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 PROCUREMENT APPEALS
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Attorneys for Appellant
Core Tech International Corp.

BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM

ARRIOLA, COWAN & ARRIOLA, HAGATNA, GUAM 96910

IN THE APPEAL OF) Docket No. OPA PA-17-10
)
 CORE TECH INTERNATIONAL CORP.,) **APPELLANT CORE TECH**
) **INTERNATIONAL CORP.'S MOTION**
 Appellant.) **FOR SANCTIONS AGAINST**
) **DEPARTMENT OF PUBLIC WORKS**
) **FOR FAILURE TO FILE AND SERVE**
) **TIMELY AND COMPLETE**
) **PROCUREMENT RECORD**

Appellant Core Tech International Corp. hereby moves for sanctions against Department of Public Works for failure to submit a timely and complete Procurement Record, as mandated by 2 GAR, Div. 4, § 12103(c)(3).

Appellant filed its notice of appeal in this matter on October 23, 2017. Pursuant to 2 GAR, Div. 4, § 12103(c)(3), DPW was required to submit to the Office of the Public Auditor (OPA) a “complete copy of the procurement record *relevant to the appeal* within five (5) working days of receiving notice of an Appeal, in chronological order where numbered sequentially, tabbed, and indexed to identify the contents.” (Emphasis added) The documents relevant to this appeal are numerous, including but not limited to: the drawings, plans and specifications of the

Project, the progress and other payments that have been made to date to Appellant; documents supporting DPW's assessment of liquidated damages; and documents supporting the Notice of Termination/Default of the Contract and the letter rejecting Appellant's change order and time extension requests.

Under the deadline contained in section 12103(c)(3), DPW was required to file and serve the complete Procurement Record on October 30, 2017. DPW failed to do so. It filed a portion of the Procurement Record on October 31, 2017 with OPA, but failed to serve Appellant with a copy. A. Arriola Decl. DPW then filed a supplement to the Procurement Record on November 3, 2017, and again failed to serve Appellant with a copy of the supplemental filing. *Id.* On November 13, 2017, DPW filed its Agency Report and another supplement to the Procurement Record. On the same day, Appellant was served with a copy of the Agency Report and a compact disk containing only the contract that is the subject of this appeal. *Id.* This is the only procurement record filing ever received by Appellant. *Id.*

At the pre-hearing conference in this matter on November 8, 2017, DPW's counsel informed the OPA and Appellant that he had previously provided responses to Appellant's Sunshine Act requests and that these same documents were filed as the "Procurement Record." *Recording of Pre-Hearing Conference of Nov. 8, 2017* at 11:00. He stated that his staff "was still copying the procurement record." *Id.* at 11:02. However, Appellant does not know whether they are the same documents because Appellant has never received copies of the Procurement Record filed with the OPA. A. Arriola Decl. More importantly, Appellant does not agree that responses to its Sunshine Act requests constitute the "complete" procurement record required by the Rules. *Id.* At the pre-hearing conference the Hearing Officer expressly ordered DPW to ensure that the procurement record was turned over to Appellant's counsel. *Recording of Pre-Hearing Conference of Nov. 8, 2017* at 11:05.

On November 14, 2017 Appellant's counsel wrote an email to DPW's counsel asking when she would receive the procurement record. A. Arriola Decl., Exh. 1. He wrote back and indicated that he had served a copy on November 13, 2017. *Id.* Appellant's counsel wrote back to inform him that she had only received the contract for the project and this was not the complete procurement record. *Id.* DPW's counsel wrote back, stating that he would "review with DPW and get back to you shortly." *Id.* To date, three weeks after DPW was required to serve Appellant with a copy of the complete procurement record, Appellant has received only the contract between Appellant and DPW that is the subject of this appeal. More importantly, it appears that the procurement record is still incomplete, based upon DPW counsel's email, since he is still reviewing the matter with DPW.

All of DPW's procurement record filings are untimely and they are still incomplete. Appellant is severely prejudiced by the lack of a timely and complete Procurement Record: (1) Appellant cannot adequately file an Exhibit List and Witness List on November 22, 2017 without reviewing the procurement record; (2) Appellant cannot adequately support its Comments to DPW's Agency Report, which are due on December 1, 2017; (3) Appellant cannot adequately support a motion for partial summary judgment in the event the OPA agrees to allow leave to file one; and (4) Appellant cannot adequately prepare for the hearing in this matter when it has not received the procurement record well in advance of the hearing.

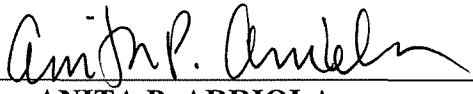
CONCLUSION

Pursuant to 2 GAR Div. 4, § 12109(h), the Hearing Officer may refuse to allow a party to support or oppose designated claims or defenses, or may prohibit that party from introducing designated matters in evidence. Due to DPW's failure to abide by the rules and to comply with

the Hearing Officer's order, Appellant respectfully requests that the OPA disallow DPW from introducing any evidence in support of its defenses in this case.

Dated this 20th day of November, 2017.

ARRIOLA, COWAN & ARRIOLA
Counsel for Core Tech International Corp.

By: 
ANITA P. ARRIOLA