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PROCUREMENT APPEAL

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

Core Tech International Corp.,

Appellant.

and

GUAM DEPARTMENT OF PUBLIC WORKS,

Purchasing Agency.

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

OBJECTION TO GEFF SUBPOENA TO HENRY J. TAITANO

ORIGINAL

Appellant Core Tech International Corp. ("Core Tech"), by and through counsel, objects to the Subpoena GEFF issued to and served on Henry J. Taitano on September 12, 2016 in these consolidated appeals. Mr. Taitano is a Core Tech employee, and an institutional representative for Core Tech in this Appeal.

Guam law authorizes the Public Auditor to perform activities such as conducting public hearings, subpoenaing witnesses and conducting depositions, in furtherance of its duties. 1 GCA §1909. Furthermore, 5 GCA §9217(a) provides that "the hearing officer sitting alone may issue subpoenas and subpoenas duces tecum." The parties or their counsel are not authorized to issue subpoenas to witnesses.

The Office of Public Accountability (OPA) also notified the parties in its *Notice of Re-Scheduled Hearing re Appellant's Appeal* ("Notice of Re-Scheduled Hearing"), that an application shall be made "to the Hearing Officer for Procurement Appeals, Office of Public Accountability" for the "issuance of subpoenas to compel the attendance of witnesses and the production of books document or other things." *Notice of Re-Scheduled Hearing* at 2 (August 11, 2016). The subpoena GEFF attempted to issue to Mr. Taitano was signed by Mr. Aguigui, which does not comply with §9217(a) or the Hearing Officer's Order of August 11, 2016. It is, on its face, improper.

Furthermore, GEFF did not list Mr. Taitano as a witness in its witness list that was due on August 26, 2016, a deadline which was extended to August 30, 2016, nearly two weeks prior to issuance of GEFF's purported subpoena to Mr. Taitano. To the extent GEFF intends to add a witness to its list, it should first seek leave of the OPA to add Mr. Taitano as a witness, provided that it can establish a proper offer of proof. An offer of proof is particularly important in this instance because of GEFF's arguments in response to Core Tech's objections during GEFF's examination of DPW Deputy Director Felix Benavente on September 8, 2016, during which the following discussion ensued:

Hearing Officer: …Mr. Aguigui, I don't think there is any issue that Mr. Benavente was acting as the Chief Procurement Officer. I don't think there is any question that shortly after this, Mr. Leon Guerrero recused himself. What's your offer of proof for the line of questioning?

Mr. Aguigui: Well, I wanted to get into the…well, she was questioning Mr. Benavente as to why he assumed the position and without questioning Mr. Benavente as to the circumstances of why Mr. Leon Guerrero wasn't involved. So I simply wanted to know that.

Hearing Officer: Okay, but do we have to point out… I don't think that Mr. Taitano's identity is a question in this case, or the relationship he has with Mr. Leon Guerrero, so do we need to go this far?

Mr. Aguigui: Probably not, but I would reserve any questioning until later. Ms. Tang has brought up issues about which officials may be involved in either the pre-proposal stage or some other stage of the RFP so, if this is actually a question of who was involved, and family members involved, it's a fair issue of examination.

GEFF admitted at the continued hearing on September 8, 2016, that its sole purpose for questioning Mr. Benavente regarding Mr. Taitano was to retaliate for Core Tech's exploration of Mr. Edward J. Calvo's ("EJ Calvo") involvement in the RFP working group as the Chairman of the GEDA Board of Directors, when he had a financial interest in the outcome of the award. Mr. Taitano was not involved in the preparation of this RFP, and GEFF has not offered any evidence suggesting that he was involved. To the extent GEFF seeks to call Mr. Taitano as a witness to further the same line of questioning it attempted on Mr. Benavente, such questioning is irrelevant and is made for the sole purpose of harassing Mr. Taitano. The OPA should require GEFF to make an offer a proof to prevent GEFF's continued harassment of Mr. Taitano.

RESPECTFULLY SUBMITTED this 14th day of September, 2016

By: _____
Joyce C.H. Tang
Attorneys for Appellant
Core Tech International Corp.