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PROCUREMENT APPEALS

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

In the Appeal of

Core Tech International Corp.,  
Appellant.

and

Guam Department of Public Works,  
Purchasing Agency.

**DOCKET NO. OPA-PA-16-007**  
**DOCKET NO. OPA-PA-16-011**

**REQUEST FOR DETERMINATION THAT  
GUAM EDUCATIONAL FACILITIES  
FOUNDATION'S PROPOSAL WAS NON-  
RESPONSIVE**

**I. INTRODUCTION**

On June 15, 2015, the Department of Public Works ("DPW") issued a Request for Proposals for the 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 (the "RFP"). The RFP contemplated a contract to be for a term of five (5) years to include services for thirty-five (35) Guam Department of Education ("GDOE") facilities as outlined in the Army Corps of Engineering Assessment Report (Attached as A-14 to the RFP), starting with Simon Sanchez High

1 School. *See*, RFP, §2.0 at 7, Exhibit 1; Addendum 6, Exhibit 2 at CT-2-00011. Priority would be  
2 given to Simon Sanchez High School (“SSHS”) and the development of a comprehensive capital  
3 improvement plan. *Id.* Three companies submitted proposals: Core Tech, Guam Educational  
4 *Facilities* Foundation, Inc. (“GEFF”), and Pernix Guam LLC (“Pernix”). The Bid Submission  
5 deadline was November 6, 2015. *See*, Addendum 6 at 1, Exhibit 2 at CT-2-00006. The Bid Opening  
6 date was November 20, 2016. *See*, Addendum 8, Exhibit 2 at CT-2-00052.

8 As discussed in Section II.A. below, the proposer, Guam Educational *Facilities* Foundation  
9 refers to itself as “GEFF”, the same acronym used by the Guam Education *Financing* Foundation,  
10 which constructed the four (4) Guam Public School System schools known as Okkodo High School,  
11 Liguán Elementary, Adacao Elementary and Astumbo Middle School (the “Four Schools”). On May  
12 13, 2016, DPW issued a Notice of Intent to Award the contract to GEFF. Core Tech protested the  
13 intended award, and subsequently appealed DPW’s denial of the protests to the Office of Public  
14 Accountability, which consolidated the appeals.

16 The hearing on the consolidated appeals before the Public Auditor commenced on September  
17 7, 2016. It became clear from the testimony of Jon Fernandez, Felix Benavente and Mana Silva  
18 Taijeron, all three of whom are members of the Evaluation Committee and the Negotiation  
19 Committee, that they believed the “GEFF” that is the proposer for this RFP (Guam Educational  
20 *Facilities* Foundation), was the “GEFF” that constructed the Four Schools (Guam Education  
21 *Financing* Foundation).

23 The testimony of the Evaluation Committee and Negotiation Committee members, and Randy  
24 Romero, who is the DOE Program Coordinator for Capital Improvement Projects, reveals that  
25 Government representatives in this RFP were led to believe that the Proposer Guam Educational  
26 *Facilities* Foundation was Guam Education *Financing* Foundation, the awardee of the Four Schools.  
27  
28

1 The fact that the principal decision makers believed they were evaluating the “GEFF” that  
2 built the Four Schools for this RFP is shocking, and raises the question of (1) which “GEFF”  
3 submitted the Proposals, (2) which “GEFF’s” qualifications were reviewed and evaluated, and (3) to  
4 which entity did the Government believe the contract for this RFP was being awarded. Because  
5 GEFF’s proposal was not released, Core Tech is unable to verify the information contained in  
6 GEFF’s proposal. However, GEFF represented to the Government and to the public in numerous  
7 GEFF press releases and statements made to the press, along with briefs filed by GEFF with the  
8 OPA, that it is the GEFF that constructed the Four Schools when clearly it was not. This  
9 misrepresentation is a serious violation of Guam law and cannot be dismissed or ignored.

10 GEFF, the proposer entity, has misrepresented who it is. Core Tech requests that the Public  
11 Auditor review the original GEFF proposal, submitted to the OPA under seal, for the purpose of  
12 determining whether GEFF’s proposal was responsive to the RFP with regard to its identity and  
13 experience, or whether GEFF in its proposal misrepresented that it was the same GEFF that  
14 constructed the Four Schools, and claimed that GEFF’s experience as its own. Core Tech is not  
15 seeking release on confidential or proprietary information, but rather information regarding the  
16 identity of the entity that submitted the original proposal.

## 17 18 **II. RELEVANT FACTS**

19 On December 24, 2015, DPW notified GEFF that its proposal ranked highest of all offerors.  
20 *See*, Negotiating Committee Memorandum dated May 13, 2016 at 1 (“Negotiating Committee  
21 Memo”), Exhibit 12. The Negotiating Committee commenced negotiations in January 2016. The  
22 members of the Negotiating Committee team were Jon Fernandez (Superintendent of GDOE), Mana  
23 Silva Taijeron (GEDA Deputy Director), and Felix C. Benavente (DPW Deputy Director). *Id.*

24 The OPA hearing on the consolidated appeals commenced on September 7, 2016 and the  
25 Public Auditor heard the testimony of Felix Benavente, Richard Inman, Randy Romero, and Jon  
26 Fernandez. Based on the testimony received by the Public Auditor to date, an issue regarding Guam  
27 Educational *Facilities* Foundation’s identity as an offeror came to light.

28 In DPW’s September 25, 2015 Responses to the Requests for Information (“RFI”), one of

1 the parties that submitted an RFI was identified as *Guam Education Development Foundation*  
2 (“GEDP”). During the September 15, 2016 hearing on the consolidated appeals, the Public Auditor  
3 requested the Proposer, Guam Educational Facilities Foundation to clarify: (1) whether the  
4 identification of Guam Education Development Foundation was a typographical error, and (2) if so,  
5 whether the error originated in the submission of the RFI or in DPW’s response. On September 16,  
6 2016, the offeror, Guam Educational Facilities Foundation, confirmed that the designation was  
7 indeed an error in the submission of the RFI. The Public Auditor asked what the correct  
8 identification would have been for the party submitting the RFI. The Offeror confirmed that it is an  
9 entity known as Guam Education Financing Foundation.

10 Richard Inman testified on September 16, 2016, that Guam Educational *Facilities* Foundation  
11 is a non-profit corporation. The Guam Department of Revenue & Taxation has no record of Guam  
12 Educational *Facilities* Foundation (the GEF which is the proposer on this RFP) having a business  
13 license, nor does it have a record of Guam Educational *Facilities* Foundation having a tax exemption  
14 certificate as of September 27, 2016. *See Declaration of Leslie Travis* (“Travis Decl.”), at ¶3.

15 Mr. Inman also testified that Guam Education *Financing* Foundation was the special purpose  
16 entity formed in 2004 for the purpose of submitting a proposal for and ultimately developing,  
17 designing and constructing the Four Schools. In 2010, when Okkodo High School was undergoing  
18 an expansion, Guam Education Financing Foundation II was established to finance, develop and  
19 construct the expansion. Guam Education Financing Foundation II was incorporated on November 5,  
20 2010. Neither Guam Education Financing Foundation nor Guam Education Financing Foundation II  
21 submitted a proposal for the Simon Sanchez High School project at issue in this appeal.

22  
23 **A. The Proposer Guam Educational *Facilities* Foundation, Misrepresented Who It**  
24 **Is By Claiming To Be Guam Education *Financing* Foundation, The GEF Entity**  
**That Constructed The Four Schools**

25 The current “GEFF”, Guam Educational *Facilities* Foundation, was the proposer whose  
26 proposal was ranked highest by the evaluation team. The current GEFF is not the same GEFF entity  
27 that constructed the Four Schools.

28 Based on information adduced at the hearing in this matter, including Mr. Inman’s testimony,

1 it is clear that Guam Education *Financing* Foundation, Guam Education Financing Foundation II, and  
 2 Guam Educational Facilities Foundation are all distinct corporate entities.

ENTITY	DATE ESTABLISHED	PURPOSE
Guam Education Financing Foundation  Members: Richard Inman John Hand James Wilson  <i>See, Travis Decl. at Ex. A</i>	November 15, 2004	Construction of Okkodo High School, Liguán Elementary, Adacao Elementary and Astumbo Middle School
Guam Education Financing Foundation II  Members: Richard Inman John Hand James Wilson  <i>See, Travis Decl. at Ex. B</i>	November 5, 2010	Expansion of Okkodo High School
Guam Educational Facilities Foundation  Members: Philip J. Flores Emily J. Hernandez  <i>See, Travis Decl. at Ex. C</i>	August 27, 2015	Simon Sanchez High School and CCIP

23 Because the proposals submitted for the RFP for Simon Sanchez High School are confidential<sup>1</sup>, Core  
 24 Tech is unable to confirm whether the current GEFF, Guam Educational *Facilities* Foundation,  
 25 identified itself as the entity that constructed the four schools in its proposal. Based on the  
 26 Declaration of Sean Easter, submitted on July 22, 2016, it appears that GEFF has submitted its

27 \_\_\_\_\_  
 28 <sup>1</sup> Portions of the evaluation phase records were included in the procurement record, distributed to all parties and made available for public review, such as the cost estimate of all offerors.

1 original proposal to the OPA. It is clear, however, from the testimony of Jon Fernandez  
 2 (Superintendent of GDOE), Mana Silva Taijeron (GEDA Deputy Director), and Felix C. Benavente  
 3 (DPW Deputy Director), members of both the Evaluation Committee and the Negotiating Committee,  
 4 and Randy Romero (GDOE Program Coordinator), that they all believed the current GEFF, Guam  
 5 Educational *Facilities* Foundation was the GEFF entity that built the Four Schools:

Date	Witness	Testimony
9/7/2016	DPW Deputy Director Felix Benavente	Testified that GEFF is an organization that completes and takes on projects “similar to what we have” and can do so successfully.
9/15/2016	GDOE Program Coord. Randy Romero	Testified that he recused himself from participating in the evaluation process in part because he acts as a liaison between GDOE and GEFF for the leased schools (Okkodo, Astumbo, Liguán and Adacao)
9/19/2016	GDOE Superintendent Jon Fernandez	Testified that he had experience with GEFF through the leased schools (Okkodo, Astumbo, Liguán and Adacao)
9/23/2016	GEDA Deputy Admin. Mana Silva Taijeron	Testified that GEFF was the contractor for the 4 leased schools (Okkodo, Astumbo, Liguán and Adacao)

17 In addition to the testimony of the four witnesses, the March 13, 2016 Negotiation Committee  
 18 Memorandum attached to the Notice of Intent to Award confirms the Negotiation Committee’s belief  
 19 that when it was negotiating with the current GEFF, Guam Educational *Facilities* Foundation, it was  
 20 negotiating with the GEFF entity that constructed the Four Schools, *and* the Okkodo expansion,  
 21 which was not performed by Guam Educational *Facilities* Foundation or Guam Education Financing  
 22 Foundation, but by Guam Education Financing Foundation II:

23 GEFF has completed 10 projects on Guam (4 schools, Okkodo expansion and 5  
 24 housing projects) ALL within the contract term.

25 *Negotiation Committee Memorandum*, CT12 at 3.

26  
 27 It is likely that Guam Educational *Facilities* Foundation claimed to be the same entity as  
 28 Guam Education *Financing* Foundation in its proposal, which has not been disclosed in this matter,

1 because Guam Educational *Facilities* Foundation and its representatives, have publicly stated,  
 2 including multiple times in the context of this consolidated appeal, that the current GEFF is the same  
 3 GEFF entity that was formed in 2010, and built the Four Schools:

Date	Document	Statement
4 5 6 Undated 7 <i>See, Travis</i> 8 <i>Decl.</i> at Ex. 9 D 10 11	4 5 6 Guam Educational Facilities Foundation Press 7 Release Re: Yigo Mayor 8 9 10 11	4 5 6 “GEFF has operated on Guam for 7 more than ten years and has 8 successfully completed several large 9 scale projects for the Guam 10 Department of Education. In 2004, 11 GEFF was awarded an RFP to 12 design, build, finance and maintain 13 four new schools for the Guam 14 Public School System at a cost of 15 approximately \$72.5 million – 16 Adacao Elementary School, Ligan 17 Elementary School, Astumbo Middle 18 School and Okkodo High School. 19 Construction commenced in 20 November 2006 and the first school 21 was completed and turned over to 22 GDOE in February of 2008. Each 23 new school was finished on scope, 24 On time and on budget.” 25 26 27 28
17 18 1/13/2016 19 <i>See, Travis</i> 20 <i>Decl.</i> at Ex. 21 E 22 23 24 25 26 27 28	17 18 Guam Educational Facilities Foundation Press 19 Release Re: Highest Qualified Bidder 20 21 22 23 24 25 26 27 28	17 18 “GEFF has operated on Guam for 19 more than ten years and has 20 successfully completed several large 21 scale projects for the Guam 22 Department of Education. In 2004, 23 GEFF was awarded an RFP to 24 design, build, finance and maintain 25 four new schools for the Guam 26 Public School System at a cost of 27 approximately \$72.5 million – 28 Adacao Elementary School, Ligan Elementary School, Astumbo Middle School and Okkodo High School. Construction commenced in November 2006 and the first school was completed and turned over to GDOE in February of 2008. Each new school was finished on scope, On time and on budget.”

1 2 3 4 5	Undated <i>See, Travis Decl.</i> at Ex. F	Guam Educational Facilities Foundation Press Release Re: Third Protest	“...the GEFF organization has successfully developed, built, financed, and maintained other schools such as Okkodo High School, Adacao Elementary, Ligan Elementary, and Astumbo Middle School.”
6 7 8 9 10	6/27/2016  <i>See, Travis Decl.</i> at Ex. H	<i>Pacific Daily News</i> Article “Group: Core Tech’s Protest are ‘Delay Tactics’”	Quotes GEFF VP Sean Easter, “Compare Core Tech’s controversial deal at Tiyan for old and abandoned buildings and facilities that is worth hundreds of millions of dollars to Core Tech with what GEFF achieved on the recently completed expansion of Okkodo High School and the new SSSH plan.”
11 12 13 14 15 16 17 18 19 20 21 22	7/27/2016  <i>See, Travis Decl.</i> at Ex. G	Guam Educational Facilities Foundation Press Release Re: Core Tech’s Multiple Protests	“GEFF has operated on Guam for more than ten years and has successfully completed several large scale projects for the Guam Department of Education. In 2004, GEFF was awarded an RFP to design, build, finance and maintain four new schools for the Guam Public School System at a cost of approximately \$72.5 million – Adacao Elementary School, Ligan Elementary School, Astumbo Middle School and Okkodo High School. Construction commenced in November 2006 and the first school was completed and turned over to GDOE in February of 2008. Each new school was finished on scope, On time and on budget.”
23 24 25 26 27 28	9/2/2016	Hearing Brief of Interested Party Guam Educational Facilities Foundation	States on Page 10, “[a]dditionally, the structure GEFF will use is the same structure GEFF used in constructing four schools on Guam and for the Okkodo High School expansion.”  States on Page 11, “...[I]n prior construction work done for GEFF, Core Tech initially schose to sue cheap and inferior roofing products



1			at the four schools GEFF developed. Because of serious inferior quality problems with this material, GEFF filed a latent-defect claim with Zurick, Core Tech's bonding company."
2			
3			States on Page 12, "...[T]here is the Government of Guam's successful prior experience with GEFF and Hensel Phelps, the prime contractor, who completed their prior jobs on time without increases due to change orders."
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9	9/8/2016	Phil Flores interview for Pacific News Center, "GEFF Confident Coretech Appeal Will Be Thrown Out"  <a href="http://www.pacificnewscenter.com/local/10767">http://www.pacificnewscenter.com/local/10767</a>	"Core Tech is absolutely bogging things down with this. They just want to get another contract. I mean, I want you to compare what we've done – Okkodo, Liguán, Adacao, compare that to Tiyan. I mean it just isn't right and they want to do another one."
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14	9/9/2016	Phil Flores interview on Patti Arroyo Show  <a href="http://www.pacificnewscenter.com/pnc-k57-interviews/10770">http://www.pacificnewscenter.com/pnc-k57-interviews/10770</a>	"As we said yesterday, we will compare what we've done, at Okkodo at Adacao...we've built four schools plus an addition at Okkodo, compared to Tiyan, which such is a bad deal for the students and isn't even ADA compliant, and he wants to build another one like that? I don't get it."
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20	9/16/2016	Hearing Testimony Of Rick Inman	Mr. Inman testified that Guam Educational <i>Facilities</i> Foundation wanted to help the youth of Guam, that it had prior experience with the four other schools, which was successful, and that it insures and maintains the other schools. However, Hearing Officer Anthony Camacho corrected Mr. Inman, pointing out that the entity responsible for the four schools project was Guam Education <i>Financing</i> Foundation.
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1 The false statement that the current GEF, Guam Educational *Facilities* Foundation, is the  
 2 same entity that constructed the Four Schools has been reprinted by media outlets and has never been  
 3 corrected by either GEF:

4  
 5 Guam Educational *Facilities* Foundation has done work for DOE before – the company built  
 6 the Adacao Elementary, Liguán Elementary, Astumbo Middle and Okkodo High Schools.  
*KUAM News*, January 14, 2016. See, *Travis Decl.* at Ex. I

7  
 8 Guam Educational *Facilities* Foundation is a nonprofit group that leases Astumbo Middle  
 9 School, Liguán Elementary School, Adacao Elementary School and Okkodo High School to  
 10 the Government of Guam.” *Pacific Daily News*, “Group: Core Tech’s Protest are ‘Delay  
 Tactics””, June 27, 2016. See, *Travis Decl.* at Ex. H.

11 **“As we said yesterday, we will compare what we’ve done, at Okkodo at Adacao...we’ve**  
 12 **been four schools plus an addition at Okkodo**, compared to Tiyan, which such is a bad  
 13 deal for the students and isn’t even ADA compliant, and he wants to build another one like  
 that? I don’t get it.” – Phil Flores on Patti Arroyo Show 9/9/2016, *supra*.

14  
 15 The fact that the current GEF, Guam Educational *Facilities* Foundation, has claimed to be  
 16 Guam Education *Financing* Foundation affects the responsiveness of its original proposal, and every  
 17 subsequent proposal submitted thereafter, including the proposal the Negotiating Committee  
 18 ultimately selected. The RFP contains specific experience requirements for all proposers:

RFP Section	Statement
As AMENDED IN ADDENDUM 6:	5.1.1 COMPETENCY OF BIDDERS
5.1.1 Competency of Bidders	The Government may require bidders to present satisfactory evidence that he has sufficient experience and he is fully prepared with necessary capital, material, machinery and skilled workmen and supervision staff to carry out the contract satisfactorily. Accordingly, the Contractor must submit for review the following statements;
CT2-11 (emphasis supplied)	<ul style="list-style-type: none"> <li>a) <i>Experience on similar work.</i></li> <li>b) <i>Past performance of firm in accomplishing government projects in agreed time.</i></li> <li>c) <i>Availability of plant, machinery and other equipment necessary for work.</i></li> <li>d) <i>Quality of work presently performed for Government of Guam or other agencies.</i></li> <li>e) <i>Contractor's diligence in carrying out responsibility.</i></li> <li>f) <i>Record of good owner-contractor relationship.</i></li> <li>g) <i>Previous record of bids qualification.</i></li> <li>h) <i>Quality of supervisory personnel and areas of their performance.</i></li> <li>i) <i>Record of past performance of government contracts including record of default and non-payment of obligations.</i></li> <li>j) <i>Possession of Government of Guam appropriate contractor's license.</i></li> <li>k) <i>Financing capabilities.</i></li> <li>l) <i>Financial resources.</i></li> </ul>

1 2 3 4	Proposal Structure: Company Overview  CT1-42	a. Type of firm. State whether Offeror is a corporation, partnership, sole proprietorship, Joint venture, etc. Provide the organizational documents for Offeror and a certificate of good standing from the state or territory of formation. Provide a brief overview of your firm, including key team members, and a description of capital, bondability by US Treasury listed company and experience. Provide a list of your key team members with a brief background of their experience and education. Include any pertinent or applicable awards, commendations and publications by team members.
5 6 7	Proposal Structure: Financing, construction, maintenance and management plans  CT1-42	a. Construction Experience. Provide a write up of not more than 15 pages in 8.5 inch x 11 inch with font size not smaller than 10 points, to demonstrate Offeror's experience in new construction and/or renovation experience of 5 school projects or similar facilities/structures with a minimum contract amount of \$5 Million for the past 5 years on Guam and/or in a remote, resource constrained environment with logistical challenges.
8 9 10 11 12	Pernix RFI #12  CT2-33	12. Section 5.1.4 Experience: The experience requirements (10 years) of this clause appear to be in direct conflict with the Evaluation Criteria experience requirement (5 years) which is very restrictive and does not meet the intent of the clause. Please clarify the conflict.  Answer: The ten (10) years' experience means the continuous number of years a certain offeror or proposer doing business as a contractor in Guam or in a remote, resource constraint environment with logistical challenges. And the five (5) years' experience is the number of years doing school construction or other similar facilities/structures with a minimum worth of \$ 5,000,000.

14 If the current GEF, Guam Educational *Facilities* Foundation, represented in its proposal, as  
15 it does publicly, that it was the entity that constructed the Four Schools, and if it submitted  
16 information regarding the former GEF's, Guam Education *Financing* Foundation's, experience as  
17 its own experience, its claim is a material misrepresentation that renders its proposal non-responsive:

18  
19 **3.7 CLASSIFICATION OF PROPOSALS AS RESPONSIVE OR NON-RESPONSIVE**

20 All proposals will initially be classified as either "responsive" or non-responsive".  
21 Proposals may be found non-responsive at any time during the evaluation process or  
22 contract negotiation *if any of the required information is not provided or the proposal*  
23 *is not within the plans and specifications described and required in the RFP.* If a  
proposal is found to be non-responsive, it *will not* be considered further.

24 *RFP*, CT1-000015. According to the RFP, responsiveness is a consideration during both the  
25 evaluation and the negotiation phases. Because, as described above, the RFP requires proposers to  
26 submit information regarding *their* experience and past performance, the current GEF should not  
27 have relied on the experience of Guam Education *Financing* Foundation in its proposal. Its failure to  
28 submit information regarding its own experience (or lack thereof) should have resulted in a finding of

1 non-responsiveness at the evaluation stage, and it should be found non-responsive presently in the  
2 negotiation stage. 2 GAR §3115(e)(3)(A)(ii) also authorizes the Government to reject an individual  
3 proposal that “does not conform in all material respects” to the solicitation. Because GEFf’s proposal  
4 is non-responsive, the RFP requires that the proper action on the part of the Government is to not  
5 further consider GEFf’s proposal.

6 Because this information was not corrected in subsequent proposals, the Negotiation  
7 Committee’s acceptance and ultimate selection of one of the new proposals was made under the  
8 continuous assumption that the current GEFf, Guam Educational Facilities Foundation, was the  
9 entity that constructed the four schools, rendering these subsequent proposals likewise non-  
10 responsive.

### 11 12 III. CONCLUSION

13 Because Guam Educational *Facilities* Foundation has represented multiple times under oath,  
14 on the record before the OPA, and in press releases and interviews to the media that it is the same  
15 entity that constructed the Four Schools, and because members of the Evaluation and Negotiation  
16 committees for the RFP believed that the two entities were the same, the inescapable conclusion is  
17 that Guam Educational *Facilities* Foundation represented in its original proposal that it is the same  
18 entity that constructed the Four Schools. The OPA should review GEFf’s original proposal,  
19 submitted under seal, for the purpose of determining whether GEFf’s proposal is responsive to the  
20 RFP’s sections regarding identity and experience, and unseal this non-confidential and non-  
21 proprietary information for purposes of the hearing on the consolidated appeals.

22  
23 Dated: September 29, 2016

24 By: 

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Core Tech International Corp.