

***IN THE APPEAL OF CORE TECH INT'L CORP.
OPA-PA-16-007 & OPA-PA-16-011***

CORE TECH INT'L CORP.

CLOSING STATEMENT

October 7, 2016

**THIS IS THE SINGLE LARGEST
PROCUREMENT DPW HAS EVER
SOLICITED**

WHAT'S AT STAKE?

- Providing the “Best Value” to the People of Guam for SSHS and the 35 remaining schools
- Preventing the Government from writing a blank check
- Ensuring the fairness, integrity and transparency in the Procurement Process

WHAT SHOULD HAVE
HAPPENED?

“ALL HANDS ON DECK”

- DPW should have had a clear understanding of its duties as the Procuring Agency
- Felix Benavente, the Chief Procurement Officer should have had a clear understanding of his duties
- DPW should have complied with Guam Procurement Law

WHAT WENT WRONG?

1. The Government failed to comply with Guam Procurement Law
2. The Government failed to insure a complete procurement record was kept
3. The Government failed to ensure a level playing field for all proposers
4. The Government failed to protect the integrity of the procurement process

Complete Procurement Record Defined

5 GCA §5249

Each procurement officer shall maintain a complete record of each procurement. **The record shall include the following:**

(a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement;

(b) a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;

(c) sound recordings of all pre-bid conferences, negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement (*emphasis added*)

No Award If Procurement Record Cannot be Certified

§ 5250. Certification of Record.

No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection. The certificate is itself a part of the record

Date, Time, Subject Matter and Names of Participants in Meetings

1. Any meetings involving Government employees in any way related to this procurement
2. Pre-solicitation, post-solicitation, evaluation, negotiation, and award.
3. GEFF's notes and minutes are not enough

LOG OF COMMUNICATIONS

- Between government employees and the public and potential bidder
- Unknown who prepared it.
- Incomplete entries on 16 days over period of 1 yr.
- Started 6 months after issuance of RFP and ended two months before award
- There are no phone call records
- Cannot be recreated *post hoc*

Log of Communications

(CT Ex. 24)

DPW/DOE/GEDA					
RFP Committee for SSHS & 35 DOE Schools					
Log Book					
Item No.	Date	Type of Communication	Who	Subject	Action
1	12/22/2015	Memorandum	John Calanayan	Lease Financing of Public Schools	AUP No Response
2	2/12/2016	Email	Shannon Taitano	GEFF CD	AUP No Response
3	2/12/2016	Email	Antoinette Leon Guerrero	Simon Sanchez High School	AUP No Response
4	2/15/2016	Meeting	DPW/DOE/GEDA/ & GEFF	Roles of Members/ Cost Overviews	
5	2/15/2016	Email	Jon F., Mana T., & Shannon T.	Contract Negotiation Mtg. w/ GEFF for Lease Financing	AUP Responded
6	2/16/2016	Email	Tom Keeler	RFP-Financing of Public Schools, SSHS First	Tom K. Responded
7	2/16/2016	Email	Jon Fernandez/ Tom Keeler	RFP-Financing of Public Schools, SSHS First	Jon F. Responded
8	2/16/2016	Email	Jon Fernandez	Award	AUP Responded
9	2/17/2016	Email	KUAM-Isa Baza	100 Mil RFP	Aup Responded
10	2/17/2016	Email	Arleen Pierce	RFP-Contract Negotiations Memo 2/17/16 to GEFF	AUP Responded
11	2/18/2016	Email	Arleen Pierce	Point of Contacts and Purpose	AUP Responded
12	2/19/2016	Meeting	DPW/DOE/GEDA	Documents Received from GEFF	
13	2/19/2016	Email	Arleen Pierce	Contract Negotiation Mtg. w/ GEFF for Lease Financing	AUP Responded
14	2/23/2016	Email	John Calanayan/ Reynaldo J.	GEFF SSHS Cost Estimate & Sq Ft.	AUP No Response
15	2/23/2016	Email	Sydney Leon Guerrero	Simon Sanchez High School	AUP No Response
16	2/23/2016	Meeting	DPW/ DOE/ GEDA	RFP Cost, Deliverables and Timelines	
17	2/24/2016	Email	KUAM-Sabrina Sala Matanana	Sunshin Act Request	AUP No Response
18	2/25/2016	Email	Antoinette Leon Guerrero	Simon Sanchez High School	AUP No Response
19	2/25/2016	Email	Jon F., Mana T., & Shannon T.	GEFF Cost Breakdown	AUP Responded
20	2/26/2016	Email	John C., Jon F., Randy R.	Request to contact Superintendent Fernandez, GEFF Mtg.	AUP Responded
21	2/26/2016	Memorandum	GEFF	Request to contact Superintendent Fernandez	AUP Responded
22	2/29/2016	Memorandum	GEFF	Detailed Construction Costs	AUP Responded
23	3/1/2016	Email	Felix B., Tom Keeler	Update on RFP for Schools	AUP Responded
24	3/1/2016	Memorandum	Felix Benavente	KUAM- Freedom of Information	AUP Responded
25	3/1/2016	Memorandum	Felix Benavente	Request to contact Superintendent Fernandez	AUP Responded
26	3/1/2016	Email	Tom Keeler	Memo to DOE	AUP Responded

“Substantially complied in good faith” with the requirement of maintaining a complete communication log *is not the law.*

On Sept. 23, John Calanayan testified:

- Understood communications include hard copies of documents, meetings, telephone calls, texts, and emails.
- It would be impossible to recreate the entire range of communications
- Spoke to Ms. Mooney (AG) in February 2016 and found out he was required to keep a log
- Asked: Because he is unable to recreate a complete log, DPW would not be able to certify that there is a complete procurement record?

“I believe so.”

Sound Recordings

1. All pre-bid conferences - No log therefore cannot verify videotapes are complete
2. All negotiations arising from a Request for Proposals
 - At least 18 meetings during negotiations with GEF
 - Ray Junio recorded portion of one May meeting with GEF (CT Ex. 21) on cell phone, which was later damaged and destroyed.

5 GCA §5249(c)
Public Law 18-44

“sound recordings of all pre-bid conferences, negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;”

CORE TECH'S PRICE WAS DISCLOSED IN NEGOTIATIONS



Arleen U. Pierce <arleen.pierce@dpw.guam.gov>

DPW RFP committee - SSSH cost analysis from GEF

Reynaldo T. Junio <reynaldo.junio@dpw.guam.gov>

Mon, Mar 14, 2016 at 1:30 PM

To: "Arleen U. Pierce" <arleen.pierce@dpw.guam.gov>, "John F. Calanayan" <john.calanayan@dpw.guam.gov>

Cc: Felix Benavente <felix.benavente@dpw.guam.gov>

Arleen, the following are the answers to your inquiries.
Hoping this one will help.

5. Would like to reduce cost down to \$63M as the 2nd offeror has given.

To me, we could not just reduce the price until such time we will know what are the cost included on the \$73M. (example; new structure versus structures to remain and re-use).

1. GEFF submitted an original cost estimate and cost breakdown in the amount of \$73M.

Negotiation should start from the original cost which is \$73M as per RFP requirement.

2. Another added cost was recd to a new amount of \$89M - do we reject the \$89M need legal advice since the only amount known in offer from GEFF is 73M?

The added cost estimate should not be considered for negotiation since the RFP requires that a cost estimate shall be submitted together with other RFP requirements and ~~not~~ during negotiation.

3. GEFF Cost schedules provided are not clear and do not show the cost for each item the RFP requires.

CT000619

The Public Auditor said to Felix Benavente on September 15, 2016:

We don't give that many \$100M contracts, you are the Chief Procurement Officer, I understand you rely on staff, but it's your responsibility

I'm mildly disappointed in the manner in which you were not able to answer more precisely what happened in this \$100M procurement. **This is a shadow on the people of Guam regarding the transparency of what happens during this process.** I hope DPW starts keeping records more properly.

The 100 Million Dollar Question

\$160 Million Cap – CFJ Opinion Dated 3/31/2016

Rather than set a total cap, what Public Laws 32-120 and 32-121 do are identify sources of funding and the amounts available from such sources that can be used for the lease-back payments. For example, Public Law 32-120, section 3 (codified at 5 GCA § 22425(q)(4)) provides that \$1,707,652 is continuously appropriated annually to GDOE for the renovation or construction of a new SSHS. Public Law 32-121, also identifies other sources of funding available for the remaining 35 public schools. *See e.g.*, Public Law 32-121 (codified at 5 GCA § 58E107) (rental payments may be secured by a pledge or other reservation of revenues collected by the Government in the amount of \$4.8 million from the maturity of Business Privilege Tax Bond Series 2013C available annually beginning FY2019). We understand that based on GEFf's calculations, the sources and amount of funding identified in Public Laws 32-120 and 32-121 make more than \$100 million available for all the schools (we estimate upwards to \$160 million).

See, CT Ex. 6

4/13/2016 Letter from Speaker Won Pat

Then in February 2014, PL 32-120 and 32-121 were passed to build or renovate Simon Sanchez High School and to provide the necessary funding for renovations to the other Guam public schools. **These laws, while identifying a debt service amount, do not have a cap to its borrowing capacity.**

I hope you will find this information useful. If you have any questions, please contact me or any of my staff at the numbers provided below.

Senseramente,



Judith T. Won Pat, Ed. D.
Speaker, 33rd Guam Legislature

I Mina' Trentai Tres Na Liheslaturan Guåhan ◊ 33RD GUAM LEGISLATURE ◊ 155 HESLER PLACE HAGATÑA, GUAM 96910
TEL 671-472-3586/7 ◊ FAX 671-472-3589 ◊ EMAIL SPEAKER@JLDIWONPAT.COM

See, CT Ex. 8

4/22/2016 Email from Janalynn Damian to Tom Keeler

GEDA explained to us today, however, that although it agrees that the Public Laws do not set a cap, the Government included the \$100 million cap language in the RFP as a self-imposed limitation on spending by the Government. Per Tina, this was a fiscal policy decision by the Government. So what we understand from Tina and Mana is that the RFP allows for a total of \$100 million to be spent on SSHS and the CCIP. So for example, if SSHS cost \$75 million, then \$25 million can be allocated to develop the CCIP and address the priorities identified in the CCIP. Also, funding sources that don't add to the Government's debt service, such as federal grants, would be excluded from the \$100 million cap.

GEFF is now aware of this self-imposed \$100 million cap, and we are prepared to move forward with the design and financing plans for SSHS and the CCIP, and should any funds be left over, additional task orders for the other 35 schools. We're scheduled to meet again with the GEDA team on Monday at 2pm, and GEFF reps will meet with GDOE at 4pm.

See, CT EX. 45 (CT001242)

4/26/2016 Version of the Draft IDIQ

III.

COMPENSATION AND PAYMENT FOR SERVICES

3.1. Compensation and Payment for Services. The Government will compensate the Developer for services rendered for Task Orders issued as provided in this Contract based on available funds and not to exceed One Hundred Million and 00/100 Dollars (\$100,000,000.00) pursuant to Section I (Scope of Contract), unless otherwise directed by the Government in writing and permitted by Public Laws 32-120 and 32-121 or any other law.

not to exceed

See, CT Ex. 57 (CT 004018)

Section 3.1 – IDIQ Contract Partially Executed Version

III.

COMPENSATION AND PAYMENT FOR SERVICES

3.1. Compensation and Payment for Services. The Government will compensate the Developer for services rendered for Task Orders issued as provided in this Contract based on available funds and not to exceed One Hundred Million and 00/100 Dollars (\$100,000,000.00) pursuant to Section I (Scope of Contract), **unless otherwise directed by the Director of DPW in writing and permitted by Public Laws 32-120 and 32-121 or any other law.** The first and second Task Orders will be for Simon Sanchez High School and the CCIP.

See, CT 40 (p. 3)

PERFORMANCE BOND

Performance and Payment Bond Requirement in the RFP

- 4.2.1.5. **The Offeror [awardee] must be bondable as required by this RFP and by law. A one hundred percent (100%) performance and payment bond must be obtained by Offeror or its prime Contractor.** The bond must be issued by a company authorized to do business on Guam, and listed in the U.S. Department of the Treasury's Listing of Approved Sureties (Circular 570).

See, CT1-000021

Requirement of Delivery of Performance Bond When Contract Signed

“A performance bond satisfactory to the territory . . . , is required for all contracts in excess of \$25,000 in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the territory at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with §3109(n)(2) (Bid Evaluation and Award, Responsibility and Responsiveness) of these Regulations.”

2 GAR Div. 4 §5104(a)

Illegal Subcontract to GEDP

- Who is Guam Education Development Partners?
- Government approved Developer's wholesale subcontract of the Development Agreement with Guam Education Development Partners (*see*, CT Ex. 40 §17.11)
- Government will be drafting the agreement between GEDP and GEFF – *this was shown to be a false statement* (*see*, CT Ex. 46)

IMPROPER MODIFICATION OF THE RFP & GEF'S FOUR NEW PROPOSALS

Randy Romero's Email

The purpose of this document is the evaluation of GEFs' RFP submitted cost proposal against subsequent letters dated February 24th, February 29th and March 3rd, 2016 that provided additional costs associated with the construction of Simon Sanchez High School that was not disclosed in their RFP submission.

GEFF PROPOSAL PAGE 113:

SIMON SANCHEZ HIGH SCHOOL COST ESTIMATE

Guam Educational Facilities Foundation hereby submits a cost estimate of \$73,218,078 for the demolition, re-construction and renovation of Simon Sanchez High School, not including contribution to the arts required by PL 31-118, furniture and equipment and selected additional fees. This estimate is based on the Work Plan for Simon Sanchez as outlined on pages 82 through 120 of our Proposal dated November 20, 2015 and exceeds or meets the requirements set forth in the RFP.

Response:

The RFP and Government response to the RFI's in addendum 6 and 7 indicates a clear intent that the cost estimate for Simon Sanchez High School is all inclusive of design, construction, insurance, maintenance and collateral equipment as identified in RFP Sections; 4.0 to 4.03, 4.2.1.6, 4.9.1.8 and 5.1.2. The GEFF cost estimate submitted did not disclose the actual cost of Simon Sanchez High School only until a letter dated February 29, 2016 was submitted by GEFF that broke down the additional costs which resulted in a \$16,104,180.00 increase.

DOE 4/19/16 Internal Memo

The evaluation committee ranked the offerors in the following successions and proposed costs;

No. 1 GEFF

No. 2 CTI

No. 3 Purnix

	Simon Sanchez Proposal		Costs not included	Simon Sanchez Total	CCIP	RFP Total	Proposed SSHS SF
GEFF	\$ 73,218,078.00 *		\$ 16,104,180.00	\$ 89,322,258.00	\$ 400,000.00	\$ 89,722,258.00	278,850
CTI	\$ 61,598,362.00 **		\$ 1,684,867.00	\$ 63,283,229.00	\$ 536,279.00	\$ 63,819,508.00	Not indicated
Purnex	\$ 82,400,000.00 ***					\$ 82,400,000.00	Not indicated
* additional project costs not included or identified in proposal submission.							
** equipment not included but offered as optional.							
*** Purnex cost proposal was in a separate sealed envelope which was not opened by the evaluation committee. The CCIP and other costs associated with their proposal is not known.							
GEFF Vs. CTI		\$ 25,902,750.00		Difference			
GEFF Vs. Purnex		\$ 7,322,258.00		Difference			

See, CT 9 – 000004

Randy Romero Doesn't Think It's Fair

“The reduction of square footage equates to lesser classrooms, reduced sizes of buildings and removal of buildings. This results in changes to the parameters stated within the RFP and is a disadvantage to the other offerors who proposed offers based on the parameters of the RFP.”

CT 9 - 00004

Public Laws 58D & 58E
Requires Proposal Delivering
“Best Value”

“The selection of a contractor *shall* be based upon the proposal that delivers the *best value* for Guam in meeting the objectives of the education agency” (emphasis added)

See, CT 1- 00179

Best value is not achieved by compromising school requirements

The table below illustrates the efforts in negotiations. The negotiations show a trend of square footage reductions with an upward costs.

History		Simon Sanchez Proposal	Costs not included	Simon Sanchez Total	Proposed SSHS SF	Cost per SF
RFP		\$73,218,078.00	\$16,104,180.00	\$89,322,258.00	278,850	\$320.32
3/3/2016	*	\$77,688,554.00	0	\$77,688,554.00	237,000	\$327.80
3/21/2016	*	\$63,796,049.00	0	\$63,796,049.00	193,766	\$329.24
4/1/2016	*	\$74,974,000.00	0	\$74,974,000.00	234,739	\$319.39
4/5/2016	*	\$78,164,364.47	0	\$78,164,364.47	244,816	\$319.28

* SF cost is calculated by the cost of SSHS divided by Square Footage (Cost÷SF).

See, CT Ex. 9-00002

Statutory Limitations on Negotiations

(2) Elements of Negotiation. *Contract negotiations shall be directed toward:*

(A) making certain that the offeror *has a clear understanding of the scope of work*, specifically, the essential requirements involved in providing the required services;

(B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

(C) *agreeing upon compensation which is fair and reasonable*, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

RFP Addendum 7: “Minimum Requirement”

7. The list of collateral equipment along with quantity was attached as Attachment “A” in addendum No.6. Shall the offeror submit the cost estimates for the furniture and equipment listed on Attachment “A” in our proposal? If yes, what will be the assigned score or point for evaluating the cost estimate for this submittal?

Answer:

The equipment cost shall be included with the project cost of Simon Sanchez High School. Attachment “A” is a reference to be considered as a minimum requirement for Simon Sanchez High School.

See, CT2-000050

**“I was hoping that this (memo)
would open some eyes.”**

Testimony of Randy Romero on September 19, 2016

See, CT Ex. 9

WHO REALLY CARES ABOUT THE STUDENTS OF SSHS?

Randy Romero

Program Coordinator for CCIP of the
Department of Education

How can our community have faith and trust in our government if our highest offices are excused from scrutiny -- they should set the example of transparency and accountability.