

1 **THE LAW OFFICES OF**  
2 **IGNACIO CRUZ AGUIGUI**  
3 A Professional Corporation  
4 Ignacio C. Aguigui, Esq.  
5 Suite 310, RK Plaza  
6 341 S. Marine Corps Drive  
7 Tamuning, Guam 96913  
8 Telephone (671) 989-9253/987-9914  
9 Facsimile (671) 989-9255

7 **CALVO FISHER & JACOB LLP**  
8 Janalynn Cruz Damian, Esq.  
9 259 Martyr Street, Suite 100  
10 Hagåtña, Guam 96910  
11 Telephone: (671) 646-9355  
12 Facsimile: (671) 646-9403

13 *Attorneys for Interested Party*  
14 *Guam Educational Facilities Foundation, Inc.*

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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS**

IN THE APPEAL OF:

CORE TECH INTERNATIONAL CORP.,

Appellant.

**RECEIVED**

OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 09/07/2010

TIME: 8:55  AM  PM BY: AR

FILE NO OPA-PA: 10-007, 10-011

**CONSOLIDATED APPEALS NOS.:**  
**OPA-PA-16-007 AND OPA-PA-16-011**

**INTERESTED PARTY GUAM  
EDUCATION FACILITIES FOUNDATION,  
INC.'S SUBMISSION OF COPIES OF  
EXHIBITS q AND r**

1 **GUAM EDUCATIONAL FACILITIES FOUNDATION, INC.** ("GEFF") submits  
2 concurrently herewith courtesy copies of its exhibits **q** and **r** which were previously identified in  
3 its Exhibit List filed August 26, 2016. Exhibit **q** (GEFF Comments on DPW Agency Report  
4 (*OPA-PA-16-011*) (filed 9/2/16)), and Exhibit **r** (DPW's Rebuttal to Comments of Core Tech on  
5 DPW Agency Report (*OPA-PA-16-011*) (filed 9/6/16)) were not yet due to be filed with the OPA  
6 at the time that GEFF's Exhibit List was filed on August 26. Therefore, GEFF now submits to  
7 the OPA and serves on the parties copies of the exhibits to be included in their exhibit binders.

8 Dated: September 7, 2016.

9 **THE LAW OFFICES OF  
10 IGNACIO CRUZ AGUIGUI**

11 By:   
12 **IGNACIO C. AGUIGUI, ESQ.**

13 Suite 310, RK Plaza  
14 341 S. Marine Corps Drive  
15 Tamuning, Guam 96913  
16 Telephone (671) 989-9253/987-9914  
17 Facsimile (671) 989-9255

18 **CALVO FISHER & JACOB LLP**  
19 259 Martyr Street, Suite 100  
20 Hagåtña, Guam 96910  
21 Telephone: (671) 646-9355  
22 Facsimile: (671) 646-9403

23 *Attorneys for Guam Educational Facilities Foundation, Inc.*  
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# Exhibit q

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Ignacio C. Aguigui, Esq.  
**THE LAW OFFICES OF  
IGNACIO CRUZ AGUIGUI**  
A Professional Corporation  
Suite 310, RK Plaza  
341 S. Marine Corps Drive  
Tamuning, Guam 96913  
Telephone (671) 989-9253/987-9914  
Facsimile (671) 989-9255  
General Email: [admin@aguigui.com](mailto:admin@aguigui.com)

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**CALVO FISHER & JACOB LLP**  
259 Martyr Street, Suite 100  
Hagåtña, Guam 96910  
Telephone: (671) 646-9355  
Facsimile: (671) 646-9403  
*Attorneys for Interested Party  
Guam Educational Facilities Foundation, Inc.*

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS**

IN THE APPEAL OF:  
  
CORE TECH INTERNATIONAL CORP.,  
  
Appellant.

**CONSOLIDATED APPEAL NOS.:**  
OPA-PA-16-007  
OPA-PA-16-011

**COMMENTS OF INTERESTED PARTY,  
GUAM EDUCATIONAL FACILITIES  
FOUNDATION, ON DPW'S AGENCY  
REPORT FILED AUGUST 23, 2016**

**GUAM EDUCATIONAL FACILITIES FOUNDATION, INC.** ("GEFF"), an interested party and the offeror selected as the most qualified in the instant procurement, concurs with virtually all of the points contained in the Agency Report filed by the Department of Public Works ("DPW") on August 23, 2016.

1 GEFF provides herein additional comments and observations, in response to both the  
2 Agency Report and the Notice of Appeal (“Appeal”) filed by Core Tech International Corporation  
3 (“Core Tech”) on August 10, 2016.<sup>1</sup> Core Tech’s instant Appeal is without merit. Accordingly,  
4 for the reasons stated herein and in DPW’s Agency Report, the Public Auditor should deny Core  
5 Tech’s Appeal.

6 **I. THE NEGOTIATED IDIQ CONTRACT IS CONSISTENT WITH THE**  
7 **TERMS OF THE RFP AND AUTHORIZING LEGISLATION WITH**  
8 **REGARD TO THE \$100 MILLION CAP**

9 Core Tech’s Appeal alleges that DPW, the Guam Department of Education (“GDOE”)  
10 and GEFF agreed to a final version of the IDIQ contract (specifically § 3.1 of the IDIQ) “which  
11 included provisions allowing the offeror, GEFF, to circumvent the \$100 million contract  
12 limitation in the RFP.” *See* Appeal at 3, lines 26-27, and 4, lines 1-2. Core Tech’s assertion is  
13 without merit and is based on a fundamental misunderstanding of the IDIQ, the RFP and the  
14 authorizing laws.

15 The RFP was authorized by Public Law 32-120. *See* RFP Addendum No. 6 Section 2.0  
16 (Procurement Record at Tab 4). The RFP provides that scope under the RFP includes financing  
17 for various school improvements “with a total cost of up to One Hundred Million Dollars  
18 (\$100,000,000.00).” *See id.* at RFP Addendum No. 6 Section 4.0. The RFP also provides,  
19 however, that to the extent there is any conflict between the RFP and a public law (such as Public  
20 Laws 32-120 and 32-121), the public laws control. *See id.* at RFP Addendum No. 6 Section 2.0.  
21 Core Tech was well aware of the controlling status of Public Laws 32-120 and 32-121 since at  
22 least September 25, 2015, when Addendum No. 6 was issued.

23 Neither Public Law 32-120 nor Public Law 32-121 mandate a \$100 million cap on the  
24 procurement. *See* Public Law 32-120 (Feb. 10, 2014) and 32-121 (Feb. 10, 2014). If the  
25 Legislature had intended to include a cap, it could have easily done so as it had done previously in

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26 <sup>1</sup> Core Tech’s August 10 Appeal was consolidated with Core Tech’s June 23, 2016 Notice  
27 of Appeal (OPA-PA-16-007) by order dated August 22, 2016.

1 Public Law 31-229, a prior law related to the rehabilitation of Guam’s public schools. *See* 2B  
2 Sutherland Statutory Construction § 51:2 (7th ed.) (“Generally, though, courts presume a different  
3 intent when a legislature omits words used in a prior statute on a similar subject. More broadly,  
4 where a legislature inserts a provision in only one of two statutes that deal with a closely related  
5 subject, courts construe the omission as deliberate rather than inadvertent. California, for  
6 example, concluded that ‘where a statute, with reference to one subject contains a given  
7 provision, the omission of such provision from a similar statute concerning a related subject is  
8 significant to show that a different intention existed.’” (Footnotes omitted)). Public Law 31-229  
9 authorized lease financings for school improvements and included a limitation that the lease  
10 financing authorized by that law “shall not exceed the aggregate amount of One Hundred Million  
11 Dollars (\$100,000,000).” *See* Public Law 31-229, section 12 (June 18, 2012). The absence of a  
12 cap in Public Laws 32-120 and 32-121 evidences the Legislature’s intent to deliberately omit  
13 such language; and since Public Laws 32-120 and 32-121 supersede the RFP in cases of conflict,  
14 the \$100 million limit does not apply to this procurement.

15 Further, as acknowledged by Core Tech (*see* Appeal at 6, lines 3-19), and confirmed by  
16 Speaker Won Pat (*see* April 13, 2016 Letter from Speaker Won Pat (Procurement Record at Tab  
17 17 and July 15, 2016 Supplemental to Procurement Record at Tab 2)), rather than set a cap, what  
18 the Legislature chose to do is identify sources of funding and the amounts available from such  
19 sources that can be used for the lease-back payments. For example, Public Law 32-120, section 3  
20 (codified at 5 GCA § 22425(q)(4)) provides that \$1,707,652 is continuously appropriated  
21 annually to GDOE for the renovation or construction of a new SSHS. Public Law 32-121, also  
22 identifies other sources of funding available for the remaining 35 public schools. *See e.g.*, Public  
23 Law 32-121 (codified at 5 GCA § 58E107) (rental payments may be secured by a pledge or other  
24 reservation of revenues collected by the Government in the amount of \$4.8 million from the  
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1 maturity of Business Privilege Tax Bond Series 2013C available annually beginning FY2019).<sup>2</sup>  
2 Thus, it is clear that the Legislature did not intend to limit the financing capacity for the direly  
3 needed school projects authorized by Public Laws 32-120 and 32-121.

4 Even though a cap is not mandated by Public Law 32-120 or Public Law 32-121, the IDIQ  
5 contract still includes a cap of \$100 million. Section 3.1 of the IDIQ contract provides with  
6 regard to the \$100 million cap as follows:

7  
8 **3.1. Compensation and Payment for Services.** The Government will  
9 compensate the Developer for services rendered for Task Orders issued as  
10 provided in this Contract based on available funds and not to exceed One  
11 Hundred Million and 00/100 Dollars (\$100,000,000.00) pursuant to Section I  
(Scope of Contract), unless otherwise directed by the Director of DPW in writing  
and permitted by Public Laws 32-120 and 32-121 or any other law. The first and  
second Task Orders will be for Simon Sanchez High School and the CCIP.

12 The above provision is consistent with the RFP as both the contract language and the RFP  
13 provide that the authorizing laws control. Core Tech's claim that Section 3.1 gives GEF "a  
14 blank check" skews the plain language of Section 3.1, which requires both the DPW's Director's  
15 written consent and legislative authorization to exceed \$100 million. Further, Core Tech's  
16 assertion that Section 3.1 is contrary to legislative policy on safeguarding public funds is  
17 unsupported since it is the Legislature that declined to impose a cap as it had done previously in  
18 Public Law 31-229. *See also* April 13, 2016 Letter from Speaker Won Pat (Procurement Record  
19 at Tab 17 and July 15, 2016 Supplemental to Procurement Record at Tab 2).

20 In any event, as correctly pointed out by DPW, the IDIQ contract has yet to be executed  
21 by the Governor or approved by the Attorney General. Thus, if it is determined that the RFP and  
22 Public Laws 32-120 and 32-121 mandate a \$100 million cap, revising the draft IDIQ contract to  
23 strike "unless otherwise directed by the Director of DPW in writing and permitted by Public Laws

24  
25 \_\_\_\_\_  
26 <sup>2</sup> Based on GEF's calculations, the sources and amount of funding identified in Public  
27 Laws 32-120 and 32-121 make more than \$100 million available for all the schools (GEF  
estimates upwards of \$160 million). *See* March 21, 2016 Letter from Janalynn Cruz Damian  
(July 15, 2016 Supplemental to Procurement Record at Tab 1).

1 32-120 and 32-121 or any other law” could be an appropriate remedy under those circumstances.<sup>3</sup>  
2 The Procurement Law allows a proposed award to be “revised to comply with the law.” See 5  
3 GCA § 5451 (“Remedies Prior to an Award. If prior to award it is determined that a solicitation  
4 or proposed award of a contract is in violation of law, then the solicitation *or proposed award*  
5 shall be: (a) cancelled; or (b) *revised to comply with the law.*”) (emphasis added).  
6

7 **II. DPW’S GOOD FAITH MAINTENANCE OF THE CURRENT**  
8 **PROCUREMENT RECORD SUBSTANTIALLY COMPLIES WITH**  
9 **APPLICABLE LAW**

10 Core Tech claims that the procurement record at issue is “fatally flawed.” However, as  
11 pointed out by DPW, the 3,000-page procurement record as it currently exists is replete with  
12 drafts, communications, minutes of meetings, evaluations, and a detailed memorandum of the  
13 negotiations between the Government and GEF. This voluminous procurement record clearly  
14 portrays the good faith efforts of the Government in carrying out this procurement and in  
15 substantially complying with applicable law. Further, Core Tech has made no showing that the  
16 procurement record actually and currently maintained by DPW tarnishes the integrity of the  
17 procurement process.

18 Core Tech points to two types of records that are purportedly missing – a log of  
19 communications required by 5 GCA § 5249(a) and audio recordings of negotiation meetings  
20 required by 5 GCA § 5249(c). However, these items are not fatal to the procurement.

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21 <sup>3</sup> In any event, Core Tech’s argument that the IDIQ contract is supposedly “in violation”  
22 of the RFP is legally unsustainable. Section V of the IDIQ contract (“Contract Documents’  
23 Defined”) identifies a list of documents that together “constitute the Contract Documents, all of  
24 which are made part hereof; and collectively evidenced and constitute the Contract between the  
25 parties hereto, and they are as fully a part of this Contract, as if they were set out verbatim and in  
26 full herein:...” IDIQ Contract, § V (August 3, 2016 Supplemental to Procurement Record at Tab  
27 1). Included in the list of documents identified in Section V that are part of the Contract are: (1)  
28 the “Request for Proposals and all attachments, forms, or exhibits thereto” and (2) “All  
Amendments or Addenda to the Request for Proposals.” Therefore the RFP itself and all of its  
attachments, amendments, and addenda are “made part” of the IDIQ contract and together with  
the other documents identified constitute “the Contract between the parties hereto.” IDIQ  
Contract, § V. Section 3.1 cannot therefore be read or interpreted to “violate” the RFP, as Core  
Tech contends, because the RFP is part of the IDIQ contract.



1           With regard to Core Tech’s allegations relating to the lack of a “communications log,” the  
2 Procurement Law provides that the procurement record shall include:

3                   (a) the date, time, subject matter, and names of participants at any  
4 meeting including government employees that is in any way related to a particular  
5 procurement;

6                   (b) a log of all communications between government employees and any  
7 member of the public, potential bidder, vendor or manufacturer which is any way  
8 related to the procurement.

9 5 GCA § 5429.

10           The procurement record submitted to the OPA includes minutes of meetings that include  
11 the date, time, subject matter, and attendees. *See* attendance sheets and minutes of meetings  
12 (Procurement Record at Tabs 6, 8, 12, 17). Thus, DPW has complied with the requirements of  
13 subsection (a). Further, a communication log can still be generated prior to certification of the  
14 record and award of the IDIQ contract. DPW has stated that it will complete the communication  
15 log required by subsection (b) once the stay is lifted and prior to any contract award and that it  
16 has maintained a record of all communications relating to the Procurement. *See* Agency Report  
17 at 6-7. Significantly, the procurement record has yet to be certified by DPW. *See id.* Certification  
18 of the record is required before award and as DPW points out in its Agency Report, no award has  
19 been made as the procurement is stayed and the AG has yet to approve and the Governor has yet  
20 to sign the IDIQ contract. *See id.* Core Tech has not presented any evidence to doubt DPW’s  
21 assertion that the Government “maintains voluminous pages of communications and documents  
22 that have transpired in this procurement.” Agency Report at 7. *Cf Teleguam Holdings LLC v.*  
23 *Territory of Guam*, et al., Superior Court of Guam Civil Case No. 334-13 (Decision & Order  
24 Aug. 8, 2014) (finding a materially deficient record where record was declared to be complete but  
25 was missing records determined to exist via testimony).

26           Core Tech’s complaint regarding DPW’s lack of sound recordings of contract negotiations  
27 between DPW and GEF is without merit. Audio recordings of negotiation meetings are not  
28 mandatory under a reasonable reading and interpretation of the statute. Core Tech notes that the

1 original text of 5GCA § 5249 as enacted by the legislature (Public Law 18-44), contains an  
2 internal separating comma, rather than a semicolon, and reads as follows:

3  
4 Each procurement officer shall maintain a complete record of each  
5 procurement. The record shall include the following:

6 ...

7 **(c) sound recordings of all pre-bid conferences, negotiations**  
8 **arising from a request for proposals and discussions with**  
9 **vendors concerning small purchase procurement;....**

10 Core Tech further observes that the published version (as published by the Compiler of  
11 Laws), replaces the comma with a semicolon, and reads as follows:

12 **(c) sound recordings of all pre-bid conferences; negotiations**  
13 **arising from a request for proposals and discussions with**  
14 **vendors concerning small purchase procurement;....**

15 Although Core Tech calls this a “typographical error” (Appeal at 10) by the Compiler of  
16 Laws, this change to a semicolon was more likely a *typographical correction*. Guam law  
17 empowers the Compiler of Laws to make adjustments in order to “[c]orrect manifest clerical  
18 errors or typographical errors.” See 1 GCA § 1606(g) (“In preparing the Guam Code Annotated,  
19 the Guam Administrative Rules and Regulations, court reports and other publications of the  
20 Office, the Compiler of Laws may: .... (g) Correct manifest clerical errors or typographical  
21 errors.”). It is likely that the Compiler realized that the original comma that the Legislature  
22 placed between the words “conferences” and “negotiations” should more appropriately be a  
23 semicolon in order to clarify the independent nature of the adjacent clauses. Thus, § 5249 section  
24 read in its entirety would only require the procurement “record” to include “sound recordings” for  
25 “pre-bid conferences” and *only* “pre-bid conferences.” Indeed this is also consistent with the  
26 legislative history of the statute. The original version of the bill as introduced in the 18<sup>th</sup> Guam  
27 Legislature on January 22, 1986 required *only* sound recordings *for pre-bid conferences*:

28 § 6964.4. Record of Procurement Actions Taken Pursuant to This  
Title. The process of procurement shall be **documented** at each  
step of the process, regardless of the manner of procurement  
authorized for the particular goods or services to be delivered to the  
government.

1 (a) All pre-bid conferences shall be tape recorded and a  
2 transcript of the tape recordings shall be made available to any  
3 member of the public who requests it within ten (10) days of the  
4 pre-bid conference.

5 ....

6 See Bill No. 743 (LS) (18<sup>th</sup> Guam Legis., 1<sup>st</sup> Reg. Sess.) (1/22/1986) at 9 (emphasis added)  
7 attached hereto as **Exhibit 1**.<sup>4</sup> There are two additional noteworthy points about the language of  
8 Bill No. 743: First, although subsection (a) requires sound recordings for pre-bid conferences,  
9 only the “**transcript**” of the recordings is required to be kept and made available to the public.  
10 Second, the paragraph antecedent to subsection (a) only requires that the procurement process  
11 overall shall be “**documented**” – the meaning of which is self-evident – i.e., the procurement  
12 process shall be supported or evidenced by “*writings*.” See Black’s Law Dictionary (6<sup>th</sup> ed.) at  
13 481 (defining *document* (n) as “An instrument on which is recorded, by means of letters, figures,  
14 or marks, the original, official, or legal form of something, which may be evidentially used. In  
15 this sense the term ‘document’ applies to *writings*;....” (emphasis added); see also New Int’l  
16 Webster’s Dictionary & Thesaurus of the English Language (2002) at 288 (defining “document”  
17 (n) as “1. an original piece of *written or printed matter* conveying authoritative information or  
18 evidence” (emphasis added)). See **Exhibit 2** attached hereto.

19 Yet, even if the Compiler chose to keep the comma between “conferences” and  
20 “negotiations,” the clauses could be still read independently, contrary to Core Tech’s wishful  
21 interpretation:

22 The record shall include the following:

23 ...

24 (c) sound recordings of all pre-bid conferences, negotiations  
25 arising from a request for proposals and discussions with  
26 vendors concerning small purchase procurement;....

27 <sup>4</sup> As retrieved from [http://guamlegislature.com/Public\\_Laws\\_18th/P.L.%2018-44%20SBill%20No.%20743.pdf](http://guamlegislature.com/Public_Laws_18th/P.L.%2018-44%20SBill%20No.%20743.pdf) on 9/1/2016 (highlights added).

1 Thus, the “procurement record” shall include *first*, “sound recordings of all pre-bid conferences”  
2 and *second*, “negotiations arising from a request for proposals and discussions with vendors  
3 concerning small purchase procurement.” Under Core Tech’s reading, “sound recordings”  
4 would not be limited to pre-bid conferences, but instead would apply to the remaining items in  
5 subsection (c). In other words, as Core Tech would have it, procurement officials are required to  
6 tape record (1) “all pre-bid conferences,” (2) all “negotiations arising from a request for  
7 proposals,” and (3) all “discussions with vendors concerning small purchase procurement.”  
8 However, reading the statute in that fashion requires something that is neither in the original text  
9 of Public Law 18-44 nor in the text published by the Compiler of Laws – a comma between  
10 “proposals” and the word “and” in the second line. Indeed, Core Tech included this non-existent  
11 comma, but only in its June 15, 2016 protest letter:

12  
13 **(c) sound recordings of all pre-bid conferences; negotiations**  
14 **arising from a request for proposal[,] and discussions with**  
15 **vendors concerning small purchase procurement;**

16 *See* Core Tech Protest Letter (6/15/2016) at 5. Notably, Core Tech abandoned its newly-found  
17 comma in its subsequent Notice of Appeal with the OPA (*see* Notice of Appeal filed 8/10/2016,  
18 at 7 & 10), and instead reverted to the original text of the public law and the text published by the  
19 Compiler of Laws – neither of which contains Core Tech’s phantom comma.

20 In light of the above discussion, a more appropriate reading and interpretation of the  
21 statute describes two different types of records that an agency must maintain under subsection (c):  
22 (1) “sound recordings of all pre-bid conferences”, and (2) “negotiations arising from a request for  
23 proposals and discussions with vendors concerning small purchase procurement.” Thus, the  
24 plain language does *not require* DPW to maintain sound recordings of contract negotiations  
25 arising from an RFP, nor does it require sound recordings of discussions with vendors concerning  
26 small purchase procurement. *See Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 23 (“In cases  
27 involving statutory construction, the plain language of a statute must be the starting point.”).  
28

1 Instead, under a plain reading of the statute, the term “sound recordings” would apply only to  
2 “pre-bid conferences.”<sup>5</sup> Consequently, it was neither arbitrary nor capricious for DPW to read §  
3 5249(c) in such a way, and such a reading of subsection (c) does not lead to absurd or impractical  
4 consequences, untenable distinctions or unreasonable results. *See Carlson v. Guam Tel. Auth.*,  
5 2002 Guam 15, ¶ 17 (“Deference is given to the agency interpretation so long as that  
6 interpretation neither contravenes clear legislative intent nor frustrates the policy that legislature  
7 sought to implement.”); *Guerrero v. Santo Thomas*, 2010 Guam 11, ¶ 39 (“We afford deference  
8 to an agency’s interpretation of a statute when the agency has specialized knowledge in the area,  
9 but accord the agency interpretation less weight where technical knowledge is not necessary in  
10 interpreting a statute.”); 5 GCA § 5113 (“The Director of Public Works shall serve as the central  
11 procurement officer of the Territory with respect to construction.”); *Sumitomo Constr., Co. v.*  
12 *Gov’t of Guam*, 2001 Guam 23, ¶ 17 (“[N]otwithstanding the deference due the plain-meaning of  
13 statutory language, ... such language need not be followed where the result would lead to absurd  
14 or impractical consequences, untenable distinctions, or unreasonable results.” (alteration in  
15 original) (internal quotation marks omitted)).

16 Finally, Core Tech has not demonstrated how it is somehow prejudiced by any lack of  
17 sound recordings. Nor could Core Tech make such a showing because the negotiations were  
18 extensively memorialized in a detailed negotiations memo. *See* May 13, 2016 Memorandum  
19 from Negotiating Committee (Procurement Record at Tab 16). This memorandum discusses in  
20 detail the negotiations between the Government and GEF. The preparation and inclusion of a  
21 negotiation memorandum in the procurement record is consistent with the plain language of  
22 subsection (c) and demonstrates DPW’s good faith effort to comply with the requirements of  
23

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24 <sup>5</sup> Indeed, the plain language requires sound recordings **only** as to “*pre-bid conferences*,”  
25 which do **not** apply to the instant **RFP process**. “Pre-bid conferences” occur only in an Invitation  
26 for Bid (IFB) process, and **not** an RFP. The Guam Procurement Regulations distinguish between  
27 “**pre-bid conferences**” in the IFB process, and “**pre-proposal conferences**” in an RFP process.  
28 *See* 2 GAR Div. 4 § 3109 (g)(4) (explaining “pre-bid conferences” in the IFB process), § 3114 (g)  
(explaining “pre-proposal conferences” in the RFP process).

1 subsection (c).<sup>6</sup> Moreover, further documentation of negotiation meetings was maintained by the  
2 government in the form of written meeting notes, summaries, and minutes.

3 **III. CORE'S TECH'S JULY 15, 2016 PROTEST RELATING TO THE \$100**  
4 **MILLION CAP IS UNTIMELY**

5 Core Tech's protest ground relating to the purported \$100 million cap is based on the  
6 language of the RFP and Public Laws 32-120 and 32-121. And its challenge to the language of  
7 section 3.1 is based on the proposed IDIQ Contract between the Government and GEFF, a copy  
8 of which Core Tech claims to have received only on July 1, 2016. However, Core Tech knew as  
9 early as May 13, 2016, that such a contract existed when it received DPW's Notice of Intent to  
10 Award. *See* Notice of Intent to Award at 1 ("The **Contract** is in an amount not exceed one  
11 hundred million and 00/100 dollars (\$100,000,000.00). A Task Order has been negotiated for the  
12 Reconstruction of Simon Sanchez High School at a price not to exceed seventy six million eight  
13 hundred sixty seven thousand and three hundred thirty-five and 00/100 dollars  
14 (\$76,867,335.00).") (emphasis added). Upon its review of the Notice on May 13, 2016, Core  
15 Tech should have *promptly* requested inspection of such a contract and any other related  
16 documents from DPW. Under Guam's Sunshine Act, any member of the public is allowed to  
17 request inspection of a public document. 5 GCA § 10103. Instead of promptly requesting  
18 inspection of the IDIQ Contract, Core Tech waited *more than a month* after it received the May  
19 13, 2016 Notice of Intent to Award – i.e., until June 14, 2016 – to make a request to DPW under  
20 the Sunshine Act. Core Tech was clearly able to make such a request *much earlier* than June 14,  
21 2016, and should have done so. Instead, Core Tech unreasonably delayed and waited too long,  
22 and didn't file its protest until July 15, 2016. Core Tech "should have known" of the facts  
23 constituting the basis of its protest *prior to* July 1, 2016 (the date when Core Tech claims it

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24  
25 <sup>6</sup> Good faith and lack of fraud on part of the parties is significant as even illegal contracts  
26 can be ratified. *See* 5 GCA § 5452(a) ("Remedies After an Award. (a) If after an award it is  
27 determined that a solicitation or award of a contract is in violation of law, then: (1) if the person  
28 awarded the contract has not acted fraudulently or in bad faith: (A) the contract may be ratified  
and affirmed, provided it is determined that doing so is in the best interests of the Territory...").

1 actually received the IDIQ Contract). See 2 GAR Div. 4 § 9101 (protests shall be in writing and  
2 shall be “filed within 14 days after the protestor knows or *should have known* of the facts giving  
3 rise thereto..... Protest filed after the 14 day period shall not be considered.”) (emphasis added).

4 Core Tech’s protest was therefore untimely.

5 **IV. CONCLUSION**

6 Core Tech’s Appeal and July 15, 2016 protest are without merit. Accordingly, for the  
7 reasons stated herein and in DPW’s Agency Report, GEFf respectfully requests that the Public  
8 Auditor DENY Core Tech’s Appeal.

9 Dated: September 2, 2016.

10 **THE LAW OFFICES OF  
11 IGNACIO CRUZ AGUIGUI**

12 By:

13   
14 **IGNACIO C. AGUIGUI, ESQ.**

15 Suite 310, RK Plaza  
16 341 S. Marine Corps Drive  
17 Tamuning, Guam 96913  
18 Telephone (671) 989-9253/987-9914  
19 Facsimile (671) 989-9255

20 **CALVO FISHER & JACOB LLP**  
21 259 Martyr Street, Suite 100  
22 Hagåtña, Guam 96910  
23 Telephone: (671) 646-9355  
24 Facsimile: (671) 646-9403

25 *Attorneys for Guam Educational Facilities Foundation, Inc.*

# EXHIBIT 1



Introduced

JAN 22 '86

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Bill No. 743(LS)

Introduced by:

C. T. C. Gutierrez

AN ACT TO ADD A NEW CHAPTER 12 AND TO AMEND  
CERTAIN CODE SECTIONS CONTAINED IN TITLE VII-A  
OF THE GOVERNMENT CODE, RELATIVE TO  
ESTABLISHING A PROCUREMENT APPEALS BOARD AND  
TO AMEND THE PROCUREMENT LAWS OF GUAM.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. A new Chapter 12 is added to Title VII-A of the  
3 Government Code to read:

4 "CHAPTER 12

5 Procurement Appeals Board

6 Article A

7 Section 6983. Creation of the Procurement Appeals Board. There  
8 is established an independent entity to be known as the 'Procurement  
9 Appeals Board' to be composed of a Chairperson and at least two (2)  
10 other members, but not more than seven (7) members. The  
11 Chairperson and members of the Board shall be appointed by the  
12 Governor and confirmed with the advice and consent of the Legislature  
13 and shall serve full-time.

14 Section 6983.1. Terms and qualifications of members of the  
15 Procurement Appeals Board.

16 (a) Term. The term of office of the Chairperson and each  
17 member of the Procurement Appeals Board shall be six (6) years  
18 except that in making the initial appointments, the Governor shall  
19 appoint one (1) member for a term of two (2) years, one (1) member  
20 for a term of four (4) years, and the Chairperson for a term of six  
21 (6) years, so that a term of office shall expire every two years.  
22 Thereafter, their successors shall be appointed for terms of six (6)  
23 years, or for the balance of any unexpired term, but members may

1 continue to serve beyond their terms until their successors take office.  
2 Members may be reappointed for succeeding terms. If there is no  
3 chairperson, or if such officer is absent or unable to serve, the senior  
4 member in length of service shall be temporary chairperson.

5 (b) Authority of the Chairperson. The Chairperson may adopt  
6 operational procedures and issue such orders, not inconsistent with his  
7 title, as may be necessary in the execution of the Board's functions.  
8 The Chairperson's authority may be delegated to the Board's members  
9 and employees, but only members of the Board may issue decisions on  
10 appeals.

11 (c) Administrative Support. The Civil Service Commission is  
12 authorized to provide for the Board such services as the Chairperson  
13 requests, on such basis, reimbursable or otherwise, as may be agreed  
14 upon between the Civil Service Commission and the Chairperson.

15 (c) Qualifications for Board Membership. The Chairperson and  
16 members of the Board shall be:

17 (1) Members in good standing of the Guam Bar for at least  
18 five (5) years, and experienced in contracts or commercial  
19 matters; or

20 (2) Members of the public who have demonstrated  
21 experience of at least five (5) years in procurement.

22 Section 6983.2. Rules of Procedure. The Procurement Appeals  
23 Board shall adopt rules of procedure which, to the fullest extent  
24 possible, will provide for the expeditious resolution of controversies.  
25 The Board may adopt Small Claims Procedures for the resolution of  
26 controversies involving claims of less than Twenty-Five Thousand  
27 Dollars (\$25,000).

28 Section 6983.3. Decisions of the Procurement Appeals Board.  
29 Acting by one or more of its members, the Procurement Appeals Board  
30 shall issue a decision in writing or take other appropriate action on  
31 each appeal submitted. A copy of any decision shall be provided to all  
32 parties, the Chief Procurement Officer, the Director of Public Works  
33 and the head of a Purchasing Agency.

1           Section 6983.4. Jurisdiction of the Procurement Appeals Board.  
2 Unless an action has been initiated previously in the Superior Court  
3 for essentially the same cause of action, unless within fifteen (15)  
4 days after the action is brought before the Procurement Appeals  
5 Board, written objection is made by either the aggrieved bidder,  
6 offeror or contractor, prospective or actual, or the Chief procurement  
7 officer, the Director of Public Works or head of a Purchasing Agency  
8 with the concurrence of the Attorney General, the Board shall have  
9 jurisdiction to review and determine de novo:

10           (a) Any protest of a solicitation or award of a contract  
11 addressed to the Board or by an aggrieved actual or prospective  
12 bidder or offeror, or a contractor; and

13           (b) Any appeal by an aggrieved party from a determination by  
14 the Chief procurement officer, the Director of Public Works, the head  
15 of a Purchasing Agency, or a designee of either officer which is  
16 authorized by Article A of Chapter 9 of this Title.

17           Section 6983.5. Protest of Solicitations or Awards.

18           (a) Scope. This Section applies to:

19           (1) A protest of a solicitation or award of a contract  
20 addressed to the Procurement Appeals Board an aggrieved actual  
21 or prospective bidder or offeror, or a contractor, and

22           (2) An appeal addressed to the Board of a decision under  
23 Section 6975(c).

24           (b) Time limitations on filing a protest or an appeal.

25           (1) For a protest under Subsection (a)(1) of this Section,  
26 the aggrieved person shall file a protest with the Board within  
27 fourteen (14) days after the aggrieved person knew or should  
28 have known of the facts and circumstances upon which the  
29 protest is based.

30           (2) For an appeal under Subsection (a)(2) of this Section,  
31 the aggrieved person shall file an appeal within seven (7) days of  
32 receipt of a decision under Section 6975(c).

1 (c) Decision. On any direct protest under Subsection (a)(1) of  
2 this Section or appeal under Subsection (a)(2) of this Section, the  
3 Board shall promptly decide whether the solicitation or award was in  
4 accordance with the statutes, regulations, and the terms of the  
5 conditions of the solicitation. The proceeding shall be de novo. Any  
6 prior determinations by administrative officials shall not be final or  
7 conclusive.

8 (d) Standard of review for factual issues. A determination of an  
9 issue of fact by the Board under Subsection (c) of this Section shall  
10 be final and conclusive unless arbitrary, capricious, fraudulent, or  
11 clearly erroneous.

12 Section 6983.6. Suspension or Debarment Proceedings. (a)  
13 Scope. This Section applies to a review of the Procurement Appeals  
14 Board of a decision under Section 6975.1 of this Title.

15 (b) Time limitation on filing an appeal. The aggrieved person  
16 shall file its appeal with the Board within sixty (60) days of the  
17 receipt of a decision under 6975.1(c).

18 (c) Decision. The Board shall promptly decide whether, or the  
19 extent to which, the debarment or suspension was in accordance with  
20 the statutes, regulations and the best interest of the territory, and  
21 was fair. The proceeding shall be de novo. Any prior determinations  
22 by administrative officials shall not be final or conclusive.

23 (d) Standard or review for factual issues. A determination of an  
24 issue of fact by the Board under Subsection (c) of this Section shall  
25 be final and conclusive unless arbitrary, capricious, fraudulent or  
26 clearly erroneous.

27 Section 6983.7. Contract and Breach of Contract Controversies.

28 (a) Scope. This Section applies to a review by the Procurement  
29 Appeals Board of a decision under Section 6975.2 of this Title.

30 (b) Time limitation on filing an appeal. The aggrieved  
31 contractor shall file its appeal with the Board within sixty (60) days of  
32 the receipt of the decision under Section 6975.2(c) of this Title.

33 (c) Decision. The Board shall promptly decide the contract or  
34 breach of contract controversy. The proceeding shall be de novo.

1 (d) Standard of review for factual issues. A determination of an  
2 issue of fact by the Board under Subsection (c) of this Section shall  
3 be final and conclusive unless arbitrary, capricious, fraudulent, or  
4 clearly erroneous.

5 Section 6983.8. No Finality to a Decision on a Issue of Law. No  
6 determination by the Procurement Appeals Board on an issue of law  
7 shall be final or conclusive.

8 Section 6983.9. Appeal and Review of Procurement Appeals Board  
9 Decisions.

10 (a) Appeal. Any person receiving an adverse decision, the  
11 territory, or both may appeal from a decision by the Procurement  
12 Appeals Board to the Superior Court of the territory of Guam.

13 (b) Authorization of appeal by the territory. No such appeals  
14 shall be made by the territory unless recommended by the Chief  
15 Procurement Officer, the Director of Public Works, or the head of the  
16 Purchasing Agency involved and approved by the Attorney General.

17 Section 6970. Discontinuance of Contractor's Appeal. After  
18 notice of an appeal to the Procurement Appeals Board has been filed  
19 by the Chief Procurement Officer, the Director of Public Works or the  
20 head of a Purchasing Agency, a contractor may not discontinue such  
21 appeal without prejudice, except as authorized by the Board."

22 Section 2. Subsection (c) of Section 6975 of the Government Code is  
23 amended to read:

24 "(c) Decision. If the protest is not resolved by mutual  
25 agreement, the Chief procurement officer, the Director of Public  
26 Works, the head of a purchasing agency, or a designee of one of these  
27 officers shall promptly issue a decision in writing. The decision shall:

28 (1) State the reasons for the action taken; and

29 (2) Inform the protestant of its right to judicial or  
30 administrative review as provided in this [Chapter] Title."

31 Section 3. Subsection (e) of Section 6975 of the Government Code is  
32 amended to read:

33 "(e) Finality of decision. A decision under Subsection (c) of  
34 this Section shall be final and conclusive unless fraudulent, or (1) any

1 person adversely affected by the decision commences an action in  
2 Court in accordance with Section 6978(a) of this Chapter; or (2) any  
3 person adversely affected by the decision appeals administratively to  
4 the Procurement Appeals Board in accordance with Section 6983.5 of  
5 this Title."

6 Section 4. Subsection (f) of Section 6975 of the Government Code is  
7 amended to read:

8 "(f) Stay of procurements during protest. In the event of a  
9 timely protest under Subsection (a) of this Section [or] 1 under  
10 Section 6978(a) of this Chapter, or under Section 6983.5 of this Title,  
11 the territory shall not proceed further with the solicitation or with the  
12 award of the contract until the Chief Procurement Officer or the  
13 Director of Public Works, after consultation with the head of the using  
14 agency or the head of a Purchasing Agency, makes a written  
15 determination that the award of a contract without delay is necessary  
16 to protect substantial interests of the territory."

17 Section 5. Subsection (c) of Section 6975.1 of the Government Code is  
18 amended to read:

19 "(c) Decision. The Chief Procurement Officer, the Director of  
20 Public Works or the head of a Purchasing Agency shall issue a written  
21 decision to debar or suspend. The decision shall:

- 22 (1) State the reasons for the action taken; and  
23 (2) Inform the debarred or the suspended person involved  
24 of its rights to judicial or administrative review as provided in  
25 this [Chapter] Title."

26 Section 6. Subsection (e) of Section 6975.1 is amended to read:

27 "(e) Finality of Decision. A decision under Subsection (c) of  
28 this Section shall be final and conclusive, unless fraudulent, or (1)  
29 the debarred or suspended person commences an action in court in  
30 accordance with Section 6978(b) of this Chapter; or (2) the debarred  
31 or suspended person appeals administratively to the Procurement  
32 Appeals Board in accordance with Section 6983.6 of this Title."

33 Section 7. Subsection (c) of Section 6975.2 of the Government Code is  
34 amended to read:

1           "(c) Decision. If such a controversy is not resolved by mutual  
2 agreement, the Chief Procurement Officer, the Director of Public  
3 Works, the head of a Purchasing Agency or the designee of one of  
4 these officers shall promptly assure a decision in writing. The  
5 decision shall:

6           (1) State the reasons for the action taken; and

7           (2) Inform the contractor of its right to judicial or  
8 administrative review as provided in this [Chapter] Title."

9           Section 8. Subsection (e) of Section 6975.2 of the Government Code is  
10 amended to read:

11           "(e) Finality of Decision. The decision under Subsection (c) of  
12 this Section shall be final and conclusive unless fraudulent, or; (a)  
13 The contractor commences an action in Court in accordance with  
14 Section 6978(c) of this Chapter; or (b) The Contractor appeals  
15 administratively to the Procurement Appeals Board in accordance with  
16 Section 6983.7 of this Title."

17           Section 9. Subsection (d) of Section 6978 of the Government Code is  
18 amended to read:

19           "(d) Limited Finality for Administrative Determinations. In any  
20 judicial action under this Section, factual or legal determinations by  
21 employees, agents or other persons appointed by the territory shall  
22 have no finality and shall not be conclusive, notwithstanding any  
23 contract provision, or regulation, "except to the extent provided in  
24 §§6964, 6983.5(d), 6983.6(d), and 6983.7(d) of this Title."

25           Section 10. Subsection (a) of Section 6978.1 of the Government Code  
26 is amended to read:

27           "6978.1. Time limitations on actions.

28           (a) Protested Solicitations and Awards. Any action under  
29 Section 6978(a) of this Chapter shall be initiated as follows:

30           (1) Within thirty (30) days after the aggrieved person  
31 knows or should have known of the facts giving rise to the  
32 action; or

1 (2) Within fourteen (14) days after receipt of a final  
2 administrative decision pursuant to Section 6975 of this Chapter  
3 or Section 6983.5(c), whichever is applicable."

4 Section 11. Subsection (b) of Section 6978.1 of the Government Code  
5 is amended to read:

6 "(b) Debarments and Suspensions for Cause. Any action under  
7 Section 6978(b) of this Chapter shall be commenced six (6) months  
8 after receipt of the decision of the Chief Procurement Officer, the  
9 Director of Public works, or head of a Purchasing Agency under  
10 Section 6975.1(c) of this Chapter [or], the decision of the Policy  
11 Office under Section 6981.1 of this Title, or the decision of the  
12 Procurement Appeals Board under Section 6983.6(c) of this Title,  
13 whichever is applicable."

14 Section 12. Subsection (c) of Section 6978.1 of the Government Code  
15 is amended to read:

16 "(c) Actions Under Contracts or for Breach of Contract. Any  
17 action commenced under Section 6978(c) of this Chapter shall be  
18 commenced within six (6) months of the date the claim arose, or within  
19 six (6) months the claimant knew or should have known, that a claim  
20 existed against the other party, except notice of appeals from the  
21 Procurement Appeals Board pursuant to Section 6983.9 concerning  
22 actions on a contract or for breach of contract shall be filed within  
23 twelve (12) months after the date of the Procurement Appeals Board  
24 decision."

25 Section 13. Section 6976 of the Government Code is amended to read:

26 "§6976. Applicability of this article. The provisions of this  
27 Article apply where it is determined administratively, or upon  
28 administrative or judicial review, that a solicitation or award of a  
29 contract is in violation of law."

30 Section 14. A new subsection (d) is added to §6980.6 of the  
31 Government Code to read:

32 "(d). Favors to the Territory. It shall be a breach of ethical  
33 standards for any person who is or may become a contractor, a  
34 subcontractor under a contract to the prime contractor or higher tier



1 contractor, or any person associated therewith, to offer, give or agree  
2 to give to any employee or agent of the territory, or for any employee  
3 or agent of the territory to accept, a favor or gratuity on behalf of  
4 the territory whether or not such favor or gratuity may be considered  
5 a reimbursable expense of the territory, during the pendency of any  
6 matter related to procurement from such person or any entity  
7 represented by such person."

8 Section 15. Subsection (c) of §6980.6 of the Government Code is  
9 amended to read:

10 "(c). Contract Clause. The prohibition against gratuities [and]  
11 , kickbacks and favors to the territory prescribed in this section shall  
12 be conspicuously set forth in every contract and solicitation therefor."

13 Section 16. A new §6964.4 is added to the Government Code to read:

14 "6964.4. Record of Procurement Actions Taken Pursuant to This  
15 Title. The process of procurement shall be documented at each step  
16 of the process, regardless of the manner of procurement authorized for  
17 the particular goods or services to be delivered to the government.

18 (a) All pre-bid conferences shall be tape recorded and a  
19 transcript of the tape recordings shall be made available to any  
20 member of the public who requests it within ten (10) days of the  
21 pre-bid conference.

22 (b) All specifications drawn up by the government for  
23 procurement purposes shall state within the specifications themselves  
24 what sources were used for drawing them up, who was consulted about  
25 their preparation, and who drew up the specifications.

26 (c) All decisions made concerning procurement shall be in writing  
27 and shall contain the bases for the decision, including a record of the  
28 underlying reasoning and process of deliberations. Copies of any  
29 decision shall be available to any member of the public who requests it  
30 immediately after the issuance of such decision."

31 Section 17. Section 6969.5 of the Government Code is amended to  
32 read:

33 "§6959.5. Emergency Procurements.

1           Notwithstanding any other provision of this Title, the Chief  
2 Procurement Officer, the Director of Public Works, the head of a  
3 purchasing agency, or a designee of either officer may make or  
4 authorize others to make emergency procurements when there exists a  
5 threat to public health, welfare, or safety under emergency conditions  
6 as defined in regulations promulgated by the Policy Office; provided  
7 that such emergency procurements shall be made with such competition  
8 as is practicable under the circumstances. A written determination of  
9 the basis for the emergency and for the selection of the particular  
10 contractor shall be included in the contract file. The requirements for  
11 a written determination for the emergency shall be met if the  
12 procurements are being made on the basis of the Governor's  
13 declaration of an emergency situation by Executive Order if such  
14 Order states that emergency procurement may be resorted to for the  
15 purposes of the Order.

16           No situation shall be considered an emergency unless clear and  
17 compelling evidence for such emergency exists and no situation shall  
18 be considered an emergency where reasonable and prudent  
19 administrative and management procedures should have foreseen and  
20 precluded the emergency."

# EXHIBIT 2

# BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of  
American and English Jurisprudence,  
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

**SIXTH EDITION**

BY

**THE PUBLISHER'S EDITORIAL STAFF**

Coauthors

**JOSEPH R. NOLAN**

Associate Justice, Massachusetts Supreme Judicial Court  
and

**JACQUELINE M. NOLAN-HALEY**

Associate Clinical Professor,  
Fordham University School of Law

Contributing Authors

**M. J. CONNOLLY**

Associate Professor (Linguistics),  
College of Arts & Sciences, Boston College

**STEPHEN C. HICKS**

Professor of Law, Suffolk University  
Law School, Boston, MA

**MARTINA N. ALIBRANDI**

Certified Public Accountant, Bolton, MA

ST. PAUL, MINN.  
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inception to its conclusion. The name of "docket" or "trial docket" is sometimes given to the list or calendar of causes set to be tried at a specified term, prepared by the clerks for the use of the court and bar.

#### General Classification

An *appearance docket* is one in which the appearances in actions are entered, containing also a brief abstract of the successive steps in each action. A *bar docket* is an unofficial paper consisting of a transcript of the docket for a term of court, printed for distribution to members of the bar. An *execution docket* is a list of the executions sued out or pending in the sheriff's office. A *judgment docket* is a list or docket of the judgments entered in a given court, methodically kept by the clerk or other proper officer, open to public inspection, and intended to afford official notice to interested parties of the existence or lien of judgments. *See also* Judgment docket; Preferred dockets.

*Civil docket.* Fed.R. Civil P. 79(a), and analogous state rules, requires that the clerk keep a "civil docket" of all actions pending before the court. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the actions is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

*Docket fee.* An attorney's fee, of a fixed sum, chargeable with or as a part of the costs of the action, for the attorney of the successful party; so called because chargeable on the docket, not as a fee for making docket entries.

*Dock-master.* In England, an officer invested with powers within the docks, and a certain distance therefrom, to direct the mooring and removing of ships, so as to prevent obstruction to the dock entrances.

*Dock receipt.* Also known as dock warrant. A type of interim certificate issued by maritime shipping company upon delivery of goods at the dock, often entitling the designated person to have a bill of lading issued to him. Trade usage may in some cases entitle such paper to be treated as a document of title. If the receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt. *See also* Document (*Document of title*); Warehouse receipt.

*Dock sale.* Exists where a purchaser uses its owned or rented vehicles to take possession of the product at the seller's shipping dock. In most states, the sale is apportioned to the operating state of the purchaser, rather than the seller.

*Dock warrant.* *See* Dock receipt.

*Doctor, v.* To prescribe or treat medically or to treat as a doctor or physician.

*Doctor, n.* A learned man; one qualified to give instruction of the higher order in a science or art, particularly, one who has received the highest academical degree in his art or faculty, as, a doctor of laws, medicine, or theology. In colloquial language, however, the term is practically restricted to practitioners of medicine; i.e. physicians, surgeons.

*Doctor-patient privilege.* In law of evidence, right of patient to exclude from evidence communications made by him to his physician; recognized in most jurisdictions but sometimes limited; e.g. to communications to psychotherapist.

*Doctrinal interpretation.* *See* Interpretation.

*Doctrine.* A rule, principle, theory, or tenet of the law; as, e.g. Abstention doctrine; Clean hands doctrine, etc.

**Document.** An instrument on which is recorded by means of letters, figures, or marks, the original, official, or legal form of something, which may be essentially used. In this sense the term "document" applies to writings, to words printed, lithographed, or photographed; to maps or plans; to seals, plates, or even stones on which inscriptions are cut or engraved. In the plural, the deeds, agreements, title-papers, letters, receipts, and other written instruments used to prove a fact. As used as a verb, to support with documentary evidence or authorities.

Within meaning of the best evidence rule, document is any physical embodiment of information or ideas; e.g. a letter, a contract, a receipt, a book of account, a blueprint, or an X-ray plate. *Strico v. Cotto*, 67 Misc.2d 636, 324 N.Y.S.2d 483, 486. *See also* Documentary evidence.

*See also* Instrument.

*Ancient documents.* Deeds, wills, and other writings more than thirty years (twenty years under Fed.Evid.R. 803(16)) old are so called; they are presumed to be genuine without express proof, when coming from the proper custody.

*Commercial law.* Under U.C.C., any paper including document of title, security, invoice, certificate, notice of default and the like. U.C.C. § 5-103. *See also* Documentary draft.

*Conflicts of law.* (1) Whether a right is embodied in a document is determined by the law which governs the right. (2) As between persons who are not both parties to the conveyance, (a) the effect of a conveyance of a right embodied in a document depends upon the effect of the conveyance of the document; and (b) the effect of a conveyance of an interest in a document in which a right is embodied is determined by the law that would be applied by the courts of the state where the document was at the time of the conveyance. These courts would usually apply their own local law in determining such questions. Restatement, Second, Conflicts, § 249.

*Document of title.* A written description, identification or declaration of goods "which in the regular course of business or financing is treated as adequately evidencing

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... fishing. 10 Obs. A person of great learning qualified to instruct. —v.t. Colloq. 1 To prescribe for or treat medicinally. 2 To repair. 3 To alter; falsify, as evidence. —v.l. Colloq. 4 To practice medicine. 5 To take medicine or undergo medicinal treatment. [*<L, a teacher <docere teach>*]

—*doctoral adj.*

**doc-tor-ate** (dok'tor-it) *n.* The degree, status, or title of a doctor.

**doc-tri-naire** (dok'trī-nār) *adj.* Theoretical; visionary. —*n.* One whose views are derived from theories rather than from facts; a scholastic or impractical theorist. —*doc'tri-nair'ism n.*

**doc-tri-nal** (dok'trī-nəl, also *Brit. dok'trī-nəl*) *adj.* 1 Pertaining to or characterized by doctrine. 2 Having to do with teaching; instructive. See synonyms under DOGMATIC. —*doc'tri-nal'y adv.*

**doc-trine** (dok'trīn) *n.* 1 That which is taught or set forth for acceptance or belief; that which is held to be true by any person, sect, or school; especially, in religion, a tenet, or body of tenets; belief; dogma. 2 Obs. Instruction; teaching. [*<OF <L doctrina teaching <docere teach>*]

*Synonyms:* article, belief, dogma, precept, principle, teaching, tenet. *Doctrine* primarily signifies that which is taught; *principle*, the fundamental basis on which the teaching rests. A *doctrine* is reasoned out, and may be defended by reasoning; a *dogma* rests on authority, as of the decision of the church, etc. A *doctrine* or *dogma* is a statement of some one item of belief; a *creed* is a summary of doctrines or dogmas. *Dogma* has commonly the signification of a belief arrogantly asserted. *Tenet* is simply that which is held, and is applied to a single item of belief. Compare FAITH, LAW.

**doc-u-dra-ma** (dok'yə-drā'mə, -drā') *n.* A television drama or series based on fact but presented in the style of a documentary.

**document** (dok'yū-mənt) *n.* 1 An original piece of written or printed matter conveying authoritative information or evidence. 2 One of the several papers affixed to a documentary bill and testifying to or effecting the transfer of goods, as a bill of lading, certificate of insurance, etc. 3 A documentary. 4 Obs. A cautionary example. 5 Obs. Instruction. 6 Obs. Evidence. See synonyms under RECORD. —*v.t.* 1 To furnish with documents. 2 To prove by documentary evidence. 3 To supply with references and notes to authoritative material; to document a text. [*<OF <L documentum a lesson <docere teach>*] —*doc'u-men'tal adj.*

**docu-men-tal-ist** (dok'yə-men'təl-ist) *n.* A specialist in the assembling, classifying, and organizing of documents; an archivist with special training in the field of documentation.

**doc-u-men-tar-y** (dok'yə-men'tar-ē) *adj.* Of, pertaining to, supported by, or based upon documents; also *doc'u-men'tal*. —*n. pl.* -ries A motion-picture film that records or exhibits a phase of regional, social, or cultural life without fictionalization.

**doc-u-men-ta-tion** (dok'yə-men'tā-shən) *n.* 1 The preparation or supplying of documents, references, records, etc. 2 The documents thus furnished. 3 The act of citing sources in a literary work.

**dod-der**<sup>1</sup> (dod'ər) *v.i.* To tremble or totter, as from age. [*Cf. ME didder tremble*]

**dod-der**<sup>2</sup> (dod'ər) *n.* Any of several leafless, twining herbs of the genus *Cuscuta*, parasitic on various plants to which they adhere by suckers. [*ME dodder*]

**dod-dered** (dod'ərd) *adj.* 1 Having lost the top or branches through age or decay; said of trees. 2 Shattered; infirm. [*ME dodden clip*]

**dod-der-ing** (dod'ər-īng) *adj.* Shaky; infirm; hence, senile.

**dodeca-** *combining form* Twelve; of or having twelve: *dodecagon*. Also, before vowels, *dodec-*. [*<Gk. dōdeka twelve>*]

**do-dec-a-gon** (dō-dek'ə-gon) *n.* *Geom.* A figure, especially a plane figure, with twelve sides and twelve angles. [*<Gk. dōdekagōnon>*] —*do-dec-a-gon'al* (dō-dek'ə-gō-nəl) *adj.*

**do-dec-a-phon-ic** (dō-dek'ə-fō-n'ik) *adj.* *Music* Twelve-tone.

**dodge** (dodj) *v.* *dodged, dodg-ing v.t.* 1 To avoid; as a blow, by a sudden turn or twist. 2 To evade, as a duty or issue, by cunning or trickery. —*v.l.* 3 To move quickly to one

side or change position suddenly, as to avoid a blow. 4 To practice trickery; be deceitful. —*n.* An act of dodging; evasion; hence, a trick to deceive or cheat; any trick. See synonyms under ARTIFICE. [*Origin unknown*]

**dodg-er** (dodj'ər) *n.* 1 One who dodges; a tricky fellow. 2 A small handbill. 3 A cooked cake of Indian meal; corn dodger.

**do-do** (dō'dō) *n. pl.* -does or -dos A large, extinct bird (genus *Rapheo*) of Mauritius and Réunion, about the size of a turkey, with rudimentary, functionless wings. [*<Pg. doudo foolish>*]

**doe** (dō) *n.* The female of the deer, antelope, hare, rabbit, or kangaroo. ♦ Homophone: *dough*. [*OE dā*]

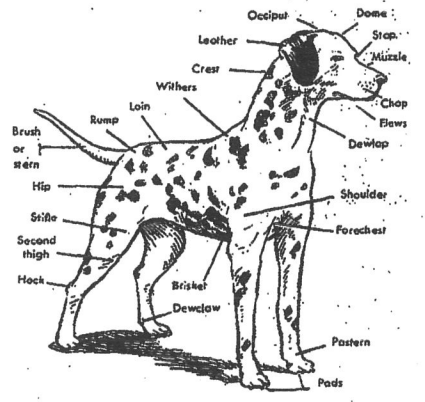
**do-er** (dō'ər) *n.* One who acts, does, or performs; an agent. See synonyms under AGENT.

**does** (duz) Present tense, third person singular, of DO.

**doe-skin** (dō'skīn) *n.* 1 The skin of a doe, especially when dressed. 2 A heavy, twilled, cotton fabric napped on one side; also, a heavy, short-napped, woolen fabric resembling doeskin.

**does-n't** (duz'ənt) Does not; a contraction. **doff** (dof, dōf) *v.t.* 1 To take off or remove, as clothing. 2 To take off (the hat) in salutation. 3 To throw away; discard. [*Contraction of DO OFF*] —*doff'er n.*

**dog** (dōg, dog) *n.* 1 A domesticated carnivorous mammal (*Canis familiaris*), of worldwide distribution and many varieties, noted for its adaptability and its devotion to man. ♦ Collateral adjective: *canine*. 2 One of



DOG Nomenclature for anatomical parts

various other species of the family *Canidae*, as the dingo, etc. 3 The male of the dog and various other animals of the *Canidae*: a dog fox. 4 In the western United States, a prairie dog. 5 *Mech.* Any small device that holds or grips; a catch, detent, or pawl. 6 The hammer of a firearm. 7 An andiron. 8 *Meteorol.* A sundog or fog dog. 9 A fellow; man-about-town; a gay dog. 10 A scoundrel; rascal. 11 *U.S. Slang* A hot dog. 12 *pl. Slang* Feet. —*dead dog Slang* A person or thing of no use or value. —*to put on the dog U.S. Slang* To make a pretentious display. —*adv.* Very; utterly; used in combination: *dog-tired*. —*v.t.* *dogged, dog-ging* 1 To follow persistently; hound; hunt. 2 To fasten with or as with a dog or catch. [*OE dogga*]

**Dog** (dōg, dog) 1 Either of two southern constellations, called *Canis Major* and *Canis Minor*. See CONSTELLATION. 2 Sirius, the Dog Star.

**dog-ape** (dōg'āp, dog'-) *n.* A baboon or similar ape.

**dog-bane** (dōg'bān, dog'-) *n.* Any of a genus (*Apocynum*, family *Apocynaceae*) of smooth, reddish-stemmed herbs about 3 feet high, having an acrid, milky juice; especially, the hemp dogbane (*A. cannabinum*), used in medicine as a cardiac tonic, and the spreading dogbane (*A. androsaemifolium*) of North America.

**dog-ber-ry** (dōg'ber-ē, dog'-) *n. pl.* -ries 1 The European dogwood (*Cornus sanguinea*). 2 Its fruit. 3 The chokeberry. 4 The bearberry (genus *Arctostaphylos*). 5 The English dog rose.

**dog-bri-er** (dōg'bri-ər, dog'-) *n.* The dog-dog-cart (dōg'kār't, dog'-) *n.* 1 A vehicle, usually two-wheeled, with a set back to back and, originally, an open space for dogs beneath the rear seat. 2 A cart hauled by one or more dogs.

**dogs** (dōj) *n.* The elective chief magistrate holding princely rank, in the former republics of Venice and Genoa. [*<Ital. <L. dux chief. Doublet of DUKE>*] —*doggedly adv.*

**dog-ear** (dōg'ēr, dog'-) *n.* The corner of a book, turned down to mark a place of careless use. —*v.t.* To turn or fold down the corner of (a page). Also *dog's-ear* —*doggedly adv.*

**dog-fen-mel** (dōg'fēn'əl, dog'-) *n.* 1 The heath aster. 2 The heath aster.

**dog-fight** (dōg'fīt, dog'-) *n.* 1 A fight or as between dogs. 2 *Mil.* Combat in quarters between aircraft or tanks.

**dog-fish** (dōg'fīsh, dog'-) *n. pl.* -fish One of various small, littoral sharks, especially the common spiny dogfish (*Squalus acanthias*), North American waters, and the smooth dogfish (*genus Mustelus*).

**dog-ged** (dōg'īd, dog'-) *adj.* Silently or persistently; stubborn; obdurate. See under MOROSE, OBSTINATE. —*dog-ged-ness n.*

**dog-ger** (dōg'ər, dog'-) *n.* *Naut.* A two-masted fishing vessel, broad of beam and with a fish-well in the center, used in the North Atlantic. [*ME doggere; origin uncertain*]

**dog-ger-el** (dōg'ər-əl, dog'-) *n.* A proverbially written verse, usually comic and lacking in effect. —*adj.* Of or containing such verse. Also *dog-gel*. [*ME; origin unknown*] —*dog-ger-el-ist n.*

**dog-gér-y** (dōg'ər-ē, dog'-) *n. pl.* -ies Dogs collectively. 2 Canaille; the scum of a crowd. 3 Doglike conduct.

**dog-gish** (dōg'īsh, dog'-) *adj.* 1 Like a dog; snappish. 2 *Colloq.* Showily fashionable; pretentious. —*dog-gish-ly adv.* —*dog-gish-ness n.*

**dog-go** (dōg'ō, dog'-) *adv.* *Slang* In concealment; in hiding; to lie doggone.

**dog-gy** (dōg'ē, dog'-) *adj.* -gy, -gier, -giest or pertaining to dogs; doglike; a doggy. 2 *Colloq.* Admirable; fashionable; stylish. —*n. pl.* -gies A dog, especially a bulldog. Also *dog-gie*.

**doggy bag** A bag containing leftovers from a restaurant customer may take home for his dog.

**dog house** 1 A kennel. 2 The caboose on a freight train. —*in the dog house* In disfavor.

**do-gie** (dō'gē) *n.* In the western United States, a stray or motherless calf; also spotted calf. [*Origin unknown*]

**dog in the manger** One who will neither eat a thing himself nor permit others to do so.

**dog-leg-ged** (dōg'leg'īd, -leg'd, dog'-) *adj.* Bending a bend like a dog's hind leg; said of a road, etc. Also *dog'-leg*.

**dog-ma** (dōg'mə, dog'-) *n. pl.* -mas (-mə-tə) 1 *Theol.* A doctrine or teaching of religious truth as maintained by the Christian church or any particular denomination; hence, a statement of religious faith formulated by a body possessing authority to decree or decide. 2 Any settled opinion or conviction based on an established principle, maxim, or tenet. See under DOCTRINE. [*<L <Gk. dōgma opinion, tenet <dōkein think>*]

**dog-mat-ic** (dōg-mat'ik, dog'-) *adj.* 1 Based by positive and authoritative assertion on opinions without evidence. 2 Flippant. 3 Like or pertaining to dogmatism. —*dog-mat'i-cal-ly adv.* —*dog-mat'i-cal-ness n.*

*Synonyms:* arrogant, authoritative, dogmatic, doctrinal, domineering, imperious, opinionated, overbearing, positive, opinionated, systematic.

**dog-mat-ism** (dōg'mə-tiz'əm, dog'-) *n.* A positive or arrogant assertion, as of belief, without proof. 2 *Philos.* An uncritical faith in the presumptions of reason or a priori truth, opposed to *scepticism*.

**do-good-er** (dō'gōd'ər) *n.* An idealist

# Exhibit r





Office of the Attorney General  
 Elizabeth Barrett-Anderson  
 Attorney General of Guam  
 Solicitor Division  
 590 S. Marine Corps Drive  
 Tamuning, Guam 96913 • USA  
 (671) 475-3324 • (671) 472-2493 (Fax)  
 www.guamag.org

Attorneys for the Government of Guam

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THE OFFICE OF PUBLIC ACCOUNTABILITY  
 HAGÁTÑA, GUAM

In the Appeal of:	)	CONSOLIDATED APPEALS NOS.
	)	OPA-PA-16-007 AND OPA-PA-16-011
CORE TECH INTERNATIONAL CORP.,	)	
	)	
Appellant,	)	
	)	
and	)	DEPARTMENT OF PUBLIC WORKS
	)	
GUAM DEPARTMENT OF PUBLIC	)	REBUTTAL TO CORE TECH
WORKS,	)	INTERNATIONAL, INC'S COMMENTS ON
	)	THE AGENCY REPORT
Purchasing Agency.	)	
	)	

The Department of Public Work ("DPW") hereby submits its rebuttal to Core Tech International Corp's ("Core Tech") comments to DPW's Agency Report that was filed on August 23, 2016.

*Handwritten signature and date:*  
 9/6/16  
 L&L Limited Lab

## ARGUMENT

### A. The Indefinite Delivery Indefinite Quantity Contract is Consistent with the Request for Proposals

Core Tech's assertion that the Indefinite Delivery Indefinite Quantity Contract "IDIQ" Contract envisions circumvention of the Request for Proposals ("RFP"), which is incorrect, is not properly before the OPA. Core Tech appeals DPW's decision to deny its protest based on speculation that the IDIQ may exceed the One Hundred Million Dollar (\$100,000,000.00) cap set in the RFP.

Core Tech suggests that letters from Guam Educational Facilities Foundation's ("GEFF") attorney and Speaker Won Pat support its position. These letters only indicate an interpretation of the laws authorizing the procurement. Whether their interpretations of these laws are correct is irrelevant to this RFP because this RFP limits the cost of the project at One Hundred Million Dollars (\$100,000,000.00). Anything beyond the cap would require a separate procurement.

DPW has never asserted the RFP allows DPW to exceed the One Hundred Million Dollar (\$100,000,000.00) cap. Section 4.0 of the RFP clearly sets the cap at One Hundred Million Dollars (\$100,000,000.00). Section V of the IDIQ incorporates the RFP and Section 3.1 of the IDIQ also limits the compensation and payment for services at One Hundred Million Dollars (\$100,000,000.00). The One Hundred Million Dollar (\$100,000,000.00) cap is further documented in the Negotiating Team's May 13, 2016 Memorandum *See*, DPW Hearing Exhibit B at fourth bullet point on page 4 of 5, and Exhibit F. Therefore, the IDIQ does not circumvent the RFP.

## B. DPW Maintains a Complete Procurement Record

Title 5 G.C.A. § 5249 sets forth a number of items to be included in the procurement record. Core Tech takes issue with two of the listed items. Core Tech contends that DPW failed to provide a communications log and record the negotiation meetings.

DPW has yet to finalize the procurement record. This usually occurs prior to submitting the contract to the Attorney General's office for review and approval as to legality and form. Part of the submittal is the certification by the procurement officer that the procurement record is complete. Due to Core Tech's appeal of the procurement, the process has been stayed pending resolution of the appeal. DPW intends to complete the log once the stay is lifted.

Further to the requirements of the procurement record, it has been DPW's interpretation of 5 G.C.A. § 5249(c) that sound recordings of negotiation meetings are not required in the procurement. There may be deference to an agency's interpretation of an ambiguous statute when the agency's conclusion is based on a permissible construction of the statute. *See Guam Mem'l Hosp. Auth. v. Civil Serv. Comm'n*, 2015 Guam 18 ¶ 13 (Guam June 24, 2015). Whether the first two clauses in 5 G.C.A. § 5249(c) are separated by a semicolon or comma, they still can be read independently as a comma is used to separate phrases and a semicolon provides a more distinct separation. This may account for the semicolon used in the published version as the Guam Compiler is well within his authority to make typographical corrections to clarify the independent nature of the adjacent clauses. 1 G.C.A. § 1606.

DPW satisfied the requirements of the procurement record by providing a record of the negotiations including a memo detailing the negotiation process and the determination made as a result of the negotiations.

**C. Remedies Available Prior to an Award**

The Guam Procurement Law provides remedies prior to an award in the event it is determined that a solicitation or proposed award is in violation of law. Although Core Tech seeks to have the solicitation or proposed award cancelled, the law allows the solicitation or proposed award to be revised to comply with the law. 5 G.C.A. § 5451.

As there has only been a proposed award, the proposed IDIQ, the communications log, and the record of negotiations can be revised to comply with the law, if deemed necessary. Section 3.1 of the IDIQ can be revised. The communications log can be finished. The record of negotiations can be further detailed, if necessary.

Further, the contract has yet to be reviewed and approved by either the Attorney General or Governor. As is the required practice the contract will be submitted to the Attorney General via a memorandum recommending approval that will address a variety of contract issues, including those raised by Core Tech in its appeal. Until the Attorney General and Governor's office have reviewed and approved the contract is a proposed contract.

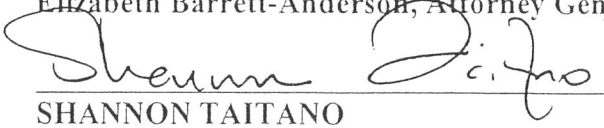
The current phase of the procurement process is pre-award and unfinished. Therefore, the solicitation or proposed award can be revised as Core Tech's allegations concerning the procurement are not fatal to the procurement.

**CONCLUSION**

DPW requests the relief stated in the Agency Report.

Dated this 2<sup>nd</sup> day of September, 2016.

By:

**OFFICE OF THE ATTORNEY GENERAL**  
**Elizabeth Barrett-Anderson, Attorney General**  
  
**SHANNON TAITANO**  
Assistant Attorney General