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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 07/08/2010

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FILE NO OPA-PA: 16-007

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

<p>IN THE APPEAL OF:</p> <p>CORE TECH INTERNATIONAL CORP.,</p> <p style="padding-left: 100px;">Appellant.</p>	<p>) DOCKET NO. OPA-PA-16-007</p> <p>)</p> <p>)</p> <p>) PURCHASING AGENCY'S</p> <p>) MOTION FOR AN EXPEDITIOUS</p> <p>) DISPOSITION (DISMISSAL)</p> <p>) ON THE MERITS</p>
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The Department of Public Works ("DPW"), through counsel, respectfully requests an expeditious disposition of dismissal on the merits in this matter. As such, submitted with this Motion is DPW's Request that Core Tech's Appeal be heard on the Record.

BACKGROUND

DPW issued a Request for Proposals to Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance of Public Schools (Beginning with Simon Sanchez High School) Project No.: 730-5-1055-L-YIG. Three proposals were submitted to DPW and evaluated by the selection committee. Guam Educational Facilities Foundations, Inc. ("GEFF") was the highest ranked offeror. After successful negotiations, a letter of intent to award the

ORIGINAL

contract was issued to GEFf.

Core Tech International Corp. ("Core Tech") filed its protest with DPW. After review of the protest, DPW denied Core Tech's protest. Core Tech then filed its appeal of DPW's decision to deny its protest with the Office of Public Accountability.

ARGUMENT

Pursuant to 2 GAR, Div. 4, § 12109(a), the Hearing Officer has the authority "to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding." We submit that the procurement record in this matter and filed with the Office of Public Accountability shows DPW complied with the Guam Procurement Law and Public Laws 32-120 and 32-121 authorizing the lease financing for the design, renovation, rehabilitation, construction and maintenance of Department of Education schools. Based on the record submitted and the explanation below, the Hearing Officer should expeditiously dismiss this appeal on the merits.

Simon Sanchez High School is plagued with health and safety issues. See, Declaration of Jon Fernandez. Further delay in the rehabilitation and reconstruction of the aging facility prolongs the exposure of unsafe and harmful conditions to the students and faculty of Simon Sanchez High School. See, Declaration of Jon Fernandez. Simon Sanchez High School gymnasium, science wing and restroom were recently shut down by Public Health and Social Services due to unsafe conditions and health concerns. See, Declaration of Jon Fernandez. Expenditures toward band aid repairs are a futile use of government resources. These dire conditions could be completely and permanently addressed by quickly dismissing the matter and allowing the project to proceed forward.

DPW also seeks expeditious resolution in this matter in order to pursue favorable financing rates in the market. The USDA Rural Development offers a prevailing interest rate of 2.75% through September 30, 2016, which is currently a historical low for the Agency. See, Letter dated July 5, 2016 from USDA to Richard B. Inman, Jr. attached as Exhibit A. In order to qualify for this CF Direct Loan program, GEFf would need to file a formal application to USDA by August 31, 2016. See, U.S.D.A. Notice of Preapplication Review Action attached as Exhibit B. USDA has already determined that GEFf's proposal is eligible for funding based on its review of GEFf's preapplication to the Agency. See, U.S.D.A. Notice of Preapplication Review Action

attached as Exhibit B. The next interest rate adjustment, if applicable, would be effective October 1, 2016. See, Letter dated July 5, 2016 from USDA to Richard B. Inman, Jr. attached as Exhibit A.

A dismissal of this appeal would allow DPW and GEF to timely submit an application to USDA. If the application, which has already been deemed eligible for funding, is approved, the government could realize a significant savings to the cost of the project. If GEF is able to obtain a USDA loan, the interest rate will be 2.75%, which is significantly lower than the tax-exempt bond market, and the government of Guam will save over \$23,000,000 in interest over the life of the loan. See, Letter dated July 8, 2016 from GEF to DPW, attached as Exhibit C. The savings could mean more funding toward repairing the remaining 34 schools.

CONCLUSION

For the foregoing reasons, DPW requests that the Hearing Officer find an expeditious dismissal of the instant appeal is warranted because the record reveals that DPW complied with the Guam Procurement Act and Public Laws 32-120 and 32-121 and Core Tech's Appeal fails on its merit.

Submitted this 8th day of July, 2016.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General



By:

SHANNON TAITANO
Assistant Attorney General

EXHIBIT A



July 5, 2016

Richard B. Inman, Jr.
Guam Educational Facilities Foundation, Inc.
259 Martyr Street, Suite 204
Hagatna, GU 96910

Dear Mr. Inman:

Subject: Community Facility (CF) Direct Loan Program
Prevailing Interest Rate

USDA Rural Development (RD) is pleased to have issued the AD-622, Notice of Preapplication Review Action dated May 25, 2016 in favor of the Guam Educational Facilities Foundation, Inc. (GEFF). Funds will be used to construct a new public high school in the northern village of Yigo, Guam.

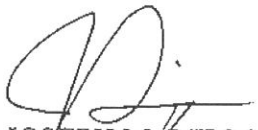
In addition to offering a loan term that can extend up to forty (40) years, RD offers a market interest rates that is set by RD based on “... the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter.”

Based on the above index, the prevailing interest rate that is in effect from **July 1, 2016 to September 30, 2016** is **2.750%**, which is currently a historical low for the Agency. The next interest rate adjustment, if applicable, would be effective October 1, 2016.

I trust that this provides clarification relative to the application of the prevailing interest rate for the CF Direct Loan program.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,


JOSEPH M. DIEGO
Area Director

Rural Development
770 East Sunset Blvd., Suite 280, Tiyan, GU 96913
Voice (671) 472-7361 • Fax (855) 878-2465

USDA is an equal opportunity provider, employer, and lender.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

EXHIBIT B

U.S. DEPARTMENT OF AGRICULTURE
**NOTICE OF PREAPPLICATION REVIEW
 ACTION**

From: USDA Rural Development
 (Department, bureau, or establishment)

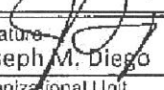
Agency Number _____

To: Mr. Richard B. Inman, Jr.
 Guam Educational Facilities
 Foundation, Inc.
 259 Martyr Street
 Suite 204
 Hagatna, GU 96910

Reference Your Preapplication
 Number _____

Dated: 05-25-2016

- We have reviewed your preapplication for Federal assistance under Community Facilities Programs and have determined that your proposal is:
 - eligible for funding by this agency and can compete with similar applications from other grantees.
 - eligible but does not have the priority necessary for further consideration at this time.
 - not eligible for funding by this agency.
- Therefore, we suggest that You:
 - file a formal application with us by (date) 08-31-2016
 - file an application with _____ (Suggested Federal agency).
 - find other means of funding this project.
- Based upon the funds available for this program over the last two fiscal years and the number of applications reviewed, or pending, we anticipate that funds for which you are competing will be available after (month, year) Sept 2017.
- You requested \$ 50,000,000.00 Federal funding in your preapplication form, and we:
 - are agreeable to consideration of approximately this amount in the formal application.
 - will need to analyze the amount requested in more detail.
- A preapplication conference will be _____ necessary not necessary. We are recommending that it be held at _____, on _____, at _____ a.m./p.m. Please contact the undersigned for confirmation.
- Enclosures: Forms _____ Instructions _____ Other (Specify) _____
- Other Remarks:
 All obligations dependent on funding availability.

Signature  Joseph M. Diego	Title Area Director	Date 06-06-2016
Organizational Unit	Administrative Office	Telephone Number (671) 300-8560

Address 770 Sunset Blvd., Suite 280
 Guam, GU Tiyan

NOTE: This form will be used by Federal agencies to inform applicants of the results of a review of their preapplication request for Federal assistance. When the review cannot be performed within 45 days, the applicant shall be informed by letter as to when the review will be completed. When Federal agencies determine that the proposal is not eligible for Federal assistance, specific reasons should be provided in Item 7 Other Remarks.

EXHIBIT C



GUAM EDUCATIONAL FACILITIES FOUNDATION

118 Biridan Pulattat
Dededo, Guam 96929

3060 Peachtree Road, Suite 1705
Atlanta, GA 30305 USA
404.504.2772 (ph) | 404.504.2790 (fx)

July 8, 2016

Mr. Felix C. Benavente
Deputy Director
Guam Department of Public Works
542 North Marine Corps Drive
Upper Tumon, Guam 96913

RE: RFP No. 730-5-1055-L-YIG, USDA Loan

Dear Mr. Benavente,

The purpose of this letter is to request that the Department of Public Works declare that the rebuilding of Simon Sanchez should proceed without delay to protect the substantial interest of people of Guam because of the attractive financing currently available. GEF identified attractive financial funding via a USDA Community Facilities Program and proactively submitted a pre-application for a direct loan through this program. The USDA has approved the pre-application and requested that we submit a formal application by August 31, 2016 to qualify for current funding availability. If we are able to obtain a USDA loan the interest rate will be 2.75%, which is significantly lower than the market, and the Government of Guam will save over \$23,000,000 in interest over the life of the loan.

The need to move promptly and take advantage of the availability of the USDA loan is amplified by the fact that Fitch has recently downgraded Guam's debt rating. This downgrade combined with an increasing aversion to risk due to worldwide economic uncertainties will only continue to increase Guam's cost of capital in the public markets and the spread between the interest rate of Guam's below investment grade bonds and the USDA loan will continue to rise.

In addition to the urgency due to financing availability and potential savings for the government, conditions at Simon Sanchez High School are deplorable and the Department of Public Health has shut down portions of the school. If the Government of Guam is to provide a safe, healthy, sanitary learning environment it must take action. The savings of \$23,000,000 or more available from the USDA financing can be used to improve the remaining schools or other important purposes identified by the Government of Guam. Thus to take advantage of these savings and remedy the situation at Simon Sanchez, the award of the IDIQ contract and finalization of the Lease without delay is necessary to protect the substantial interest of people of Guam.

If possible, we encourage the OPA Appeal to proceed without a trial in an efficient manner. The facts in this matter speak for themselves. It is important that we continue to pursue the USDA



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loan and that this meeting be conducted promptly to take advantage of this extremely attractive financing. Thank you for your consideration.

Respectfully,

Sean K. Easter
Vice President

CC: Jon Fernandez
Tom Keeler
Shannon Taitano
Rick Inman
Jamie Wilson
Eduardo Calvo



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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-16-007
)	
)	
CORE TECH INTERNATIONAL CORP.,)	DECLARATION
)	
Appellant.)	
)	

JON FERNANDEZ makes this declaration under penalty of perjury under the laws of Guam and states:

1. I am employed by Guam Department of Education, Government of Guam, as its Superintendent.
2. I submit this Declaration in hope that the Office of Public Accountancy (“OPA”) will either hear Core Tech International Corp.’s Appeal on the Record or, if a hearing is deemed needed, on an expedited basis.
3. Simon Sanchez High School is plagued with health and safety issues. Further delay in the rehabilitation and reconstruction of the aging facility prolongs the exposure of unsafe and harmful conditions to the students and faculty of Simon Sanchez High School. Simon Sanchez High School gymnasium, science wing and restroom were recently shut down by Public Health and Social Services due to unsafe conditions and health concerns.

4. It is my understanding that the Selected Contractor has applied for financing from the USDA Rural Development, which currently offers interest rates at historical lows for the Agency. If the Selected Contractor is able to close on this financing it will allow the government to allocate other funds needed to repair Guam's other public schools.

I declare under penalty of perjury that the aforementioned is true.

Submitted this 8th day of July, 2016.

By:



JON FERNANDEZ
SUPERINTENDENT
Guam Department of Education