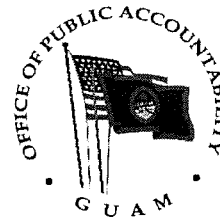


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FAX

To:	Mr. Glenn Leon Guerrero Director Department of Public Works 542 North Marine Corps Drive Upper Tumon, Guam 96913 Phone: (671)646-3121/3232 Fax: (671) 649-6178	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
	Mr. Thomas Keeler Ms. Shannon Taitano Assistant Attorney Generals Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	Pages:	4 (including cover page)
CC:	Joyce C.H. Tang, Esq. (Attorney for Appellant Core Tech) Civile & Tang, PLLC 330 Hernan Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	Date:	May 4, 2017
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-17-001 Decision and Order RE Purchasing Agency's Motion to Dismiss and Motion for Expedited Decision

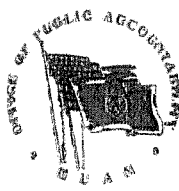
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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,

CORE TECH INTERNATIONAL CORP,

Appellant

APPEAL NO: OPA-PA-17-001

**DECISION AND ORDER RE
PURCHASING AGENCY'S MOTION TO
DISMISS AND MOTION FOR
EXPEDITED DECISION**

To: **Purchasing Agency:**
Department of Public Works, Government of Guam
C/O Thomas P. Keeler, 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. (CTI)
C/O Joyce C.A. Tang, Esq.
330 Hernan Cortez Ave., Suite 200
Hagåtña, Guam, 96910
Facsimile: (671) 477-2511

THIS MATTER, came before the Public Auditor on April 20, 2017 for a hearing on the Purchasing Agency's Motion to Dismiss and Motion for Expedited Decision. The Appellant was represented by Joyce C.A. Tang, Esq. Felix Benavente appeared on behalf of the Purchasing Agency, and was represented by Assistant Attorney General Thomas P. Keeler, Esq. After hearing the arguments of the parties and for good cause shown, the Public Auditor hereby FINDS and ORDERS the following:

1. The Public Auditor DENIES the Motion to Dismiss. Every appellate tribunal has a duty to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions, or abstract propositions, or to declare principles of rules of law which cannot affect the matter in issue in the case before it. *In Re Guardianship of Ulloa*, 2014

1 Guam 32, ¶24. A claim is moot when issues no longer live or the parties lack a legally
2 cognizable legal interest in the outcome. *Id.*, at ¶25. Accordingly, an appeal should be
3 dismissed as moot when, by virtue of an intervening event, the appellate tribunal cannot grant
4 effective relief whatever in favor of the appellant. *Id.* Further, a case can become moot at any
5 stage of litigation. *Id.*, at ¶26. On the other hand, a case is not moot if the appellate tribunal has
6 the ability to undo the effects of conduct that was not prevented by the time of decision.
7 *Sananap, et.al., v. Cyfred Ltd., et.al.*, 2009 Guam 13, ¶21. Finally, even if a mootness issue is
8 not raised by the parties, an appellate tribunal is required to raise it *sua sponte* to examine
9 jurisdictional issues. *In Re Guardianship of Ulloa*, 2014 Guam 32, ¶27. The Public Auditor’s
10 jurisdiction in this matter is based on her authority to review appeals of a Purchasing Agency’s
11 decision denying a procurement protest. 5 G.C.A. §5425(e) and 2 G.A.R. Div. 4, Chap. 12,
12 §12112. In exercising this jurisdiction, the Public Auditor shall determine whether a decision on
13 the protest concerning the method of solicitation, solicitation, or award of the contract, or
14 entitlement to costs, is in accordance with the statutes, regulations, and the terms and conditions
15 of the solicitation. 2 G.A.R. Div. 4, Chap. 12, §12112. The Public Auditor shall have the power
16 to review and determine *de novo* any such appeals properly submitted to her. 5 G.C.A. §5703
17 and 2 G.A.R. Div. 4, Chap. 12, §12103(a). Accordingly, the Public Auditor finds that if this
18 matter is moot due to the Purchasing Agency’s concessions, it would not properly be before her
19 because there would no longer be any issues regarding the Purchasing Agency’s decision on the
20 Appellant’s protest concerning the method of solicitation, solicitation, or award of the contract,
21 or entitlement to costs for the Public Auditor to review *de novo*. Here, the Purchasing Agency
22 has agreed to limit the Request for Proposal at issue in this matter to the Simon Sanchez High
23 School (hereafter referred to as “SSHS”) Project and the preparation of the Comprehensive
24 Capital Improvement Plan (hereafter referred to as “CCIP”) for prioritizing capital improvements
25 for the Guam Department of Education’s remaining thirty-four (34) public schools. Page 3,
26 Agency Report filed on March 31, 2017. To resolve whether this matter is now moot, the Public
27 Auditor must determine whether the Purchasing Agency’s concessions have eliminated all issues
28 in this appeal.

1 The Public Auditor finds that the Purchasing Agency's concessions do not eliminate all
2 the issues in this appeal. In fact, the Purchasing Agency states that its agreement addresses all of
3 CTI's issues on appeal with the exception of the Appellant's claim that GDOE is required to
4 complete a Program Study prior to the issuance of a second RFP for maintenance of Guam's
5 remaining public schools. *Id.* In fact, the Purchasing Agency disputes this and contends that the
6 CCIP was intended in lieu of the Program Study. *Id.* The Purchasing Agency goes on to argue
7 that this issue is moot. *Id.* However, as stated above, to be moot, all issues must be resolved.
8 As there is at least this issue for the Public Auditor to resolve, the Public Auditor finds that this
9 matter is not moot and the Purchasing Agency's Motion to Dismiss must be DENIED.

10 2. The Purchasing Agency's Motion for Expedited Decision is GRANTED. The
11 Purchasing Agency cites the SSHS's deteriorating conditions, outdated design, and
12 overcrowding, as its justifications for requesting that this matter be expedited. Page 2, Motion to
13 Dismiss filed on March 31, 2017. The Appellant agrees that this matter should proceed in an
14 expedited fashion by joining in the Government's Motion for Expedited Decision. Page 2,
15 Opposition to DPW's Motion to Dismiss filed on April 10, 2017. The laws and rules governing
16 the procedures for resolving this appeal already require an expeditious resolution. 5 G.C.A.
17 §5701 and 2 G.A.R., Div. 4, Chap. 12, §12101. Hence, this is an expedited proceeding,
18 therefore, the Purchasing Agency's Motion for an Expedited Decision is hereby GRANTED.

19 **SO ORDERED** this 4th day of May, 2017 by:

20 
21 _____
22 DORIS FLORES BROOKS, CPA, CGFM
23 PUBLIC AUDITOR
24
25
26
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 Auditor
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