

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

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|--|--|------------------------------|---|
| 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: | Anita Arriola, Esq. Attorney for Appellant Core Tech International Corp. Arriola, Cowan & Arriola Tel: (671) 477-9730/33 Fax: (671) 477-9734 | Date: | January 29, 2018 |
| | | Phone: Fax: | (671) 475-0390 x. 216 (671) 472-7951 |
| Re: | OPA-PA-17-010 Decision and Order RE Appellant's Motion to Disqualify the Purchasing Agency's Counsel | | |
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 Jerrick Hernandez
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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

| | | |
|-------------------------------|---|----------------------------------|
| IN THE APPEAL OF, |) | APPEAL NO: OPA-PA-17-010 |
| | } | |
| CORE TECH INTERNATIONAL CORP, | } | DECISION AND ORDER RE |
| | } | APPELLANT'S MOTION TO |
| Appellant | } | DISQUALIFY THE PURCHASING |
| | } | AGENCY'S COUNSEL |

To: **Purchasing Agency:**
Department of Public Works, Government of Guam
C/O Thomas P. Keeler, Esq.
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 Anita P. Arriola, Esq.
259 Martyr Street, Suite 201
Hagåtña, Guam, 96910
Facsimile: (671) 477-9734

THIS MATTER, came before the Public Auditor on December 11, 2017 pursuant to the Appellant's (Hereafter Referred to as "CTI") Motion to Disqualify the Purchasing Agency's counsel of record Assistant Attorney General Tom Keeler that was filed in this matter on November 27, 2017. After reviewing the aforementioned motion and after reviewing the briefs and arguments of the parties concerning the same, the Public Auditor, hereby FINDS and ORDERS the following

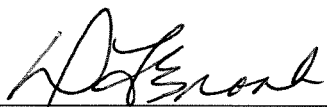
1. Assistant Attorney General Thomas P. Keeler, Esq., who is representing the Purchasing

1 Agency's (Hereafter referred to as "DPW") in this matter, is not a necessary witness. CTI's
2 main argument alleges that DPW has asserted an "advice of counsel defense" and that Keeler
3 must be disqualified because he is now a necessary witness in this matter. Page 3, CTI's Motion
4 to Disqualify Tom Keeler filed on November 27, 2017 (Hereafter Referred to as CTI's Motion.
5 In a criminal case, the Advice of Counsel Defense is a partial defense offered to disprove the
6 *mens rea* element of a crime. *Bisno v. United States*, 299 F.2d 711, 719 (9th Cir., 1961). A
7 criminal defendant who reasonably relies on the advice of counsel may not be convicted of a
8 crime that involves willful and unlawful intent. *Williamson v. United States*, 207 U.S. 425, 453
9 (1908). Hence, the "advice of counsel defense" is not applicable to this administrative
10 proceeding because neither DPW, nor any of DPW's employees have been charged with a
11 criminal offense involving willful and unlawful intent such that they could properly assert the
12 defense, and if they had, the resolution of such criminal charges would be outside of the Public
13 Auditor's jurisdiction. CTI also argues that Keeler's testimony of relevant and unobtainable
14 elsewhere. Page 4, CTI's Motion. In support of this argument, CTI alleges that only Keeler can
15 testify about the timing and accuracy of DPW's Notice of Default or Contract Termination on
16 the bridge project and its interpretation of the record of default in the solicitation at issue in this
17 matter. *Id.*, page 3-4. However, this is not true, the Public Auditor finds that it can examine
18 DPW's employees and the record in this matter to obtain evidence concerning those issues. CTI
19 is reminded that the Attorney General of Guam and her attorneys have very specific role in
20 Guam's Procurement System. Whenever the Chief Procurement Officer, the Director of Public
21 Works, or the head of any executive branch agency, autonomous agency, instrumentality, or
22 public corporation of the government of Guam conducts any solicitation or procurement which is
23 estimated to result in an award of five-hundred-thousand-dollars (\$500,000) or more, the
24 Attorney General shall act as legal advisor during all phases of the solicitation or procurement
25 process. 5 G.C.A. §5150. The Public Auditor finds that Assistant Attorney General Thomas P.
26 Keeler, Esq., was fulfilling this statutory duty when he provided legal advice to DPW, and this,
27 by itself, does not make him a necessary witness in this matter. Finally, the Public Auditor finds
28 that disqualifying DPW's chief counsel in this matter would cause great and untoward delay. If

1 the motion were granted, DPW would have to obtain new counsel and that counsel would likely
2 take months to review the extensive, voluminous, and complex record in this matter before such
3 replacement counsel would be prepared for a hearing. Therefore, the Public Auditor finds that
4 the benefit CTI would have in examining Keeler as a witness, would be outweighed by the great
5 prejudice disqualifying Keeler would have on DPW.

6 2. Based on the foregoing, CTI's Motion of Disqualify Assistant Attorney General Thomas P.
7 Keeler, Esq., is hereby DENIED.

8
9 **SO ORDERED** this 29th day of January, 2018 by:

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13 _____
14 DORIS FLORES BROOKS, CPA, CGFM
15 PUBLIC AUDITOR
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| | 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) |
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Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-17-010 Decision and Order RE Appellant's Motion for Leave to File Motion for Partial Summary Judgement

1 message

Jerrick Hernandez <jhernandez@guamopa.com>
To: Anita Arriola <anitaarriola@arriolacowan.com>

Mon, Jan 29, 2018 at 1:46 PM

Hafa Adai,

Please confirm receipt of this email and the attached document.

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Regards,

Jerrick J.J.G. Hernandez, CGAP, CICA
Auditor
Office of Public Accountability – Guam
www.opaguam.org
Tel. (671) 475-0390 ext. 208
Fax (671) 472-7951

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