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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**

IN THE APPEAL OF ) Docket No. OPA PA-17-10  
)  
CORE TECH INTERNATIONAL CORP., ) **APPELLANT CORE TECH**  
) **INTERNATIONAL CORP.'S**  
Appellant. ) **MOTION TO RECONSIDER**  
) **DECISION ON SUBPOENA DUCES**  
) **TECUM TO BLAIR JOHNSON**  
) **STERLING & MARTINEZ**

Appellant Core Tech International Corp. ("CTI") files this motion to reconsider the Hearing Officer's Order denying CTI's request for issuance of a Subpoenas Duces Tecum to Blair Sterling Johnson & Martinez ("the Blair firm"), attached to its original request as Exhibit A. CTI respectfully disagrees with the Hearing Officer's decision that the Blair subpoena is "unduly repetitious."

Appellee Department of Works asserts a reliance on advice of counsel defense in response to CTI's claim of retaliation. Specifically, DPW asserts:

The timing of DPW August 23, 2017 Notice of Termination/Default was based on the advice of counsel who informed DPW that the Route 1/8 Project's Surety's Bond might not be enforceable if DPW failed to terminate prior to the one year anniversary of Substantial Completion (i.e., August 25, 2016). DPW's counsel provided this advice as early as June, 2017.

Appellant's Exhibit A, attached to Motion to Disqualify. CTI filed a Motion to Disqualify DPW's counsel Thomas Keeler on November 27, 2017 due to DPW's advice of counsel defense. (CTI's Motion to Disqualify is incorporated by reference herein in its entirety).

The Hearing Officer granted CTI's request as to the Subpoena Duces Tecum addressed to Takagi & Associates ("TA"). TA served its responses on December 4, 2017. TA is the Guam agent for the bonding companies, Zurich American Insurance Company and Fidelity and Deposit Company of Maryland (collectively "the Bonding Companies") who issued the surety bond that is the subject of DPW's reliance on advice of counsel defense.

The Blair firm does not represent TA. The Bonding Companies are represented locally by Thomas Sterling, Esq., a partner at the Blair firm, who has been in contact with both DPW's counsel Tom Keeler and CTI's undersigned counsel re the Notice of Termination/Default issued by DPW in this matter.

TA does not have possession or control over documents held or possessed by the Bonding Companies. The Bonding Companies are beyond the subpoena power of the Office of Public Auditor. Accordingly, CTI seeks documents and communications between DPW, Mr. Keeler, PTG, etc. on the one hand, and the Blair firm, on the other hand, in order to determine whether Mr. Keeler sought advice or information from Mr. Sterling or the Bonding Companies regarding his alleged legal advice to DPW. This goes to the issues of whether Mr. Keeler's advice was reasonable, based on relevant facts, and whether there was good faith reliance on advice of counsel. *See C.E. Carlson v. SEC*, 859 F.2d 1429, 1436 (10th Cir.1988). In addition, CTI is entitled to discover and cross-examine Mr. Keeler about when the attorney's advice occurred, how much research was conducted by the attorney, and what information DPW and others (such as the

Bonding Companies) provided to Mr. Keeler concerning such advice. *See Randolph v. PowerComm Const., Inc.*, 309 F.R.D. 249, 367 (D. Md. 2015).

The documents and information sought by CTI are not confidential or privileged. The documents and information are required in order for CTI to file its Hearing Brief, currently due on December 7, 2017, and to prepare for the hearing of this matter beginning on December 13, 2017.

For all of the foregoing reasons, CTI respectfully requests that the Office of the Public Auditor grant this motion to reconsider its Decision of November 30, 2017 and issue the Subpoenas Duces Tecum in the form attached as Exhibit A to the original Request for Subpoenas.

Dated this 4th day of December, 2017.

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

By: Anita P. Arriola  
**ANITA P. ARRIOLA**