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DPW Denies GPS Protests, Cancels Simon Sanchez High School Procurement to Keep Project Moving Forward

Upper Tumon, Guam- Simon Sanchez High School students have waited far too long for a permanent campus. To prevent the project from becoming trapped in years of pointless litigation, the Department of Public Works has denied all three protests filed by General Pacific Services, rejected all proposals, and cancelled the current procurement.

The decision was made in consultation with the Guam Department of Education Superintendent and the Office of the Attorney General.

DPW determined that the procurement was conducted properly, in good faith, and in accordance with the Request for Proposals, the Ma Kåhat Act, and Guam procurement law. The protests did not establish a material violation of law.

GPS's protests were denied for the following reasons:

- The official procurement record was maintained by DPW, and GPS was provided access to inspect it on multiple occasions.
- Demolition was included in the original RFP, and the protest challenging the demolition work was also filed after the applicable protest period.
- The procurement was based first on qualifications, not price. Only the highest-ranked proposer's price was opened for negotiation, and no final contract price was ever agreed upon.

Although all three protests were denied, GPS indicated that it intends to continue challenging the procurement if DPW does not decide in its favor. Continuing with the existing procurement would therefore expose the project to the possibility of prolonged litigation and years of additional delay. The recent closure of Tiyon and SSHS makes it clear that this project cannot wait.

"We will not allow GPS to hold Simon Sanchez students hostage to years of needless litigation," said DPW Director Vincent P. Arriola. "DPW followed the law, the evaluation process was sound, and all three protests were denied. But the students cannot continue waiting while one unsuccessful proposer attempts to secure an award it did not receive. Cancelling and restarting the procurement is the fastest

responsible path forward.”

The existing procurement environment has also been compromised by the public release of incomplete pricing and negotiation information. GPS’s publicly discussed price was never opened by the Government, evaluated, or negotiated under the RFP and therefore cannot be fairly compared with the terms being negotiated with the highest-ranked proposer. The release of pricing information also made it more difficult for the Government to preserve the confidential negotiating environment contemplated by the RFP. This consideration weighed heavily on the cancellation decision

DPW is now preparing to reissue the procurement, to close the loopholes GPS used to frustrate construction of SSHS. DPW intends to issue a new procurement as quickly as legally possible. The revised procurement will clarify the project requirements, and will be geared toward what protects Simon Sanchez students and the community from further frivolous protests and unnecessary delay.

“This cancellation is not an admission that the procurement was flawed, quite the opposite” Arriola said. “It is a decision to protect the students from the much greater risk of having this project tied up in court for years. Our responsibility is to deliver a new school, not to defend an otherwise sound procurement indefinitely so a disgruntled bidder can capitalize the archaic automatic stay provision in our procurement law.”

DPW also renews its call for the Guam Legislature to reform the procurement process governing the Simon Sanchez High School project. One bidder prematurely publicized its sealed price proposal in an ongoing RFP process. Using snippets of the comprehensive procurement law, without context, that bidder frustrated construction of SSHS.

The Governor previously transmitted legislation specifically intended to address future protests involving the project and called the Legislature into emergency session. Although the Legislature agreed to hear the measure, it has not yet acted.

“This is exactly why procurement reform is necessary,” Arriola said. “Critical community projects should not be stopped for months or years by frivolous protests that fail to identify a material violation of law. We call on the Legislature to act so Simon Sanchez High School can finally be properly built.” The full DPW decision denying the three protests and cancelling the procurement is attached.
