

1 Ignacio C. Aguigui, Esq.
2 **THE LAW OFFICES OF**
3 **IGNACIO CRUZ AGUIGUI**
4 A Professional Corporation
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
10 General Email: admin@aguigui.com

RECEIVED
OFFICE OF PUBLIC ACCOUNTS
PROCUREMENT APPEALS
DATE: 9/8/16
TIME: 12:15 AM PM BY: EMO
FILE NO. OPA-PA: 16-007 & 16-011

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

11 *Attorneys for Interested Party*
12 *Guam Educational Facilities Foundation, Inc.*

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

17 IN THE APPEAL OF:

19 CORE TECH INTERNATIONAL CORP.,

21 Appellant.

CONSOLIDATED APPEAL NOS.:

OPA-PA-16-007
OPA-PA-16-011

**GUAM EDUCATIONAL FACILITIES
FOUNDATION, INC.'S OBJECTION TO
CORE TECH'S REQUEST TO REVIEW
THE TAPE RECORDINGS OF THE
EVALUATION TEAM MEETINGS FILED
UNDER SEAL ON SEPTEMBER 6, 2016**

24 **GUAM EDUCATIONAL FACILITIES FOUNDATION, INC.** ("GEFF"), interested
25 party, hereby submits its objection to Appellant Core Tech International Corporation's ("Core
26 Tech") request to review the tape recordings of the evaluation team's meetings filed under seal
27
28

1 (“Sealed Tapes”) by Purchasing Agency Department of Public Works (“DPW”) on September 6,
2 2016.

3 The Sealed Tapes should not be made available for public inspection for the following
4 reasons: First, under 2 GAR Div. 4 § 3114(h), proposals of offerors who are not awarded the
5 contract shall not be opened to public inspection and even after award, those portions of an
6 awardee’s proposal designated as confidential and proprietary are also protected from public
7 disclosure. Second, the Sealed Tapes are not required to be included in the Procurement Record
8 described in 5 GCA § 5249, and, in any event, the record already contains the required
9 attendance sheets of evaluation team meetings. Third, the contents of the Sealed Tapes are not
10 relevant to any issue raised in Core Tech’s protests or Notices of Appeal. Accordingly, the
11 Sealed Tapes should remain filed under seal protected from public disclosure.

12 **I. THE SEALED TAPES CONTAIN DISCUSSIONS RELATING TO THE**
13 **OFFERORS’ PROPOSALS, WHICH AT THIS STAGE OF THE**
14 **PROCUREMENT ARE PROTECTED FROM PUBLIC DISCLOSURE**

15 Section 3114(h)(1) of the Procurement Regulations provides that “[p]roposals of offerors
16 who are not awarded the contract shall not be opened to public inspection.” 2 GAR Div. 4 §
17 3114(h)(1). *See also* 2 GAR Div. 4, § 3114 (i)(2) (“the agency conducting the procurement
18 shall not disclose any information contained in any proposals until *after* the award of the
19 proposed contract has been made”) (emphasis added). *See also In the Appeal of Guam*
20 *Community Improvement Foundation, Inc.*, OPA-PA-09-005, Decision at 6 (Guam OPA, Nov.
21 27, 2009) (“there was no award of the contract in this matter so none of the proposals can be
22 made public at this time”). Further, even after award, portions of the awardee’s proposal remain
23 non-public if properly designated confidential and proprietary. *See* 2 GAR Div. 4 § 3114(f)
24 (instructing that a Request for Proposal shall contain a “statement that offerors may designate
25 those portions of the proposals which contain trade secrets or other proprietary data which may
26 remain confidential”); *Id.* at § 3114(h)(2) (providing that those portions of an awardee’s
27 proposal designated as confidential and proprietary remain non-public unless objected to by the
28

1 agency, in which case the designated portions become public unless the awardee protests or
2 withdraws the proposal).

3 Here, no contract award has been made yet. (See Notice of Intent to Award,
4 Procurement Record at Tab 16 (“As provided for in the RFP, this Notice of Award is subject to
5 execution of a written contract.”).) Accordingly, because the Sealed Tapes presumably contain
6 discussions by the evaluation team on the contents of the offerors’ proposals and presentations
7 by the offerors on their respective proposals, the Sealed Tapes should only be made available for
8 *in camera* inspection by the Public Auditor should such inspection be deemed necessary in
9 resolving the instant appeal.

10 **II. THE SEALED TAPES ARE NOT PART OF THE PROCUREMENT**
11 **RECORD AND THE RECORD ALREADY CONTAINS THE REQUIRED**
12 **ATTENDANCE SHEETS**

13 Pursuant to 5 GCA § 5249, the procurement officer shall maintain a procurement record
14 containing the following:

- 15 (a) the date, time, subject matter and names of participants at any meeting
16 including government employees that is in any way related to a
17 particular procurement;
- 18 (b) a log of all communications between government employees and any
19 member of the public, potential bidder, vendor or manufacturer which
20 is in any way related to the procurement;
- 21 (c) sound recordings of all pre-bid conferences; negotiations arising from a
22 request for proposals and discussions with vendors concerning small
23 purchase procurement;
- 24 (d) brochures and submittals of potential vendors, manufacturers or
25 contractors, and all drafts, signed and dated by the draftsman, and
26 other papers or materials used in the development of specifications;
27 and
- 28 (e) the requesting agency’s determination of need.

5 GCA § 5249.

Sound recordings of evaluation of proposals are **not** required to be maintained as part of
the procurement record. Further, the procurement record already contains the attendance sheets
of the evaluation team meetings showing the date, time, subject matter, and names of participants
required by 5 GCA § 5249(a). See Procurement Record at Tab 12. Thus, the Sealed Tapes are
not required to be made available as part of the public procurement record. See 5 GCA § 5251.

1 (“The record required by § 5249 of this Chapter is a public record and, subject to rules
2 promulgated by the Public Auditor, any person may inspect and copy any portion of the record.”)

3 **III. THE SEALED TAPES ARE NOT RELEVANT TO ANY ISSUE RAISED IN**
4 **CORE TECH’S PROTESTS OR NOTICES OF APPEAL**

5 Core Tech did not challenge the evaluation process or the ranking of the offerors. See
6 Core Tech’s Notices of Appeal filed June 23, 2016 and August 10, 2016; Core Tech’s List of
7 Issues filed August 30, 2016. Thus, the contents of the Sealed Tapes, which presumably contain
8 recordings of discussions about the contents of the offerors’ proposals, are not relevant to the
9 issues raised in this appeal and need not be reviewed by Core Tech.

10 Further, the contents of the Sealed Tapes are not relevant to Core Tech’s appeal issue
11 regarding the completeness of the procurement record. As stated above, the Sealed Tapes are not
12 required to be maintained as part of the procurement record described in 5 GCA § 5249, and the
13 procurement record already contains the attendance sheets required by § 5249(a). Thus, there is
14 no basis to allow the public disclosure of the Sealed Tapes.


15 **IV. CONCLUSION**

16 For the reasons stated above, the Sealed Tapes should not be made available for public
17 inspection and should only be made available for *in camera* inspection by the Public Auditor
18 should such inspection be deemed necessary in resolving the instant appeal.

19 Dated: September 8, 2016.

20 **THE LAW OFFICES OF**
21 **IGNACIO CRUZ AGUIGUI**

22 By:


23 **IGNACIO C. AGUIGUI, ESQ.**
Suite 310, RK Plaza
341 S. Marine Corps Drive
24 Tamuning, Guam 96913
Telephone (671) 989-9253/987-9914
Facsimile (671) 989-9255

25 **CALVO FISHER & JACOB LLP**

26 259 Martyr Street, Suite 100, Hagåtña, Guam 96910
27 Telephone: (671) 646-9355
Facsimile: (671) 646-9403

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