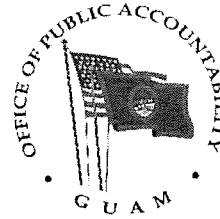


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



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 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	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
		Pages:	5 (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:	December 12, 2017
		Phone: Fax:	(671) 475-0390 x. 216 (671) 472-7951

Re: OPA-PA-17-010 Decision and Order RE Appellant's Motion for Sanctions.

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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 FOR
SANCTIONS**

Appellant

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 Hearing Officer pursuant to the Appellant's (Hereafter referred to as "CTI") Motion for Sanctions against the Purchasing Agency (Hereafter Referred to as "DPW") for failure to file and timely serve a timely and complete procurement record filed in this matter on November 20, 2017.

BACKGROUND

DPW filed the procurement record in this matter on October 31, 2017, a Supplement to the Procurement Record on November 3, 2017, and a Supplement to the Procurement Record dated

1 November 13, 2017. As a result of these filings, the OPA has received from DPW the following
2 batches of records: (1) Box A; (2) Box B; (3) Box D; (4) Documents K1-K9; (5) Documents
3 AL1-AL11; (6) Documents I thru IV; (7) A CD labled "FOIA Request David Yao;" (8) A CD
4 labled "FOIA Request Mike Hobbs;" (9) A CD labled "FOIA Request David Titzel;" (10) Two
5 CDs labled Plans and Specs and Non-Compliance Report; (11) A sealed envelope containing
6 privilged communications; and (12) A CD titled "F-82 and F-82AG Checklist."

7 It its motion and reply brief, CTI claims that it only received item numbers 7, 8, 9, and 12,
8 described above, in the form of four CDs. In its opposition brief DPW claims that it has
9 provided the entire procurement record to CTI.

11 DISCUSSION

12 After reviewing copies of the four CDs that DPW provided to CTI, the Hearing Officer finds
13 that CTI has not received the complete procurement record that DPW filed with the OPA. DPW
14 was required to provide the OPA a complete copy of the procurement record by October 31,
15 2017. 2 G.A.R., Div. 4, Chap. 12, §12104(3) and Notice of Receipt of Appeal filed on October
16 24, 2017. Additionally, on November 8, 2017, the Hearing Officer ordered DPW to provide
17 CIT's counsel a copy of the Procurement Record in this matter. However, it is clear that DPW
18 only provided CTI's counsel item 7, which is the CD labled "FOIA Request David Yao," item 8,
19 which is the CD labled "FOIA Request Mike Hobbs," item (9), which is the CD labled "FOIA
20 Request David Titzel," and item 12, which is the CD titled "F-82 and F-82AG Checklist." DPW
21 claims that it served the remaining documents, which it placed on a CD, to CTI's counsel,
22 however it could not produce a stamp receipt from CTI's counsel's office confirming this. See
23 page 2, DPW's Opposition filed on December 6, 2017 (Hereafter Referred to as "Opposition").
24 CTI's counsel denies this claim. The Hearing Officer finds that without the stamp receipt from
25 CTI's counsel's office, DPW's claim that they served the CD is less credible than the CTI's
26 statement that it did not receive the CD. Hence, the Hearing Officer finds that DPW failed to
27 deliver the remaining documents from the procurement record to CTI's counsel. DPW also
28 alleges that as a result of various Freedom of Information Act (Hereafter referred to as "FOIA")

1 requests made by CTI, that its responses to the FOIA requests serve as its delivery of the
2 procurement record to CTI. Page 2, Opposition. The Hearing Officer disagrees with this
3 argument for two reasons. First, the FOIA requests are a separate matter and not a part of these
4 proceedings. Second, without being provided with a complete copy of the procurement record
5 in this matter, CTI has no way knowing whether the documents provided in response to the
6 FOIA requests constitute a complete procurement record.

7 Finally, the Hearing Officer reviewed the four CDs provided by DPW to CTI to
8 determine whether they contained a complete procurement record. After an extensive review,
9 the Hearing Officer finds that item (8), which is the CD labeled "FOIA Request Mike Hobbs,"
10 and item (9), which is the CD labeled "FOIA Request David Titzel," contain some material from
11 Box A. Further item (7) item 7, which is the CD labeled "FOIA Request David Yao," contains
12 some material from Box A and Box B. However, none of these CDs, or all of them combined
13 contain all the material in Box A or Box B, and none of these CDs contain any plans or
14 specifications. Hence, the Hearing Officer finds that DPW failed to provide CTI with a
15 complete procurement record.

16 As a sanction, CTI requests that DPW be prevented from introducing any evidence in
17 support of its defenses in this matter. See CTI's reply brief, page 5. DPW is reminded that the
18 Hearing Officer may sanction a non-compliant party by refusing to allow a party to support or
19 oppose designated claims or defenses, and may prohibit a party from introducing designated
20 matters into evidence. 2 G.A.R., Div. 4, Chap. 12, §12109(h). However, the Hearing Officer
21 will not impose such sanctions at this time.

22 The Hearing Re Appellant's Appeal scheduled for 10:00 a.m., on December 13, 2017 is
23 hereby VACATED, however, the parties must still appear at that date and time for a scheduling
24 conference. DPW is hereby ORDERED to provide a complete procurement record,

25 ///

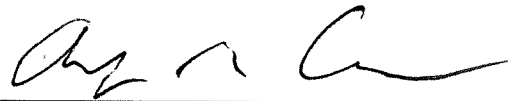
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1 excluding items 7, 8, 9, and 12, described above, to CTI no later than 5:00 p.m., on December
2 20, 2017, and must include a log of its privileged materials in lieu of said materials. A new
3 scheduling order will be issued concerning extended filing deadlines for amended hearing
4 materials.

5
6
7 **SO ORDERED** this 12th day of December, 2017 by:

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12 ANTHONY R. CAMACHO, ESQ.
13 Hearing Officer
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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:	5 (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:	December 12, 2017
		Phone:	(671) 475-0390 x. 216
		Fax:	(671) 472-7951

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Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-17-010 Decision and Order RE Appellant's Motion for Sanctions

Jerrick Hernandez <jhernandez@guamopa.com>

Tue, Dec 12, 2017 at 4:13 PM

To: Anita Arriola <anitaarriola@arriolacowan.com>, Tom Keeler <tkeeler@guamag.org>

Hello Ms. Arriola and Mr. Keeler,

Please see attached Decision and Order RE Appellant's Motion for Sanctions for OPA-PA-17-010 (Core Tech vs. DPW). The Decision was also faxed to your offices.

Please confirm receipt of this email and the attachment.

As you will see in the Decision, the formal hearing is vacated, but we will be holding a scheduling conference instead at 10am tomorrow.

--

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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