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Office of the Attorney General

Alicia G. Limtiaco

Attorney General of Guam

Civil Division

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www.guamattorneygeneral.com

Attorneys for the Department of Public Works

BEFORE THE GUAM PUBLIC AUDITOR
Procurement Appeal

IN THE APPEAL OF:)	DOCKET NO. OPA-PA 09-007
)	
GUAM EDUCATION FINANCING)	DECLARATION OF SUBSTANTIAL
FOUNDATION, INC.)	INTEREST
)	
Appellant.)	
)	
)	

Attached hereto is the Declaration of Substantial Interest of Lawrence P. Perez, Director of the Department of Public Works containing his 5 GCA 5125(g)(3) determination. This Declaration is accompanied by Exhibits A, B, C, D, E, F and G which are incorporated by this reference into the Declaration of Substantial Interest.

Filed contemporaneously herewith is a proposed Confirmation of the Substantial Interest of the Territory for issuance by Doris Flores Brooks, Public Auditor of Guam.

Dated this 2nd day of October, 2009.

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

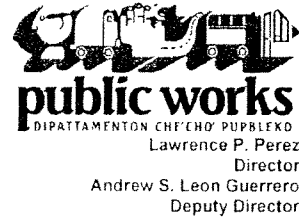
JOHN WEISENBERGER
Assistant Attorney General

COPY



The Honorable
Felix P. Camacho
 Governor

The Honorable
Michael W. Cruz, M.D.
 Lieutenant Governor



DECLARATION OF SUBSTANTIAL INTEREST

On August 5, 2009, the Department of Public Works (DPW) received a protest from the Guam Community Improvement Foundation, Inc. (GCIFI) concerning the following 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**

Issued on November 21, 2008, the DPW RFP consisted of two criteria components Part I: Financing, with an overall weight of 70% and Part II: Construction, with an overall weight of 30%. DPW reported having received three responsive proposals as of January 8, 2009. During an RFP presentation on January 16, 2009, the Evaluation Committee determined International Bridge Corporation (IBC), to have the highest ranked proposal for this project. IBC was invited to proceed with the due-process of the negotiation phase with DPW.

DPW and IBC entered into negotiations on the finance, build and leaseback proposal of IBC. These negotiations resulted in an agreement over the demolition, design, and build of the new high school, over the collateral equipment to be provided for the new school, over a maintenance program for the new school for the duration of the 30 year lease, over the lease-back agreement for 30 years, and over the underlying costs for all of the above.

On August 5, 2009, IBC was literally one day away from securing the financing for the entire package. This financing component is 70 % of the RFP and necessarily involved the Guam Economic Development Authority, on behalf of the Government of Guam. GEDA's participation was essential in order to assure prospective lenders that the government could meet its obligations in the 30 year leaseback arrangement, and to assure that IBC was qualified for reduced interest, tax-free municipal bonds as required by Public Law 29-114. But for the protest by GCIF, DPW intended to award a contract to IBC as the negotiations had reached a successful conclusion.

An award of a contract to IBC for the Finance, Demolition, Design Build, Maintenance, and Leaseback project, RFP Project No. 700-5-1020-L-TAM, without further delay is necessary to protect the substantial interests of the Territory for the reasons set out here.

SUBSTANTIAL INTERESTS OF THE TERRITORY

The Guam Procurement Law provides that:

“In the event of a timely protest under Subsection (a) of this Section ...the Territory shall not proceed further with ...the award of the contract prior to final resolution of such protest, and any such further action is void, unless:

(1) the ... Director of Public Works after consultation with and written concurrence of the head of the using or purchasing agency and the Attorney General ... makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the Territory;...”

5 GCA §5425(g) (1).

A DETERMINATION OF THE SUBSTANTIAL INTERESTS OF THE TERRITORY

To determine the substantial interests of the Territory concerning the award of a contract to the International Bridge Corporation for RFP Project No. 700-5-1020-L-TAM, as the Director of Public Works, I requested input from the Superintendent of the Department of Education (DOE), The John F. Kennedy Exit Strategy Task Force, the Administrator of the Guam Economic Development Authority (GEDA), as well as from my department. See Exhibit A. The responses received are attached as Exhibits B, C, D and E (Department of Education), Exhibit F (Guam Economic Development Authority), Exhibit G (Department of Public Works).

Although these statements, Exhibits B-G, form the basis of a determination that the award of a contract to IBC without delay is necessary to protect the substantial interests of the Territory, the statements may be summarized as follows:

1. The Organic Act of Guam requires that the government of Guam shall provide an adequate public educational system, and shall establish, maintain and operate public schools. Section 29, Organic Act of Guam. 48 USC §1421g.
2. As a clear statement of public policy, Guam law defines an adequate public educational system as one that requires an education provided in a healthy, safe and sanitary learning environment. 1 GCA §715 (11) & (12).
3. The closure of the JFK campus on June 09, 2008 was the basis for the declaration of a state of emergency in August 2008 by Governor Felix Camacho in order to facilitate a timely solution to the closure of the high school.
4. Public Law 29-114, an act relative to the construction of a new John F. Kennedy High School, was enacted on October 10, 2008. The Legislature, having found an immediate need, authorized the procurement of a new John F. Kennedy High

School through a financing, demolition, design, construction, long-term maintenance and leaseback arrangement. As an indication of the need for this new school, *I Liheslaturan Guåhan* declared a critical shortage of public school facilities, required that the Request For Proposal for the new JFK High School be prepared and published within thirty (30) days of the enactment of the law, and required that the new high school be built within nine (9) months of the award of a contract.


5. The Guam Education Policy Board fully supported the declaration of emergency by the Governor and the findings of the Guam Legislature that there is a critical need for a new JFK High School. Supporting this immediate need for the John F. Kennedy Community, the Guam Education Policy Board passed Resolution 2009-09, Relative to Rebuilding of John F. Kennedy High School. (Exhibit D).
6. Hardship on the educational communities of both the JFK High School and the George Washington High School (GW High School) during school year 2008-2009, was shared at the GW High School campus, and each community endured half-day split sessions.
7. Both school communities, but especially the JFK High School has endured a disruption of all phases of their education program since August 2008 and continuing to the present.
8. JFK High School students just begun the 2009-2010 school year on August 24, 2009 at Tiyan, two weeks behind the rest of the public school students. JFK High School students' temporary campus located at Tiyan for school year 2009-2010, was in jeopardy due to serious environmental concerns at the temporary campus resulting in the delay of opening of school.
9. A long term disruption of the efforts already taken by International Bridge Corporation in the municipal bond market to successfully finance the cost of building a new JFK High School may result in a significant increase in the cost of the financing, or in the alternative, significantly diminish the ability to finance this project in the manner and timeline mandated by Guam law, as well as in the timeline necessary to meet the educational needs of the JFK students for the long term.
10. An inability to bring to a successful conclusion to the efforts by IBC, and its partner, the Government of Guam, will likely affect Guam's relationships with investors and other related parties, not only within the municipal market, but also globally. The Government's image as a stable business partner in this market place may be damaged.
11. Labor and materials prices will likely escalate over time, availability of manpower may be impacted by the upcoming military build-up, and there will be a significant delay in the completion of the entire project.

CONCLUSION

Having addressed and thoroughly executed the due process of the RFP procurement procedures, as the Director of the Department of Public Works, I firmly attest to having complied with Public Law 29-114 and the Guam Code Annotated – Chapter 5, Guam Procurement Law.

Together, with the Administrator, for the Guam Economic Development Authority and the Superintendent, for the Department of Education, we ascertain that the continued RFP due process of the Negotiation phase and eventual award of the contract without delay is necessary to protect the substantial interests of the territory.

Respectfully submitted.



LAWRENCE P. PEREZ
Director – Department of Public Works (DPW)

Date: 8/25/09



ANTHONY BLAZ
Administrator – Guam Economic Development Authority (GEDA)

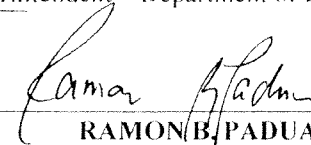
Date: 8/25/09

CONCURRED:



NERISSA BRETANIA-UNDERWOOD
Superintendent – Department of Education (DOE)

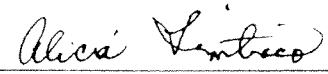
Date: 8/25/2009



RAMON B. PADUA, P.E.
DPW Chief Engineer – Capital Improvement Projects (DPW)

Date: 08/25/09

CONCURRED:



ALICIA LIMTIACO
Attorney General of Guam

Date: 8/27/09



I MAGA' LAHEN GUAHAI
GOVERNOR OF GUAM
FELIX P. CAMACHO
I SEGUNDO NA MAGA' LAHEN GUAHAI
LT. GOVERNOR OF GUAM
MICHAEL W. CRUZ M.D
ADMINISTRADO
ADMINISTRATOR
ANTHONY C. BLA.

Aturidad Inadilanton Ikunumihan Guahan

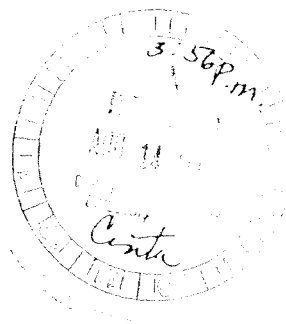
Facsimile

To: Larry Perez
Director, DPW

From: Tony Blaz
Administrator, GEDA

Fax: 649-6178

**PRIVATE &
CONFIDENTIAL**



No. of pages including cover: 3

Please see attached.

If you should have any questions, please call me at 647-4332.

Si Yu'os Masse

EXHIBIT 6



PRIVATE & CONFIDENTIAL

GOVERNOR OF GUAM
FELIX P. CAMACHO
1 SECUNDO NA MAGA' LAHEN GUAMA
LT. GOVERNOR OF GUAM
MICHAEL W. CRUZ M.E.
ADMINISTRADO
ADMINISTRATO
ANTHONY C. BLA

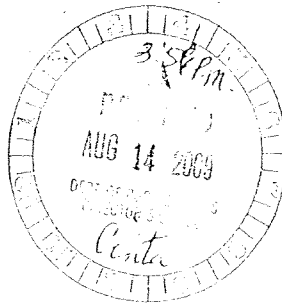
Atunadad Inadilanton Ikunumihan: Guahan

August 14, 2009

Lawrence P. Perez
Director
Department Public Works
542 N. Marine Drive
Tamuning, GU 96913

Re: Substantial Interest of the Territory

Hafa Adai Larry



This letter is intended to provide you with additional information to support a determination, per Title 5 GCA §5425(g)(1), that moving forward with the JFK contract as awarded is in the substantial interest of the territory. While we believe that the majority of the arguments should come from the Department of Education as it relates to the well being of the student population, the overall state of Guam's public school system and, to the extent it applies, compliance with federal education standards, there are municipal market factors to take into consideration as well. GEDA, as Central Financial Manager, is charged with ensuring that there is no negative effect to the perception of Guam in the municipal market, especially at this critical juncture of unprecedented growth and opportunity for the island. We believe that the potential for further delay or litigation may be detrimental to Guam's outlook in the capital markets for the following reasons

Uncertainty of Future Interest Rates and Market Volatility

Notwithstanding the impact of the delay on Guam's school children and their access to adequate educational facilities, there is a potential impact on the direct cost to the Government, since a portion of the lease payments are based on the debt service associated with the financing of the project. The municipal market over the last year has been very volatile. Executing the financing now when market conditions for the securities are known is more beneficial than taking the risk that the market will still be accessible at a later time.

Increased Costs as a Result of Delays

Another consideration is the cost of the delays due to the protests and potential litigation. Construction costs and labor costs are rising, while the timeframe in which the school must be constructed is shrinking. This may result in a higher cost to construct the new school in the tighter timeframe, as more workers and more labor hours would likely be required.

The Government is also paying millions of dollars for an interim facility that is not suitable for high school students in the long term. The cost of the interim facility is comparable to that of the permanent facility, without the benefit of the full amenities that the permanent facility provides. To pay for an additional year

of rent on an interim facility, when the alternative is a long-term facility with a life span of 50+ years and included maintenance, seems imprudent. This could also have a negative budgetary impact on the General Fund, as the rent for the interim facility is not currently planned for in the upcoming budget. We have already represented to the rating agencies and investors that any obligations incurred this fiscal year would not have budgetary impact until Fiscal Years 2011 or 2012. Any deviation from this policy may result in slower-than-planned deficit reduction and would warrant explanation to the rating agencies and investors.

Investor Perception

As the current bidder was prepared to market and sell the lease certificates of participation last week, municipal investors were fully engaged in pre-marketing conversations with the underwriter, as well as undertook the credit approval processes necessary to invest in the securities. As you know, the first protest was filed just prior to the official sale period of the certificates and thus, investors were notified that the sale would be delayed until further notice. Since then, the second protest and rumors of potential litigation will make it more difficult to enter the market in the near future with "clean" disclosure and without final resolution of the protests. In fact, bond counsel has stated that in order to move forward with the financing and provide a legal opinion as to the validity of the securities, the protests must be dismissed or resolved and deemed not able to be appealed. GEDA is concerned that the convoluted disclosure that may be required as a result of these protests may scare off investors that would have otherwise been willing to purchase the securities. Because of the protests, investors may have a perception of heightened risk that the securities may not be delivered after the sale, as promised, without interference. A scenario such as this would be a black eye on Guam in the market.

Maintenance of Relationships with Investment Banks and Brokers

Per Title 12 GCA §50103(k), GEDA is mandated with maintenance of relationships with bond rating agencies and brokerage houses, as well as the development of interest among investment banks and bond brokers. If the protest process is allowed to drag on over time, and the contract award is further delayed or dissolved altogether, Guam could be viewed in a negative light by potential investors, developers and business partners in the future. This could translate into fewer bids/proposals and higher investment or borrowing costs in the future, as a result of potential diminished interest in doing business with GovGuam. Although this is a smaller concern compared to the others listed above, it is a concern nonetheless.

In closing, GEDA supports that DPW and DOE's pursuit of obtaining the Attorney General's and Public Auditor's guidance on whether a determination according to GCA §5425(g)(1) is achievable. Ninety-nine percent of the work has already been completed by the current developer in order to break ground on the project and complete it in the timeline required by Guam law. Every day of delay will cost the Government more money in the end, and will not benefit anyone except those who have an interest in seeing this project fail. It is only logical that moving forward to complete this critical project, as planned (and as mandated), is in the substantial interest of the Territory, its educational system and its children.

Senseramente,



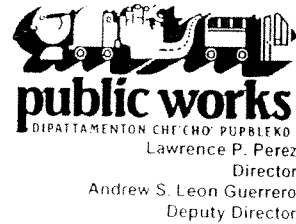
Anthony C. Blaz
Administrator

Guam Economic Development Authority



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



Lawrence P. Perez
Director
Andrew S. Leon Guerrero
Deputy Director

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5 GCA §5-425(g) (1).

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11. Labor and materials prices will likely escalate over time, availability of manpower may be impacted by the upcoming military build-up, and there will be a significant delay in the completion of the entire project.

CONCLUSION

Having addressed and thoroughly executed the due process of the RFP procurement procedures, as the Director of the Department of Public Works, I firmly attest to having complied with Public Law 29-114 and the Guam Code Annotated - Chapter 5, Guam Procurement Law.

Together, with the Administrator, for the Guam Economic Development Authority and the Superintendent, for the Department of Education, we ascertain that the continued RFP due process of the Negotiation phase and eventual award of the contract without delay is necessary to protect the substantial interests of the territory.

Respectfully submitted,



LAWRENCE P. PEREZ
Director - Department of Public Works (DPW)

Date: 8/25/09



ANTHONY BLAZ
Administrator - Guam Economic Development Authority (GEDA)


Date: 8/25/09

CONCURRED:



NERISSA BRETANIA-UNDERWOOD
Superintendent - Department of Education (DOE)


Date: 8/25/2009



RAMON B. PADUA, P.E.
DPW Chief Engineer - Capital Improvement Projects (DPW)

Date: 08/25/09

CONCURRED:



ALICIA LIMTIACO
Attorney General of Guam

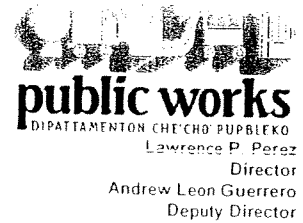
Date: 8/29/09

EXHIBIT A

Declaration of Substantial Interest
DPW RFP Project No. 700-5-1020-L-TAM

The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor




MEMORANDUM

TO: **Anthony Blaz**, Administrator
Guam Economic Development Authority (GEDA)

Nerissa Bretania Underwood, Superintendent
Department of Education (DOE)

Ramon B. Padua P.E., Chief Engineer
DPW Engineering, CIP Verticals

FROM:  **Lawrence P. Perez**, Director *8/12/09*

SUBJECT: **SUBSTANTIAL INTERESTS OF THE TERRITORY**

Hafa Adai!

The filing of the "Protest" letter by the unsuccessful bidder(s) has prompted me to exercise my authority as Director of the Department of Public Works, Pursuant to 5GCA, Guam Procurement Law.

To date DPW has issued the Notice of Decision hereby officially denying their "Protest" letter. Having assumed an aggressive mode, and in anticipation of next progressive course of action, the potential Appeals process, please allow me to proceed.

Reference to 5 GCA 5425(g1), I have decided in accordance with complying to the statutes within this section, to pursue all efforts to determine "that the award of the contract (RFP) without delay is necessary to protect substantial interests of the territory," to lift the stay of the procurement, and to proceed with the due process of the contract.

Henceforth, I am requesting for your department to submit a detailed Statement of Interest that lists compelling reasons to support this determination. The Statement of Interest will be compiled by our legal advisor for presentation during the Appeals process. Kindly submit this report by no later than Friday, August 14, 2009.

Again, I apologize for the inconvenience. Thank you for your continued cooperation and patience.

CC: Office of the Governor
Attorney General's Office

EXHIBIT A

EXHIBIT B

Declaration of Substantial Interest

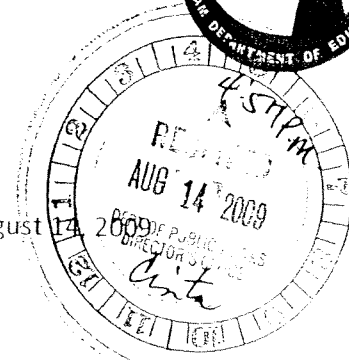
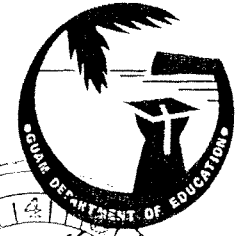
DPW RFP Project No. 700-5-1020-L-TAM



DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT

P.O. Box DE
Hagåtña, Guam 96932
Telephone: (671) 300-1547 / 300-1536
Fax: (671) 472-5003
Email: nbunderwood@gdoe.net
www.gdoe.net

Nerissa Bretania Underwood, Ph.D.
Superintendent of Education



August 14, 2009

LETTER OF SUBSTANTIAL GOVERNMENT INTEREST

In support of the Department of Public Works' Notice of Decision, officially denying the submitted protest made by the Law Firm of Cunliffe and Cook, on behalf of Mr. Anthony Sgro, President of Guam Community Improvement Foundation, Inc., the Department of Education and the community of John F. Kennedy humbly seeks the immediate resumption and completion of the RFP process established by Public Law 29-114.

This process has been encumbered with a magnitude of problematic situations, most of which were created by outside influences and situations, such as the landfill court case, political interference, and now protests by losing bidders, all of which have resulted in hardship and loss of learning for the community of Guam. As stipulated by Public Law 28-45, Title 1 G.C.A., Ch. 7 Section 715 provides that students attending Department of Education should be educated in a healthy, safe and sanitary learning environment; and Section 29(b) of the Organic Act - "The Government of Guam shall provide an adequate public educational system of Guam, and to that end shall establish, maintain, and operate public schools according to the laws of Guam".

In August of 2008, in response to the dire situation created by the closure of the Tumon campus of JFK High School, the Governor of Guam declared a State of Emergency and ordered the establishment of the JFK High School Exit Task Force, with representation from the Governor's office, the Legislature, the Guam Public School System and the Department of Public Works to address the situation and facilitate a solution to the problems with the JFK campus. This emergency situation was what initially gave rise to the public law which required the reconstruction of the JFK Campus.

The Public Law authorizing this project (PL 29-114) states in the Legislative Findings that "Specifically, there is an *immediate* need to replace John F. Kennedy (JFK) High School in Tumon, Guam and to build a modern facility on the site of the existing school." The Department of Education agrees with and supports this legislative finding, and affirms that the need to replace the JFK High School is urgent and immediate.

It is clear that problems associated with the delay in completing a procurement to resolve this critical educational need, that was unanimously authorized and mandated by the Guam Legislature (PL 29-114), is fully supported by the Guam Education Policy Board, and a top priority for the Governor and Lt. Governor, are having a direct adverse effect on over half of

EXHIBIT B

Guam's public high school student population. This is clearly of substantial interest to the Guam community.

The Department of Education hereby asserts that, pursuant to Title 5 GCA §5425 G (1), the awarding of the contract to the top ranked bidder without delay is necessary to protect the substantial interest of the Territory.

Sensefiamente

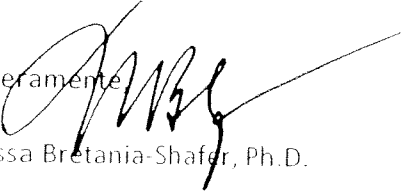

Nerissa Bretania-Shafer, Ph.D.

EXHIBIT C

*Declaration of Substantial Interest
DPW RFP Project No. 700-5-1020-L-TAM*

EXHIBIT D

Declaration of Substantial Interest

DPW RFP Project No. 700-5-1020-L-TAM

**GUAM EDUCATION POLICY BOARD
RESOLUTION NUMBER 2009-09**



Introduced by:

Guam Education Policy Board Members

RELATIVE TO REBUILDING OF JOHN F. KENNEDY HIGH SCHOOL.

WHEREAS, the Government of Guam is responsible for the provision of an adequate education as established in the Organic Act of Guam, 48 USCA, § 1421(g)(b); and

WHEREAS, pursuant to Public Law 26-26 the Guam Education Policy Board was established to decide policy issues for the Department of Education; and

WHEREAS, JFK High School was closed on June 9, 2008 by the Health and Safety Task Force; and

WHEREAS, the students of JFK High School were in a double session with GW High School for School Year 2008-2009; and

WHEREAS, the Guam Education Policy Board finds that double session is not a conducive learning environment; and

WHEREAS, JFK High School will be housed at a temporary Tiyan facility for School Year 2009-2010; and

WHEREAS, the students of JFK High School should return to their campus located in Upper Tumon, Tamuning, by the beginning of School Year 2010-2011.

NOW THEREFORE BE IT RESOLVED, the Guam Education Policy Board supports the rebuilding of JFK High School at Upper Tumon, Tamuning; and

BE IT FURTHER RESOLVED, the Guam Education Policy Board is in support of rebuilding the campus in a timely manner as possible; and

BE IT FURTHER RESOLVED, that the Guam Education Policy Board reaffirms Board Resolution 2008-11 Relative to Supporting the Governor's Option to Provide an Interim John F. Kennedy High School Campus; and

BE IT FURTHER RESOLVED, the Guam Education Policy Board is in support of the lease back, design, demolish and build arrangement pursuant to P.L. 29-114; and

BE IT FURTHER RESOLVED, that a copy of this Resolution be transmitted to the Governor of Guam; I Mina Trenta Na Liheslaturan Guahan, Bond Counsel for the transaction and the Administrator of Guam Economic Development Authority; and

BE IT FURTHER RESOLVED, THAT THE GUAM EDUCATION POLICY BOARD DULY AND REGULARLY ADOPTS RESOLUTION NUMBER 2009-09 ON THIS 7th DAY OF AUGUST, 2009.


RONALD A. AYUYU
Acting Chairman

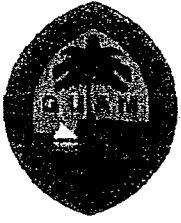

NERISSA BRETANA-SHAFFER, Ph.D.
Executive Secretary

EXHIBIT D

EXHIBIT E

Declaration of Substantial Interest

DPW RFP Project No. 700-5-1020-L-TAM



**DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT**

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Telephone: (671) 300-1547 / 300-1536
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Nerissa Bretania Underwood, Ph.D.
Superintendent of Education

August 24, 2009

Citations of Public Law, Regulations and Policy Resolutions which support a determination of "Substantial interest of the Territory" with regards to JFK HS Finance Demolish Design Build Maintain and Leaseback (FDDBML) solicitation

Governing language from 5GCA Division 1, Chapter 5, Guam Procurement Law, section 5425 (g)
(g) In the event of a timely protest under Subsection (a) of this Section, or under Subsection (a) of Section 5480 of this Chapter, the territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any further action is void, unless:

(1) the Chief Procurement Office or the Director of Public Works after consultation with and written concurrence of the head of the using or purchasing agency and the attorney General or Designated Deputy Attorney General, makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the territory; and ...

Citations

The interests of the territory with respect to the solicitation above can be defined in part by the responsibilities of the parties of interest to this procurement, namely, the Governor of Guam, the Department of Education and the Department of Public Works.

1. The Organic Act of Guam, Subchapter 1, Section 1421g(b) defines the responsibilities of the government with regard to the Public Education System: *The Government of Guam shall provide an adequate public educational system of Guam, and to that end shall establish, maintain and operation public schools according to the laws of Guam.*

The Government of Guam, and in particular, the Governor and the Department of Education, must provide an adequate public education system. As it is defined by the Organic Act, the provisions of such is an absolute interest of the Territory

2. The Organic Act of Guam, Subchapter 1, Section 1422 defines the powers and duties of the Governor of Guam as chief executive of the Government of Guam, and bestows on the Governor "*general supervision and control of all the departments, bureaus, agencies and other instrumentalities of the executive branch of the Government of Guam.*"

The Governor of Guam has general supervision and control of the parties to this project, specifically the Department of Public works and the Guam Economic Development Authority, as these departments are mandated to carry out the requirements of the public law authorizing

EXHIBIT E

the project, the Governor has the responsibility of ensuring the requirements of law regarding the JFK re-build project are met.

3. Public Law 29-114 authorizes the government of Guam or an Education Agency (the Department of Education) to lease government land to a private contractor to construct the new JFK High School, and also to lease-back the completed education facility for up to 30 years. The Public Law also mandates the Department of Public Works to issue an RFP, in compliance with the Guam Procurement Law, for the financing, design, construction and maintenance of a new JFK High School over the lease period. The Legislative Finding and Intent of PL 29-114 cite a "critical shortage of public school facilities," as well as a specific "immediate need to replace the John F. Kennedy (JFK) High School in Tumon, Guam." The provisions of this public law are to be codified in Chapter 58A of Title 5 of the Guam Code Annotated.

The legislature has identified a critical shortage in school facilities and unanimously passed a law which identifies the JFK re-build project as an immediate need. There is no clearer statement of the fact that this project is in the substantial interest of the territory of Guam.

4. Title 17 Education, of the Guam Code Annotated (GCA) Chapter 3 Guam Public School System, Section 3102 requires the Superintendent of Education to administer the school system; and Section 3103 lists the responsibilities of the Superintendent, including to "perform other duties as may be required by public law to provide an adequate public educational system."

The Superintendent is required by law to move this project forward as it is necessary in order to provide an adequate public educational system in accordance with the requirements of law. The Superintendent's ability to move the project forward is in the substantial interest of the territory of Guam.

5. Title 17 Education, of the Guam Code Annotated (GCA) Chapter 3 Guam Public School System, Section 3111 establishes the Guam Education Policy Board; and Section 3112 lists the responsibilities of the Guam Education Policy Board, including to "perform other duties as may be required by public law to provide an adequate public educational system."

The GEPB is required by law to move this project forward as it is necessary in order to provide an adequate public educational system in accordance with the requirements of law. As the project is in the best interest of Guam's educational system, the Board's ability to move the project forward is in the substantial interest of the territory of Guam. On August 07, 2009, it was unanimously passed, adopted, and further resolved by the Guam Education Policy Board, Relative to the Rebuilding of John F. Kennedy High School, Resolution 2009-09.

6. Title 17 Education, of the Guam Code Annotated (GCA) Chapter 3 Guam Public School System, Section 7113 provides the limitations on capacity for high schools at 1200 students per high school; office DOE School Year 2008 enrollment for high school students was 9633 high school students, resulting in an average of 1927 students per school with all 5 DOE public high schools

in operation. With JFK closed, the average number of students per school could climb to 2408 students per school. In order to meet the target populations mandated by Guam law, at least 8 high schools are required.

The adequacy of the public educational system can be defined by its ability to meet the requirements of law, and the educational standards set by the GEPB. Specific to this solicitation, the re-building of a fully functional JFK educational facility with capacity of the current enrollment of the school, is necessary to meet the minimum requirements of the existing law. If JFK is not re-constructed, the result will be an inadequate number of facilities, and overcrowding of the existing operational facilities. This will result in an inadequate educational system. Therefore, the JFK re-build project is of substantial interest to the territory of Guam.

EXHIBIT F

Declaration of Substantial Interest
DPW RFP Project No. 700-5-1020-L-TAM



MAGA' LAHEN GUAHAI
GOVERNOR OF GUAM
FELIX P. CAMACHI
I SEGUNDO NA MAGA' LAHEN GUAHAI
LT. GOVERNOR OF GUAM
MICHAEL W. CRUZ M.D.
ADMINISTRADO
ADMINISTRATOR
ANTHONY C. BLAZ

Facsimile

To: Larry Perez
Director, DPW

From: Tony Blaz
Administrator, GEDA

Fax: 649-6178

**PRIVATE &
CONFIDENTIAL**

No. of pages including cover: 3

Please see attached.

If you should have any questions, please call me at 647-4332.

Si Yu'os Masse

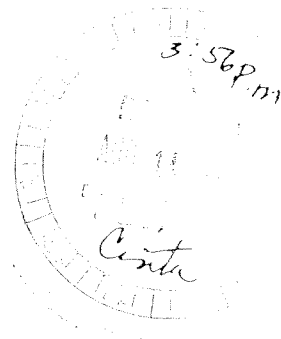


EXHIBIT F



PRIVATE & CONFIDENTIAL

GOVERNOR OF GUAM
FELIX P. CAMACHO
1. SECUNDO NA MAGA' LAHEN GUAHAN
1. GOVERNOR OF GUAM
MICHAEL W. CRUZ M.E.
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ANTHONY C. BLA

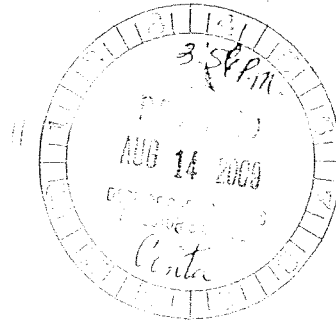
Aturidád Inadilánton Ikunumihan Guahan

August 14, 2009

Lawrence P. Perez
Director
Department Public Works
542 N. Marine Drive
Tamuning, GU 96913

Re: Substantial Interest of the Territory

Hafa Adai Larry.



This letter is intended to provide you with additional information to support a determination, per Title 5 GCA §5425(g)(1), that moving forward with the JFK contract as awarded is in the substantial interest of the territory. While we believe that the majority of the arguments should come from the Department of Education as it relates to the well being of the student population, the overall state of Guam's public school system and, to the extent it applies, compliance with federal education standards, there are municipal market factors to take into consideration as well. GEDA, as Central Financial Manager, is charged with ensuring that there is no negative effect to the perception of Guam in the municipal market, especially at this critical juncture of unprecedented growth and opportunity for the island. We believe that the potential for further delay or litigation may be detrimental to Guam's outlook in the capital markets for the following reasons.

Uncertainty of Future Interest Rates and Market Volatility

Notwithstanding the impact of the delay on Guam's school children and their access to adequate educational facilities, there is a potential impact on the direct cost to the Government, since a portion of the lease payments are based on the debt service associated with the financing of the project. The municipal market over the last year has been very volatile. Executing the financing now when market conditions for the securities are known is more beneficial than taking the risk that the market will still be accessible at a later time.

Increased Costs as a Result of Delays

Another consideration is the cost of the delays due to the protests and potential litigation. Construction costs and labor costs are rising, while the timeframe in which the school must be constructed is shrinking. This may result in a higher cost to construct the new school in the tighter timeframe, as more workers and more labor hours would likely be required.

The Government is also paying millions of dollars for an interim facility that is not suitable for high school students in the long term. The cost of the interim facility is comparable to that of the permanent facility, without the benefit of the full amenities that the permanent facility provides. To pay for an additional year

of rent on an interim facility, when the alternative is a long-term facility with a life span of 50+ years and included maintenance, seems imprudent. This could also have a negative budgetary impact on the General Fund, as the rent for the interim facility is not currently planned for in the upcoming budget. We have already represented to the rating agencies and investors that any obligations incurred this fiscal year would not have budgetary impact until Fiscal Years 2011 or 2012. Any deviation from this policy may result in slower-than-planned deficit reduction and would warrant explanation to the rating agencies and investors.

Investor Perception

As the current bidder was prepared to market and sell the lease certificates of participation last week, municipal investors were fully engaged in pre-marketing conversations with the underwriter, as well as undertook the credit approval processes necessary to invest in the securities. As you know, the first protest was filed just prior to the official sale period of the certificates and thus, investors were notified that the sale would be delayed until further notice. Since then, the second protest and rumors of potential litigation will make it more difficult to enter the market in the near future with "clean" disclosure and without final resolution of the protests. In fact, bond counsel has stated that in order to move forward with the financing and provide a legal opinion as to the validity of the securities, the protests must be dismissed or resolved and deemed not able to be appealed. GEDA is concerned that the convoluted disclosure that may be required as a result of these protests may scare off investors that would have otherwise been willing to purchase the securities. Because of the protests, investors may have a perception of heightened risk that the securities may not be delivered after the sale, as promised, without interference. A scenario such as this would be a black eye on Guam in the market.

Maintenance of Relationships with Investment Banks and Brokers

Per Title 12 GCA §50103(k), GEDA is mandated with maintenance of relationships with bond rating agencies and brokerage houses, as well as the development of interest among investment banks and bond brokers. If the protest process is allowed to drag on over time, and the contract award is further delayed or dissolved altogether, Guam could be viewed in a negative light by potential investors, developers and business partners in the future. This could translate into fewer bids/proposals and higher investment or borrowing costs in the future, as a result of potential diminished interest in doing business with GovGuam. Although this is a smaller concern compared to the others listed above, it is a concern nonetheless.

In closing, GEDA supports that DPW and DOE's pursuit of obtaining the Attorney General's and Public Auditor's guidance on whether a determination according to GCA §5425(g)(1) is achievable. Ninety-nine percent of the work has already been completed by the current developer in order to break ground on the project and complete it in the timeline required by Guam law. Every day of delay will cost the Government more money in the end, and will not benefit anyone except those who have an interest in seeing this project fail. It is only logical that moving forward to complete this critical project, as planned (and as mandated), is in the substantial interest of the Territory, its educational system and its children.

Senseremente,



Anthony C. Blaz
Administrator

Guam Economic Development Authority

EXHIBIT G

Declaration of Substantial Interest

DPW RFP Project No. 700-5-1020-L-TAM



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



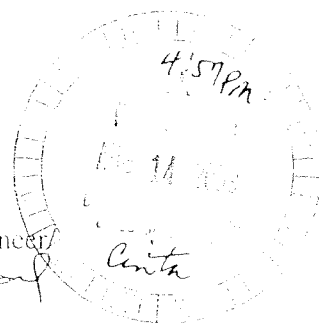
public works
DIPARTAMENTO DE OBRAS PÚBLICAS
Lawrence P. Perez
Director
Andrew Leon Guerrero
Deputy Director

August 14, 2009

MEMORANDUM

TO: Lawrence P. Perez, Director

FROM: *for:* Ramon B. Padua, P.E., Chief Engineer
Dionisio M. De Leon, Engr III *[Signature]*
DPW Engineering CIP Vertical



SUBJECT: Substantial Interest of the Territory
Construction of New John F. Kennedy High School
Project No. 700-5-1020-L-TAM

As we all know, JFK students, teachers, parents and concerned citizens are anticipating the timely completion of subject School, however, if processing of the required documents will be further on hold, in addition to their frustration, contributing factors are as follows:

- 1. Labor & Materials price escalation.
- 2. Possibility of higher Loan interest rate.
- 3. Availability of manpower due to Military build-up.
- 4. Delay of Completion.

The above factors is the main concern and hopefully, any problem will be resolved accordingly, for the best interest of the community.

EXHIBIT G



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



public works
DIPATAMENTON CHI'CHO' PUPBLEKO

Lawrence P. Perez
Director
Andrew S. Leon Guerrero
Deputy Director

TO: John Weisenberger
Assistant Attorney General
Office of the Attorney General

FROM:  Lawrence P. Perez
Director

8/14/09

SUBJECT: "Substantial Interests of the Territory"

Hafa Adai John.

As per our discussion, Friday, August 7, 2009, and followed by the ensuing memorandum (dated August 12, 2009) from office to DOE, GEDA, and DPW, please find attached herewith, "Substantial Interests of the Territory" requests for your perusal and next steps.

Please prepare the requisite filing before the Public Auditor in the event that an Appeal is filed.

Should you have any questions you can refer them to me or my team. Thank you in advance for your assistance.

Cc: Office of the Governor
Attn: Shannon Taitano Lujan