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Appeal Number OPA-PA-09-007
Guam Education Financing Foundation
List of Issues
For Hearing on December 7, 2009

1. DPW alleges that they sent a letter announcing results of the selection committee on March 14, 2009. Such letter was never received by GEFF.
2. 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.
3. The AG claims that the Official Statement produced by GEDA and 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. This is not accurate since the \$69 million listed in the Official Statement is not less than GEFF's all-in cost of \$58 million. SEC regulations and specifically rule 15c2-12 require that Official Statements be distributed that accurately present all material facts. The underwriter would not distribute an Official Statement that has large and material inaccuracies regarding cost and scope of a project unless the Government of Guam fraudulently confirmed those inaccuracies.
4. The Official Statement 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 Official Statement but indicated that the school's external walkways and gym provided the necessary square footage to house 2,700 students. If the Official Statement states that IBC is constructing 144,000 square feet and they are really constructing 233,000 then it constitutes a material misstatement of fact.
5. Naturally ventilated covered walkways should not be counted as educational square footage. Their cost of construction is much lower.
6. DPW asserts 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 design fees, soft costs, financing costs, capitalized interest and prudent reserves for debt service and Insurance and Maintenance cost increases in its \$58.8 million proposal and GEFF stands by those numbers today.
7. The AG alleges that GEFF has not "gone to the markets with these (financing) agreements". In fact, GEFF developed the form of the agreements used in financing the first municipal lease transaction and we

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closed a subsequent transaction with similar agreements in November 3, 2008. So we have gone to the market with these agreements and our underwriter Merchant Capital is in the market every day.

8. DPW alleges that IBC's compensation is fair and equitable. GEFF contends that paying lease payments to IBC which are \$97 million too much over the term of the lease is excessive.
9. When IBC's costs became substantially higher than GEFF DPW should have begun negotiations with GEFF.