



Office of the Attorney General

Elizabeth Barrett-Anderson

Attorney General of Guam

Solicitor Division

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Attorneys for the Government of Guam

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 09-21-16

TIME: 4:10 AM PM BY: MZ

FILE NO OPA-PA: 16-007, 16-011

**THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGÁTÑA, GUAM**

In the Appeal of:

CORE TECH INTERNATIONAL CORP.,

Appellant,

and

**GUAM DEPARTMENT OF PUBLIC
WORKS,**

Purchasing Agency.

) CONSOLIDATED APPEALS NOS.
) **OPA-PA-16-007 AND OPA-PA-16-011**

) **DEPARTMENT OF PUBLIC WORKS**
) **SUPPLEMENTAL TO PROCUREMENT**
) **RECORD**

Comes now, Department of Public Work ("DPW"), and through its undersigned counsel,
herein files the Supplement to the Department of Public Works Procurement Record as follows:

1. Letters of Substantial Interest

2. Internal Memorandum from AAG Tom Keeler to Deputy Solicitor (sealed)
3. Draft Internal Memorandum from AAG Tom Keeler to DPW (sealed)

Dated this 21st day of September, 2016.

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



By:

SHANNON TAITANO
Assistant Attorney General

Simon Sanchez HS

1 message

Tom Keeler <tpkeeler@gmail.com>

Mon, Sep 12, 2016 at 12:53 PM

Reply-To: tpkeeler@gmail.com

To: rpromero@gdoe.net, Shannon Taitano <staitano@guamag.org>, Felix Benavente <felix.benavente@dpw.guam.gov> ,

Tom Keeler <tkeeler@guamag.org>

CONFIDENTIAL COMMUNICATION

Randy,

Am forced to send this from my gmail account b/c of ongoing computer problems at DPW. Please call once you have an opportunity to review.

Please treat this as a confidential communication. It should not be disclosed or discussed with any DOE staff other than the Superintendent, Acting Superintendent or staff that are directly involved in finalizing any documents or letters.

Thanks.

Tom

CONFIDENTIALITY NOTICE: This email and any files transmitted with it may be legally privileged and confidential and is intended solely for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any review, dissemination or copying of this email, or taking any action in reliance on the contents of this information is strictly prohibited. If you received this transmission in error, please notify us immediately by e-mail or telephone to arrange for the return of this email and any files to us or to verify it has been deleted from your system.

**GDOE - Superintendent's Draft Declaration of Substantial Interest.docx**

96K

TPK – Draft GDOE Letterhead

To – DPW Deputy Director

LETTER OF SUBSTANTIAL GOVERNMENT INTEREST

**Re: Protest Regarding Request for Proposals for Project No.
730-5-1055-L-YIG (Lease Financing for Design,
Renovation, Rehabilitation, Construction and Maintenance
for Public Schools (Beginning with Simon Sanchez High School)**

**Protest of Intent to Award Contract to Guam Educational
Facilities Foundation, Inc. (“GEFF”)**

In support of the Department of Public Works’ (“DPW”) Notice of Decision dated June 8, 2016, and Notice of Decision, dated June July 15, 2016, officially denying the second and third protests made by Core Tech International Corp. (“Core Tech”) concerning the above referenced Request for Proposal (“RFP”).

The procurement process has encountered a number of problems created by outside influences and situations and a number of protests by losing proposer Core Tech, all of which have resulted in hardship for the residents of Guam, in particular the students, staff and administration of Simon Sanchez High School and Guam’s other public schools. Public Law 28-45, Title 1 G.C.A., Chapter 7, Section 715, provides that students attending the Department of Education should be educated in a healthy, safe and sanitary learning environment. Section 29(b) of the Guam Organic Act provides further: “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.”

Public Law 32-120, the *MA KAHAT ACT* OF 2013 and Public Law 32-121, also known as the *MA KAHAT ACT* OF 2013 (collectively the “Act”), which authorized the RFP added new Chapters 58D and 58E, respectively, to the Guam Procurement Code. Public Law 32-120 states

in the Legislative Findings and Policies that “*I Liheslaturan Guahan* finds that Simon Sanchez High School faces the combined challenges of deteriorating conditions, out of date design, and overcrowding. These combined deficiencies impair the quality of teaching and learning and contribute to health and safety problems for staff and students.” In addition, the Legislature’s urgency in moving forward with the project is documented in Section 58D105 in which it states the RFP “*shall* be issued within thirty (30) days of enactment of this Act for the renovation or construction of a new Simon Sanchez High School on the existing site, ...”. The Department of Education agrees with and supports these legislative findings, which it notes were made over a year and a half ago, and affirms that the need to replace Simon Sanchez High School is urgent and immediate.

It is clear that problems associated with the ongoing delays in completing a procurement to resolve these critical educational needs, that being the reconstruction of Simon Sanchez High School and the development of a comprehensive capital improvement plan to address past due repair and maintenance needs for Guam’s other public schools, are having a direct adverse effect on Guam’s public middle and high school population. It is obvious that the procurements authorized by the Act, which was unanimously authorized and mandated by the Guam Legislature and is also a top priority for the Governor and Lt. Governor of Guam, is of substantial interest to Guam and should *immediately* move forward.

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

Senseramente,



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY TENORIO
Lt. Governor



GLENN LEON GUERRERO

Director

FELIX C. BENAVENTE

Deputy Director

September 12, 2016

MEMORANDUM

TO: Jay Rojas, Administrator, Guam Economic Development Authority
Joseph L.M. Sanchez, Acting Superintendent, Guam Department of Education

FROM: Deputy Director

SUBJECT: Substantial Interest of Guam

Buenas Yan Hafa Adai:

Concerns relating to ongoing delays related to the reconstruction of Simon Sanchez High School have existed since the time the unsuccessful offeror filed its June 23, 2016 Notice of Appeal to the Office of Public Accountancy ("OPA"). The Appeal was based on the department's denial of the offeror's second protest dated May 27, 2016, in this procurement. These concerns significantly increased with the offeror filing yet another protest on July, 15 2016, which was also denied. Unsuccessful offeror's third protest necessitated consolidation of the second and third protests and rescheduling of Appeal hearing dates.

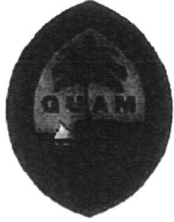
Pursuant to the authority provided me under 5 GCA Section 5425(g)(1), I have decided to immediately move forward with a determination that "the award of the contract without delay is necessary to protect the substantial interests of the territory" needed to lift the stay of the procurement and to finalize an Indefinite Quality/Indefinite Quantity contract **AS SOON AS POSSIBLE**.

While discussions have been held the past several weeks, it is my determination that the reconstruction of Simon Sanchez High School can't be delayed any further. Accordingly, I would request that your agency submit its detailed Statement of Interest by mid afternoon tomorrow, Tuesday, September 13, 2016. Upon receipt I will finalize the department's Statement of Interest and meet with the Guam Attorney General **AS SOON AS POSSIBLE**. If all is in order the Statement of Interest will be compiled by our legal advisor for presentation to the OPA in the Appeals process.

Thank you for your continuing assistance.

FELIX C. BENAVENTE

cc: Office of the Governor
Attorney General of Guam



**DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT**

www.gdoe.net
500 Mariner Ave. Barrigada, Guam 96913
Telephone: (671)475-0457 or 300-1547/1536 • Fax: (671)472-5001
Email: jonfernandez@gdoe.net



JON J.P. FERNANDEZ
Superintendent of Education

September 13, 2016

MEMORANDUM

TO: Felix C. Benavente
Deputy Director, Department of Public Works

FROM: Acting Superintendent

Re: **LETTER OF SUBSTANTIAL GOVERNMENT INTEREST
Protest Regarding Request for Proposals for Project No.
730-5-1055-L-YIG (Lease Financing for Design,
Renovation, Rehabilitation, Construction and Maintenance
for Public Schools (Beginning with Simon Sanchez High School)**

**Protest of Intent to Award Contract to Guam Educational
Facilities Foundation, Inc. ("GEFF")**



In support of the Department of Public Works' ("DPW") Notice of Decision dated June 8, 2016, and Notice of Decision, dated June July 15, 2016, officially denying the second and third protests made by Core Tech International Corp. ("Core Tech") concerning the above referenced Request for Proposal ("RFP").

The procurement process has encountered a number of problems created by outside influences and situations and a number of protests by losing proposer Core Tech, all of which have resulted in hardship for the residents of Guam, in particular the students, staff and administration of Simon Sanchez High School and Guam's other public schools. Public Law 28-45, Title 1 G.C.A., Chapter 7, Section 715, provides that students attending the Department of Education should be educated in a healthy, safe and sanitary learning environment. Section 29(b) of the Guam Organic Act provides further: "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."

Public Law 32-120, the *MA KAHAT ACT OF 2013* and Public Law 32-121, also known as the *MA KAHAT ACT OF 2013* (collectively the "Act"), which authorized the RFP added new Chapters 58D and 58E, respectively, to the Guam Procurement Code. Public Law 32-120 states in the Legislative Findings and Policies that "*I Liheslaturan Guahan* finds that Simon Sanchez High School faces the combined challenges of deteriorating conditions, out of date design, and overcrowding. These combined deficiencies impair the quality of teaching and learning and contribute to health and safety problems for staff and students." In addition, the Legislature's urgency in moving forward with the project is documented in Section 58D105 in which it states the RFP "*shall* be issued within thirty (30) days of enactment of this Act for the renovation or construction of a new Simon Sanchez High School on the existing site, ...". The Department of Education agrees with and supports these legislative findings, which it notes were made over a year and a half ago, and affirms that the need to replace Simon

It is clear that problems associated with the ongoing delays in completing a procurement to resolve these critical educational needs, that being the reconstruction of Simon Sanchez High School and the development of a comprehensive capital improvement plan to address past due repair and maintenance needs for Guam's other public schools, are having a direct adverse effect on Guam's public elementary, middle and high school population. It is obvious that the procurements authorized by the Act, which was unanimously authorized and mandated by the Guam Legislature and is also a top priority for the Governor and Lt. Governor of Guam, is of substantial interest to Guam and should ***immediately*** move forward.

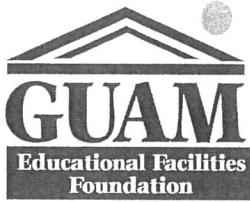
The Department of Education hereby asserts that, pursuant to Title 5 GCA §5425 G (1), the awarding of the contract to the top ranked offeror without delay is necessary to protect the substantial interest of Guam.

Senseramente,



JOSEPH L.M. SANCHEZ
Acting Superintendent

cc: Office of the Governor
Guam Attorney General's Office



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)

September 1, 2016

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

Re: RFP No.730-5-1055-L-YIG

Dear Director Benavente:

The purpose of this letter is to express GEF's concern that the continued delays caused by CoreTech's unwarranted protests and appeals will have a material detrimental impact on the reconstruction of Simon Sanchez High School and the repair of the other GDOE schools. The GEF Plan of Finance uses a creative combination of a direct USDA Community Facility Loan ("USDA CFL"), tax-exempt certificates of participation and project equity. This "hybrid" plan of finance is designed to take advantage of the historically low 2.75% interest rate now available with a direct loan from the USDA CFL program supplemented with tax exempt financing that is 1% lower today than a year ago. As a result of the favorable financing rates and unique GEF structure the annual savings to the Government and people of Guam is approximately \$1,296,000 per year or \$38,879,000 over the thirty-year lease term. However, these savings are likely to be lost unless GEF moves quickly to lock down this opportunity with the USDA.

As outlined in our letter to you dated July 8, 2016, the USDA approved GEF's loan pre-application and requested that we submit a formal application by August 31, 2016 in order to qualify for funding in the federal government's 2016-17 fiscal year which begins on October 1, 2016. At considerable time and expense, GEF completed and submitted the formal loan application to USDA on August 22, 2016 to preserve this financial opportunity. We are concerned that unless there is a timely resolution of Core Tech's appeal and we can submit a signed IDIQ prior to the beginning of the US Government's fiscal year then the loan application will be considered incomplete and funding allocated to other competing projects across the country.

Furthermore, recent statements by the U.S. Federal Reserve Board suggest that an increase in interest rates is near. Any such action will raise the costs of borrowing on both USDA and tax exempt financing; however, one particular benefit of the USDA program is that once awarded the interest rate is fixed for the term. Our ability to lock not only the commitment but also the interest rate is another compelling reason to seek an expedited solution to the appeal.



GUAM EDUCATIONAL FACILITIES FOUNDATION

118 Biridan Pulattat
Dededo, Guam 96929

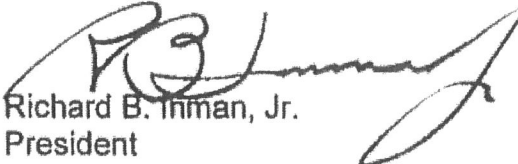
3060 Peachtree Road, Suite 1705
Atlanta, GA 30305 USA
404.504.2772 (ph) | 404.504.2790 (fx)

Additionally, the lowest interest cost for interim construction financing is available by using a Bond Anticipation Note (BAN) for the USDA portion of the project cost. The USDA customarily provides permanent loans for completed facilities and prefers not to provide construction financing for projects such as SSSHS. Stifel Nicolaus, GEF's underwriter, has completed many similar transactions and is highly confident that short term construction notes can be issued at attractive interest rates in the current markets providing even greater savings.

The monetary benefits of GEF's financing plan and the current rate environment are over \$38 million (\$23 million on a present value basis) and out weight by far the frivolous issues raised in Core Tech's appeal. We encourage the Government to take the actions necessary to enable the IDIQ to be executed so that the loan application and plan of financing can be executed under these favorable terms.

We hope that our expression of concerns and the risk of delay are duly considered. GEF is committed to doing what we can to move this important project forward in a manner that will provide the best value for the people of Guam. Please feel free to share our concerns with the other Committee members.

Sincerely,
Guam Educational Facilities Foundation, Inc.


Richard B. Inman, Jr.
President

Shannon Taitano

From: Felix Benavente <felix.benavente@dpw.guam.gov>
Sent: Tuesday, September 20, 2016 4:31 PM
To: Christina Garcia
Cc: Jay Rojas; Mana Silva Tajjeron; Shannon Taitano; Antoinette Leon Guerrero; Angelene Guzman; Tom Keeler; Tom Keeler
Subject: Re: GEDA Letter Regarding \$100M School Lease RFP

Si Yu'os Ma Ase' Tina.
Felix C. Benavente
DD-DPW

On Tue, Sep 20, 2016 at 4:04 PM, Christina Garcia <cgarcia@investguam.com> wrote:

Hafa Adai Deputy Director Benavente,

Attached please find a Letter intended to provide you with additional information to support a determination, per Title 5 GCA §5425(g)(1), that moving forward with the RFP for the \$100 million school lease, as awarded is in substantial interest of the Island of Guam.

Please do not hesitate to contact me here at the GEDA offices should you have any questions or comments.

Si Yu'os Ma'ase,
Tina Garcia

--
Christina "Tina" Garcia
Public Finance Manager
Tel: (671) 647-4332 ext. 121
email: cgarcia@investguam.com

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GEDA

Guam Economic Development Authority

Aturidad Inadilanton Ikunumiban Guaban

EDDIE BAZA CALVO
GOVERNOR OF GUAM
IMAGA'LAHEN GUAHAN
RAY TENORIO
LT. GOVERNOR OF GUAM
ISEGUNDO NA MAGA'LAHEN GUAHAN
JAY ROJAS
ADMINISTRATOR
ADMINISTRADOT
MANA SILVA TAIJERON
DEPUTY ADMINISTRATOR
SIGUNDO NA ADMINSTRADOT

September 18, 2016

Felix Benevente
Deputy Director, Department of Public Works
Tamuning, Guam

RE: RFP Project no. 730-5-1055-L-YIG Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance for Public Schools

Hafa Adai Deputy Director Benevente,

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 *RFP Project no. 730-5-1055-L-YIG Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance for Public Schools* (the "Project") as awarded is in substantial interest of the Island of Guam. While we believe that the Guam Department of Education ("GDOE") has provided arguments in support of moving forward, there are a number of municipal market factors to take into consideration.

The Guam Economic Development Authority ("GEDA"), as Central Financial Manager, is charged with ensuring that the perception of Guam as a viable and worthy investment option is maintained through continued communication with all market stakeholders. As Guam is at a critical juncture in the market, and in light of the recent Puerto Rico Bond defaults, 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:

Low Interest Rate Environment and Market Volatility

Notwithstanding the impact of the delay on Guam's school children and their access to adequate educational facilities, the municipal market rates have been dropping significantly this year, attributed to all time low, but volatile, treasury rates and the quick market rebound since the announcement this past June of the United Kingdom's intent to withdraw from the European Union, commonly know as "Brexit". Executing the financing now would directly impact the Government, since lower rates would mean lower borrowing costs for the project. An additional risk is that there is strong market anticipation that the Federal Government will begin to increase interest beginning in December 2016.

Increased Costs as a Result of Delays

Another consideration is the cost of the delays due to the protest 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 Simon Sanchez High School ("SSHS") and make critical repairs to the other schools in a tighter timeframe as more workers and more labor hours would be required to complete the project in time for the required school year. This will more than likely cause major disruptions and inconvenience for the school administration in planning the transitions from the old facility to the new facility, for instance in the case of SSHS, or during the time needed to make rushed repairs at the other school facilities.





The Honorable
EDDIE BAZA CALVO
 Governor

The Honorable
RAY S. TENORIO
 Lieutenant Governor



GLENN LEON GUERRERO
 Director
FELIX C. BENAVENTE
 Deputy Director

September 14, 2016

MEMORANDUM

TO: Felix C. Benavente, Deputy Director

FROM: John Calanayan, Engineer *SUPERVISOR OF CONTRACTS*
 DPW Engineering CIP

SUBJECT: **Substantial Interest of Guam**
 Construction of New Simon Sanchez High School
 Project No. 730-5-1055-L-YIG

It is common knowledge that Simon Sanchez HS students, teachers, parents and concerned citizens are anticipating the timely completion of the High School. Substantial concerns exist with ongoing delays in construction owing to a proposer’s appeal to the Office of Public Accountability. It is CIP’s position that the construction of Simon Sanchez HS should immediately move forward. Factors of concern with further delays include, but are not limited to, the following:

1. Labor and Materials and increase in costs.
2. The possibility of higher interest rates increasing the cost of construction.
3. Concerns with the availability of labor owing to the Military buildup and other reasons.
4. Delay of Completion.
5. *CONCERN WITH H2-B WORKERS.*

The above factors are the main concerns with ongoing delays. It is in the best interest of Guam and the Simon Sanchez students and community to immediate move forward with the Project.

(no subject)

3 messages

Tom Keeler <tkeeler@guamag.org>

Wed, Sep 14, 2016 at 1:30 PM

To: TARALYN Santos <tarasantos89@gmail.com>, Tom Keeler <tkeeler@guamag.org>



09-14-16 DRAFT CIP letter.docx

12K

TARALYN Santos <tarasantos89@gmail.com>

Wed, Sep 14, 2016 at 2:19 PM

To: Tom Keeler <tkeeler@guamag.org>

Printed and placed in your box

Tara

On Wed, Sep 14, 2016 at 1:30 PM, Tom Keeler <tkeeler@guamag.org> wrote:

Tom Keeler <tkeeler@guamag.org>

Wed, Sep 14, 2016 at 3:29 PM

To: TARALYN Santos <tarasantos89@gmail.com>

Again, Thanks. Tom

From: TARALYN Santos [tarasantos89@gmail.com]

Sent: Wednesday, September 14, 2016 2:19 PM

To: Tom Keeler

Subject: Re:

Printed and placed in your box

Tara

On Wed, Sep 14, 2016 at 1:30 PM, Tom Keeler <tkeeler@guamag.org<mailto:tkeeler@guamag.org>> wrote:



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY S. TENORIO
Lieutenant Governor



GLENN LEON GUERRERO
Director

FELIX C. BENAVENTE
Deputy Director

September 14, 2016

MEMORANDUM

TO: Felix C. Benavente, Deputy Director

FROM: John Calanayan, Engineer 1
DPW Engineering CIP

SUBJECT: **Substantial Interest of Guam**
Construction of New Simon Sanchez High School
Project No. 730-5-1055-L-YIG

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