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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 17-001

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

10  
11 In the Appeal of

12 Core Tech International Corp.,

13 Appellant.

14 and

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16 Guam Department of Public Works,

17 Purchasing Agency.  
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**DOCKET NO. OPA-PA-17-001**

**CORE TECH INTERNATIONAL  
CORP.'S COMMENTS TO DPW'S  
AGENCY REPORT**

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## I. INTRODUCTION

On March 16, 2017, Core Tech International, Corp. (“Core Tech”) appealed the decision rendered by the Department of Public Works (“DPW”) on March 2, 2017, denying in part the February 8, 2017 Protest raised by Core Tech 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. 730-5-1056-L-YIG (the “RFP”).

Core Tech’s March 16, 2017 appeal (the “Appeal”) raised two claims. The first claim addressed the fact that the RFP did not include cost as an evaluation factor. DPW in its response of March 2, agreed to include cost as an evaluation factor. The first claim is moot. The second claim Core Tech raised was that the RFP did not follow the requirements of 5 GCA Chapter 58E – which among other things, required DPW to issue a separate solicitation for this procurement. The Agency Decision issued on March 2, 2017 denied the second claim.

These issues are properly before the Public Auditor and the OPA has jurisdiction to review and consider these issues in this Appeal.

## II. ARGUMENT

### A. THIS PROCUREMENT SHOULD NOT INCLUDE PROCUREMENT OF SERVICES AND WORK COVERED UNDER 5 GCA CHAPTER 58E

The current RFP references and includes procurement for Chapter 58D and Chapter 58E. The two enabling statutes and the two RFP solicitations were not combined for good reasons. Chapter 58D’s specific purpose was to procure services for Simon Sanchez High School (“SSHS”) and allow the Government to enter into a long-term lease to fund the services required for the SSHS procurement. The focus of Chapter 58E was to authorize the procurement of services for the remaining thirty-four (34) schools and the long-term leases that the Government can enter into to fund the services needed for these schools. Specifically, Chapter 58E *does not* authorize the procurement of insurance and maintenance services for the 34 schools. Notwithstanding the lack of

1 authorization in Chapter 58E, the RFP includes the procurement of insurance and maintenance  
2 services for the 34 schools. See, §2.0, RFP at 7 (DPW is “seeking a qualified firm to provide . . .  
3 maintenance and insurance as mandated under Public Laws 32-120 and 32-121 for a total of thirty-  
4 five (35) ... schools with priority of Simon Sanchez High School....”).

5  
6 **B. A PROCUREMENT OF THE WORK AND SERVICES FOR THE**  
7 **REMAINING 34 SCHOOLS UNDER 5 GCA §58E REQUIRES A**  
8 **PROGRAM STUDY**

9 Core Tech takes issue with the fact that DPW did not comply with 5 GCA §58E103, which  
10 requires the Program Study to be completed before an RFP for the work and services to be performed  
11 under Chapter 58E is issued. Section 58E103 directs that the Program Study be completed at least  
12 30 days before the RFP is issue, and would serve as the basis and scope of work and services for a  
13 Chapter 58E RFP:

14  
15 **§ 58E103. Identification of Projects and Procurement.**

16 Under the Superintendent of Education’s direction, the education  
17 agency ***shall utilize the Program Study***, and the report generated by the  
18 Department of Interior (DOI)-funded assessment report by the Army Corps of  
19 Engineers, to identify and prioritize potential projects to be completed. The list  
20 of projects ***shall*** be included in a Request for Proposals developed by the  
21 education agency. Upon receipt of the Program Study, the Superintendent of  
22 Education ***shall*** solicit Requests for Proposals (RFP) through the Department  
23 of Public Works, in compliance with the Guam Procurement Law, for the  
24 **financing, design, construction and rehabilitation of the education facility**,  
25 according to the needs of the education agency and consistent with this  
26 Chapter. The choice of the contractor ***shall*** be made by a selection committee  
27 comprised of the Superintendent of the Department of Education, serving as  
28 Chairman, and including the Director of the Department of Public Works or  
Deputy Director, the Director of the Department of Land Management or  
Deputy Director, the Administrator of the Guam Environmental Protection  
Agency or Deputy Administrator, and the Administrator of the Guam  
Economic Development Authority or Deputy Administrator. The committee  
***shall*** assess the prior performance of the contractor on similar projects, and  
***shall*** be free to disqualify any contractor that *does not* have a successful record  
of project completion on Guam.

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

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

4                                5 GCA §58E103 (emphasis supplied).

5                                DPW in its Agency Report disputed that DOE “is required to complete a ‘Program Study’  
6                                prior to the issuance of the second RFP for maintenance of Guam’s remaining public schools” and  
7                                contends that the “CCIP was intended in lieu of the Program Study.” *See*, Agency Report at 3.  
8                                Section 58E103 is clear on the timing on the order of the completion of the Program Study in relation  
9                                to the RFP. “The RFP shall be issued within thirty (30) days *after* the receipt of the Program Study  
10                                ....” *Id.* There is no other way to interpret this section.

11                                DPW argues that the CCIP would serve as the Program Study required under §58E103.  
12                                While it is possible the Program Study, which is a term that is not defined in Chapter 58E, can be  
13                                substituted with the CCIP, Core Tech cannot be certain that the CCIP fulfills the purpose of the  
14                                Program Study until the CCIP is completed. Nevertheless, this does not change the requirement that  
15                                the *CCIP* must be completed 30 days *before* the RFP is issued for work or services to be procured  
16                                under Chapter 58E.

### 17                                III. CONCLUSION

18                                Core Tech requests a ruling from the OPA as follows:

- 19
- 20                                1. DPW should be required to comply with the solicitation requirements of Chapter 58D  
21                                and Chapter 58E and issue two separate RFPs;
  - 22                                2. DPW should be required to complete a Program Study and then issue a separate RFP  
23                                for rehabilitation of the 34 schools, in accordance with the requirements of 5 GCA Chapter 58E;
  - 24                                3. For an award of reasonable attorney’s fees and costs of this protest and appeal; and  
25                                4. For such other relief that the OPA may determine is just and proper.
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Submitted this 10<sup>th</sup> day of April, 2017.

**CIVILLE & TANG, PLLC**

By: 

**JOYCE C. TANG**  
**LESLIE TRAVIS**

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*Core Tech International, Corp.*

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