

ANITA P. ARRIOLA, ESQ.
ARRIOLA, COWAN & ARRIOLA
259 MARTYR STREET, SUITE 201
HAGATNA, GUAM 96910
Telephone: (671) 477-9730/33
Facsimile: (671) 477-9734
E-Mail: anitaarriola@arriolacowan.com

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Attorneys for Appellant Core Tech International Corp.

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF) Docket No. OPA PA-17-10
)
CORE TECH INTERNATIONAL CORP.,) **APPELLANT CORE TECH**
) **INTERNATIONAL CORP.'S REPLY**
Appellant.) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR SANCTIONS**
)
)

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Appellant Core Tech International Corp. ("CTI") files this Reply Memorandum in support of its Motion for Sanctions against Appellee Department of Public Works ("DPW"). Contrary to DPW's Response to the Motion for Sanctions, DPW failed to provide a complete copy of the Procurement Record to CTI. As of the filing of this Reply, two days before the hearing scheduled in this appeal, CTI does not have a complete copy of the Procurement Record and is severely prejudiced in its ability to pursue this appeal without such record.

ARGUMENT

I. DPW'S RESPONSE ESTABLISHES THAT A COMPLETE PROCUREMENT RECORD WAS NOT PROVIDED TO CTI.

Upon review of the files and records at the OPA and comparing them to the files and records received by CTI, the following is a list of documents and CDs received and not received

by CTI:

DATE OF FILING AT OPA	TITLE OF FILING/DESCRIPTION	RECEIVED/NOT RECEIVED
Oct. 31, 2017	Department of Public Works Procurement Record BOX A(3)- Buster Anderson Emails Route 1/8 Intersection Improvements and Agana Bridges Replacement Project	Not received
Oct. 31, 2017	Department of Public Works Procurement Record BOX B(3)- Emails	Not received
Oct. 31, 2017	Eight (8) CDs (Plans and Specs – 4 CDs; Non-compliance reports – 4 CDs)	Not received
Nov. 3, 2017	DPW Supplemental to Procurement Record - David Titzel CD	Received
Nov. 3, 2017	DPW Supplemental to Procurement Record - David Yao CD	Received
Nov. 3, 2017	DPW Supplemental to Procurement Record - Mike Hobbs CD	Received
Nov. 3, 2017	DPW Supplemental to Procurement Record - AL-1 to AL-6: Emails from Parsons Transportation Group; D-1 to D-5: Emails from PTG, DPW, SWCA; K-1 to K-9: Emails from DPW, PTG, FHWA, SWCA, DPRI.	Not received
Nov. 13, 2017	Supplemental DPW Procurement Record: F-82 and F-82 AG Checklist	Received

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As established above, the large bulk of the procurement record was filed on October 31, 2017 with the Office of Public Auditor. However, they were not provided to CTI. The email from DPW’s counsel Mr. Keeler to his secretary Ms. Linda Hernandez states that a CD was served on CTI, but there is no proof that it was. As DPW concedes, “[u]nfortunately, DPW is not presently able to produce a receipted copy from Appellee [sic]”. DPW Opposition at 2. This is because CTI did not receive copies of those documents or CDs and DPW provides no evidence otherwise.

On November 3, 2017, DPW filed a “Department of Public Works Supplemental to Procurement Record”, which included a David Titzel CD, a David Yao CD, and Mike Hobbs CD. CTI received these three CDs. True and correct copies of those CDs are attached hereto as Exhibit A. However, the Supplemental Procurement Record references numerous emails AL-1 to AL-6; D-1 to D-5; and K-1 to K-9. These documents were not provided to CTI, in document or CD form. DPW provides no evidence that they were received by CTI.

On November 13, 2017, DPW filed another Supplemental Procurement Record and served CTI with one CD labeled “F-82 and F-82 AG Checklist”. The documents contained in this CD are the Contract documents under file “F-82” and bid documents under file “F-82 AG Checklist.” A true and correct copy of the CD received by CTI is attached hereto as Exhibit B. Exhibit B does not contain the information or documents filed as part of the Procurement Record at the OPA on October 31, 2017 or the missing emails filed on November 3, 2017.

DPW states on page 2 of its Opposition: “In order to avoid any misunderstandings a second copy of the Procurement Record is contained in the CD filed with this response.” *No CD was provided to CTI with DPW’s Response.*

DPW attempts to cure its deficiencies by arguing that CTI had issued Sunshine Act Requests to DPW concerning the Project and DPW responded to such requests by providing “thousands of pages of Project documents.” DPW Response at 3. CTI has no way of knowing whether the Sunshine Act responses are the same documents filed with the OPA because it has not received a complete copy of the Procurement Record in this case. Further, CTI should not have to sift through “thousands of pages” of Sunshine Act responses in order to determine whether they are “relevant to the appeal”, *see* 2 GAR, Div. 4, § 12104(c)(3), and are a part of the Procurement Record.

In sum, the record is clear that DPW did not provide CTI with a complete copy of the Procurement Record.

II. CTI IS SEVERELY PREJUDICED BY NOT HAVING THE COMPLETE PROCUREMENT RECORD.

CTI filed its Exhibit List and Witness List as required on November 22, 2017, its Comments to DPW’s Agency Report on December 1, 2017; and its Hearing Brief on December 7, 2017 – all without benefit of the complete Procurement Record in this case. Even if DPW provided

the eight (8) CDs containing plans and specifications, the three (3) boxes of documents, and the missing emails today, CTI is at a severe disadvantage in preparing for the hearing in this matter, presently scheduled to take place on December 13, 2017, two days hence.

The Hearing Officer's Order of November 8, 2017 for DPW to provide a complete Procurement Record, which DPW acknowledges on page 2 of its Response, is akin to a pre-trial Order and violation of the Order is misconduct adequate to support an evidentiary or other sanction. *United States v. Kahaluu Const. Co.*, 857 F.2d 600, 602 (9th Cir.1988); see *Von Brimer v. Whirlpool Corp*, 536 F.2d 838, 844 (9th Cir.1976) (failure to obey a pre-trial order may result in the preclusion of evidence). A party's conduct that "impair[s] [an opposing party's] ability to go to trial or threaten[s] to interfere with the rightful decision of the case" similarly supports sanctions. *Kahaluu Const. Co.*, 857 F.2d at 604.

DPW violated its obligation under 2 GAR, Div. 4, § 12104(c)(3) and the Hearing Officer's Order to provide a complete procurement record. DPW has not provided any adequate justification for its violations. CTI was deprived of the opportunity to prepare its filings without the Procurement Record. If the OPA determines merely to allow DPW to provide CTI with the missing Procurement Records, all of CTI's previous filings would have been for naught and CTI will be required to supplement its Exhibit List, Witness List, Comments, and Hearing Brief based upon any additional information. For these reasons, DPW should not be allowed to introduce any evidence in support of its defenses in this case.

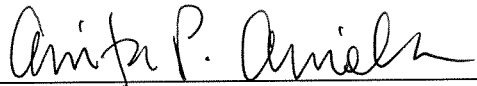
CONCLUSION

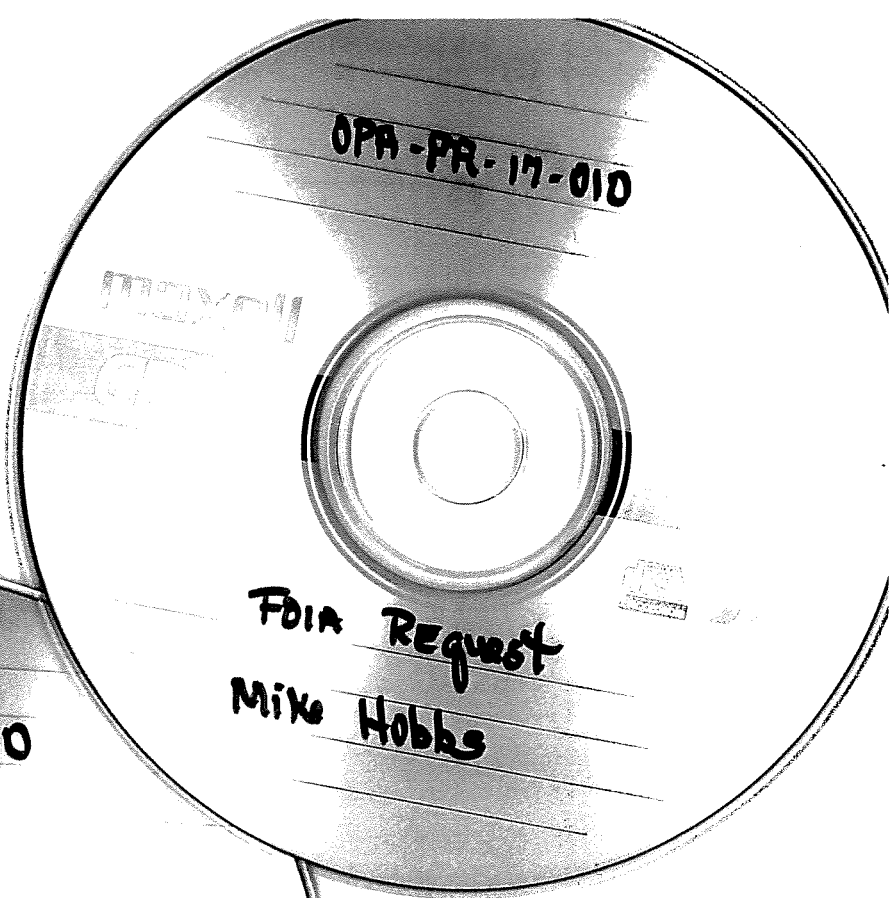
Pursuant to 2 GAR Div. 4, § 12109(h), the Hearing Officer may refuse to allow a party to support or oppose designated claims or defenses, or may prohibit that party from introducing designated matters in evidence. Due to DPW's failure to abide by the rules and to comply with

the Hearing Officer's November 8, 2017 Order, Appellant respectfully requests that the OPA disallow DPW from introducing any evidence in support of its defenses in this case.

Dated this 11th day of December, 2017.

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

By: 
ANITA P. ARRIOLA



PENGAD 800-631-6969
EXHIBIT
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