

**Office of the Attorney General**  
**Elizabeth Barrett-Anderson**  
 Attorney General of Guam  
**Solicitor Division**  
 590 S. Marine Corps Drive  
 ITC Bldg., Ste. 802  
 Tamuning, Guam 96913 • USA  
 Tel. (671) 475-3324 Fax. (671) 472-2493  
 www.guamag.org

**Attorneys for the Government of Guam**

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

**RECEIVED**  
 OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEALS  
 DATE: 11/03/17  
 TIME: 4:39  AM  PM BY: C. Roque  
 FILE NO OPA-PA: 17-009

**IN THE APPEAL OF:** ) DOCKET NO. **OPA-PA-17-009**  
 )  
 )  
**CORE TECH INTERNATIONAL CORP.,** ) **MOTION FOR**  
 ) **SUMMARY JUDGMENT**  
 )  
 )  
**APPELLANT.** )

**Comes Now**, the Department of Public Works, Purchasing Agency, by and through the Attorney General of Guam, and moves, pursuant to Civil Rule 56 for summary judgment.

**I. STATEMENT OF FACTS**

Public Law 34-19 amended the *MA KAHATACTOF* 2013 (the “Act”). The law authorized the government to solicit for the renovation or construction of Simon Sanchez High School (“SSHS”) and to award the contract to the “responsive offer submitted by a responsible offeror that is responsive to the solicitation and offers the lowest annual leaseback rate to the government of Guam for a fixed thirty (30) year term.” *See, P.L. 34-19:3.*

On July 7 2017, the Department of Public Works (“DPW”) issued an Invitation to Bid

**ORIGINAL**

Project No. 730-5-1057-L-YIG Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance of Simon Sanchez High School. The IFB, as authorized by the Act, contemplated that the contract be awarded to a responsible offeror with a responsive offer with the lowest annual leaseback rate for a thirty (30) year term.

Core Tech filed a written protest on September 7, 2017, asserting two (2) claims. Core Tech's first claim was that the IFB failed to include all applicable contractual terms and conditions as required by Guam's Procurement Law. Its second claim was that it would be improper for DPW to consider a notice of default/termination as a "Record of Default" in the determination of responsibility. DPW issued its Agency Decision on September 29, 2017, agreeing to revise the IFB with regard to the first claim and denying the second claim. DPW canceled the IFB on October 2, 2017 to revise and reissue considering Core Tech's concerns with the IFB. Core Tech appealed DPW's denial of the second claim as set forth in the Notice of Appeal and Protest.

## II. ISSUE

**Whether Appellant's claim should be dismissed because Appellant cannot show they have been damaged by the request to provide a record of past performance including record of default**

## III. DISCUSSION

### *Applicable summary judgment standard*

"The court may grant summary judgment pursuant to Rule 56 of the Guam Rules of Civil Procedure when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Bank of Guam v. Flores, 2004 Guam 25, ¶ 8 (Guam Dec. 29, 2004). The party moving for summary judgment bears the initial responsibility of demonstrating the "absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

The party opposing a motion for summary judgment cannot rest upon the mere allegations of

his or her pleadings. Instead, the opposing party must set forth specific facts showing that there is a genuine issue of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In this regard, the party opposing the motion has the burden of presenting “affirmative evidence”. Id. at 257.

**Whether Appellant’s claim should be dismissed because Appellant cannot show they have been damaged by the request to provide a record of past performance including record of default**

Here Appellant’s claim should be dismissed because there is no evidence that the Appellant has sustained damages by the IFB’s request to provide a record of past performance including record of default has caused them damage. Appellant’s protest and subsequent appeal of this procurement is premature as they have not determined a nonresponsible bidder and not been rejected as a bidder in this procurement

Bids have not been submitted for evaluation. The evaluation committee has not been convened to evaluate bids and determine whether the bidders are responsible. In other words, Appellant has not submitted a bid, their record of performance has not been evaluated, they have not been determined nonresponsible, and they have not been rejected as a bidder in this procurement. Appellant has not sustained damages.

Appellant’s claim and argument that they are not a responsible bidder is speculative and conjectural. *See Miller v. Likins*, 109 Wash. App. 140, 34 P.3d 835 (2001) (The court found arguments to be speculative or conjectural and affirmed lower court’s summary judgment dismissal of claims.) The determination of responsibility is vested in the evaluation committee and not the bidder. It is not known what weight if any would be given to a termination of default especially if it has not been adjudicated. Since Appellant has not submitted a bid, has not been evaluated, has not been rejected as nonresponsible, Appellant

cannot claim they have been damaged.

The construction of a new SSHS campus is urgently needed and a procurement of high priority. Appellant's protest and appeal is spurious and unnecessarily disruptive to this urgently needed procurement to construct a new SSHS campus. This is evident by their premature protest and appeal of this procurement as discussed above.

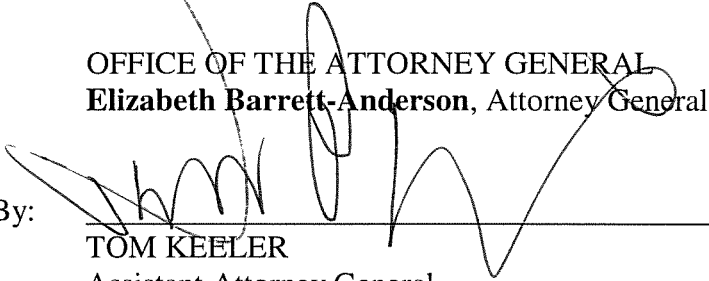
#### IV. CONCLUSION

Purchasing Agency's motion for summary judgment should be granted.

Submitted this 3<sup>rd</sup> day of November, 2017.

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

By:

  
\_\_\_\_\_  
TOM KEELER  
Assistant Attorney General