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8 **PROCUREMENT APPEAL**
9 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

11 In the Appeal of

12 Core Tech International Corp.,

15 Appellant.

16 and

17 GUAM DEPARTMENT OF PUBLIC
18 WORKS,

19 Purchasing Agency.

DOCKET NO. OPA-PA-16-007
OPA-PA-16-011

**REPLY RE CORE TECH'S OBJECTION TO
SUBPOENA TO HENRY J. TAITANO**

21 Appellant Core Tech International Corp. ("Core Tech"), by and through counsel, replies to
22 Guam Educational Facilities Foundation's ("GEFF") Response to Core Tech's Objections to the
23 Subpoena served on Henry J. Taitano on September 12, 2016.

24 In its Response, GEFF misinterprets Guam Procurement Law, again. It contends that 5 GCA §
25 9217 does not in any manner circumscribe its ability to directly subpoena witnesses. Specifically,
26 GEFF argues that §9217 authorizes the parties to issue subpoenas pursuant to Rule 45 of the Guam
27 Rules of Civil Procedure, and ignores the entire mechanism Section 9217 provides for the issuance of
28 subpoenas. This interpretation is incorrect. Section 9217 provides:

1 § 9217. Subpoena.

2 (a) Before the hearing has commenced the agency shall issue subpoenas and
3 subpoenas duces tecum at the request of any party in accordance with the
4 provisions of §1985 of the Code of Civil Procedure. After the hearing has
5 commenced the agency hearing a case or a hearing officer sitting alone may
6 issue subpoenas and subpoenas duces tecum.

7 5 GCA § 9217. Section 9217 unequivocally authorizes *the OPA* to issue subpoenas at the request of
8 a party in accordance with §1985 of the Code of Civil Procedure, a precursor to GRCP 45.

9 GEFF also fails to address its failure to comply with the Hearing Officer clear directive to the
10 parties in its *Notice of Re-Scheduled Hearing re Appellant's Appeal* (“Notice of Re-Scheduled
11 Hearing”), requiring that an application shall be made “to the Hearing Officer for Procurement
12 Appeals, Office of Public Accountability” for the “issuance of subpoenas to compel the attendance of
13 witnesses and the production of books document or other things.” *Notice of Re-Scheduled Hearing* at
14 2 (August 11, 2016). GEFF has not requested that the Hearing Officer issue a subpoena to Mr.
15 Taitano. GEFF has not complied with Guam Procurement law as well as the OPA’s express
16 instructions, and continues to refuse to comply after being informed of the same.

17 In its response, GEFF admits it is calling Mr. Taitano solely to retaliate for Core Tech’s
18 exploration of the involvement of Edward J. Calvo (“EJ Calvo”) in the RFP. GEFF has even
19 suggested that it will not call Mr. Taitano if Core Tech drops its investigation into EJ Calvo’s
20 involvement in the RFP, claiming “although it had never been GEFF’s desire to inject this issue as
21 part of these appeals, it was Core Tech’s own vicious attempts to drag Mr. Calvo into these
22 proceedings which, as a matter of justice and fair play, now requires that this issue be looked into
23 further *if Core Tech insists on proceeding with its baseless campaign against Mr. Calvo.*” Response
24 at 3. (Emphasis added.) It appears GEFF intends to use its improper subpoena of Mr. Taitano as a
25 bargaining tool to convince Core Tech to abandon its investigation into Mr. Calvo’s involvement.

26 GEFF’s claims that “serious ethical issues” are raised by Mr. Taitano and his father-in-law,
27 Glenn Leon Guerrero, are baseless. Mr. Leon Guerrero properly recused himself from the RFP when
28 Core Tech picked up an RFP packet, before Core Tech had even submitted a bid. 5 G.C.A. §5628(a)
provides:

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2 (a) Conflict of Interest. It shall be a breach of ethical standards for any
3 employee to participate directly or indirectly in a procurement *when the employee*
4 *knows that*:

5 (1) the employee or any member of the employee's immediate
6 family has a financial interest pertaining to the procurement;

7 (2) a business or organization in which the employee, or any member
8 of the employee's immediate family, has a financial interest pertaining to
9 the procurement; or

10 (3) any other person, business or organization with whom the
11 employee or any member of the employee's immediate family is
12 negotiating or has an arrangement concerning prospective employment is
13 involved in the procurement.

14 5 G.C.A. §5628(a). (Emphasis added.) As soon as Core Tech gave any indication that it might be
15 involved in the bid, by picking up RFP materials, Mr. Leon Guerrero recused himself. Moreover,
16 Mr. Leon Guerrero's involvement was a normal part of his duties as Director of the Department of
17 Public Works ("DPW"), in stark contrast to EJ Calvo's persistent, documented attempt to insert
18 himself into an RFP with which he would not otherwise be involved. If one were to accept GEF's
19 argument, the Director of DPW would have to prematurely recuse himself from involvement in *any*
20 construction RFPs on the basis that his son-in-law works for a construction firm, regardless of
21 whether or not that firm had any interest whatsoever in submitting a bid.

22 Finally, baseless as GEF's allegations against Mr. Taitano and Mr. Leon Guerrero are, they
23 have no bearing on the instant consolidated appeals and, are, therefore, irrelevant. The testimony
24 GEF claims to seek would not go to prove or disprove any of the issues in the consolidated appeals.
25 At best, GEF's subpoena of Mr. Taitano is intended to distract from the issues in this appeal; at
26 worst, it is intended to intimidate Core Tech into abandoning its investigation of EJ Calvo. The
27 Subpoena issued to Mr. Taitano does not comply with Guam Procurement Law and instructions of
28 the Hearing Officer, and is, therefore, not a valid subpoena. If the Hearing Officer determines that

1 Mr. Taitano's testimony is required, Core Tech requests that the examination be limited to matters
2 relevant to the issues in these Appeals only.

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4 RESPECTFULLY SUBMITTED this 16th day of September, 2016

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7 By: _____
8 Joyce C.H. Tang
9 *Attorneys for Appellant*
10 *Core Tech International Corp.*

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