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CS  
MAR 16 2017

8 **PROCUREMENT APPEAL**  
9 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

10  
11 In the Appeal of

DOCKET NO. OPA-PA- 17-001

12 Core Tech International Corp.,

**NOTICE OF APPEAL**

13  
14 Appellant.

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19 **RECEIVED**  
20 OFFICE OF PUBLIC ACCOUNTABILITY  
21 PROCUREMENT APPEALS

22 DATE: 03.16.17

23 TIME: 4:20  AM  PM BY: JMO

24 FILE NO OPA-PA: 17-001  
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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.

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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).

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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.

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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.

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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  
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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.  
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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*  
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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 SSHS 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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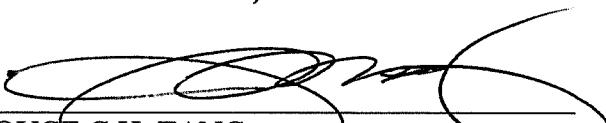
**V. DECLARATION RE COURT ACTION**

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**

  
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JOYCE C.H. TANG  
*Attorneys for Appellant Core Tech Int'l Corp.*



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**VERIFICATION**

I, Conchita Bathan, am the CEO of Appellant CORE TECH INTERNATIONAL CORP., and I am authorized to make this verification. I have read the foregoing Notice of Appeal and, based on information and belief and to the best of my knowledge, the facts stated therein are true and correct. I declare under penalty of perjury under the laws of Guam that the foregoing is true and correct. This verification was executed on the 16<sup>th</sup> day of March, 2017.

By:   
\_\_\_\_\_  
CONCHITA BATHAN  
CEO  
*Appellant Core Tech International Corp.*