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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 10/18/12
TIME: 3:45 AM PM BY: JH
FILE NO OPA-PA: 12-007

**THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM
HAGÁTÑA, GUAM**

In the Appeal of) DOCKET NUMBER. OPA-PA-12-007
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)
DATA MANAGEMENT RESOURCES, LLC.,)
) **APPELLANT’S MOTION FOR**
) **DISQUALIFICATION OF PUBLIC AUDITOR**
Appellant.)
)
)
_____)

COMES NOW Appellant, DATA MANAGEMENT RESOURCES, LLC. (“DMR”), through undersigned counsel, moves for the disqualification and voluntary recusal of the Public Auditor from the above-captioned matter pursuant to Title 2 Guam Administrative Rules and Regulations, Div. 4, Ch. 12 (GAR) § 12601. The Public Auditor has an actual and direct conflict to DMR; specifically, in an ongoing litigation in the Supreme Court of Guam, the Public Auditor is the appellant, and her interests are adverse to DMR. This Motion for Disqualification of Public Auditor is based upon 2 GAR § 12601, the Affidavit of Richard C. Taitano filed concurrently herewith, and the Memorandum of Points and Authorities set forth below.

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MEMORANDUM OF POINTS AND AUTHORITIES

The Public Auditor is entrusted with the “power and duty to hear and decide all appeals of decisions that arise under Title 5, Guam Code Annotated, § 5425(c)”. 1 GCA § 1909(k). Guam law expressly dictates the importance of impartiality and the fostering of public confidence in the implementation and enforcement of Guam’s procurement law:

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the territorial procurement organization.

5 GCA § 5625.

There is no position within our government more critical to fostering public confidence in the integrity of the procurement process than the position entrusted with the ultimate authority to hear and decide procurement appeals. As the final administrative decision maker in procurement matters, the Public Auditor must foster, not hinder, the public’s confidence in the procurement process. The requirement that procurement appellate decisions be made with unyielding impartiality is unquestionable.

The Public Auditor has been delegated numerous responsibilities outside of the procurement law for which the awareness, knowledge, and the practice of the highest degree of ethical standards is inherently demanded. In addition to duties involving the direction and supervision of financial and management audits for the government of Guam, the Public Auditor was also tasked with the initial compilation of ethical standards for training the leaders of the Government of Guam. *See* 4 GCA § 15410 (“The Public Auditor shall develop standards for the ethics program until the Guam Ethics Commission is appointed and functioning . . .”). The Public Auditor’s role as the final administrative arbiter of procurement disputes demands no less of a conscientious awareness and practice of the highest degree of ethical standards consistent with this territory’s policies.

1 Based on the facts and circumstances described below, DMR respectfully requests the
2 disqualification and voluntary recusal of the Public Auditor, pursuant to 2 GAR § 12601, which provides as
3 follows:

4 **§ 12601. Disqualification of Public Auditor.** The Public Auditor may recuse herself or
5 himself at any time and notify all parties, or any party may raise the issue of disqualification
6 and state the relevant facts prior to the hearing. The Public Auditor shall make a
7 determination and notify all parties. In the event of disqualification or recusal of the Public
8 Auditor, a procurement Appeal must be taken to the Superior Court of Guam in accordance
9 with 5 GCA § 5480.

10 As set forth above, any party may raise the issue of disqualification and state the relevant facts related
11 thereto prior to the hearing.

12 In this matter, the Public Auditor is tasked with the ultimate authority to hear and determine on an
13 impartial basis the merits of DMR's procurement appeal. However, the Public Auditor is currently an active
14 and opposing party of DMR in a separate ongoing matter before the Supreme Court of Guam, namely,
15 Supreme Court Case No. CVA12-30. Affidavit of Richard C. Taitano ("RCT Affidavit"), at ¶¶ 4 and 9. The
16 Supreme Court case involves the appeal of Superior Court Special Proceedings Case No. SP107-11, and was
17 recently consolidated with Supreme Court Case No. CVA12-018, also involving an appeal of SP107-11, as
18 initiated by the Public Auditor. RCT Affidavit, at ¶¶ 4, 5, 8 and 9.

19 The significance of the Public Auditor's active role and opposing interest in the Supreme Court case
20 and the proceedings below cannot be overstated. As the record reflects, it arose from the procurement of
21 computer equipment through an invitation for bid by the Real Party-In-Interest, the Guam Department of
22 Education ("GDOE"). See RCT Affidavit, at ¶ 5. It is unmistakable that the active advocate in the
23 Superior Court of Guam case was the Public Auditor, and not GDOE. RCT Affidavit, at ¶¶ 5-8. The
24 Superior Court expressly recognized that GDOE "filed an Answer admitting to the allegations of the
25 Petition, and was not present for hearing." RCT Affidavit, at ¶ 6. Indeed, the only appearance made by
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1 GDOE was to oppose any award of attorney's fees "because OPA interfered with GDOE's ability to
2 resolve the matter". RCT Affidavit, at ¶ 7.

3 More importantly, the Public Auditor's continued and active advocacy in opposition to DMR's
4 interest is evidenced by its determination to directly appeal the Superior Court decision to the Supreme
5 Court of Guam in CVA12-018. GDOE's lack of participation at the Supreme Court level is again notably
6 absent as it failed to file any initial briefs on appeal in CVA12-018. RCT Affidavit, at ¶ 8. Quite simply, the
7 Supreme Court case is not one involving the silent presence of the Public Auditor with respect to an
8 underlying administrative decision overturned at the trial court level. The Public Auditor has taken an active
9 role in the ongoing Supreme Court case, and is actively asserting interests entirely adverse to the interests of
10 DMR. The Public Auditor's simultaneous advocacy against the interests of DMR in a separate and ongoing
11 matter raises significant issues with respect to her ability to fulfill her duty and responsibility to act as an
12 impartial administrative arbiter in this matter.
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14 Public confidence in the procurement process must be fostered by all public employees, including
15 those entrusted with final administrative decision making authority. The Public Auditor's continued
16 participation in this matter directly hinders such public confidence in the procurement process; particularly,
17 her affirmative conduct in appealing the Superior Court of Guam decision clearly undermines public
18 confidence, and is akin to a trial court appealing to the Supreme Court of the United States, a finding by the
19 Supreme Court of Guam, contrary to its judgment. In light of the Public Auditor's continued assertion of
20 interests directly adverse to DMR in the Supreme Court of Guam case, the Public Auditor's ability to
21 remain impartial in judgment of this matter is inherently doubtful and requires her disqualification and
22 recusal.
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CONCLUSION

Based on the Public Auditor's actual and direct conflict of interests with DMR, DMR respectfully submits the Public Auditor cannot impartially hear and decide the merits of this matter and must disqualify and voluntarily recuse herself from this matter pursuant to 2 GAR § 12601.

Dated this 18th day of October, 2012.

**LAW OFFICE OF
JACQUELINE TAITANO TERLAJE, P.C.**

By: 

JACQUELINE TAITANO TERLAJE