

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

**PROCUREMENT APPEALS**

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IN THE APPEAL	)	<b>APPEAL NO: OPA-PA-12-007</b>
	)	
DATA MANAGEMENT	)	
RESOURCES, LLC	)	
	)	<b>DECISION AND ORDER</b>
	)	Re: Disqualification of Public Auditor
Appellant.	)	

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**INTRODUCTION**

On October 18, 2012, Appellant Data Management Resources, LLC (“DMR”) filed a motion to disqualify the Public Auditor from hearing the present Appeal. On the morning of October 22, 2012 the date scheduled for the Appeal Hearing, the Department of Administration (“DOA”) responded with a written opposition. At the scheduled hearing, Hearing Officer Phillip Torres granted DMR an opportunity to respond to the Opposition, with a decision on the issue to be rendered on October 25, 2012, and the hearing to reconvene on October 29, 2012 if the motion to disqualify is not granted.

DMR argues that the Public Auditor should be disqualified from the present case because the Office of Public Accountability is a party adverse to DMR in a case currently pending in the Supreme Court of Guam. DMR states that this “raises significant issues with respect to [the Public Auditor’s] ability ... to act as an impartial administrative arbiter in this matter.” DOA in its opposition points out that DMR’s motion to disqualify was filed so late that it “appears to have been an afterthought;” and argues that the facts alleged by DMR do not amount to bias or prejudice.

1                   **I. DMR’S MOTION IS NOT TIMELY.**

2                   The Procurement protest and appeals process of Guam is designed to address and  
3 conclude protested issues as quickly as possible. The law sets forth strict deadlines for protests,  
4 decisions, and appeals. The procedural regulations governing appeals is to be “construed and  
5 applied to provide for the expeditious resolution of controversies.” Title 2 Guam Administrative  
6 Rules and Regulations (“GAR”) Section 12101. Because every protest and appeal represents the  
7 possible delay of a needed procurement, the functioning of the government of Guam requires  
8 prompt attention to protests and appeals. For this reason, the parties to an appeal should likewise  
9 prosecute their cases expeditiously.

10                  The present Appeal was received by the Office of Public Accountability on April 2, 2012.  
11 The Parties have submitted to the Public Auditor’s jurisdiction, and acquiesced in the Public  
12 Auditor’s authority to determine the issues at hand since that date. DMR filed its motion for  
13 disqualification less than two business days before the hearing scheduled on October 22, 2012.  
14 The Public Auditor agrees with DOA that as a matter of course this was “inexcusably untimely,”  
15 in this case when DMR knew or should have known of this issue since the outset of the appeal.  
16 DMR is correct that the current law does not impose a time limit on raising the issue, as long as  
17 it is done “prior to hearing,” 2 GAR §12601. For this reason, and in order to “promote the  
18 integrity of the procurement process,” the Public Auditor will address the issue on the merits. 5  
19 G.C.A. §5703.

20                   **II. BECAUSE NO ACTUAL BIAS EXIST, THE PUBLIC**  
21                   **AUDITOR IS NOT DISQUALIFIED FROM HEARING THIS**  
22                   **APPEAL**

23                  Guam Procurement Law allows for the parties to raise the issue of the Public Auditor’s  
24 qualification to hear and decide on procurement appeals (2 GAR §12601), but does not identify  
25 any standards for disqualification. The Public Auditor addressed this in the Appeal of Teleguam  
26 Holdings LLC dba GTA Telecom, where she found that “the appearance of impropriety standard

1 does not apply to adjudicators of administrative hearings such as the Public Auditor.” OPA-PA-  
2 10-002 at p.2. The Public Auditor found that “the standard for disqualification of ... the Public  
3 Auditor is the higher standard of *actual bias*.” *Id.* (*emphasis added*) (Citing *Sule v. Guam Board*  
4 *of Dental Examiners*, 2008 Guam 20 at ¶19).

5 In the present case, DMR argues that due to the fact that the OPA is a party to a case on  
6 appeal before the Supreme Court of Guam, “the Public Auditor has an actual and direct conflict  
7 to DMR...” DMR’s Motion at p. 1. That is, the OPA is the party appealing a case that was  
8 decided in DMR’s favor by the trial court, and DMR states that this demonstrates “actual and  
9 direct conflict of interests between her role as a direct and active advocate in the Supreme Court  
10 ... and her mandated role as an impartial arbiter” in the present case. DMR’s Reply at 2-3.

11 However, DMR does not explain how it reaches this conclusion. In DMR’s Motion for  
12 Disqualification, DMR does not suggest that the Public Auditor can somehow influence the  
13 outcome of CVA012-18 by her determination in the present Appeal, or that existence of that case  
14 means she has a financial or other interest in the outcome of the present Appeal. Nor does DMR  
15 allege that the Public Auditor, by appealing CVA012-18, has expressed an opinion on the matter  
16 in controversy in the present case, such that her impartiality can be questioned.

17 This is because no such connection exists. Disagreement on a point of law in one case  
18 does not equate to personal bias in all issues. It does not reasonably – or inherently – place the  
19 Public Auditor’s impartiality in doubt, and it does not amount to a showing of actual bias.

20 “A party’s unilateral perceptions of an appearance of bias cannot be a ground for  
21 disqualification.” OPA-PA-10-002 at p.2. DMR has not suggested any proof of actual bias, other  
22 than the unilateral assertion that a direct conflict exists. This is insufficient for disqualification.  
23 The Public Auditor affirms that no bias exists, and for that reason, disqualification is improper.

24 The Public Auditor also agrees with DOA that DMR’s position leads to an untenable  
25 result: If the Public Auditor were to adopt the position that she is disqualified in the present  
26

1 situation, the probable result would be the disqualification of the Public Auditor from hearing  
2 most appeals. Guam Procurement Law clearly does not anticipate such a conclusion.

3 **CONCLUSION**

4 Applying the standard of actual bias, the Public Auditor affirms that there she is not  
5 biased in the present case, and that she can hear and determine the issues impartially. For the  
6 reasons set forth above, the Public Auditor DENIES DMR's motion for Disqualification. The  
7 hearing on this appeal will commence on Monday, October 29, at 1:00 p.m..

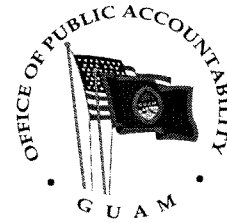
8 **DATED** at Hagåtña, Guam, on October 25, 2012.

9 **OFFICE OF PUBLIC ACCOUNTABILITY**

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<b>To:</b>	<b>Jacqueline Taitano Terlaje, ESQ</b> Data Management Resources, LLC 888 North Marine Corps Drive, Suite 215 Tamuning, GU 96913	<b>Date:</b>	Thursday, October 25, 2012
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**Re:** Appeal No. OPA-PA-12-007 Decision and Order Re Disqualification of Public Auditor

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