

**ANITA P. ARRIOLA, ESQ.**  
**ARRIOLA, COWAN & ARRIOLA**  
 259 MARTYR STREET, SUITE 201  
 HAGATNA, GUAM 96910  
 Telephone: (671) 477-9730/33  
 Facsimile: (671) 477-9734  
 E-Mail: [anitaarriola@arriolacowan.com](mailto:anitaarriola@arriolacowan.com)

**RECEIVED**  
 OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEALS  
 DATE: Nov 14, 2017  
 TIME: 1:51  AM  PM BY: FDJ  
 FILE NO OPA-PA: 17-010

*Attorneys for Appellant  
 Core Tech International Corp.*

**BEFORE THE PUBLIC AUDITOR  
 PROCUREMENT APPEALS  
 TERRITORY OF GUAM**

IN THE APPEAL OF	)	Docket No. OPA PA-17-10
	)	
CORE TECH INTERNATIONAL CORP.,	)	<b>APPELLANT CORE TECH INTER-</b>
	)	<b>NATIONAL CORP.'S MOTION FOR</b>
Appellant.	)	<b>LEAVE TO FILE MOTION FOR</b>
	)	<b>PARTIAL SUMMARY JUDGMENT</b>
	)	

Appellant Core Tech International Corp. ("CTI") moves the Public Auditor and the Hearing Officer for an Order granting Appellant leave to file a motion for partial summary judgment. CTI submits that a decision on the motion would significantly reduce the number of witnesses and hearing time in the case and would further reduce the issues to be tried.

**STATEMENT OF FACTS**

CTI filed its notice of appeal in this matter on October 23, 2017. The Notice of Pre-hearing Conference and Motion Filing Deadline, issued in this matter on October 27, 2017, provided for a motion filing deadline of November 6, 2017. On October 31, 2017, Appellee Department of Public Works ("DPW") filed its Procurement Record. On November 3, 2017, DPW filed a Supplement to the Procurement Record. This appeal concerns CTI's contract with DPW ("the Contract") for improvements to Route 1/Route 8 and to replace Agana Bridges 1 and

ARRIOLA, COWAN & ARRIOLA, HAGATNA, GUAM 96910

2 (“Project”). CTI alleges DPW’s wrongful termination of the Contract, DPW’s breach of the Contract, and wrongful interference with the Contract by DPW’s consultant Parson’s Transportation Group (“PTG”). Further, CTI alleges that DPW’s termination of the Contract was in retaliation for CTI’s successful protests and appeals against DPW concerning the Simon Sanchez High School Invitation for Bids (“SSHS Bids”). On November 13, 2017, DPW filed its Agency Record.

DPW asserts that CTI failed to construct the Project sidewalks, ramps and driveways in accordance with the American Disabilities Act (“ADA”) requirements and that this was the primary reason for the Notice of Termination/Default issued to CTI. DPW Agency Report at 2. However, DPW fails to inform the OPA that DPW paid for the alleged non-ADA compliant items in full and by such payment acknowledged that CTI’s work on such items was accepted and acceptable. Accordingly, any remaining work to be done on the alleged non-ADA compliant items would only be punch list items.

In addition, DPW has assessed more than \$2,796,420.00 in liquidated damages against CTI for alleged delays and breach of the Contract. The facts of this case establish that liquidated damages should be barred or substantially reduced based on substantial completion of the Project and/or beneficial use and occupancy of the Project.

### **ARGUMENT**

2 GAR, Div. 4, § 12109(a) and (d) provides that the Hearing Officer may fix the issues in a proceeding; consider matters that may aid in the expeditious disposition of the proceeding; and rule on motions and other procedural items on matters pending before such officer. Good cause exists to allow CTI to file a motion for partial summary judgment beyond the motion filing deadline. The Project spanned more than six years and, as is evident by DPW’s filings, the

Procurement Record is voluminous and the Notice of Appeal and Agency Report raise numerous issues concerning the Project and the Contract relating to the Project. DPW's newly filed Agency Report raises several defenses, each of which will result in significant development of testimony and evidence. It is highly likely that the three days of hearing on December 13-15, 2017 will not be sufficient time to hear this matter.

CTI submits that its proposed motion for partial summary judgment will result in a narrowing of the issues, efficient and economic expenditure of time and resources by the parties and the OPA, and may obviate the need for a hearing on the issues raised herein. CTI therefore respectfully requests that the OPA grant its motion for leave to file a motion for partial summary judgment on the issues of: (1) whether, because the alleged non-ADA complaints items were paid in full by CTI, DPW is estopped from claiming that CTI breached the Contract by failing to correct such items; and (2) whether there was substantial completion and/or beneficial use and occupancy of the Project, thereby barring or significantly reducing liquidated damages.

In the event that the OPA grants CTI's motion for leave to file a motion for partial summary judgment, 2 GAR, Div. 4, § 12109(g) provides that the Hearing Officer may fix time limits for submission of written documents in matters before such officer. CTI requests that the Hearing Officer issue a briefing schedule setting the filing of briefs on the motion for partial summary judgement, any opposition thereto, and any reply brief, as well as hearing date on the motion.

Dated this 14th day of November, 2017.

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

By:   
**ANITA P. ARRIOLA**