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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 09-06-16
 TIME: 4:20 AM PM BY: MJ
 FILE NO OPA-PA: 16-007, 16-011

THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGÁTÑA, GUAM

In the Appeal of:)	CONSOLIDATED APPEALS NOS.
)	OPA-PA-16-007 AND OPA-PA-16-011
CORE TECH INTERNATIONAL CORP.,)	
)	
Appellant,)	
)	
and)	DEPARTMENT OF PUBLIC WORKS
)	
GUAM DEPARTMENT OF PUBLIC)	AMENDED EXHIBIT LIST
WORKS,)	
)	
Purchasing Agency.)	
)	

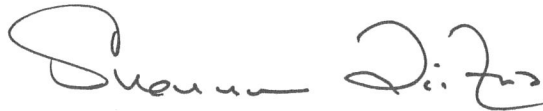
Comes now, Department of Public Work ("DPW"), and through its undersigned counsel, herein files their Amended Exhibit List in the above-captioned matter by adding the additional exhibits as follows:

- **Exhibit S** - Public Law 32-120
- **Exhibit T** - Public Law 32-121
- **Exhibit U (1-3)** - 12-22-15 DPW letters to Contractors

- Exhibit U1 - Guam Educational Facilities Foundation
- Exhibit U2 - Core Tech International Corp.
- Exhibit U3 - Pernix Guam LLC
- Exhibit V - Protest 1 letter

Dated this 6th day of September, 2016.

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



By:

SHANNON TAITANO
Assistant Attorney General

EXHIBIT S

Public Law 32-120

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

FEB 13 2014

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

32-14-1301
Office of the Speaker
Judith T. Won Pat, Ed.D.
Date: 2/14/14
Time: 4:02 PM
Received by:

Dear Madame Speaker:

Transmitted herewith is Bill No. 225-32 (COR) "AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER §22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND §53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND" which I signed into law on February 10, 2014 as Public Law 32-120.

2014 FEB 14 PM 4:49 N

Senseramente,

EDDIE BAZA CALVO

1301

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

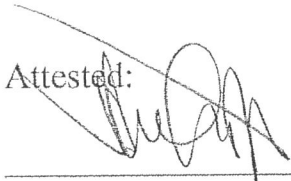
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that Bill No. 225-32 (COR), "AN ACT TO *ADD* A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO *AMEND* AND *RENUMBER* § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO *AMEND* § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND," was on the 1st day of February, 2014, duly and regularly passed.



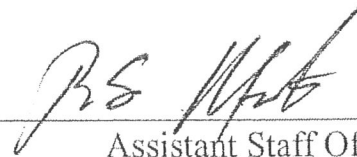
Judith T. Won Pat, Ed.D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: FEB 10 2014

Public Law No. 32-120

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 225-32 (COR)

As amended by the Author; and
further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
T. R. Muña Barnes
Aline A. Yamashita, Ph.D.
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Lintiaco
Brant T. McCreadie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas

AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND.

1 contribute to health and safety problems for staff and students. It should be
2 noted that it is critical for the Guam Department of Education to develop a
3 comprehensive capital improvement plan to provide a roadmap for
4 prioritizing facility improvements beyond Simon Sanchez.

5 *I Liheslatura* finds that after reviewing the summary of outstanding
6 General and Limited Obligation debts as of March 1, 2013, that the debt
7 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
8 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
9 (\$1,139,464,853). It also states that the General Obligation Debt is Four
10 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
11 Hundred Fifty Three Dollars (\$446,473,853); and the Limited Obligation
12 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
13 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
14 accumulated total of One Billion One Hundred Ten Million Three Hundred
15 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
16 Subtracting the debt ceiling limit less the General and Limited Obligation
17 Debts leaves the amount for future debt obligation at Twenty Nine Million
18 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

19 *I Liheslatura* further finds that the cost for the renovation or
20 construction of a new Simon Sanchez High School would exceed Guam's
21 debt ceiling obligation cap if a General Obligation Bond is pursued. To
22 circumvent the debt ceiling cap, *I Liheslatura* finds that the construction of
23 *Okkodo* High School, *Astumbo* Middle School, *Liguan* Elementary School,
24 *Adacao* Elementary School, John F. Kennedy High School and the
25 expansion of *Okkodo* High School validates the fundamental soundness of
26 using a municipal lease as a vehicle to build new educational facilities. By
27 utilizing municipal leasing to renovate or construct a new Simon Sanchez

1 High School, the remaining future debt obligation may be used to fund other
2 priorities of the government.

3 *I Liheslatura* further intends to authorize *I Maga'lahañ Guåhan* to
4 pledge or reserve the additional proceeds as a source of payment for a
5 municipal lease financing, secured for the purposes stated herein, either to
6 renovate or construct a new Simon Sanchez High School. To overcome the
7 financing hurdles, *I Liheslaturan Guåhan* supports the government of
8 Guam to enter into a contract for the financing, design, renovation or
9 construction and long-term capital maintenance of Simon Sanchez High
10 School with a private sector contractor who can provide long-term
11 financing obtained through tax-exempt obligations or other
12 competitive alternative financing based on long-term lease-backs to
13 the government of Guam. In order to facilitate system-wide
14 improvements, *I Liheslatura shall* authorize the Guam Department of
15 Education to develop a comprehensive capital improvement plan for
16 prioritizing capital improvements to all Guam Department of Education
17 schools. To facilitate the financing, design, renovation or construction
18 and maintenance of an education facility envisioned by this Act, the
19 government of Guam will be authorized to lease, for up to thirty (30)
20 years, government of Guam property on which the facilities will be
21 constructed to the contractor, who will design, renovate or construct a
22 new education facility in accordance with specifications approved by
23 Guam Department of Education. The education facility and land will be
24 leased back to the government of Guam for a period *not to exceed* thirty
25 (30) years or the initial ground lease to the contractor over which time
26 the government of Guam will amortize, as lease payments to the
27 contractor, the cost of the financing, design, renovation or construction

1 and related expenses of the education facility. The contractor will also
2 be responsible for the capital maintenance of the education facility
3 constructed under this Act, which costs *shall* be paid by the government of
4 Guam, as provided for under this Act. At the expiration of the lease-back
5 period, the government of Guam real property and the education facility
6 that is renovated or constructed on the government of Guam real property
7 will revert to the government of Guam with no further obligations to the
8 Contractor.

9 **§ 58D103. Definitions.** For purposes of this Chapter and *unless*
10 otherwise specified, the following words and phrases are defined to mean:

11 (a) *Act* means Chapter 58D of Title 5, Guam Code
12 Annotated, known as the “*Ma Kāhat Act of 2013.*”

13 (b) *Comprehensive capital improvement plan* means a plan
14 that takes into consideration the physical condition of each school,
15 along with attendance area population, enrollment patterns, and
16 bussing logistics. It *shall* also include how each school meets the
17 instructional needs of GDOE and prioritizes repairs of existing
18 schools, and renovation and construction of new school facilities in
19 order to deal with GDOE limited resources.

20 (c) *Contract shall* mean the various design, renovation or
21 construction and financing agreements entered into by and between
22 the education agency and the contractor following negotiations on the
23 response to the Request for Proposal.

24 (d) *Contractor shall* mean the authorized entity which *shall*
25 be the signatory on the Contract and *shall* be fully responsible for
26 carrying out the design, renovation or construction, financing and
27 maintenance of the education facility. The contractor may cooperate

1 with another entity or entities in any manner the contractor deems
2 appropriate to provide for the financing, design, renovation,
3 construction or maintenance of the public school facilities envisioned
4 by this Act.

5 (e) *Education agency shall* mean the Guam Department of
6 Education.

7 (f) *Education facility* as used in this Act, *shall* mean the
8 renovation or construction of a new high school, and to include its
9 athletic facilities to be located on the existing site of Simon Sanchez
10 High School.

11 (g) *Lease shall* mean a lease from an education agency to the
12 contractor entered into at the time of the contract for the property.

13 (h) *Lease-back shall* mean the lease from the contractor to
14 the education agency.

15 (i) *Lease-back period shall* mean the term of the lease from
16 the contractor to the education agency.

17 (j) *Property shall* mean any property on which an education
18 facility is located.

19 **§ 58D104. Authorization to Enter Into Long-Term Leases.** For
20 the purpose of facilitating the financing of the design, renovation
21 or construction and maintenance of an education facility encompassed
22 by this Act, the government of Guam or an education agency, as the case
23 may be, is authorized to lease, if required, to the contractor sufficient
24 government of Guam real property on which to renovate or construct a
25 new education facility; *provided*, such property is in the inventory of the
26 education agency or the government of Guam. The property may be the
27 site of an existing education facility under the control of an education

1 agency, which existing facility may be renovated or demolished and
2 rebuilt under the provisions of this Act. The education agency is also
3 authorized to lease back from the contractor the property for a
4 period mutually agreed upon between the education agency and the
5 contractor as may be reasonably necessary to amortize over the lease-
6 back period the costs associated with the financing, design, renovation or
7 construction of the education facility. In no event shall the end of such
8 lease-back period be later than the date thirty (30) years from the
9 scheduled date of completion of the education facility. The lease-back
10 may be structured as an annually renewable lease with provision for
11 automatic renewals to the extent that pledged or reserved revenue under
12 §22425(q)(4) and (6) of Title 5, Guam Code Annotated, is available. The
13 lease-back *shall not* be construed as a debt under any applicable debt
14 limitation under the Guam Organic Act or Guam law.

15 **§ 58D105. Procurement.** Subject to the approval of *I Liheslaturan*
16 *Guåhan*, the government of Guam or an education agency *shall* solicit
17 Requests for Proposals (RFP) through the Department of Public Works, in
18 compliance with the Guam procurement law, for the development of the
19 comprehensive capital improvement plan, the financing, design, renovation
20 or construction of the education facility, together with insurance and
21 maintenance of the education facility over the lease-back period, according
22 to the needs of the education agency and consistent with this Chapter. The
23 choice of the contractor *shall* be made by a selection committee comprised
24 of the Superintendent of the Department of Education, serving as Chairman,
25 and including the Director of the Department of Public Works or Deputy
26 Director, the Director of the Department of Land Management or Deputy
27 Director, the Administrator of the Guam Environmental Protection Agency

1 or Deputy Administrator, and the Administrator of the Guam Economic
2 Development Authority or Deputy Administrator. The committee *shall*
3 access the prior performance of the contractor on similar projects and may
4 disqualify any Contractor that does not have a successful record of project
5 completion on Guam.

6 The selection of a contractor *shall* be based upon the proposal that
7 delivers the best value for Guam in meeting the objectives of the education
8 agency.

9 The RFP *shall* be issued within thirty (30) days of enactment of this
10 Act for the renovation or construction of a new Simon Sanchez High School
11 on the existing site, which may include demolition of such portions of the
12 existing facility as necessary.

13 **§ 58D106. Responsibilities of Contractor.** The contract *shall*
14 require that the contractor will work with GDOE to develop the
15 comprehensive capital improvement plan in connection with the design of a
16 renovated or construction of a new Simon Sanchez High School. Further,
17 the contractor *shall* be responsible for all costs, expenses and fees of any
18 kind or nature, associated with the design, civil improvements, on-site
19 and off-site infrastructure, construction, permits, and financing
20 associated with the completion of an education facility, including the
21 financing of furniture and equipment for the education facility, as, and
22 to the extent, provided by the education agency in the Request for
23 Proposals. The contract will also require that all major subcontracts be
24 covered by a performance bond; and further, that there be a specific
25 delivery date with liquidated damages for failure to deliver the school by
26 the specified date. The contractor *shall* also be responsible for the capital
27 maintenance of the schools during the lease-back period, but *shall not* be

1 responsible for the capital maintenance of the furniture and equipment.
2 The lease-back may provide that if sufficient funds are *not* appropriated
3 or otherwise available for the payment of amounts due under the lease and
4 any maintenance agreement, the education agency will have the
5 obligation to vacate the education facility, and the contractor *shall* have
6 the right of use and occupancy of the education facility for the remainder
7 of the term of the lease, *unless* new mutually satisfactory terms are entered
8 into. For this purpose, the lease may provide that its term shall be extended
9 for a period *not to exceed* the shorter of ten (10) years beyond the
10 original term of the lease-back or such period of time as is necessary to
11 repay in full any financing arranged pursuant to § 58D108. The capital
12 maintenance costs *shall* be paid by the education agency on a periodic
13 basis as incurred by the contractor on terms to be agreed to in the contract
14 for the education facility.

15 **§ 58D107. Assignments.** To facilitate the purposes of this Act
16 and to provide security for the holders of any financing instruments issued
17 pursuant to this Act, the contractor may assign, without the need of the
18 consent of the education agency, the contract, the lease, and the
19 lease-back to any underwriter, trustee, or other party as appropriate, to
20 facilitate the issuance of the tax-exempt obligations, other financial
21 instruments or alternative financing for the education facility.

22 **§ 58D108. Use of Tax-Exempt Bonds for Financing.** To
23 minimize the financing cost to the education agency, financing utilized by
24 the contractor to fund the design, renovation or construction of an
25 education facility *shall* be through tax-exempt obligations or other
26 financial instruments, provided, such financing is available at interest rates

1 determined by the education agency to be reasonable and competitive.
2 Alternatively, the contractor may use an alternative method of financing,
3 including, but *not* limited to, a short term debt, mortgage, loan, federally
4 guaranteed loan or loan by an instrumentality of the United States of
5 America, if such financing will better serve the needs of the people of
6 Guam. Such alternative financing *shall* be approved by *I Liheslaturan*
7 *Guåhan*. The purpose for the requirements of this Section is to assure the
8 education agency pays the lowest possible interest rate so that the cost to
9 the education agency of financing the design, renovation or construction
10 of an education facility, amortized through the lease-back payments
11 from the education agency to the contractor, will be lower than regular
12 commercial rates.

13 **§ 58D109. Pledge of Additional Revenue from the Real Property**
14 **Valuation.** Rental payments under the lease and the lease-back may be
15 secured by a pledge or other reservation of revenues received by the
16 government of Guam pursuant to §22425(q)(4) and (6) Article 4, Chapter 22
17 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as
18 provided in this Section are hereby continuously appropriated for the
19 purpose of making lease-back payments, but any amounts *only* reserved as
20 provided in this Section, and *not* pledged, *shall* be subject to an annual
21 appropriation for the purpose of making lease-back payments. Any such
22 pledge or reservation authorized hereunder *shall* be valid and binding from
23 the time the pledge or reservation is made, and *shall* be limited to the sum of
24 Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and
25 Ninety Eight Cents (\$5,051,977.98) per year during the lease-back period, as
26 outlined in §22425(q)(4) and (6) of Title 5, Guam Code Annotated, hereof.
27 The revenues pledged or reserved and thereafter received by the government

1 of Guam or by any trustee, depository or custodian *shall* be deposited in a
2 separate account and *shall* be immediately subject to such reservation or the
3 lien of such pledge without any physical delivery thereof or further act, and
4 such reservation or the lien of such pledge *shall* be valid and binding against
5 all parties having claims of any kind in tort, contract or otherwise against the
6 government of Guam or such trustee, depository or custodian, irrespective of
7 whether the parties have notice thereof. The instrument by which such
8 pledge or reservation is created need not be recorded.

9 **§ 58D110. Utilities and Routine Maintenance and Repair.** The
10 education agency *shall* be responsible for the connection and payment of all
11 utilities, including without limitation, power, water, sewer, telephone and
12 cable, and all routine interior maintenance and repair and exterior
13 groundskeeping and landscaping, and upkeep of the education facility.

14 **§ 58D111. Maintenance Fund.** The contract or a separate
15 maintenance agreement with the contractor, and the lease-back, *shall*
16 provide that all capital maintenance of the education facility be performed
17 by the contractor as a separate cost, the terms of which, and the manner for
18 establishing the amount of payment, *shall* be determined as a part of the
19 contract; provided, however, that said documents may, at the discretion of
20 the education agency, provide that capital maintenance with respect to
21 equipment (including collateral equipment), onsite utilities, offsite utilities,
22 access roads and other similar improvements need not be performed by the
23 contractor.

24 **§ 58D112. Contractual Safeguards.** Prior to undertaking the work
25 of renovating or constructing a new Simon Sanchez High School, the Guam
26 Economic Development Authority, the Department of Public Works, the
27 Guam Department of Education, and the developer or contractor *shall*

1 negotiate and enter into a binding construction contract to renovate or
2 construct a new Simon Sanchez High School in accordance with the Guam
3 Building Code (21 G.C.A. Ch. 67), and any other applicable requirements.
4 The construction contract *shall* contain contractual obligations typically
5 found in government of Guam construction contracts, including, but *not*
6 limited to:

- 7 (a) warranties;
- 8 (b) liquidated damages;
- 9 (c) performance and payment bonds;
- 10 (d) indemnity;
- 11 (e) insurance;
- 12 (f) standard specifications;
- 13 (f) technical specifications;
- 14 (g) progress schedule;
- 15 (h) maintenance;
- 16 (i) compliance with Guam labor regulations;
- 17 (j) compliance with Guam prevailing wage rates for
18 employment of temporary alien workers (H2) on Guam;
- 19 (k) compliance with Public Law 29-98: restriction against
20 contractors employing convicted sex offenders to work at government
21 of Guam venues.

22 The contract *shall* be submitted for review and approval to all entities
23 charged by law with the duty to review and approve government contracts,
24 including the Office of the Attorney General.

25 **§ 58D113. Severability.** *If* any provision of this Act or its
26 application to any person or circumstance is found to be invalid or contrary
27 to law, such invalidity *shall not* affect other provisions or applications of this

1 Act which can be given effect without the invalid provisions or application,
2 and to this end the provisions of this Act are severable.”

3 **Section 3.** §22425(q) of Article 4, Chapter 22, Division 2, Title 5, Guam
4 Code Annotated, is hereby *amended* to read:

5 “(q) Notwithstanding any other provision of law, any additional real
6 property tax revenues received as a result of the most recent valuation of real
7 property due to commence during the calendar years 2013 and 2014 is
8 hereby continuously appropriated annually, *not to exceed* Eight Million Five
9 Hundred Thousand Dollars (\$8,500,000), from the Territorial Educational
10 Facilities Fund in the amounts and for purposes set forth in this Subsection:

11 (1) The sum of One Million One Hundred Fifty Eight
12 Thousand Two Hundred Eighty Three Dollars (\$1,158,283),
13 beginning in FY 2014, for the construction of the Student Services
14 Center and Engineering Annex at the University of Guam, as a source
15 of payment to the University of Guam Capital Improvements Fund for
16 the purpose of paying rental payments due under the lease-leaseback
17 agreements with the University of Guam Endowment Foundation for
18 a term of forty (40) years;

19 (2) The sum of Two Hundred Seventy-eight Thousand Nine
20 Hundred Twenty-one Dollars and Fifty-two Cents (\$278,921.52),
21 beginning in FY 2014 for forty (40) years, for the construction or
22 renovation of Building 100 and the DNA Laboratory at the Guam
23 Community College;

24 (3) The sum of One Hundred Thirty-two Thousand Fifteen
25 Dollars (\$132,015) to the Guam Public Library System to hire a
26 Territorial Librarian at Ninety-three Thousand Three Hundred

1 Seventy-seven Dollars (\$93,377), and a Computer Analyst II at
2 Thirty-eight Thousand Six Hundred Thirty-eight Dollars (\$38,638);

3 (4) The sum of One Million Seven Hundred Seven Thousand
4 Six Hundred Fifty-two Dollars (\$1,707,652) to the Guam Department
5 of Education for the renovation or construction of a new Simon
6 Sanchez High School.

7 (5) The sum of One Million Two Hundred Thousand Dollars
8 (\$1,200,000) for rental payments under the lease and the lease-back as
9 described in Chapter 58D of Title 5, Guam Code Annotated.

10 (6) other than the portions designated to be used for in Items
11 (1), (2), (3), (4) and (5) of this Subsection, eighty percent (80%) of the
12 remaining balance for rental payments due under the lease-leaseback
13 agreement with GDOE secured for the renovation or construction of a
14 new Simon Sanchez High School, to include its athletic facilities, and
15 other Guam Department of Education public school facilities
16 requiring new construction, rehabilitation or maintenance;

17 (7) other than the portions designated to be used for in Items
18 (1), (2), (3), (4) and (5) of this Subsection, 3.5% of the remaining
19 balance for the Early Childhood Program Fund, as described in
20 §53101 of Title 17, Guam Code Annotated;

21 (8) other than the portions designated to be used for in Items
22 (1), (2), (3), (4) and (5) of this Subsection, 3.5 % of the remaining
23 balance for *I Famagu'on-ta*, Child Adolescent Services Division of
24 the Guam Behavioral Health and Wellness Center, and Project
25 *Karinu*. These funds *shall not* be subject to *I Maga'lahren Guåhan's*
26 transfer authority.

1 (9) other than the portions designated to be used for in Items
2 (1), (2), (3) (4) and (5) of this Subsection, five percent (5%) of the
3 remaining balance to the Department of Revenue and Taxation for the
4 following:

5 (A) for maintenance support and sustainability of real
6 property data and system;

7 (B) for the five (5) year (quinquennial) property tax
8 revaluation as mandated by law;

9 (C) for enhancements, and technological
10 advancements related to software/hardware, and support staff
11 necessary to improve electronic services; and

12 (D) for other costs directly associated with improving
13 the efficiency of the real property tax system.

14 The Director of the Department of Revenue and Taxation *shall*
15 submit a report to *I Maga'lahañ Guåhan* and *I Liheslaturan Guåhan*
16 on a monthly basis as to the expenditures of the funds following the
17 enactment of this Act, detailing all transactions;

18 (10) other than the portions designated to be used for in Items
19 (1), (2), (3), (4) and (5) of this Subsection, five percent (5%) of the
20 remaining balance *shall* be lock boxed for the procurement of a
21 unified financial management information system, as recommended
22 by consensus from the Department of Revenue and Taxation, the
23 Department of Administration, the General Services Agency, the
24 Office of Public Accountability, the Office of Technology, the
25 University of Guam, the Guam Community College, the Guam
26 Department of Education, and Guam Memorial Hospital Authority.
27 This amount shall be subject to legislative appropriation.

1 (11) Other than the portions designated to be used for in Items
2 (1), (2) (3) (4) and (5) of this Subsection, three percent (3%) of the
3 remaining balance *shall* be a source of funding for island-wide school
4 bus shelters. The Director of the Department of Public Works *shall*
5 submit a report to *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan*
6 on a monthly basis as to the expenditures of the funds following
7 enactment of this Act, detailing all transactions.”

8 **Section 4.** §53101 of Title 17, Guam Code Annotated, is hereby *amended*
9 to read as follows:

10 “§ 53101. **Early Childhood Program Fund.** There is hereby
11 created, separate and apart from all other funds of the government of Guam,
12 a fund known as the “Early Childhood Program Fund.” All monies received
13 by or on behalf of the government of Guam pursuant to §22425(q)(7) of
14 Title 5 GCA, *shall* be deposited in the Fund and used for early childhood
15 programs at the University of Guam, the Guam Community College, or the
16 Guam Department of Education. The Fund *shall not* be commingled with the
17 General Fund or any other funds of the government of Guam, and it *shall* be
18 maintained in a separate bank account. All monies in the Fund *shall* require
19 legislative appropriation, and *shall not* be subject to any transfer authority of
20 *I Maga'lahaen Guåhan.*”

21 **Section 5. Severability.** *If* any provision of this Act or its application to
22 any person or circumstance is found to be invalid or contrary to law, such
23 invalidity *shall not* affect other provisions or applications of this Act which can be
24 given effect without the invalid provisions or application, and to this end the
25 provisions of this Act are severable.”

EXHIBIT T

Public Law 32-121

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

FEB 13 2014

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

32-14-1302
Office of the Speaker
Judith T. Won Pat, Ed.D.
Date: 2/14/14
Time: 4:49 PM
Received by:

Dear Madame Speaker:

Transmitted herewith is Bill No. 226-32 (COR) "AN ACT TO ADD A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS" which I signed into law on February 10, 2014 as Public Law 32-121.

Senseramente,

EDDIE BAZA CALVO

2014 FEB 14 PM 4:49

1302

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

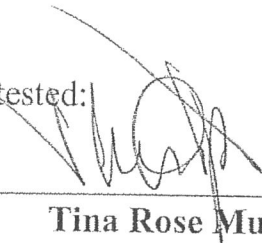
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that Bill No. 226-32 (COR), "AN ACT TO ADD A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS," was on the 1st day of February, 2014, duly and regularly passed.



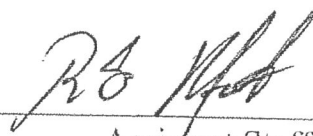
Judith T. Won Pat, Ed.D.
Speaker

Attested:




Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


EDWARD J.B. CALVO
I Maga'lahaen Guåhan

FEB 10 2014

Date: _____

Public Law No. 32-121

I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN
2013 (FIRST) Regular Session

Bill No. 226-32 (COR)

As amended by the Author;
and further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
Aline A. Yamashita, Ph.D.
T. R. Muña Barnes
Brant T. McCreadie
Dennis G. Rodriguez, Jr.
Tommy Morrison
Chris M. Dueñas
Michael T. Limtiaco
FRANK B. AGUON, JR.
R. J. Respicio
T. C. Ada
V. Anthony Ada
B. J.F. Cruz
Vicente (ben) C. Pangelinan
Michael F. Q. San Nicolas

**AN ACT TO *ADD* A NEW CHAPTER 58E TO TITLE 5,
GUAM CODE ANNOTATED, RELATIVE TO THE
FINANCE, DESIGN, RENOVATION, REHABILITATION,
CONSTRUCTION OR MAINTENANCE OF PUBLIC
SCHOOLS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 58E is hereby *added* to Title 5, Guam Code
Annotated, to read as follows:

“CHAPTER 58E

1 THE FINANCE, DESIGN, RENOVATION,
2 REHABILITATION, CONSTRUCTION OR MAINTENANCE OF
3 PUBLIC SCHOOLS

4 § 58E100. Legislative Findings and Intent.

5 § 58E101. Definitions.

6 § 58E102. Authorization to Enter into Long-Term Leases.

7 § 58E103. Identification of Projects and Procurement.

8 § 58E104. Responsibilities of Developer/Contractor.

9 § 58E105. Contractual Safeguards.

10 § 58E106. Assignments.

11 § 58E107. Pledge of Revenues.

12 § 58E108. Use of Tax-Exempt Bond and Other Financing
13 Instruments for Financing.

14 § 58E109. Utilities, Maintenance and Repair.

15 § 58E110. Severability.

16 **§ 58E100. Legislative Findings and Intent.** *I Liheslaturan*
17 *Guåhan* finds that Guam public school facilities face deficiencies in its
18 roofing, exterior, interior, structural, mechanical, electrical, plumbing, and
19 school grounds, which create a non-conducive environment that hinders
20 learning and the work and production of teachers and students.

21 *I Liheslaturan Guåhan* finds that the Guam Department of Education
22 is about \$90 Million behind on maintenance projects for the island's public
23 schools, according to a report commissioned by the Department of the
24 Interior in 2012, and recently submitted to the Guam Department of
25 Education in August 2013.

26 It is, therefore, the intent of *I Liheslaturan Guåhan* for the
27 government of Guam to use one quarter of the business privilege tax to pay

1 for the interest payments of the lease and lease-back as a form of bridge
2 financing until the maturity of the Business Privilege Tax bond series
3 2013C.

4 *I Liheslatura* finds that after reviewing the summary of outstanding
5 General and Limited Obligation debts as of March 1, 2013, that the debt
6 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
7 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
8 (\$1,139,464,853). It also states that the General Obligation Debt is Four
9 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
10 Hundred Fifty Three Dollars (\$446,473,853), and the Limited Obligation
11 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
12 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
13 accumulated total of One Billion One Hundred Ten Million Three Hundred
14 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
15 Subtracting the debt ceiling limit less the General and Limited Obligation
16 Debts leaves the amount for future debt obligation at Twenty Nine Million
17 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

18 *I Liheslatura* further finds that the cost to fund the rehabilitation of
19 the public schools will certainly exceed the debt ceiling obligation if a
20 general obligation bond is pursued. To circumvent Guam's debt ceiling cap,
21 *I Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo*
22 Middle School, *Liguan* Elementary School, *Adacao* Elementary School,
23 John F. Kennedy High School, and the expansion of *Okkodo* High School,
24 has demonstrated the fundamental soundness of using municipal lease as a
25 vehicle to build new educational facilities. By making the most of municipal
26 leasing to rehabilitate and construct Guam public schools, the remaining

1 future debt obligation may be used to fund other priorities of the
2 government.

3 § 58E101. **Definitions.** For purposes of this Chapter and *unless*
4 otherwise specified, the following words and phrases are defined to mean:

5 (a) *Comprehensive capital improvement plan* means a plan
6 that takes into consideration the physical condition of each school
7 along with attendance area population, enrollment patterns, and
8 bussing logistics. It *shall* also include how each school meets the
9 instructional needs of GDOE, and prioritizes repairs of existing
10 schools and renovation and construction of new school facilities in
11 order to deal with GDOE limited resources.

12 (b) *Contract shall* mean the design, renovation,
13 rehabilitation, construction, and financing contract entered into by and
14 between the education agency and the contractor chosen by the Guam
15 Economic Development Agency and approved by *I Liheslaturan*
16 *Guåhan*.

17 (c) *Contractor shall* mean the authorized entity which *shall*
18 be the signatory on the contract and *shall* be fully responsible for
19 carrying out the design, renovation, rehabilitation, construction,
20 financing, or maintenance of the education facility. The contractor
21 may cooperate with another entity or entities in any manner the
22 contractor deems appropriate to provide for the financing, design,
23 renovation, rehabilitation, construction or maintenance of the public
24 school facilities envisioned by this Act.

25 (d) *Education agency shall* mean the Guam Department of
26 Education.

1 (e) *Education facility* as used in this Act shall mean public
2 elementary and secondary schools on Guam, to include its athletic
3 fields and playgrounds, excluding the five leased schools under the
4 education agency.

5 (f) *Lease shall* mean a lease from an education agency to the
6 contractor entered into at the time of the contract for the property.

7 (g) *Lease-back shall* mean the lease from the contractor to
8 the education agency of the rehabilitated, renovated or newly
9 constructed education facility.

10 (h) *Lease-back period shall* mean the term of the lease from
11 the contractor to the education agency.

12 (i) *Property shall* mean any property on which an education
13 facility is located.

14 **§ 58E102. Authorization to Enter into Long-term Leases.** For
15 the purpose of facilitating the financing, design, construction and
16 rehabilitation and maintenance of an education facility encompassed by this
17 Act, the government of Guam or an education agency, as the case may be, is
18 authorized to lease, if required, to the contractor sufficient government of
19 Guam real property on which to rehabilitate an education facility; provided,
20 such property is in the inventory of the education agency or the government
21 of Guam. The property may be the site of an existing education facility
22 under the control of an education agency, which existing facility may be
23 rehabilitated under the provisions of this Act.

24 The education agency is also authorized to lease back from the
25 contractor the property for a period mutually agreed upon between the
26 education agency and the contractor as may be reasonably necessary to
27 amortize over the lease-back period the costs associated with the design,

1 renovation, rehabilitation, construction or maintenance of the education
2 facility. In no event shall the end of such lease-back period be later than the
3 date thirty (30) years from the scheduled date of completion of the education
4 facility. The lease-back may be structured as an annually renewable lease
5 with a provision for automatic renewals to the extent that pledged revenue
6 under § 58E107 is available. The lease-back *shall not* be construed as a debt
7 under any applicable debt limitation under the Guam Organic Act or Guam
8 law.

9 **§ 58E103. Identification of Projects and Procurement.** Under the
10 Superintendent of Education's direction, the education agency *shall* utilize
11 the Program Study, and the report generated by the Department of Interior
12 (DOI)-funded assessment report by the Army Corps of Engineers, to identify
13 and prioritize potential projects to be completed. The list of projects *shall* be
14 included in a Request for Proposals developed by the education agency.
15 Upon receipt of the Program Study, the Superintendent of Education *shall*
16 solicit Requests for Proposals (RFP) through the Department of Public
17 Works, in compliance with the Guam Procurement Law, for the financing,
18 design, construction and rehabilitation of the education facility, according to
19 the needs of the education agency and consistent with this Chapter. The
20 choice of the contractor *shall* be made by a selection committee comprised
21 of the Superintendent of the Department of Education, serving as Chairman,
22 and including the Director of the Department of Public Works or Deputy
23 Director, the Director of the Department of Land Management or Deputy
24 Director, the Administrator of the Guam Environmental Protection Agency
25 or Deputy Administrator, and the Administrator of the Guam Economic
26 Development Authority or Deputy Administrator. The committee *shall*
27 assess the prior performance of the contractor on similar projects, and *shall*

1 be free to disqualify any contractor that *does not* have a successful record of
2 project completion on Guam.

3 The selection of a contractor *shall* be based upon the proposal that
4 delivers the best value for Guam in meeting the objectives of the education
5 agency.

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

9 **§ 58E104. Responsibilities of Developer/Contractor.** The
10 contract *shall* require that the contractor be responsible for all costs,
11 expenses and fees of any kind or nature, associated with the rehabilitation,
12 design, civil improvements, on-site and off-site infrastructure, construction,
13 permits, and financing associated with the completion of an education
14 facility, including the financing of furniture and equipment for the education
15 facility, as and to the extent provided by the education agency in the Request
16 for Proposals. The lease-back may provide that if sufficient funds are not
17 appropriated or otherwise available for the payment of amounts due under
18 the lease, the education agency will have the obligation to vacate the
19 education facility, and the contractor *shall* have the right of use and
20 occupancy of the education facility for the remainder of the term of the
21 lease, *unless* new mutually satisfactory terms are entered into. For this
22 purpose, the lease may provide that its term *shall* be extended for a period
23 *not to exceed* the shorter of ten (10) years beyond the original term of the
24 lease-back, or such period of time as is necessary to repay in full any
25 financing arranged pursuant to § 58E108 of this Chapter. The capital
26 maintenance costs *shall* be paid by the education agency.

1 **§ 58E105. Contractual Safeguards.** Prior to undertaking the work
2 of rehabilitating educational facilities, the Guam Economic Development
3 Authority, the Department of Public Works, the Guam Department of
4 Education, and the developer or contractor, *shall* negotiate and enter into a
5 binding construction contract to build or refurbish the educational facility in
6 accordance with the Guam Building Code (21 G.C.A. Ch. 67), and any other
7 applicable requirements. The construction contract *shall* contain contractual
8 obligations typically found in government of Guam construction contracts,
9 including, but *not* limited to:

- 10 (a) warranties;
- 11 (b) liquidated damages;
- 12 (c) performance and payment bonds;
- 13 (d) indemnity;
- 14 (e) insurance;
- 15 (f) standard specifications;
- 16 (g) technical specifications;
- 17 (h) progress schedule;
- 18 (i) maintenance;
- 19 (j) compliance with Guam labor regulations;
- 20 (k) compliance with Guam prevailing wage rates for
21 employment of temporary alien workers (H2) on Guam;
- 22 (l) compliance with Public Law 29-98: restriction against
23 contractors employing convicted sex offenders to work at government
24 of Guam venues.

25 The contract must be submitted for review and approval to all entities
26 charged by law with the duty to review and approve government contracts,
27 including the Office of the Attorney General.

1 **§ 58E106. Assignments.** To facilitate the purpose of this Act and
2 provide security for the holders of any financing instruments issued pursuant
3 to this Act, the contractor may assign, without the need of the consent of the
4 education agency, the contract, the lease and lease-back to any underwriter,
5 trustee or other party as appropriate to facilitate the contractor financing.

6 **§58E107. Pledge of Revenues.**

7 (a) Rental payments under the lease and the lease-back may
8 be secured by a pledge or other reservation of revenues collected by
9 the government of Guam from the following:

10 (1) Taxes collected under the Business Privilege Tax
11 Law (namely, 11 GCA Chapter 25, excluding the alcoholic
12 beverage taxes, liquid fuel taxes, automotive surcharges,
13 tobacco taxes and real property taxes). The business privilege
14 tax pledged or reserved *shall only* apply to the unpledged
15 portion of the business privilege tax (currently one percentage
16 point of the current four percent business privilege tax rate) so
17 as not to violate the government's covenants to bondholders of
18 the Series A, Series B and Series C Limited Obligation bonds
19 authorized through Public Law 31-76, Public Law 31-196 and
20 Public Law 31-276. The sum of approximately One Million
21 Eight Hundred Eighty-Two Thousand Eighty-Two Dollars
22 (\$1,882,082) *shall* fund interest in Fiscal Year 2015, and the
23 sum of approximately Two Million Five Hundred Sixty Four
24 Thousand One Hundred Sixty-Five Dollars (\$2,564,165) *shall*
25 fund interest payment annually for Fiscal Years 2016 through
26 2018.

1 (2) The sum of One Million Two Hundred Thousand
2 Dollars (\$1,200,000) from the revenues received pursuant to
3 §22425(q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam
4 Code Annotated will be available annually beginning in Fiscal
5 Year 2016; and

6 (3) The sum of Four Million Eight Hundred Thousand
7 Dollars (\$4,800,000) from the maturity of Business Privilege
8 Tax Bond Series 2013C *shall* be available annually beginning
9 in Fiscal Year 2019.

10 (b) Revenues pledged or reserved *shall* be remitted in the
11 following manner:

12 (1) The Business Privilege Tax *shall* only pay for the
13 interest payments of the lease and the lease-back pending the
14 maturity of the Business Privilege Tax Bond Series 2013C in
15 Fiscal Year 2019, and said interest payments *shall* cease.

16 (2) Revenues received pursuant to §22425 (q)(5) of
17 Article 4, Chapter 22 Division 2, Title 5, Guam Code
18 Annotated, upon availability; and

19 (3) Upon the maturity of the Business Privilege Tax
20 Bond Series 2013C.

21 Any amounts pledged as provided in this Section are hereby
22 continuously appropriated for the purpose of making lease-back payments,
23 but any amounts only reserved as provided in this Section, and not pledged,
24 shall be subject to annual appropriation for the purpose of making lease-back
25 payments. The revenues pledged or reserved and thereafter received by the
26 government of Guam or by any trustee, depository or custodian *shall* be
27 deposited in a separate account and *shall* be immediately subject to such

1 reservation or the lien of such pledge without any physical delivery thereof
2 or further act, and such reservation or the lien of such pledge *shall* be valid
3 and binding against all parties having claims of any kind in tort, contract or
4 otherwise against the government of Guam or such trustee, depository or
5 custodian, irrespective of whether the parties have notice thereof. The
6 instrument by which such pledge or reservation is created need not be
7 recorded.

8 **§ 58E108. Use of Tax-Exempt Bond, Taxable Bond and Other**
9 **Financing Instruments for Financing.** To minimize the financing cost to
10 the education agency, financing utilized by the contractor to fund the
11 design, renovation, rehabilitation, construction or maintenance of an
12 education facility *shall* be through tax-exempt obligations, taxable bond
13 obligation, or other financial instruments, provided, such financing is
14 available at interest rates determined by the education agency to be
15 reasonable and competitive. Alternatively, the contractor may use an
16 alternative method of financing, including, but *not* limited to, a short
17 term debt, mortgage, loan, federally guaranteed loan or loan by an
18 instrumentality of the United States of America if such financing will
19 better serve the needs of the people of Guam. Such alternative financing
20 *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the
21 requirements of this Section is to assure the education agency pays the
22 lowest possible interest rate so that the cost to the education agency of
23 financing the design and construction of an education facility,
24 amortized through the lease-back payments from the education
25 agency to the contractor, will be lower than regular commercial rates.

26 **§ 58E109. Utilities, Maintenance and Repair.** The education
27 agency *shall* be responsible for the connection and payment of all utilities,

1 including without limitation, power, water, sewer, telephone, and cable, and
2 all maintenance and repair and exterior groundskeeping and landscaping,
3 and upkeep of the education facility.

4 **§ 58E110. Severability.** If any provision of this Act or its
5 application to any person or circumstance is found to be invalid or contrary
6 to law, such invalidity *shall not* affect other provisions or applications of this
7 Act which can be given effect without the invalid provisions or application,
8 and to this end the provisions of this Act are severable.”

EXHIBIT U (1-3)

12-22-15 DPW Letters to Contractors

EXHIBIT U1

Guam Educational Facilities Foundation



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY TENORIO
Lt. Governor



GLENN LEON GUERRERO
Director

FELIX C. BENAVENTE
Deputy Director

December 22, 2015

Guam Educational Facilities Foundation, Inc.
118 Biridan Pulattat
Dededo, Guam 96929

Attn: Sean K. Easter
Vice President

Subject: Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance of Public Schools (Beginning with Simon Sanchez High School) Project No. 730-5-1055-L-YIG

Dear Mr. Easter

The Simon Sanchez-RFP selection/evaluation committee has completed their evaluation of the proposals submitted in response to the advertised RFP. We are pleased to inform you that, **Guam Educational Facilities Foundation, Inc.**, has been selected as the No. 1 ranking offeror. Your proposal has been determined to meet the needs of the Government of Guam to the best degree. Therefore, as the No. 1 ranking offeror, your corporation will be participating further in the Request For Proposal process, Contract Negotiations.

Thank you very much for the impressive RFP submittal. The time and effort your company and staff expended is sincerely appreciated.

[Handwritten signature of Glenn Leon Guerrero]
GLENN LEON GUERRERO
Director

[Handwritten signature: Michael J. Alary]
12-24-15
GEFF

EXHIBIT U2

Core Tech International Corp.



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY TENORIO
Lt. Governor



GLENN LEON GUERRERO

Director

FELIX C. BENAVENTE

Deputy Director

December 22, 2015

Core Tech International Corp.
388 South Marine Corps Dr. Suite 400
Tamuning, Guam 96913

Attn: Conchita Bathan
Chief Executive Officer

Subject: Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance of Public Schools (Beginning with Simon Sanchez High School) Project No. 730-5-1055-L-YIG

Dear Ms. Bathan

Thank you very much for your participation with your firm's Request For Proposal submittal. The time and effort your company and staff expended is sincerely appreciated.

Upon the completion of the evaluation of the submittal, we wish to inform you of the ranking of your firm as No. 2, by the selection/evaluation committee. Although your Proposal will not be subject for contract negotiations at this time, please be advised that DPW wishes to retain your proposal as the initial evaluation may not exclude your proposal from further consideration.

Department of Public Works appreciates your interest with our Capital Improvement Projects and looks forward to your participation and future opportunities to work with your firm.


GLENN LEON GUERRERO
Director

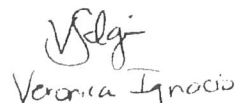

Veronica Ignacio
12/24/15

EXHIBIT U3

Pernix Guam LLC



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY TENORIO
Lt. Governor



public works
DIPATTAMENTON CHE'CHO' PUPBLEKO

GLENN LEON GUERRERO
Director

FELIX C. BENAVENTE
Deputy Director

December 22, 2015

PERNIX GUAM, LLC
P.O.Box 23068
Barrigada, Guam 96921

Attn: Louis C. DeMaria
Vice President

Subject: Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance of Public Schools (Beginning with Simon Sanchez High School) Project No. 730-5-1055-L-YIG

Dear Mr. DeMaria

Thank you very much for your participation with your firm's Request For Proposal submittal. The time and effort your company and staff expended is sincerely appreciated.

Upon the completion of the evaluation of the submittal, we wish to inform you of the ranking of your firm as No. 3, by the selection/evaluation committee. Although your Proposal will not be subject for contract negotiations at this time, please be advised that DPW wishes to retain your proposal as the initial evaluation may not exclude your proposal from further consideration.

Department of Public Works appreciates your interest with our Capital Improvement Projects and looks forward to your participation and future opportunities to work with your firm.

for Felix Benavente
GLENN LEON GUERRERO
Director

received
12/24/2015
NDEBALA

EXHIBIT V

Protest 1 Letter

CIVILLE & TANG, PLLC

www.civilletang.com

Sender's Direct E-Mail:
jtang@civilletang.com

January 7, 2016

VIA HAND DELIVERY

4:15 P.M. 08

Mr. Glenn Leon Guerrero
Director
GUAM DEPARTMENT OF PUBLIC WORKS
542 North Marine Corp Drive
Tamuning, Guam 96913

Re: **PROTEST OF RFP FOR PROJECT NO. 730-5-1055-L-YIG**

Dear Mr. Leon Guerrero:

Core Tech International Corp. ("Core Tech") hereby gives notice that it protests the method of procurement in the Request for Proposal process for the Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance for Public Schools (Beginning with Simon Sanchez High School), Project No. 730-5-1055-L-YIG (the "RFP"). A copy of the RFP is marked and attached hereto as **Exhibit 1**. This protest is made pursuant to 2 GAR Div. 4 §9101. Core Tech received the notice of ranking letter from Department of Public Works ("DPW") on December 24, 2015.

The Department of Public Works was authorized to solicit Requests for Proposals by the *Ma Kāhat* Act of 2013, Public Law 32-120, which enacted 5 GCA Chapter 58D. Pursuant to the *Ma Kāhat* Act of 2013, DPW was required to issue an RFP in compliance with the *Ma Kāhat* Act of 2013 and Guam procurement law. DPW was required to base its selection on "the proposal that delivers the *best value* for Guam in meeting the objectives of the education agency (emphasis added)." See 5 GCA §58D105.

Despite the requirement to consider value, DPW excluded the cost of construction and/or development fees from the Evaluation Criteria in its Request for Proposal. See Section 5.3 of the RFP. DPW further admitted that it would not consider cost in its answers to Core Tech's Requests for Information. Specifically, in *Addendum 6*, Core Tech asked whether there would be an amendment to include the cost as part of proposal evaluation. DPW responded: "No, cost will have no evaluation factor." See **Addendum 6** marked and attached hereto as **Exhibit 2**.

Mr. Glenn Leon Guerrero
January 7, 2016
Page 2

Likewise, in *Addendum 7* to the RFP, DPW confirmed that it would not consider the cost estimate for Simon Sanchez High School as an evaluation criterion. See *Addendum 7* marked and attached hereto as **Exhibit 3**. The question and answer regarding cost appear as Question 6 on page 5 of *Addendum 7* and are as follows:

In your response to question on Section 4.0.1, it was stated that “cost will have not evaluation factor” please confirm that government will not evaluate the cost estimate for Simon Sanchez HS even if it is still required to be submitted in our proposal.

Answer: Confirmed.

In *Addendum 7* at page 3, Section 5.3, “Evaluation, Rating and Selection”, the evaluation form setting forth the evaluation criteria was amended, and did not provide for any evaluation based on estimated costs for Simon Sanchez High School.

The Legislature directed that the selection of a proposal be based on the “best value” incorporating a procurement method -- the “best value” method -- which requires the consideration of technical and price factors to determine the offer of the greatest value to the government. See, e.g., *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 658 (Minn. 2015) (“Best-value bidding, as described by the FTA, is a procedure by which the award of a government contract depends on ‘which proposal represents the ‘best value’ [based] on an analysis of the tradeoff of qualitative technical factors and price or cost factors.’ U.S. Dep’t of Transp., Third-Party Contracting Guidance, FTA Circular 4220.1F, VI-10 (Nov. 1, 2008, rev. Mar. 18, 2013) (hereinafter “FTA Guidance”); see also *Sayer v. Minn. Dep’t of Transp.*, 790 N.W.2d 151, 156 (Minn.2010) (recognizing that the ‘best-value process differs from the lowest responsible bid process in that it allows public agencies to consider factors other than cost when awarding contracts’).”).

The consideration of “best value” requires the procuring agency to review the cost or price of the offer. Under federal regulations, the cost or price must be considered in a “best value” procurement in conducting the “trade off” between price and qualitative technical factors.

The FAR notes that “[t]he objective of source selection is to select the proposal that represents the best value.” 48 C.F.R. § 15.302. In determining which proposal represents the best value, the government must compare the relative costs and benefits of the competing proposals, including both price and non-price factors, in a best-value tradeoff analysis:

This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the

higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406.

Id. § 15.101–1(c). The FAR sets forth specific requirements for a best-value tradeoff analysis, see *id.* § 15.101–1, and sets forth a different set of requirements for a lowest-price technically acceptable procurement, see *id.* § 15.101–2.

Firstline Transportation Security, Inc. v. United States, 100 Fed. Cl. 359, 374 (Fed. Cl. 2011).

The term “best value” is also articulated in the Guam Procurement Regulations pertaining to the selection of contracts. Title 2 GAR § 3119(c)(1) directs that:

The objective when selecting a contract type is to obtain the best value in needed supplies, services, or construction in the time required and at the lowest cost or price to the territory. In order to achieve this objective, the Procurement Officer, before choosing a contract type, should review those elements of the procurement which directly affect the cost, time, risk, and profit incentives bearing on the performance. (emphasis added).

Among the factors to be considered in selecting any type of contract are:

- (A) the type and complexity of the supply, service, or construction item being procured;
- (B) the difficulty of estimating performance costs such as the inability of the territory to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
- (C) the administrative costs to both parties;
- (D) the degree to which the territory must provide technical coordination during the performance of the contract;
- (E) the effect of the choice of the type of contract on the amount of competition to be expected;

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(F) the stability of material of commodity market prices or wage levels;

(G) the urgency of the requirement; and

(H) the length of contract performance.

2 GAR § 3119(c)(1).

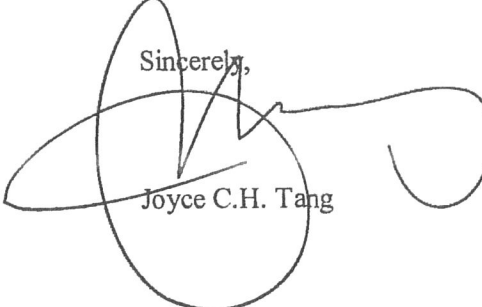
Based on the foregoing, DPW was required by Guam law to make a determination of "best value" which requires consideration of cost. Without considering cost as a factor in the evaluation, it would be impossible to assess which proposal provides the Government with "best value." A determination of "best value" without trading off cost and other technical factors would open the door to awards of contracts without considering the prices offered by other offerors in conjunction with other criteria. It would allow awards based purely on technical criteria without taking into consideration the cost to the government. 5 GCA §58D105 and Guam Procurement Law did not authorize a cost blind evaluation methodology.

Because DPW failed to consider the cost of construction and/or development fees as one of the factors in evaluating the proposals, it violated Guam Procurement Law and the mandate in 5 GCA §58D105 that the evaluation be based on the "best value" to the Government. Any award based on this flawed evaluation criteria would be invalid and the RFP should be revised to comply with Guam law and resolicited.

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Please do not hesitate to contact me at 671-472-8868 if you have further questions or comments.

Sincerely,

Joyce C.H. Tang