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 PROCUREMENT APPEALS

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**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
)	MEMORANDUM ON REMEDIES
GUAM DEPARTMENT OF PUBLIC)	
WORKS,)	
)	
Purchasing Agency.)	

MEMORANDUM ON REMIDIES

I. INTRODUCTION

On July 15, 2016 Appellant, **Core Tech International Corp** ("Core Tech"), appealed a decision by the **Department of Public Works** ("DPW") denying its Bid Protest regarding DPW's Request for Proposal for the 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 ("**RFP**"). Core Tech submitted its appeal to the **Office of Public**

ORIGINAL

Accountability (“OPA”). On June 28, 2016, **Guam Educational Facilities Foundations, Inc.** (“**GEFF**”) entered an appearance as an interested party. On August 10, 2016, Core Tech filed a second appeal with the OPA, which was consolidated with the earlier appeal. Following a hearing, the OPA ordered that the parties may submit additional briefing regarding remedies. This brief is timely submitted on Friday, October 14, 2016.

II. STATEMENT OF REMEDIES

This appeal should be dismissed. There has been no violation of Guam procurement law by DPW. Core Tech essentially asserts four (4) claims.

First, Core Tech alleges that DPW awarded an Indefinite Delivery, Indefinite Quantity Contract (“**IDIQ**”) to GEFF that envisioned circumvention of the \$100 Million cap in violation of the RFP. The allegation is based solely on innuendo and speculation. Core Tech failed to produce any evidence in the hearing to support its claim. Further, the testimony of all three (3) members of the government’s Negotiating Committee, namely, **Guam Department of Education** (“**GDOE**”) Superintendent Jon Fernandez, **Guam Economic Development Authority’s** Deputy Administrator Mana Silva Taijeron, and DPW’s Deputy Director, Felix C. Benavente testified that the IDIQ Contract had a \$100 Million cap. This was also consistent with the testimony of GEFF’s Rick Inman and Sean Easter. Finally, assuming arguendo that the superfluous language added to IDIQ Contract Section 3.1 is improper, the proper remedy is to delete said language and not otherwise alter the procurement award.

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Second, Core Tech alleges that GEFF was allowed to submit four (4) separate proposals. The evidence provided in the OPA Hearing was that the Negotiating Committee used GEFF's submissions to educate it and as part of the negotiation process. Superintendent Fernandez described the submissions as "scenarios". Ms. Taijeron considered them to be "scenarios". Addendum 6 clearly authorized the Negotiating Committee to negotiate both the "scope of work" in addition to the "fee" in determining what the "best value" was for GDOE. The Negotiating Committee, which took three (3) months to ensure it obtained "best value", acted at all times in good faith in negotiating with GEFF. Core Tech's allegation that four (4) separate proposals were submitted is not supported by the evidence and should be dismissed.

Appellant next claims DPW failed to maintain a complete procurement record required under Guam's procurement law. The procurement law provides remedies prior to an award in the event it is determined that a solicitation or proposed award is in violation of law. Although Core Tech seeks to have the solicitation or proposed award cancelled, the law allows the solicitation or proposed award to be revised to comply with the law. 5 GCA §5451.

As there has only been a proposed award, the communications log can be completed to comply with the law, if deemed necessary. The communications log can and will be finished. DPW initially filed over 3,000 pages and documents with the OPA. DPW supplemented the record when it learned that DPW and GDOE had failed to produce pre RFP documents. DPW continued to supplement the procurement file, which now contains over 5,000 pages and documents. The procurement record complies with 5 G.C.A. §5249(c) in that the pre bid conferences and the Evaluation Committee's meetings were recorded. The Negotiating Committee May 13, 2016 Memorandum also fully complied with 2 GAR § 3114(m). DPW's John Calanayan testified that other than the Procurement Log the procurement record was

complete. He testified further that once he completes the Procurement Log the Deputy Director will be able to certify that the record is complete and available for public inspection. See, 5 G.C.A. §5250. Core Tech failed to identify one single document missing from the procurement record. Core Tech did not meet its burden and its argument that the procurement record is not complete should be dismissed.

Finally, Core Tech alleges that certain contract provisions in the partially executed IDIQ contract violate Guam law. Again, although Core Tech seeks to have the solicitation or proposed award cancelled, the law allows the solicitation or proposed award to be revised to comply with the law. 5 GCA §5451. The contract remains in draft form. It has not been signed by either the Guam Attorney General or Governor of Guam. The government intends on revising the contract to delete the complained of language located in Section 3.1 of the draft contract. The government also intends on deleting the assignment language contained in Section 17.11. Core Tech incorrectly alleges that a performance bond is due at the time the IDIQ Contract is signed. This allegation directly conflicts with Section §58D112 of Public Law 32-120, the governing legislation. If the OPA were to determine however that a performance bond is due at this time the proper remedy is to require such and not otherwise disturb the award of contract to GEFf.

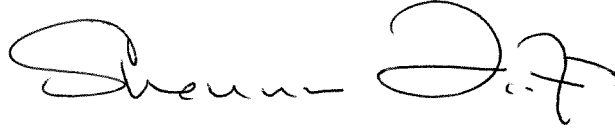
III. CONCLUSION

There is no evidence to overturn the Negotiating Team's award of contract to GEFf. The IDIQ Contract was negotiated in good faith and provides the best value for Simon Sanchez students and faculty, the GDOE and residents of Guam. The procurement record is complete and can be certified as soon as the procurement log is completed. There is considerable competent evidence to show that it is in the interests of Guam to affirm this award. Further, there is absolutely no evidence provided to show that it is in the interests of the Simon Sanchez students,

faculty and community, the GDOE and residents of Guam to terminate the award to GEF. Accordingly, DPW requests the relief stated in the Agency Report.

Dated this 14th day of October, 2016.

OFFICE OF THE ATTORNEY GENERAL
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By:

THOMAS KEELER
Assistant Attorney General