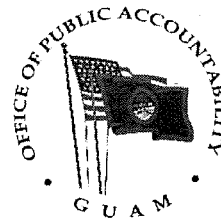


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# FAX

<b>To:</b>	<b>Mr. Glenn Leon Guerrero</b> <b>Director</b> Department of Public Works 542 North Marine Corps Drive Upper Tumon, Guam 96913 Phone: (671)646-3121/3232 Fax: (671) 649-6178	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
	<b>Mr. Thomas Keeler</b> <b>Ms. Shannon Taitano</b> <b>Assistant Attorney Generals</b> Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	<b>Pages:</b>	4 (including cover page)
<b>CC:</b>	<b>Joyce C.H. Tang, Esq.</b> (Attorney for Appellant Core Tech) Civile & Tang, PLLC 330 Hernan Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	<b>Date:</b>	December 19, 2017
		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 204 (671) 472-7951
<b>Re:</b>	OPA-PA-17-009 Decision and Order Re Appellant's Motion to Disqualify Attorney Tom Keeler and Request for Subpoena of Attorney Tom Keeler		

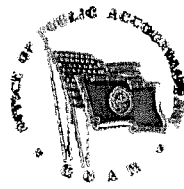
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OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**PROCUREMENT APPEALS**

IN THE APPEAL OF,	)	<b>APPEAL NO: OPA-PA-17-009</b>
	)	
CORE TECH INTERNATIONAL CORP,	)	<b>DECISION AND ORDER RE</b>
	)	<b>APPELLANT'S MOTION TO</b>
	)	<b>DISQUALIFY ATTORNEY TOM</b>
Appellant	)	<b>KEELER AND REQUEST FOR</b>
	)	<b>SUBPOENA OF ATTORNEY TOM</b>
	)	<b>KEELER</b>

To: **Purchasing Agency:**  
 Department of Public Works, Government of Guam  
 C/O Thomas P. Keeler, Esq.  
 Assistant Attorney General  
 Office of the Attorney General of Guam  
 590 S. Marine Corps Drive, Suite 706  
 Tamuning, Guam, 96913  
 Facsimile: (671) 472-2493

**Appellant:**  
 Core Tech International Corp.  
 C/O Joyce C.A. Tang, Esq.  
 330 Hernan Cortez Ave., Suite 200  
 Hagåtña, Guam, 96910  
 Facsimile: (671) 477-2511

**THIS MATTER**, came before the Public Auditor pursuant to the Appellant's (Hereafter Referred to as "CTI") Motion to Disqualify Tom Keeler that was filed on December 11, 2017 and pursuant to CTI's December 18, 2017 request for a subpoena for Tom Keeler. After reviewing the aforementioned motion and request for a subpoena, the Public Auditor, acting *Sua Sponte*, hereby FINDS and ORDERS the following

1. Assistant Attorney General Thomas P. Keeler, Esq., who is representing the Purchasing Agency's (Hereafter referred to as "DPW") in this matter, is not a necessary witness. CTI's main argument alleges that DPW has asserted an "advice of counsel defense" and that Keeler must be disqualified because he is now a necessary witness in this matter. Page 6, CTI's Motion

1 to Disqualify Tom Keeler filed on December 11, 2017 (Hereafter Referred to as CTI's Motion.  
2 In a criminal case, the Advice of Counsel Defense is a partial defense offered to disprove the  
3 *mens rea* element of a crime. *Bisno v. United States*, 299 F.2d 711, 719 (9<sup>th</sup> Cir., 1961). A  
4 criminal defendant who reasonably relies on the advice of counsel may not be convicted of a  
5 crime that involves willful and unlawful intent. *Williamson v. United States*, 207 U.S. 425, 453  
6 (1908). Hence, the "advice of counsel defense" is not applicable to this administrative  
7 proceeding because neither DPW, nor any of DPW's employees have been charged with a  
8 criminal offense involving willful and unlawful intent such that they could properly assert the  
9 defense, and if they had, the resolution of such criminal charges would be outside of the Public  
10 Auditor's jurisdiction. CTI also argues that Keeler's testimony of relevant and unobtainable  
11 elsewhere. Page 6, CTI's Motion. In support of this argument, CTI alleges that only Keeler can  
12 testify about the timing and accuracy of DPW's Notice of Default or Contract Termination on an  
13 unrelated bridge project and its interpretation of the record of default in the solicitation at issue in  
14 this matter. *Id.*, page 5-7. However, this is not true, the Public Auditor finds that it can examine  
15 DPW's employees and the record in this matter to obtain evidence concerning those issues. CTI  
16 is reminded that the Attorney General of Guam and her attorneys have very specific role in  
17 Guam's Procurement System. Whenever the Chief Procurement Officer, the Director of Public  
18 Works, or the head of any executive branch agency, autonomous agency, instrumentality, or  
19 public corporation of the government of Guam conducts any solicitation or procurement which is  
20 estimated to result in an award of five-hundred-thousand-dollars (\$500,000) or more, the  
21 Attorney General shall act as legal advisor during all phases of the solicitation or procurement  
22 process. 5 G.C.A. §5150. The Public Auditor finds that Assistant Attorney General Thomas P.  
23 Keeler, Esq., was fulfilling this statutory duty when he provided legal advice to DPW, and this,  
24 by itself, does not make him a necessary witness in this matter. Finally, as this case concerns  
25 the very complex and important solicitation for the repair or reconstruction of Simon Sanchez  
26 High School, the Public Auditor finds that disqualifying DPW's chief counsel in this matter  
27 would cause great and untoward delay. CTI filed its motion just nine (9) days prior to the  
28 scheduled hearing on its appeal. If the motion were granted, the hearing would likely have to

1 rescheduled because DPW would be highly prejudiced without its counsel, who is very familiar  
2 with its case, and it would likely take a new counsel weeks, if not months, to review the  
3 extensive record in this matter and prepare for the formal hearing. Therefore, the Public Auditor  
4 finds that the benefit CTI would have in examining Keeler as a witness, would be outweighed by  
5 the great prejudice disqualifying Keeler would have on DPW and the even greater prejudice the  
6 People of Guam would incur as a result of the delay in getting to a final resolution of CTI's  
7 appeal. Based on the foregoing, CTI's Motion of Disqualify Assistant Attorney General  
8 Thomas P. Keeler, Esq., is hereby DENIED.

9 2. Accordingly, based on the foregoing, CTI's Request to Subpoena Assistant Attorney  
10 General Thomas P. Keeler, Esq., as a witness in a formal hearing is hereby DENIED.

11  
12 **SO ORDERED** this 19<sup>th</sup> day of December, 2017 by:

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16 \_\_\_\_\_  
17 DORIS FLORES BROOKS, CPA, CGFM  
18 PUBLIC AUDITOR  
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	Mr. Thomas Keeler Ms. Shannon Tuitano Assistant Attorney Generals Office of the Attorney General of Guam 590 S. Marine Corps Drive, Suite 706 Tamuning, Guam, 96913 Fax: (671) 472-2493	<b>Pages:</b>	4 (including cover page)
<b>CC:</b>	Joyce C.H. Tang, Esq. (Attorney for Appellant Core Tech) Civile & Tang, PLLC 330 Hernan Cortez Avenue Suite 200 Hagatna, Guam 96910 Phone: (671) 472-8868/9 Fax: (671) 477-2511	<b>Date:</b>	December 19, 2017
		<b>Phone:</b>	(671) 475-0390 x. 204
		<b>Fax:</b>	(671) 472-7951

**Re:** OPA-PA-17-009 Decision and Order Re Appellant's Motion to Disqualify Attorney Tom Keeler and Request for Subpoena of Attorney Tom Keeler

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		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 204 (671) 472-7951

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WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct