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 Hagåtña, Guam 96910



FAX

To:	Mr. Glenn Leon Guerrero Director Department of Public Works 542 North Marine Corps Drive Upper Tumon, Guam 96913 Phone: (671)646-3121/3232 Fax: (671) 649-6178	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
		Pages:	11 (including cover page)
CC:	Joyce C.H. Tang, Esq. (Attorney for Appellant Core Tech) Civille & Tang, PLLC 330 Hernan Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	Date:	March 17, 2017
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-17-001 Notice of Receipt of Appeal

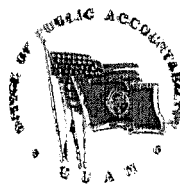
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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

March 17, 2017

Mr. Glenn Leon Guerrero
Director
Department of Public Works
542 North Marine Corps Drive
Upper Tumon, Guam 96913

VIA FACSIMILE: (671) 649-6178

Re: Notice of Receipt of Appeal – OPA-PA-17-001

Dear Mr. Leon Guerrero,

Please be advised that Core Tech International Corp. (Core Tech) filed an appeal with the Office of Public Accountability (OPA) on March 16, 2017 regarding the Department of Public Works' (DPW) response to Core Tech's protest relative to Request for Proposal Project No.: 730-5-1056-L-YIG; a procurement solicitation for Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance of Public Schools (Beginning with Simon Sanchez High School). OPA has assigned this appeal case number OPA-PA-17-001.

Immediate action is required of DPW pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

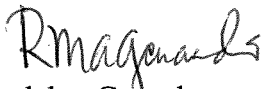
Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Friday, March 24, 2017**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Friday, March 31, 2017**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Core Tech. In addition, OPA respectfully asks that DPW provide one original and two copies of the procurement record and agency report as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or jhernandez@guamopa.com, should you have any questions regarding this notice.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Gerardo".

Rodalyn Gerardo
Audit Supervisor

Enclosure: First seven pages of Notice of Appeal – OPA-PA-17-001

Cc: Joyce C.H. Tang, Attorney for Core Tech

Joyce C.H. Tang
Leslie A. Travis
CIVILLE & TANG PLLC
330 Hernan Cortez Avenue Ste. 200
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Tel: (671) 472-8868/9
Fax: (671) 477-2511

PROCUREMENT APPEAL
IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

Core Tech International Corp.,

Appellant.

DOCKET NO. OPA-PA- _____

NOTICE OF APPEAL

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1 CORE TECH INTERNATIONAL CORP. ("Core Tech") hereby appeals the decision
2 rendered by the Department of Public Works ("DPW"), an agency of the Government of Guam, on
3 March 2, 2017, denying in part the February 8, 2017 Protest raised by Core Tech regarding DPW's
4 Request for Proposal for the Lease Financing for Design, Renovation, Rehabilitation, Construction
5 and Maintenance of Public Schools (Beginning with Simon Sanchez High School), Project No. 730-
6 5-1056-L-YIG.

7
8 **I. APPELLANT INFORMATION**

9 Name: Core Tech International Corp.

10 Address: 388 S. Marine Corps Drive, Suite 400
11 Tamuning, Guam 96913

12 For purposes of this appeal, please direct correspondence to Core Tech's counsel, Joyce C.H.
13 Tang, Esq. (jtang@civilletang.com) and Leslie A. Travis (ltravis@civilletang.com), Civile & Tang,
14 PLLC, 330 Hernan Cortez Ave. Ste. 200, Hagatna, Guam 96910 (Tel: 671/472-8868; Fax:
15 671/477-2511).

16
17 **II. APPEAL INFORMATION**

18 A. Purchasing Agency: Department of Public Works

19 B. Contract No: 730-5-1056-L-YIG

20 C. Date of Contract: N/A

21 D. This appeal is made from DPW's March 2, 2017 partial denial of Core Tech's
22 February 8, 2017 Protest (the "Protest"). *See, Protest, Exhibit A* attached hereto.

23 E. The names of competing bidders are not known to Appellant at this time.

24
25 **III. RELEVANT PROCEDURAL HISTORY**

26 On January 25, 2017, the Department of Public Works ("DPW") issued a Request for
27 Proposals for the Lease Financing for Design, Renovation, Rehabilitation, Construction and
28 Maintenance of Public Schools (Beginning with Simon Sanchez High School), Project No. 730-5-

1 1056-L-YIG (the “RFP”). *RFP*, Exhibit 1 to *Protest*, **Exhibit A** herein. A successful awardee would
2 receive a contract to provide “financing, design, renovation and construction, and to provide
3 collateral equipment, maintenance and insurance as mandated under Public Laws 32-120 and 32-121.
4 The period of performance of the IDIQ contract is five (5) years from the date of award, and during
5 this period, the Simon Sanchez High School Facility (“SSHS”) has to be completed within 730 days.
6 The RFP states the period to complete the IDIQ work for the remaining thirty-four (34) schools will
7 take place after the completion of the Comprehensive Capital Improvement Plan (“CCIP”) as
8 outlined in the Army Corps of Engineering Assessment Report (Attached as A-14 to the RFP). *See*
9 *Id.* at §2.0 and §2.1.1. The period within which to complete the CCIP is 365 days from the award of
10 the task order. *Id.*

11 The total lease-back period for *each school* cannot exceed thirty (30) years from the date of
12 completion of the educational facility. *Id.* at §2.1.2. Priority would be given to SSHS and the
13 development of a comprehensive capital improvement plan. *Id.*

14 Core Tech filed a protest on February 8, 2017, raising two claims. *See, Protest, Exhibit A.*
15 The first claim addresses the failure of the RFP to include cost as an evaluation factor. The second
16 claim is that RFP failed to follow the requirements of 5 GCA 58E – which among other things,
17 required DPW to issue a separate solicitation for this procurement. DPW issued its Agency Decision
18 on March 2, 2017, denying the second claim Core Tech raised in its Protest. *See, Agency Decision,*
19 **Exhibit B** attached hereto. Core Tech hereby appeals DPW’s denial of its Protest.

20 21 **IV. STATEMENT OF GROUNDS FOR APPEAL**

22 **A. Core Tech’s Appeal Was Timely Filed.**

23 Core Tech’s protest filed on February 8, 2017, within fourteen (14) days of receiving the RFP;
24 thus, the protest was timely filed and the 5 GCA §5425(g) automatic stay applies.

25 //

26 //

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1 **B. The RFP Failed to Follow the Requirements of 5 G.C.A. Chapter**
2 **58E When It Included the Procurement for Chapter 58E in the**
3 **RFP.**

4 5 GCA Chapter 58E authorizes the issuance of an RFP to provide for the “design, renovation,
5 rehabilitation, construction, and financing contract,” and to enter into long-term school leases for the
6 purpose of facilitating the financing, design, construction and rehabilitation and maintenance of an
7 education facility. . .” See, 5 GCA 58E102(b) & 58E103. 5 GCA §58E not only sets forth the
8 requirements for soliciting work, but identifies what type of services can be procured.

9 *First,* the requirements for soliciting work to be performed for the 34 remaining public high
10 schools are clearly set forth in 5 GCA §58E103:

11 **§ 58E103. Identification of Projects and Procurement.**

12 Under the Superintendent of Education’s direction, the education
13 agency ***shall utilize the Program Study***, and the report generated by the
14 Department of Interior (DOI)-funded assessment report by the Army Corps of
15 Engineers, to identify and prioritize potential projects to be completed. The list
16 of projects ***shall*** be included in a Request for Proposals developed by the
17 education agency. Upon receipt of the Program Study, the Superintendent of
18 Education ***shall*** solicit Requests for Proposals (RFP) through the Department
19 of Public Works, in compliance with the Guam Procurement Law, for the
20 **financing, design, construction and rehabilitation of the education facility**,
21 according to the needs of the education agency and consistent with this
22 Chapter. The choice of the contractor *shall* be made by a selection committee
23 comprised of the Superintendent of the Department of Education, serving as
24 Chairman, and including the Director of the Department of Public Works or
25 Deputy Director, the Director of the Department of Land Management or
26 Deputy Director, the Administrator of the Guam Environmental Protection
27 Agency or Deputy Administrator, and the Administrator of the Guam
28 Economic Development Authority or Deputy Administrator. The committee
shall assess the prior performance of the contractor on similar projects, and
shall be free to disqualify any contractor that *does not* have a successful record
of project completion on Guam.

**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.**

**The RFP *shall* be issued within thirty (30) days after the receipt of
the Program Study for the design, renovation, rehabilitation, construction
or maintenance of the education facility.**

5 GCA §58E103 (emphasis supplied).

1 Sections 58E102 and 58E103 clearly state that procurement of services and the long-term
2 leases allowed under Chapter 58E are for the limited purpose of procuring services for the
3 “financing, design, construction and rehabilitation of the education facility” only. It does not allow
4 the Department of Education (“DOE”) to procure other types of services, such as procurement of
5 insurance for 34 schools during the lease back period, maintenance of the schools after rehabilitating
6 the facility, or providing collateral equipment. In comparison, the *Ma Kahat Act* of 2013 allows for
7 the procurement of the “comprehensive improvement plan, the financing, design renovation or
8 construction of the education facility, together with insurance and maintenance of the education
9 facility over the lease back period.” 5 GCA §58D105.
10

11 The two enabling statutes and the two RFP solicitations were not combined for good reasons.
12 Chapter 58D’s specific purpose was to procure services for SSHS and allow Government to enter into
13 a long-term lease to fund the services required for the SSHS procurement. The focus of Chapter 58E
14 was on the procurement of services for the remaining thirty-four (34) schools and the long-term
15 leases that the Government can enter into to fund the services needed for these schools.
16

17 Core Tech protested DPW’s consolidation of the procurements for Chapter 58D (SSHS) and
18 Chapter 58E (the remaining 34 schools) into one RFP. As discussed above, combining the
19 procurement for Chapters 58D and 58E is not permitted and is unlawful. For example, §58E103
20 specifically requires that a DOE Program Study, which is separate and distinct report from the Army
21 Corps of Engineers Report (“ACE Report”), be completed and included in the RFP for the
22 procurement of maintenance services for the 34 schools. In fact, Chapter 58E mandates that the RFP
23 *shall* provide “the list of projects” derived from the DOE Program Study and ACE Report. *Id.* The
24 existing RFP does not contain a list of projects and there is no evidence of, or reference in the RFP to,
25 the DOE Program Study required under §58E103. Another example is that, while Chapter 58D
26 expressly allows for the procurement of “insurance and maintenance of the education facility over the
27
28

1 lease-back period”, Chapter 58E does not authorize the procurement of insurance and maintenance
2 for the 34 education facilities over the lease-back period. *See*, 5 GCA §58D105. There is a very
3 good reason why insurance and maintenance contracts for all of the remaining 34 education facilities
4 for the 30 year lease back period was not included in §58E – the cost would be astronomical. The
5 Government cannot afford to insure all of 34 schools for the 30 year leaseback period, when it does
6 not even have the funds needed to maintain the schools today.
7

8 In its response, DPW does not address the requirement that the services to be procured under
9 Chapter 58E must be in a separate RFP and cannot piggyback on the selection of a contractor for the
10 SSHS solicitation.

11 DPW argues that the “Program Study” referenced in Chapter 58E referred to a
12 Comprehensive Capital Improvement Plan which the selected offeror for the existing RFP would be
13 required to generate, and therefore, “nothing further is required of the government at this time.”
14 *Agency Decision* at 2. The RFP itself contemplates issuance of task orders for maintenance of the 34
15 schools “based on the priority list and needs of GDOE after the completion of the [CCIP].” *RFP* at
16 §2.0. That is not what the law requires. *First*, Chapter 58E explicitly directs that the Program Study
17 be completed prior to issuance of the RFP for maintenance of the 34 schools. *Second*, Chapter 58E
18 requires that the maintenance services be procured by RFP, not by task orders issued to the contractor
19 selected to construct SSHS. Rather than following the legal requirement to conduct a Program Study
20 and select its contractor based on that study, DPW is improperly piggybacking this procurement onto
21 the SSHS RFP, and requiring the contractor selected in the SSHS solicitation to create a program
22 study after the fact.
23
24

25 Section 58E103 further provides that “the selection of a contractor *shall* be based on the
26 proposal that delivers the best value for Guam in meeting the objectives of the education agency.”
27 As discussed above, the RFP requires consideration of best value in the evaluation criteria. *See, RFP*
28

1 at §2.0. The RFP must include price or cost as factor in the Evaluation Criteria to comply with the
2 requirement that *selection* of an offeror *shall* be based upon the proposal that delivers best value. It is
3 simply impossible for DPW to know which contractor will provide the best value in meeting its goals
4 for maintenance of 34 public schools when DPW/DOE does not know what its goals are or each
5 contractor's proposal price.
6

7 DPW's piggybacking of the selection of a contractor for the 34 schools solicitation on the
8 selection of the contractor for the SSHA solicitation is improper and unlawful. To comply with
9 §58E103, DPW must issue a new and separate RFP, and: (a) coordinate with the Department of
10 Education to obtain a program study if one has not been completed, (b) include the list of projects in
11 the RFP, and (c) make a selection based on the contractor who provides the best value in meeting the
12 objectives set out in Chapter 58E. A best value determination must include consideration of price or
13 cost.
14

15 V. RELIEF REQUESTED BY CORE TECH

16 Core Tech respectfully requests a ruling from the OPA as follows:

- 17 1. DPW should be required to comply with the solicitation requirements of Chapter 58D
18 and Chapter 58E and issue two separate RFPs;
- 19 2. DPW should be required to complete a program study and then issue a separate RFP
20 for rehabilitation of the 34 schools, in accordance with the requirements of 5 GCA
21 Chapter 58E;
- 22 3. For an award of reasonable attorney's fees and costs of this protest and appeal; and
- 23 4. For such other relief that the OPA may determine is just and proper.
- 24 5. Core Tech requests a hearing on this matter.

25 Dated: March 16, 2017

CIVILLE & TANG, PLLC

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JOYCE C.H. TANG

Attorneys for Appellant Core Tech Int'l Corp.

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V. DECLARATION RE COURT ACTION

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Dated: March 16, 2017

CIVILLE & TANG, PLLC



JOYCE C.H. TANG

Attorneys for Appellant Core Tech Int'l Corp.

Broadcast Report

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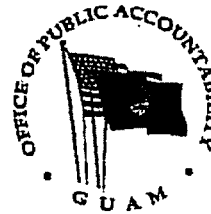
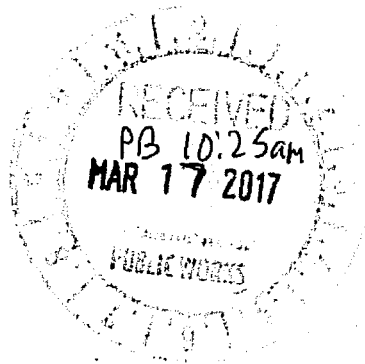
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HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
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