



OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**PROCUREMENT APPEALS**

1  
2  
3  
4  
5  
6 IN THE APPEAL OF, )  
7 )  
8 CORE TECH INTERNATIONAL CORP, )  
9 )  
10 )  
11 )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Appellant )  
APPEAL NO: OPA-PA-16-007  
OPA-PA-16-011  
DECISION AND ORDER RE  
APPELLANT'S MOTION FOR ORDER  
UNSEALING TAPE RECORDINGS  
FILED ON SEPTEMBER 6, 2016

To: **Purchasing Agency:**  
Department of Public Works, Government of Guam  
C/O Shannon Taitano, Esq.  
Assistant Attorney General  
Office of the Attorney General of Guam  
590 S. Marine Corps Drive, Suite 706  
Tamuning, Guam, 96913  
Facsimile: (671) 472-2493

**Appellant:**  
Core Tech International Corp.  
C/O Joyce C.H. Tang, Esq.  
330 Hernan Cortez Ave., Suite 200  
Hagåtña, Guam, 96910  
Facsimile: (671) 477-2511

**Interested Party:**  
Guam Educational Facilities Foundations, Inc.  
C/O Ignacio C. Aguigui, Esq.  
Suite 310 RK Plaza  
341 S. Marine Corps Drive  
Tamuning, Guam, 96913  
Facsimile: (671) 646-9403

**THIS MATTER**, came before the Hearing Officer on September 15, 2016 for a Hearing on the Appellant's September 8, 2016 Motion for Order Unsealing Tape Recordings. The Appellant was represented by Joyce C.H. Tang, Esq., and Leslie A. Travis, Esq. The Purchasing Agency was represented by Assistant Attorney Generals Thomas P. Keeler, Esq., and Shannon J.

1 Taitano, Esq. The Interested Party was represented by Ignacio C. Aguigui, Esq., and Janalynn  
2 Cruz Damian, Esq. After hearing the arguments of the parties and for good cause shown, the  
3 Hearing Officer, pursuant to 2 G.A.R., Div. 4, Chap. 12, §12109(d), hereby FINDS and  
4 ORDERS the following:

5 1. The Appellant's Motion is hereby GRANTED in part. The Public Auditor shall, upon  
6 written request, make available to any interested party or member of the public information  
7 submitted that bears on the substance of the appeal, except where information is proprietary,  
8 confidential, or otherwise permitted or required to be held by law or regulation. 2 G.A.R., Div.  
9 4, Chap. 12, §12106. Here, the Appellant's motion requests an order to unseal tape recordings of  
10 the Purchasing Agency's evaluation committee meetings that took place between July and  
11 December, 2015. The Public Hearing Officer finds that these tape recordings are part of the  
12 Procurement Record for the solicitation at issue in this matter. In deciding this motion, the  
13 Hearing Officer must adhere to one of the underlying purposes and policies of Guam's  
14 Procurement Laws and Regulations which is to require public access to all aspects of the  
15 procurement consistent with the integrity of the procurement process. 5 G.C.A. §5001(b)(8) and  
16 2 G.A.R., Div. 2, Chap. 1, §1102(7). This purpose and policy is further clarified in Guam's  
17 Procurement Law which requires procurement officers to maintain a complete record of each  
18 procurement, and this record is a public record that any person may inspect and copy any portion  
19 thereof. 5 G.C.A. §5249 and §5251. Therefore, inherently, as part of the procurement record,  
20 these tapes are a public record the Public Auditor must disclose unless the information contained  
21 on the tapes is proprietary, confidential, or otherwise permitted or required to be held by law or  
22 regulation.

23 Certain information in a Request for Proposal solicitation, such as the solicitation at issue  
24 in this matter, is prohibited from public disclosure or is limited to such disclosure only after an  
25 award. In a Request for Proposal solicitation, the Register of Proposals shall be open to public  
26 inspection only after award of the contract, and the proposals of offerors who are not awarded  
27 the contract shall not be opened to public inspection. 2 G.A.R., Div. 4, Chap. 3, §3114(h)(1).  
28 Additionally, the purchasing agency's discussions with the offerors shall not disclose any  
information derived from proposals submitted by other offerors, and the purchasing agency shall

1 not disclose any information contained in any proposals until after contract award, and only the  
2 proposal of the offeror awarded the contract shall be open to public inspection. 2 G.A.R., Div. 4,  
3 Chap. 3, §3114(i)(2). Finally, if the offeror selected for award has requested in writing the non-  
4 disclosure of trade secrets and proprietary data, and the purchasing agency has validated such  
5 request, such data is not available for public inspection. 2 G.A.R., Div. 4, Chap. 3, §3114(h)(2).  
6 Therefore, because the solicitation at issue in this matter is a Request for Proposal and it is in the  
7 pre-award stage, the Hearing Officer hereby ORDERS the following:

8 a. No later than 5:00 p.m. on September 23, 2016, the Purchasing Agency shall disclose  
9 to the Appellant and the Interested Party in this matter, an audio copy or transcript of the tape  
10 recordings the Purchasing Agency filed with the Public Auditor on September 6, 2016.

11 b. The Purchasing Agency shall redact the following information from the audio copy  
12 or transcripts of the aforementioned tape recordings:

13 (1) The Solicitation's Register of Proposals.

14 (2) The Proposals of the Offerors or any information contained therein.

15 (3) Any proposal information that is the subject of an offeror's written trade  
16 secret or proprietary data non-disclosure request which the Purchasing Agency has validated.

17 Due to the Hearing Officer finding that the tape recordings are part of the procurement  
18 record and that they are a public record, subject to the redactions set forth above, the Appellant's  
19 arguments concerning waiver of the deliberative process privilege are hereby moot.

20 The Hearing Officer is not persuaded by the Interested Party's argument that the tape  
21 recordings of the meetings are not part of the procurement record. Specifically, the Interested  
22 Party claims that because tape recordings of evaluation committee hearings are not specifically  
23 mentioned in the five (5) categories of records that are listed in 5 G.C.A. §5249, they are not part  
24 of the procurement record. However, this claim is not supported by law. As stated above,  
25 procurement officers are required to maintain a complete record of each procurement and that  
26 this record is a public record. 5 G.C.A. §5249 and §5251. The plain language of 5 G.C.A.  
27 §5249 states that the five (5) categories of documents set forth in 5 G.C.A. §5249 are items that  
28 the procurement officers shall include in the procurement record, however, there is no specific  
language that limits the procurement record to these five (5) categories of records.

1 The Hearing Officer is not persuaded by the Interested Party's argument that the tape  
2 recordings are not relevant to any issue raised in the Appellant's Protests, or Notices of Appeal.  
3 As stated above, every member of the public, including the Appellant, may make a written  
4 request that the Public Auditor make available information submitted that bears on the substance  
5 of the appeal, except where information is proprietary, confidential, or otherwise permitted or  
6 required to be held by law or regulation. 2 G.A.R., Div. 4, Chap. 12, §12106. Hence, even  
7 assuming *arguendo* that the information on the tape recordings is irrelevant to any issues in these  
8 proceedings, such assumed fact would not bar the OPA from disclosing them to the Appellant, or  
9 any other member of the public who submits a written request for them. Thus, to decide the  
10 motion, the OPA must look to whether the tape recordings are a public record instead of  
11 weighing whether they are relevant to the issues that must be decided in this matter.

12 2. The Hearing Officer does not make a finding, in this decision, that the Government  
13 violated Guam's Procurement Regulations. The Appellant argues at length in its motion that the  
14 Government violated Guam's Procurement Regulations by opening Core Tech and Pernix's  
15 proposals during evaluation. However, this argument is not necessary to decide this motion and  
16 shall not be considered here.

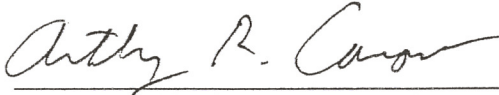
17 3. The Hearing Officer DENIES the Appellant's request that the Office of Public  
18 Accountability (OPA) order every evaluator, every recipient of the price proposals of the  
19 offerors, and the Chief Procurement Officer to submit a declaration indicating where they kept  
20 such proposals, who had them, when the proposals were opened, who was present, and whether  
21 the price proposals were copied or shared with others. The Public Auditor has the authority to  
22 compel the testimony of and the production of documents by any employee of the Government  
23 of Guam. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). At this point in the  
24 proceedings, the Appellant has made no showing that the Purchasing Agency is somehow  
25 prohibiting or preventing the Appellant from eliciting this evidence from the government  
26 witnesses the Appellant has called in this matter. Nor has any government witness refused to  
27 testify regarding this information. Therefore, there are no grounds that require the OPA to

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

compel the Purchasing Agency to produce this information in the manner requested by the Appellant at this time.

**SO ORDERED NUNC PRO TUNC** as of September 15, 2016, this 19<sup>th</sup> day of September, 2016 by:


  
\_\_\_\_\_  
ANTHONY R. CAMACHO, ESQ.  
Hearing Officer

**Acknowledgement Receipt:**

\_\_\_\_\_  
Receiver's Signature

\_\_\_\_\_  
Print Name

DATE: 9/19/2016

  
9/19/16

  
9/19/16

  
9/19/16