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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGÁTÑA, GUAM**

IN THE APPEAL OF
CORE TECH INTERNATIONAL,

Appellant.

) CONSOLIDATED DOCKET NOS.
) **OPA-PA-16-007**
) **OPA-PA-16-011**

) **REPLY MEMORANDUM IN SUPPORT OF**
) **MOTION TO QUASH SUBPOENA TO**
) **THE HONORABLE JUDITH T. WON PAT**

COMES NOW, the Honorable Judith T. Won Pat, by and through the Attorney General of Guam, and submits the following reply memorandum to Core Tech's opposition to the motion to quash the subpoena to the Honorable Judith T. Won Pat.

I. THE MOTION TO QUASH SHOULD BE GRANTED

The burden is on the proponent of the subpoena to demonstrate the relevance and necessity of the testimony, and the prejudice, injustice or other compelling reason why the testimony of the high ranking official should be taken. *See State Bd. of Pharm. v. Super. Ct.*, 78 Cal. App. 3d 641, 144 Cal. Rptr. 320, 322-23 (1978); *Capitol Vending Co. v. Baker*, 36 F.R.D. 45, 45 (D.D.C. 1964). Core Tech has failed to meet this burden. In its opposition, it argues the

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speaker should be required to testify about a letter the Speaker sent to Superintendent of the Guam Department of Education. In this letter, the Speaker expresses an opinion about the interpretation of various Guam statutes as to whether they set a cap to Guam's borrowing capacity. Core Tech claims this letter is "so unusual" that it is "entitled to find out who solicited the letter, the reasons given for seeking the letter and the use for which the letter was intended." (Core Tech opp. at p. 3). Core Tech claims the speaker has "personal knowledge" of these facts. (Core Tech opp. at p. 3).

Core Tech's arguments should be rejected. First, a legislator sending a letter to a constituent expressing opinions about recently enacted legislation is not unusual. A typical campaign brochure contains such opinions.

Second, the issue before this tribunal, as characterized by Core Tech in its opposition, is whether "the Government violated the RFP by providing for a total contract price in excess of the \$100,000 maximum specified in the RFP." Opp. at p. 3). Either the executive branch Government officials did or did not provide for a contract price in excess of the stated amount. The speaker has nothing to do with this procurement. She has no knowledge of whether the contract price is in excess of the stated amount. The person who can answer the questions Core Tech seeks to inquire of the Speaker is the superintendent of Guam's public schools and whomever did the procurement.

Third, the testimony of a high government official is not proper if the information sought could be reasonably obtained from other sources. *Thomas v. Cate*, 715 F.Supp.2d 1012, 1049 (E.D. Cal. 2010) (motion to compel deposition of the governor of California denied: "although the Governor certainly has personal knowledge of information relevant to Petitioner's claim, it is highly likely that any information the Governor can provide is also available from other

sources”); and *Johnson v. Clark*, 199 21 A.3d 199 (Md. 2011) (reversing denial of motion of quash deposition of county executive: “with respect to personal involvement, knowledge or awareness of information that may be helpful if discovered is insufficient to make the requisite showing”).

In *Hankins v. City of Philadelphia*, 1996 WL 5243341996 (E.D.Pa.1996), the court suppressed the deposition of the Mayor of Philadelphia. The court noted that at *2:

The only meaningful showing plaintiff makes is that Mayor Rendell was one of three members of the City’s Administrative Board which ultimately approved proposed changes to the job requirements for the AIDS Program Director position. That the Mayor signed off on changes to job classifications approved and submitted by the Civil Service Commission, including those of AIDS Program Director, does not demonstrate that he has personal knowledge of the particular reasons why such changes were proposed or why staffing decisions of various agencies were made.

The court found Plaintiff failed to show that the Mayor’s testimony is essential and that any information he may have about the Civil Service classification was not available from other sources. Similarly, in this procurement matter, all Core Tech can show is that the speaker wrote a letter to the Superintendent of Guam’s schools about recently enacted legislation. This is an insufficient justification, especially if the person to whom the letter was sent has not yet testified. Because Speaker Won Pat was not involved in the procurement she has no testimonial evidence to provide this tribunal. To the extent the letter she sent to the superintendent may have affected the procurement process, other witnesses, in particular the superintendent would be the witnesses to testify in that regard.

II. CONCLUSION

High government officials should not be required to testify based upon speculation that they may have relevant information. Core Tech has failed to meet their burden that (1) Speaker Won Pat has any testimonial knowledge relevant to this procurement appeal, (2) that such

testimony is essential to its case, and (3) that such testimony cannot be obtained from other sources. The motion to quash should be granted.

DATED this 16th day of September, 2016.

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

By:



KENNETH ORCUTT
Deputy Attorney General