

Speaker Benjamin J.F. Cruz

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OFFICE OF PUBLIC ACCOUNTABILITY
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Public Auditor

December 4, 2017

Honorable Benjamin J.F. Cruz
Speaker and Chairman Committee on Appropriation and Adjudication
34th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96910

Re: Bill No. 204-34 Relative to Designating the Guam Department of Education as the Procuring Entity for the construction and/or renovation of Simon Sanchez High School

Dear Speaker Cruz and Committee Members:

Thank you for the invitation to provide testimony on Bill 204, introduced by Senator Frank B. Aguon. Unfortunately, the Public Auditor must decline to comment on Bill No. 204-34 due to her need to remain fair and impartial for OPA-PA-17-009, *In the Appeal of Core Tech International Corp.*, which is the latest appeal pending before the Office of Public Accountability (OPA) concerning the solicitation for the construction or renovation of Simon Sanchez High School (SSHS). In lieu of testimony, the OPA hereby provides a summary of the more important findings in its prior decisions on past procurement appeals concerning the construction or renovation of SSHS which is as follows:

1. *In the Appeal of Core Tech International Corp.*, OPA-PA-16-007/011 (consolidated), the OPA issued its decision on November 22, 2016, which partially denied and partially granted the underlying protest.

a. The negotiating committee consisted of the Director of Department of Public Works (DPW), the Superintendent of the Guam Department of Education (GDOE), and the Deputy Director of the Guam Economic Development Authority (GEDA). Despite its high ranking members, the Negotiating Committee failed to properly evaluate the proposals to ensure they were responsive and met all of the RFP's requirements.

b. The IDIQ contract violated the RFP's \$100,000,000 limit by including language that potentially could increase the amount of the contract above the aforementioned limit.

c. The proposed award of the contract was to an offeror who failed to comply with the RFP's payment and performance bond requirements.

d. DPW, which managed the solicitation, failed to keep a complete procurement record. The record was incomplete because it did not keep a communications log as required by 5 G.C.A. §5249(b) and 2 G.A.R., Div. 4, Chap. 3, §3129(2), and because it did not make sound recordings of the negotiations as required by 5 G.C.A. §5249(c) and 2 G.A.R., Div. 4, Chap. 3, §3129(3).

2. *In the Appeal of Core Tech International Corp.*, OPA-PA-17-001, the OPA issued its decision on June 9, 2017, which partially denied and partially granted the underlying protest.

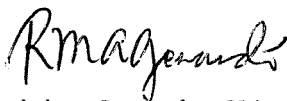
a. As a result of the OPA's decision in OPA-PA-16-007/011, DPW cancelled and re-issued its solicitation concerning the construction or renovation of SSHS. However, the new solicitation violated 5 G.C.A. §58E104 because that statute requires that the CCIP or Program Study be completed prior to the issuance of an RFP for the rehabilitation of the remaining 34 GDOE schools, and the new solicitation sought both services, simultaneously.

b. DPW correctly denied the underlying protest on the grounds that the term "Program Study" raised in the underlying protest, was synonymous with the term "Comprehensive Capital Improvement Plan, pursuant 5 G.C.A. §58E102(a) and §58E104.

c. The underlying protest allegations that 5 G.C.A., Chap. 58E prohibits the solicitation of insurance, maintenance, and collateral equipment for the remaining 34 GDOE schools had no merit because the solicitation's insurance requirements were authorized by 5 G.C.A. §58E106 and 5 G.C.A., Chap. 58E. The solicitations' provisions for collateral equipment were authorized by 5 G.C.A. §5001(b)(5) and 2 G.A.R., Div. 4, Chap. 1, §1102(4) because they promote the increased economy in Government of Guam procurement activities and maximize the purchasing value of the Government of Guam funds.

In OPA-PA-17-009, which is the current procurement appeal concerning the construction or renovation of SSHS, the formal hearing concerning the appeal is scheduled to begin on December 20, 2017.

Senseramente,



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Audit Supervisor