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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**
REMEDIES BRIEF

I. INTRODUCTION

On February 8, 2017, Appellant, **Core Tech International Corp.** (“**Core Tech**”), submitted a written protest (the “**Protest**”) to the **Department of Public Works** (“**DPW**”) 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. 730-6-1055-L-YIG (“**Current Issued RFP**”). Core Tech’s first claim

ORIGINAL

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 (“Chapter 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 (“**SSHS**”), DPW agreed to limit the Current 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**. On March 16, 2017 Core Tech submitted its appeal to the **Office of Public Accountability** (“**OPA**”).

II. STATEMENT OF REMEDIES

This appeal should be dismissed. There has been no violation of the Guam procurement law by DPW. Further, the appeal should be dismissed as DPW acquiesced to both material claims contained in Core Tech’s Protest. This fact is documented by the Agency Decision, Agency Report, and Mr. Ho Eun’s (“**Mr. Ho**”), Core Tech’s President, testimony at the OPA’s May 8, 2017 Hearing.

During the OPA Proceedings Core Tech amended its issues on appeal by requesting the OPA determine that: (1) Whether DPW violated Guam law when it combined the procurements

authorized in Chapters 58D and 58E; and (2) Whether Chapter 58E authorizes the procurement of insurance and maintenance for Future Unissued RFP.

A. DPW Has Not Violated Guam Law

Core Tech's claim that DPW violated the law in combining the procurements authorized by Chapters 58D and 58E should be dismissed. DPW and its Procurement Officer(s) have very broad discretion to determine the contents of an RFP 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) and 2 GAR 3114(f)(1). DPW's Deputy Director testified in the OPA Proceedings that the procurements were combined due to a sense of urgency with the condition of George Washington HS. Mr. Benavente explained that the government reasonably expected that the Current Issued RFP would be limited to Simon Sanchez HS, CCIP and only George Washington HS from among the 34 public schools. While it may be preferred that Chapters 58D and 58E be issued separately, as DPW has agreed to do, combining them to expedite repairs to a school in urgent need of such, did not constitute a violation of law.

B. The Second RFP for the Remaining 34 Public Schools has not been Drafted therefore any Reference to it is Speculative

Concerning what Chapter 58E does or does not authorize is untimely and moot at this time as the Future Unissued RFP has yet to be drafted, let alone issued. It is DPW's position that Core Tech, has no standing to challenge what may, or may not be, contained in the Future Unissued RFP. The OPA should not take a position on such conjectures.

Core Tech acknowledged that it may not object to the Future Unissued RFP. *See*, Core Tech's 2017 Response to Agency Report, 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.”

Core Tech’s President Mr. Ho also testified in the OPA Proceedings that the items listed in the definition of CCIP in Chapters 58D and 58E should be contained in the evaluation of Guam’s remaining public schools. Core Tech agrees that the CCIP and Program Study can be the same or are similar. Until the CCIP is completed and the second RFP is issued, Core Tech’s issue with the CCIP and Program Study is speculative. There is no clear issue presented for which the OPA can decide as these issues pertain to a Future Unissued RFP.

As to the balance of Core Tech’s desire for a determination on what Chapter 58E does or doesn’t authorize, the OPA should rule that such is untimely and that Core Tech does not have standing to object to the unissued procurement. Appellant is not able to establish how it is harmed. Further, it will have adequate legal remedies when the Future Unissued RFP issues, assuming such is needed.

In this respect, Core Tech’s concerns over what may be contained in a future procurement is outweighed by public policy calling for immediate relief of the deteriorating conditions at GDOE schools. Permitting Core Tech to demand that certain contract provisions be contained in the Future Unissued RFP will open the floodgates to protest potential or foreseeable procurements. In this instance, protests based on speculation will only serve to disrupt and delay the direly needed repairs to Guam’s public schools.

The current procurement is an important topic of great public interest on Guam. Core Tech cannot show any prejudice or harm concerning the Future Unissued RFP. Its argument is based purely on a potential future alleged harm for which it will have adequate remedies.

C. DPW Has Addressed Core Tech's Issues

In sum, under these circumstances, DPW should have the right to prepare the Future Unissued RFP and should not be restrained to remedy any harm that Core Tech alleges it may suffer. Therefore, the OPA should deny Core Tech's appeal.

Finally, Core Tech is not entitled to an award of attorney's fees. DPW acquiesced to Core Tech's primary complaints in its Protest, which reasonably should have resolved the Appeal. For the reasons stated hereinabove Core Tech's issues were addressed and otherwise moot as they involve items to be addressed in the Future Unissued RFP, for which it will have adequate remedies, if needed.

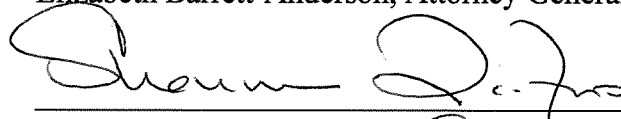
III. CONCLUSION

Core Tech's Appeal should be dismissed. DPW has agreed to amend the Current Issued RFP to separate the procurement of SSHS and CCIP from the remaining GDOE schools, which DPW has agreed to issue a separate RFP for. Core Tech's current issues are 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 12th day of May, 2017.

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

By:


THOMAS P. KEELER
Assistant Attorney General 