green building practices will be utilized to incorporate shading, low water consumption fixtures, and the use of recycled materials.

The facility will be designed and constructed to comply with all applicable building laws, ordinances and codes.

Development and Construction

The total Project budget (the "Project Budget") is estimated at approximately \$44,119,000 (exclusive of construction monitor and project developer fees), as detailed more fully below. Construction is expected to begin immediately upon the issuance of the Certificates with anticipated completion of the construction of the Project as described below under "Estimated Project Costs and Completion Schedule." In order to meet its obligation to design and build the Project under the Lease, CaPFA will enter into the Project Development Agreement (the "Development Agreement") with International Bridge Corporation, an Ohio corporation registered to do business on Guam ("IBC" or the "Developer"). See "Development Team" below. Construction risk will be mitigated through the provision of a Guaranteed Maximum Price ("GMP") for the construction in the Development Agreement and the requirement of the Development Agreement that the Developer provide performance and payment bonds in an amount equal to the GMP. In addition, an independent construction monitor will monitor construction of the Project and approve disbursements from the Project Fund on behalf of Lessee.

Under the Development Agreement, the Developer has established dates for achieving substantial completion of the Project by the date nine months from the effective date of the Lease, or such later date to which Lessor and Lessee agree (the "Completion Date") and final completion on or before the date that is 60 days after the Completion Date, with no rights to

additional compensation in the event the Project Budget is exceeded and an obligation to pay for any amounts in excess of the Project Budget unless such excesses directly result from change orders to the final plans which are instituted or approved in writing by CaPFA as set forth in the Lease and the Development Agreement. The Developer will also serve as general contractor and construction manager for the construction of the Project. See "Development Team" below.

Under the Trust Agreement, CaPFA will retain the financial flexibility to cause additional certificates to be issued if necessary to address any unanticipated Project costs. See "SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS— Execution and Delivery of Additional Certificates" in Appendix D.

As required by the Lease, Lessee has approved or will approve the scope of work and the Project Documents (as defined in the Lease; see Appendix D) including the plans and specifications for the Project and the GMP for the Project, all of which are to be provided or caused to be provided by CaPFA.

Estimated Project Costs and Completion Schedule

CaPFA and the Developer will enter into the Development Agreement prior to the issuance of the Certificates. The Developer will agree to have the Project constructed and delivered nine months from the date of execution and delivery of the Lease within a Project budget of approximately \$44,119,000. The GMP under the Development Agreement will be consistent with the foregoing Project budget.

Development Team

The development team assembled for the Project consists of the Developer, the Program and Construction Manager, the Contractor, the Architect and the Engineer.

Developer

Prior to the issuance of the Certificates, CaPFA will enter into the Development Agreement with the Developer to develop the Project on a turnkey basis. The Developer will be responsible for the design and construction of the Project pursuant to the scope of work and plans and specifications agreed upon by Lessee and CaPFA. The Developer will coordinate the local agencies and manage the overall development process. The Developer will serve as both the program manager and construction manager to complete the designs and specifications and to oversee the construction of the Project pursuant to the Development Agreement. The Developer will also serve as the general contractor for the Project. The Developer will furnish labor, materials, equipment and supplies in such quantity and to cause contractors and sub-contractors to provide the manpower necessary to complete the construction of the Project in accordance with the schedule established by the Developer and agreed to in the Lease.

The Developer was founded in 1965 and headquartered in Guam in 1976. The Developer is a closely-held corporation with a governing Board of Directors and a management team comprised of experienced construction professionals, engineers and accounting/finance managers. The Developer is an established business on Guam, with extensive experience in heavy civil construction, infrastructure work, and large scale pre cast concrete construction and housing renovation projects on Guam as well as in the Commonwealth of the Northern Marianas, the Republic of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands.

EXHIBIT B1

EXHIBIT B-1 and EXHIBIT B-2.

A copy of the Offer submitted by Appellant, Guam Education Financing Foundation, Inc., and a copy of the offer that is being considered for award, that by International Bridge Corporation.

The offer of the appellant, Guam Education Financing Foundation, Inc., and the offer being considered for award, of the International Bridge Corporation, have been filed with the Office of the Public Auditor in that related case, *In the Appeal of Guam Community Improvement Foundation, Inc.*, Docket No. OPA-PA-09-005, on September 8, 2009.

Those offers, and the entire procurement record in *In the Appeal of Guam Community Improvement Foundation, Inc.*, is filed in this matter, being incorporated by reference pursuant to instruction by the Office of the Public Auditor. See, **Procurement Record Transmittal**, filed herein on September 25, 2009.

PROPOSAL FOR CONSTRUCTION OF NEW JOHN E. KENNEDY HIGH SCHOOL

JFK - MAINTAINING THE TRADITION OF LEARNING AND EXCELLENCE

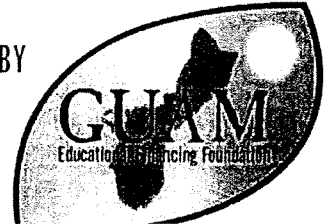
FINANCE, DEMOLITION, DESIGN, BUILD,
MAINTAIN & LEASEBACK

TO GOVERNMENT OF GUAM

PROJECT NO. 700-5-1020-LTAM

01.09

SUBMITTED BY





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PROCUREMENT APPEALS

SEP 25 2009

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FILE No. OPA-PA 09-007

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BEFORE THE PUBLIC AUDITOR
Procurement Appeal

IN THE APPEAL OF:)	DOCKET NO. OPA-PA 09-007
)	
GUAM EDUCATION FINANCNG)	
FOUNDATION, INC.)	Procurement Record Transmittal
)	
Appellant.)	
)	

Pursuant to 2 GAR Div. 4, Section 12104(c)(3), the Department of Public Works by and through its undersigned counsel, hereby designates the procurement record transmitted and filed in OPA-PA 09-005 as the procurement record in this matter, captioned above. By this reference, the Department of Public Works incorporates in this matter those non-proprietary and proprietary records transmitted to the Office of the Public Accountability on September 1, 2009, September 2, 2009 and September 22, 2009 in OPA-PA-09-005. Should additional portions of the procurement record come to the attention of DPW/Purchasing Agent it shall continue to promptly file these materials in further augmentation of the record. Pursuant to 2 GAR, Div. 4 §12104(c)(3) and 5 GCA §5252(b), request is hereby made to the Office of Accountability to treat the proprietary portions of these materials, clearly marked as such, as sensitive, holding them strictly confidential, subject to non-disclosure to all third parties directly or indirectly.

Dated this 25th day of September, 2009.

OFFICE OF THE ATTORNEY GENERAL
Alicia G. Lintiaico, Attorney General

By:

John Weisenberger
JOHN WEISENBERGER
Assistant Attorney General