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PROCUREMENT APPEALS

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**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**
) **REBUTTAL TO CORE TECH**
) **INTERNATIONAL, INC'S COMMENTS ON**
) **THE AGENCY REPORT**

The Department of Public Work ("DPW") hereby submits its rebuttal to Core Tech International Corp's ("Core Tech") comments to DPW's Agency Report that was filed on August 23, 2016.

ARGUMENT

A. **The Indefinite Delivery Indefinite Quantity Contract is Consistent with the Request for Proposals**

Core Tech's assertion that the Indefinite Delivery Indefinite Quantity Contract "IDIQ" Contract envisions circumvention of the Request for Proposals ("RFP"), which is incorrect, is not properly before the OPA. Core Tech appeals DPW's decision to deny its protest based on speculation that the IDIQ may exceed the One Hundred Million Dollar (\$100,000,000.00) cap set in the RFP.

Core Tech suggests that letters from Guam Educational Facilities Foundation's ("GEFF") attorney and Speaker Won Pat support its position. These letters only indicate an interpretation of the laws authorizing the procurement. Whether their interpretations of these laws are correct is irrelevant to this RFP because this RFP limits the cost of the project at One Hundred Million Dollars (\$100,000,000.00). Anything beyond the cap would require a separate procurement.

DPW has never asserted the RFP allows DPW to exceed the One Hundred Million Dollar (\$100,000,000.00) cap. Section 4.0 of the RFP clearly sets the cap at One Hundred Million Dollars (\$100,000,000.00). Section V of the IDIQ incorporates the RFP and Section 3.1 of the IDIQ also limits the compensation and payment for services at One Hundred Million Dollars (\$100,000,000.00). The One Hundred Million Dollar (\$100,000,000.00) cap is further documented in the Negotiating Team's May 13, 2016 Memorandum *See*, DPW Hearing Exhibit B at fourth bullet point on page 4 of 5, and Exhibit F. Therefore, the IDIQ does not circumvent the RFP.

B. DPW Maintains a Complete Procurement Record

Title 5 G.C.A. § 5249 sets forth a number of items to be included in the procurement record. Core Tech takes issue with two of the listed items. Core Tech contends that DPW failed to provide a communications log and record the negotiation meetings.

DPW has yet to finalize the procurement record. This usually occurs prior to submitting the contract to the Attorney General's office for review and approval as to legality and form. Part of the submittal is the certification by the procurement officer that the procurement record is complete. Due to Core Tech's appeal of the procurement, the process has been stayed pending resolution of the appeal. DPW intends to complete the log once the stay is lifted.

Further to the requirements of the procurement record, it has been DPW's interpretation of 5 G.C.A. § 5249(c) that sound recordings of negotiation meetings are not required in the procurement. There may be deference to an agency's interpretation of an ambiguous statute when the agency's conclusion is based on a permissible construction of the statute. *See Guam Mem'l Hosp. Auth. v. Civil Serv. Comm'n*, 2015 Guam 18 ¶ 13 (Guam June 24, 2015). Whether the first two clauses in 5 G.C.A. § 5249(c) are separated by a semicolon or comma, they still can be read independently as a comma is used to separate phrases and a semicolon provides a more distinct separation. This may account for the semicolon used in the published version as the Guam Compiler is well within his authority to make typographical corrections to clarify the independent nature of the adjacent clauses. 1 G.C.A. § 1606.

DPW satisfied the requirements of the procurement record by providing a record of the negotiations including a memo detailing the negotiation process and the determination made as a result of the negotiations.

C. Remedies Available Prior to an Award

The Guam Procurement Law provides remedies prior to an award in the event it is determined that a solicitation or proposed award is in violation of law. Although Core Tech seeks to have the solicitation or proposed award cancelled, the law allows the solicitation or proposed award to be revised to comply with the law. 5 G.C.A. § 5451.

As there has only been a proposed award, the proposed IDIQ, the communications log, and the record of negotiations can be revised to comply with the law, if deemed necessary. Section 3.1 of the IDIQ can be revised. The communications log can be finished. The record of negotiations can be further detailed, if necessary.

Further, the contract has yet to be reviewed and approved by either the Attorney General or Governor. As is the required practice the contract will be submitted to the Attorney General via a memorandum recommending approval that will address a variety of contract issues, including those raised by Core Tech in its appeal. Until the Attorney General and Governor's office have reviewed and approved the contract is a proposed contract.


The current phase of the procurement process is pre-award and unfinished. Therefore, the solicitation or proposed award can be revised as Core Tech's allegations concerning the procurement are not fatal to the procurement.

CONCLUSION

DPW requests the relief stated in the Agency Report.

Dated this 2nd day of September, 2016.

By:

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

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