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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
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 FILE NO OPA-PA: 12-007

Attorneys for the General Services Administration,
 Department of Administration, Government of Guam

BEFORE THE GUAM PUBLIC AUDITOR
Procurement Appeal

IN THE APPEAL OF:)	DOCKET NO. OPA-PA 12-007
)	
)	
)	
DATA MANAGEMENT RESOURCES, LLC.)	OPPOSITION TO
)	<u>DISQUALIFICATION MOTION</u>
Appellant.)	
)	
)	
)	

The Department of Administration, Government of Guam, opposes the last minute Motion of Appellant to Disqualify the Public Auditor as being untimely, devoid of merit and that a disqualification on the grounds urged, would constitute a dangerous precedent.

The operative provision for disqualification of the Public Auditor is:

2 GAR - ADMINISTRATION
 DIV. 4 - PROCUREMENT REGULATIONS §12601.
 Disqualification of Public Auditor.
 The Public Auditor may recuse herself or himself at any time and notify all parties, or any party may raise the issue of disqualification and state the relevant facts prior to the hearing. The Public Auditor shall make a determination and notify all parties. In the event of

*In the Appeal of: Data Management Resources, LLC.
 Opposition to Disqualification
 Docket No. OPA-PA-12-007
 19 October 2012*

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disqualification or recusal of the Public Auditor, a procurement Appeal must be taken to the Superior Court of Guam in accordance with 5 GCA §5480.

Although the rule permits a disqualification motion “prior to the hearing”, it can also be safely said that Appellant’s motion was inexcusably untimely. There is no reason whatever to believe that Appellant’s motion couldn’t have been brought even as recently as the 16th, when other pre-hearing filings were due. In fairness, Appellant should be called upon to show plausible reasons for waiting until effectively a day before the hearing to make this motion. It appears to have been an afterthought.

In any event, the mere fact that the Public Auditor and the Appellant are litigating an appellate matter in another forum, with a totally separate and distinct set of facts and legal issues, does not by any stretch of the imagination amount to “personal bias” and/or prejudice. Indeed none is alleged. Just because Appellant and the Public Auditor have conflicting views of the law in an unrelated appeal, is no reason whatsoever for her to withdraw from this matter. Were it otherwise, then anytime a party on the losing end of a procurement appeal sought judicial review, the Public Auditor would need to step down in any other procurement appeal involving the same party. Such an illogical result would amount to a grave incursion on the responsibility of the Public Auditor “to control ... and...promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5”. *Id.*, §§12101 and 12103.

The Department suggests that this challenge should be an easy call for the Public

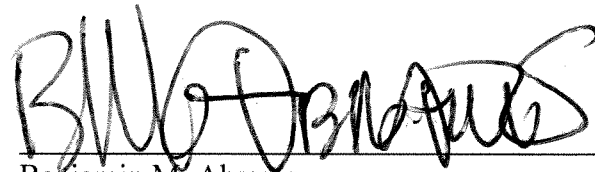
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Auditor to make. Absent a showing of prejudice by Appellant, personal bias, actual bias or some other compelling circumstance such as a blood relation, partnership, etc., the Public Auditor should exercise her statutory discretion to find herself not disqualified in this matter and continue to preside over this procurement appeal proceeding.

Dated: 19 October 2012

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By:

A handwritten signature in black ink, appearing to read 'B.M. Abrams', written over a horizontal line.

Benjamin M. Abrams
Assistant Attorney General

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