

Jacqueline Taitano Terlaje, Esq.
LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.
250 Route 4
Suite 204, Nanbo Guahan 250 Building
Hagåtña, Guam 96910
Telephone 671.648.9001
Facsimile 671.648.9002
Email: info@terlajelaw.com

Attorneys for Petitioner
Data Management Resources, LLC.

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PROCUREMENT APPEALS

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THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM
HAGÁTÑA, GUAM

In the Appeal of)	DOCKET NUMBER. OPA-PA-12-007
)	
)	
DATA MANAGEMENT RESOURCES, LLC.,)	APPELLANT'S REPLY TO OPPOSITION TO
)	MOTION FOR DISQUALIFICATION OF
Appellant.)	PUBLIC AUDITOR
)	
)	

COMES NOW Appellant, DATA MANAGEMENT RESOURCES, LLC (“DMR”), through undersigned counsel, hereby submits the following reply to the Opposition to Disqualification Motion filed by the Department of Administration, Government of Guam (“DOA”).

DOA opposes DMR’s motion as untimely despite citing verbatim the provision governing the time period upon which the motion at hand shall be filed. See 2 Guam Administrative Rules and Regulations (GAR) § 12601. This provision, a component of the regulations prepared and submitted by the Public Auditor to the Guam Legislature, expressly permits that “any party may raise the issue of disqualification and state the relevant facts prior to the hearing.” *Id.* (emphasis added). Indeed, DOA recognizes this operative time period in its opposition. Nevertheless, without any authority or explanation, DOA apparently attempts to unilaterally impose a more stringent standard into § 12601 in direct contradiction to its express language; essentially, determining on its own that the motion could have been, would have been, or should have been filed earlier.

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1 DOA concludes without discussion that the motion was inexcusably untimely. Notwithstanding
2 DOA's additional appeal to some unknown standard of "fairness", fairness actually dictates that the
3 procurement appellate process be governed by law and the language of the rules and regulations enacted to
4 expressly administer particular matters, including the motion at hand. DMR submits that the language of
5 the relevant provision is clear and mandates the time period upon which the motion at hand may be filed.
6 Pursuant to such provision, the Public Auditor must make a determination on the issue of disqualification as
7 required by Rules of Procedure for Procurement Appeals.
8

9 DOA also opposes disqualification by characterizing the litigation in Supreme Court Case No.
10 CVA12-18 as merely representing "conflicting views of the law"¹. See Opposition, at p. 2. DOA incorrectly
11 suggests that anytime a party seeks judicial review of a procurement appeal, the Public Auditor would need
12 to step down in any other appeal involving the same party. This description completely ignores the nature
13 of the Public Auditor's role and adverse interests in the Supreme Court case, as detailed in DMR's motion.

14 The Supreme Court case represents the only case where the Public Auditor has directly appealed a
15 decision by the Superior Court on a matter involving a procurement appeal. To DMR's knowledge, the
16 ongoing litigation also represents the only case where the Public Auditor, and not the real party in interest, is
17 the sole active party litigating against the interests of the opposing party.
18

19 The Public Auditor has a duty and responsibility to act as an impartial administrative arbiter in this
20 matter. The Public Auditor cannot act impartially while simultaneously and directly advocating against the
21 interests of Appellant DMR in a separate and ongoing matter. The Public Auditor must disqualify and
22 recuse herself from this matter based not on the simple and mere existence of her office on the written
23 pleadings in the ongoing litigation, but rather due to the actual and direct conflict of interests between her
24

25
26
27 ¹ Supreme Court of Guam CVA12-018 and CVA12-030 were consolidated in CVA12-018. However, two separate appeals
28 were initiated; first in CVA12-018, by the Office of Public Accountability, and CVA12-030 by Data Management Resources,
LLC..

1 role as a direct and active advocate in the Supreme Court case against DMR, and her mandated role as an
2 impartial arbiter in this matter.

3 Appellant DMR again respectfully submits the Public Auditor cannot impartially hear and decide the
4 merits of this matter and must disqualify and voluntarily recuse herself pursuant to 2 G.A.R. § 12601.

5 Dated this 23rd day of October, 2012.

6
7 **LAW OFFICE OF**
8 **JACQUELINE TAITANO TERLAJE, P.C.**

9 By: 
10 _____
11 **JACQUELINE TAITANO TERLAJE**