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 PROCUREMENT APPEALS

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**THE OFFICE OF PUBLIC ACCOUNTABILITY
 HAGATNA, GUAM**

IN THE APPEAL OF:)
)
CORE TECH INTERNATIONAL CORP.,)
)
 Appellant.)
)
 and)
)
GUAM DEPARTMENT OF PUBLIC)
WORKS,)
)
 Purchasing Agency.)
)

DOCKET NO.: **OPA-PA-17-001**

**DEPARTMENT OF PUBLIC
 WORKS
 HEARING BRIEF**

I. Introduction

Public Law 32-120, the *MA KAHAT ACT* OF 2013 (the “Act”) passed into law on February 10, 2013. Among other items the Act added a new chapter 58D to Title 5, Guam Code Annotated, relative to the renovation or construction of a new Simon Sanchez High School (“Simon Sanchez HS”) and

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related financing and the development of a comprehensive capital improvement plan for prioritizing capital improvements to all Guam Department of Education (“GDOE”) schools.

Public Law 32-121, also passed into law on February 10, 2013, added a new Chapter 58E to the Guam Code Annotated. Public Law 32-121 authorized the government to issue a request for proposals for the financing, design, construction and rehabilitation of GDOE schools.

On January 25, 2017, the Department of Public Works (“DPW”) issued a Request for Proposals for the “Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance of Public Schools (Beginning with Simon Sanchez High School), Project No. 730-5-1056-L-YIG (the “Current Issued RFP”). *See*, Procurement Record, **Tab No. 5**. The Current Issued RFP, as authorized by the Acts, contemplated that priority would be given to Simon Sanchez HS and the development of a Comprehensive Capital Improvement Plan (the “CCIP”). *Id.*

Core Tech International Corp. (“Core Tech”) filed a written protest on February 8, 2017, asserting two (2) claims. *See, Protest*, DPW **Exhibit C**. Core Tech’s first claim was that the Current Issued RFP fails to include cost as an evaluation factor. Its second claim was that the RFP fails to follow the requirements of 5 GCA 58E, which it claims requires a separate procurement for the remaining thirty-four (34) public schools. DPW issued its Agency Decision on March 2, 2017, acquiescing to Core Tech’s first claim and denying its second claim. *See, Agency Decision*, DPW **Exhibit D**. On March 16, 2017, Core Tech appealed DPW’s denial of the second claim as set forth in the Protest. *See, Core Tech’s Notice of Appeal*, DPW **Exhibit E**.

DPW filed its Agency Report on March 31, 2017 (“Agency Report”). To avoid any further delays with the procurement of the repair and/or reconstruction of Simon Sanchez HS, DPW agreed to limit the Current Issued RFP to the Simon Sanchez HS Project and preparation of the CCIP and to issue

a separate RFP (the “Future Unissued RFP”) for the remaining thirty-four (34) public schools, which has not been drafted. *See, Agency Report, DPW Exhibit F.*

DPW acquiesced to both material items contained in Core Tech’s Protest and Appeal however the parties were not able to stipulate to a dismissal. On April 21, 2017 Core Tech filed a list of two (2) issues it contends need to be determined by the Office of Public Accountability (“OPA”).

II. A. DPW Acted Properly in Determining the Scope of the Current Issued RFP, nonetheless, the Issue is Moot.

DPW notes that Core Tech’s list of issues no longer asserts that the GDOE’s Program Study is separate and distinct from the CCIP required by PL 32-120 and 32-121. An argument of form versus substance the government contends that a review of Bill Nos. 225-32 and 226-32 entertained by the Guam Legislature at the same time and the final enacted versions clearly establishes that the CCIP was intended in lieu of the Program or Programming Study.

DPW and its Procurement Officer(s) have board discretion to determine the contents of a Request for Proposals and other procurement and can consider such items as economy of scale, cost savings, and maximizing to the fullest extent practicable the purchasing value of public funds, etc. *See* 5 GCA 5001(b) 2 GAR 3114(f)(1). It is also noteworthy that 58D authorizes a request for proposals to do SSHS and CCIP and 58E authorizes a request for proposals to do GDOE schools which could include SSHS. In any event, this issue is moot as DPW has agreed to “limiting the Current Issued RFP to Simon Sanchez HS and development of the CCIP.” *Supra.*

Core Tech’s Appeal requested the relief that the department “issue two separate RFPs” and that “DPW should be required to complete a program study and then issue a separate RFP for rehabilitation of the 34 schools”. DPW agreed to issue separate RFPs as requested by Core Tech in order to expedite the reconstruction of the Simon Sanchez HS, which is the primary objective under the Current Issued

RFP and is of an ever-increasing need for its students, faculty and residents of Guam. Having acquiesced to Core Tech's request, the government fails to understand Core Tech's insistence on prolonging the OPA proceedings and delaying the construction of Simon Sanchez HS. This issue is moot.

B. 5 GCA Chapter 58E Authorizes the Procurement of Services such as Insurance and Maintenance for Guam's remaining Thirty-Four (34) Public Schools, for up to Thirty (30) Years.

Core Tech asserts that it is not protesting to protest however its list of issues remaining on appeal clearly and unequivocally contradicts this statement. Under what basis can Core Tech reasonably argue that it, or any other proposer, has the right to "protest", or otherwise claim, what DPW is required to contain in a procurement that not only has yet to issue, but hasn't even been drafted?

Core Tech's Protest and Appeal raised two (2) issues, both of which DPW acquiesced to do. DPW agreed to accommodate Core Tech's sole remaining principle issue on Appeal by agreeing to issue two separate RFPs. Having addressed both items protested by Core Tech, it has no standing to challenge what may, or may not be, contained in the Future Unissued RFP. Core Tech acknowledges that it may not object to the Future Unissued RFP. *See, Core Tech's April 10, 2017 Response to Agency Report*, DPW **Exhibit G**, Page 3, Lines 12-14, where it acknowledges:

"While it is possible the Program Study, which is a term that is not defined in Chapter 58E, can be substituted with the CCIP, Core Tech cannot be certain that the CCIP fulfills the purpose of the Program Study until the CCIP is completed."

As noted herein, DPW disputes that Core Tech has standing to challenge the terms and conditions of the Future Unissued RFP. DPW also asserts that Core Tech is not acting in good faith in challenging the terms and conditions of the Future Unissued RFP, which it acknowledges it might fully agree to it. Core Tech is not able to establish that it is a proposer or interested party to the Future Unissued RFP. Nor can it produce any evidence or allegation that it is prejudiced by an RFP that has

yet to be issued. One could reasonably assert the claim is untimely however the fact is no such claim exists for the simple fact that the Future Unissued RFP has yet to be drafted.

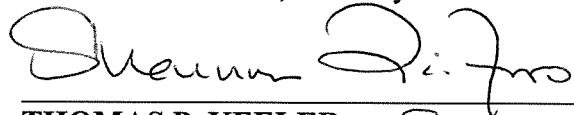
III. Conclusion.

DPW has agreed to amend the Current Issued RFP and separate the procurement of SSHS and CCIP from the remaining GDOE schools therefore making Core Tech's current issues untimely, moot and without merit. Core Tech is not able to show that it has been unduly prejudiced by the contents of DPW's Future Unissued RFP as it has not yet been drafted nor issued.

Dated this 5th day of May 2017.

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By:



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