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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS**

IN RE THE APPEAL OF DFS GUAM L.P.,

APPEAL NO.: OPA-PA-13-006

Appellant.

**A.B. WON PAT INTERNATIONAL
AIRPORT AUTHORITY, GUAM'S
MOTION TO DISQUALIFY PUBLIC
AUDITOR**

1 The A.B. Won Pat International Airport Authority, Guam (“GIAA” or “Airport”) hereby
2 requests that the Public Auditor, Doris Flores Brooks (the “Public Auditor”), recuse herself from
3 adjudicating this appeal before the Office of Public Accountability (“OPA”).

4 **I. INTRODUCTION**

5 Before the Public Auditor resumes this appeal, she must determine whether it is appropriate
6 for her to preside over it. Guam law prohibits the Public Auditor from presiding over an appeal
7 when she has a conflict of interest or appears to have prejudged it. The appeal brought by DFS
8 Guam L.P. (“DFS”) of GIAA’s decision to deny DFS’s protest concerning the award of the
9 specialty retail concession to Lotte Duty Free Guam, LLC (“Lotte”) has been stayed for over a
10 year as a result of DFS’s misguided decision to sue the Airport in Superior Court. In the interim,
11 several facts have emerged that raise questions about the Public Auditor’s impartiality and
12 compromise her ability to serve as an adjudicator who is not only fair but appears to be fair.

13 *First*, over six months after submitting its appeal, DFS revealed for the first time that
14 almost a year earlier it had hired Lujan Aguiqui & Perez LLP (“the Lujan Firm”), the law firm
15 employing the Public Auditor’s husband, James Brooks. DFS had an obligation to disclose the
16 representation at the time it submitted its appeal, but did not. That firm apparently continues to
17 represent DFS to this day and has, throughout that period, apparently operated without a legally-
18 sufficient “ethical wall” insuring that the Public Auditor’s husband took no part in the matter. As a
19 matter of law, the Public Auditor’s husband is therefore presumed to have participated in the Lujan
20 Firm’s representation of DFS.

21 *Second*, during the same period, the Public Auditor made public statements indicating that
22 she agrees with DFS’s position on the “automatic stay.” These statements were made in a public
23 hearing held by the Guam Legislature before the Public Auditor had an opportunity to review the
24 record of DFS’s protest or the reasons GIAA found that protest to be untimely. The Public
25 Auditor’s statements further call into question whether she will be able to approach this appeal
26 impartially. Indeed, DFS appears to be counting on the fact that she will not.

27 These facts warrant the Public Auditor’s recusal. The Public Auditor plays a special role in
28 the Government of Guam’s procurement process, and she is uniquely responsible for maintaining

1 the public's confidence in the integrity of that process. For that reason alone, the Public Auditor
2 has previously recused herself in procurement appeals involving her husband. Moreover, well-
3 settled law mandates recusal of a judicial officer who makes public statements that would cause a
4 reasonable member of the public to conclude that she has prejudged the appeal.

5 In this high-profile matter, which has the potential to significantly affect the public and
6 continues to be subject to intense media scrutiny, DFS's appeal should be heard by someone
7 whose impartiality cannot be questioned. Therefore, GIAA requests that the Public Auditor recuse
8 herself from presiding over DFS's appeal. No party will be prejudiced if the Public Auditor
9 recuses herself or is disqualified from this appeal, because this matter will be transferred to the
10 Guam Superior Court for a decision.

11 GIAA is filing a separate motion requesting that until this motion is resolved, the Public
12 Auditor extend the stay of this appeal, including all statutory and regulatory deadlines. Given
13 DFS's concealment of its retention of the Lujan Firm, refusal to disclose information about the role
14 played by the Lujan Firm and Mr. Brooks for more than six months, and self-serving, limited, and
15 legally-insufficient disclosure of information now, GIAA does not want to jeopardize the integrity
16 of the outcome of this appeal by attempting to litigate the merits of the appeal in tandem with this
17 motion.

18 **II. STATEMENT OF FACTS**

19 **A. An Independent Evaluation Committee Selected Lotte as the Most Qualified** 20 **Proposer to Operate the Specialty Retail Concession at the Airport**

21 On July 19, 2012, GIAA issued a request for proposals (an "RFP") to operate the specialty
22 retail concession at the Airport. (Decl. Janalynn Cruz Damian ["Damian Decl."], ¶ 3.) Guam law
23 required the RFP because the main contract between GIAA and the concessioner at the time, DFS,
24 was scheduled to expire on January 20, 2013. One of the other two concession contracts had
25 already expired, with DFS continuing to operate at the Airport in a month-to-month "holdover"
26 capacity. (*Id.*)

1 Four companies responded with proposals. Those proposals were reviewed and scored
2 according to criteria established by the RFP by an independent evaluation committee in
3 consultation with an outside global aviation consulting firm. (Damian Decl. ¶ 5; Decl. Kathleen V.
4 Fisher [“Fisher Decl.”], Ex. A [“May 17 Decision Letter”] at 7.) The proposals were then
5 randomly assigned letter identifiers to protect the confidentiality of the proposers and the legally
6 protected contents of the proposals during the public meeting of GIAA’s board of directors. (*Id.*)

7 On March 28, 2013, GIAA’s board of directors reviewed the evaluation committee’s
8 rankings and recommendation. (Damian Decl. ¶ 6.) The board then discussed the evaluation
9 process and the fact that the proposals were identified by letter rather than by name, after which
10 the matter was tabled for the next meeting. (Damian Decl. ¶ 7.) DFS representatives attended this
11 board meeting. (Damian Decl. ¶ 6.)

12 On April 12, 2013, GIAA’s board met again, and, using the same letter-designations for the
13 proposals, discussed the evaluation criteria and rankings. (Damian Decl. ¶ 9.) Following a vote
14 approving the evaluation committee’s rankings, GIAA announced that Lotte had submitted the
15 highest ranked proposal. (*Id.*) It turned out that GIAA’s independent evaluation committee scored
16 Lotte’s proposal higher than DFS’s on all of the four objective criteria set forth in the RFP. (May
17 Decision Letter at 7.) Out of the four proposals, DFS’s proposal was ranked third. (*Id.*)

18 **B. GIAA Had Nearly Completed Negotiations with Lotte Before Receiving Any**
19 **Protest of the Award**

20 GIAA and Lotte began negotiating a contract following the announcement. (Damian Decl.
21 ¶ 10.) Representatives of GIAA and Lotte met on April 17, 2013. (*Id.*) Following the meeting,
22 GIAA believed that Lotte and GIAA had reached an agreement on most key terms. (*Id.*)

23 In the afternoon of April 23, 2013 – before receiving any protest – counsel for GIAA
24 transmitted to counsel for Lotte a copy of the revised concession agreement for Lotte’s review
25 incorporating the items discussed during the April 17 meeting. (*Id.*) GIAA anticipated that the
26 parties would enter into the concession agreement in substantially the form of the draft transmitted
27 on April 23. (*Id.*)
28

1 **C. DFS Protested the Award to Lotte Based Solely on the Random-Letter**
2 **Designation of the Proposals and Alleged Conduct From Seven Months Earlier**

3 DFS submitted a protest at the end of the day on April 23, 2013 (“April 23 Protest”).
4 (Fisher Decl., Ex. B.) The April 23 Protest was based solely on the letter-designations GIAA used
5 to identify the proposals and certain alleged conduct that occurred during a trip to South Korea in
6 September 2012. (*Id.*)

7 DFS had previously written a letter to GIAA on October 30, 2012 expressing “concern”
8 that two members of GIAA’s board of directors who traveled to South Korea in September 2012
9 on an unrelated trip sponsored by the Guam Visitors Bureau allegedly received gifts from
10 employees of Lotte. (Damian Decl. ¶ 4.) But DFS did not submit a procurement protest at that
11 time. (*Id.*) GIAA nevertheless investigated the allegations in DFS’s letter, but found that no
12 misconduct occurred.¹ (*Id.*)

13 GIAA resumed the procurement process following the investigation, and the two directors
14 who visited South Korea abstained from further participation in the RFP. (*Id.*) On April 11, 2013,
15 after it had retained the Lujan Firm to represent it regarding the RFP, DFS sent another letter to
16 GIAA stating that GIAA and its legal counsel had not done enough to address the concerns
17 expressed in its October 30, 2012 letter. (Damian Decl. ¶ 8.) But DFS insisted that “the process of
18 the RFP must continue to move forward,” (*id.*), making it clear that it was not formally protesting
19 (since a protest triggers an automatic stay under Guam’s Procurement Law).

20 DFS did not protest until April 23, 2013 – after GIAA announced that Lotte had submitted
21 the highest ranked proposal. GIAA received the protest 26 days after DFS learned that GIAA
22 would be using letter-designations for the proposals and more than six months after the South
23 Korea trip.

24 A protest is timely, however, only if it is submitted within 14 days “after such aggrieved
25 person knows or should know of the facts giving rise thereto.” 5 GCA 5425(a). DFS could have

26 _____
27 ¹ GIAA’s investigation also revealed that DFS learned of the alleged facts forming the subject of
28 its October 30, 2012 “letter of concern” and its eventual April 23, 2012 protest no later than
October 1, 2012. (*See* May 17 Decision Letter at 12.) Therefore, even if DFS’s October 30, 2012
letter were deemed a “protest,” it would have been untimely. 5 GCA § 5425(a).

1 submitted a protest based on its allegations of misconduct during the South Korea trip in early
2 October 2012. It could have protested the letter-designation process in early April 2013, within
3 fourteen days of the March 28 meeting of GIAA's board. But in each instance DFS chose to wait
4 until after the highest-ranked proposal was announced, after the deadline for submitting a protest
5 had passed.²

6 **D. GIAA Resumed Negotiations with Lotte after Determining that DFS's Appeal**
7 **was Untimely**

8 When it received DFS's April 23 Protest, GIAA immediately halted further negotiations
9 with Lotte. (Damian Decl. ¶ 11.) But in addition to finding other defects and determining that
10 DFS's protest lacked basis in fact, GIAA concluded that the April 23 Protest was untimely. (May
11 17 Decision Letter at 11-13.) Untimely protests cannot be considered as a matter of law. 5 GCA §
12 5425(a); 2 GAR Div. 4 § 9109(c)(3). GIAA denied the April 23 Protest as untimely on May 17,
13 2013.³ (May 17 Decision Letter at 11-13.)

14 GIAA also determined that it was required to proceed with its negotiations with Lotte. As
15 discussed above, under the Procurement Law, only a timely protest triggers an automatic stay of
16 procurement. 5 GCA 5425(g). Because the April 23 Protest was untimely, the automatic stay was
17 never triggered, and GIAA had an obligation to conclude its contract with the most qualified
18 proposer. GIAA therefore resumed its suspended negotiations with Lotte on May 18, 2013. (*Id.*)
19 GIAA and Lotte finalized and executed the concession agreement later the same day. (*Id.*)
20
21

22 ² By delaying its protest until April, DFS put the Airport in the difficult position of addressing
23 DFS's protest after the winning proposal had already been announced. Had DFS submitted a
24 timely protest within 14 days of the September 2012 South Korea trip, its protest could have been
25 resolved far in advance, without jeopardizing GIAA's revenue and GIAA's planned sale of
26 revenue bonds in August 2013 for much needed facility repairs and improvements, which had long
27 been in the works and depended on the expected increased revenue GIAA would receive under its
28 new concession contract. (Decl. Frank Santos Supp. GIAA's Obj. to OPA Hearing Appeal, dated
Dec. 20, 2013, ¶¶ 2-7.)

³ GIAA stated alternative bases for denying DFS's protest in its decision in addition to
untimeliness, but those bases are not relevant to the question of whether an automatic stay was
triggered by DFS's April 23 protest. (*See generally* May 17 Decision Letter at 10-34.)

1 **E. DFS Then Sued GIAA in Superior Court at the Same Time It Appealed to the**
2 **OPA, which Forced the OPA to Stay the Appeal**

3 Two weeks later, on May 30, 2013, DFS appealed the Airport’s denial of its protest to the
4 OPA. According to DFS, “GIAA failed to observe the requirement that it ‘not proceed further with
5 the solicitation or with the award of [a] contract prior to final resolution of [a pending protest].”
6 (Fisher Decl., Ex. C at 2-3 [quoting 5 GCA § 5425(g)].) DFS has since reaffirmed its position that
7 “GIAA’s failure to impose the requisite stay mandated by statute” is one of “the various issues
8 implicated in this appeal.” (Fisher Decl., Ex. D at 3.) At the time of DFS’s appeal, DFS made no
9 disclosures concerning potential conflicts of interest.

10 The next day, DFS sued GIAA and Lotte in Guam Superior Court based on its April 23
11 Protest. This lawsuit forced the Public Auditor to stay the appeal. (*See* Fisher Decl., Ex. E.) DFS’s
12 lawsuit was later dismissed after both the Guam Superior Court and the Guam Supreme Court
13 ruled that DFS violated Guam’s Procurement Law by filing the lawsuit without exhausting its
14 administrative remedies.⁴ (Fisher Decl., Ex. F at 6; Ex. G at ¶¶ 30-31.)

15 **F. More than Six Months Later GIAA Learned for the First Time that DFS had**
16 **Secretly Retained the Law Firm Employing the Public Auditor’s Husband**

17 On December 3, 2013, the Public Auditor appointed Peter C. Perez to serve as the hearing
18 officer. (Fisher Decl., Ex. H.) This decision was unexpected: while DFS had earlier moved to lift
19 the stay, GIAA had opposed that motion, and the OPA had not ruled on it.

20 Ten days later, DFS disclosed for the first time that it had previously hired the Lujan Firm,⁵
21 where Mr. Perez had been a named partner. According to the disclosure, the Lujan Firm advises
22 DFS on “issues related to [GIAA]’s determination that Lotte [] was the successful proposer for the
23 RFP that is the subject of this appeal.” (Fisher Decl., Ex. J at 1 [emphasis added].)

24 _____
25 ⁴ The Guam Supreme Court also ruled that certain comments made by Judge Bordallo in the
26 Decision & Order dismissing the Superior Court action related to the timeliness of DFS’s appeal to
27 GIAA were in excess of his jurisdiction and must be stricken. (Fisher Decl., Ex. G at ¶¶ 22-23.)

28 ⁵ At some point after DFS hired the Lujan Firm, Peter C. Perez left the Lujan Firm, and since then
the firm has been known as Lujan Aguigui & Wolf LLP. For ease of reference, the Airport will
refer to it as the Lujan Firm.

1 DFS disclosed this secret representation more than six months after it submitted its appeal
2 and a little over an hour before the deadline to submit objections to the Public Auditor's
3 appointment of Mr. Perez. DFS did *not* disclose that the Public Auditor's husband, James Brooks,
4 is employed by the Lujan Firm as a research associate. Mr. Brooks has been working at the Lujan
5 Firm for over 13 years. (Fisher Decl., Ex. K.)

6 DFS made no such disclosure regarding the potential conflict between the Public Auditor
7 and the Lujan Firm despite the presumed awareness of their counsel that the Public Auditor has
8 previously recused herself based on her husband's employment at the Lujan Firm. *See, e.g., In the*
9 *Appeal of Far East Equip. Co., LLC*, OPA-PA-08-001 (Order of Dismissal, Jan. 31, 2008). The
10 Public Auditor has also refrained to date from commenting on her ability to sit in light of DFS's
11 revelation regarding the Lujan Firm's involvement in the subject matter of this appeal and GIAA's
12 December 20 objections. (Fisher Decl., Ex. L at 4; Ex. M.)

13 **G. While the Appeal Was Stayed the Public Auditor Made Public Statements**
14 **Suggesting that She Has Prejudged Certain Issues**

15 Shortly after she appointed Mr. Perez as the hearing officer for DFS's appeal, on December
16 13, 2013, the Public Auditor testified before the Guam Legislature. (Fisher Decl., Ex. R.) The
17 Public Auditor argued that an Automatic Stay should remain in place even after a protest has been
18 denied by a public agency:

19 As John Brown had said, if the automatic stay is not placed through the appeals
20 process, it almost renders this office moot, why bother? Vendor, why bother? If the
21 agency is allowed to go forward, the agency becomes judge and jury, should they
become judge and jury?

22 (*Id.* at 84:25-85:7.)

23 The Public Auditor then made comments that appear to refer to this particular case and, in
24 criticizing the conduct of GIAA, espoused the position taken by DFS in its pending appeal: "[t]his
25 year three different agencies ignored [the Automatic Stay]. As John [Brown] said, they gave the
26 award today, issued the thing the next day, no opportunity for the vendor to protest. The *airport*,
27 the hospital and DOE." [emphasis added]. (*Id.* at 85:10-14.)

1 **H. DFS Now Claims that the Public Auditor can Hear its Appeal Because the**
2 **Lujan Firm Supposedly Had an Informal “Ethical Wall”**

3 Before the Public Auditor regained jurisdiction to hear DFS’s appeal on September 18,
4 2014, when a final judgment was entered in DFS’s lawsuit in Superior Court, DFS suddenly
5 submitted several papers to the Public Auditor on September 15, 2014 regarding this appeal.
6 Among these papers was a “Response to [GIAA]’s Objection to the [OPA] Hearing Appeal
7 [‘Response’],” which DFS elected to treat as a motion to disqualify the Public Auditor. (*See*
8 Response at 1.)

9 GIAA, however, had not previously moved to disqualify the Public Auditor. GIAA’s
10 December 20, 2013 objections sought disclosure from DFS and the Public Auditor of facts relating
11 to the Lujan Firm and the Public Auditor’s husband’s involvement in the representation of DFS
12 and her public statements to the Guam Legislature and objected to the Public Auditor resuming
13 DFS’s appeal before all of the facts were known. (*See* Fisher Decl., Ex. L at 8.) GIAA also
14 expressly reserved the right to move to disqualify the Public Auditor in the future following full
15 disclosure. (*Id.* at 2.)

16 DFS’s “Response” to GIAA’s initial objections is remarkable for three reasons:

17 *First*, both by number of pages and by emphasis, the primary purpose of DFS’s “Response”
18 is to renew DFS’s accusations of outright corruption against certain GIAA employees, board
19 members, the undersigned legal counsel⁶ that have already been shown to be baseless. (*See*
20 Response at 5-8.) These accusations and political rhetoric are clearly irrelevant to the question of
21 whether the Public Auditor has a conflict of interest. They are also unethical. *United States v.*
22 *Young*, 470 U.S. 1, 9 (1985) (“Defense counsel, like his adversary, must not be permitted to make
23 unfounded and inflammatory attacks on the opposing advocate.”).

24
25 _____
26 ⁶ In a footnote, DFS also insinuates that the current Governor of Guam has been somehow
27 involved with GIAA’s “various procurement missteps and the follow-on legal disputes” by virtue
28 of the fact that he is the first cousin of one of GIAA’s attorneys. (Response at 8 n.5.) As DFS and
 its counsel are well aware, GIAA is an autonomous rather than a line agency and the current
 Governor had nothing to do with this procurement. Nevertheless, DFS without a shred of evidence
 shamelessly infers otherwise.

1 Second, DFS’s “Response” mischaracterizes GIAA’s unanswered questions in its Objection
2 about facts that DFS deliberately concealed as an “intemperate” and “blistering attack” on “the
3 personal integrity of the Public Auditor.” (Response at 5.) DFS later admits – but only in a footnote
4 – that GIAA “does not directly accuse the OPA (or the Guam courts) of any unethical behavior.”
5 (*Id.* at 11 n.7.)

6 Third, DFS attempts to “clean up” the conflict that it created for the Public Auditor by
7 submitting an “accompanying” declaration from David Lujan that is actually dated nine months
8 earlier in order to show that the Public Auditor’s husband was prevented through an “ethical wall”
9 from involvement in the Lujan Firm’s representation of DFS. (*See* Decl. David J. Lujan [“Lujan
10 Decl.”].) DFS did not provide either a current declaration from Mr. Lujan or a declaration from the
11 Public Auditor’s husband, Mr. Brooks. DFS also did not provide any documentation evidencing
12 that an ethical wall is in place at the Lujan Firm and the nature of such an ethical wall. DFS’s
13 “Response” repeatedly cites to this nine-month-old declaration as the sole factual support for its
14 argument that the Lujan Firm and Mr. Brooks have had no involvement with this appeal⁷ and that
15 Mr. Brooks has been effectively walled-off from the Lujan Firm’s representation of DFS.

16 GIAA previously requested from DFS on four separate occasions – December 18, 2013,
17 January 21, 2014, April 14, 2014, and June 9, 2014 – that DFS disclose the nature of the Lujan
18 Firm and James Brooks’s involvement with DFS in this matter. (Fisher Decl., Exs. N-Q.) DFS
19 ignored GIAA’s requests (Fisher Decl. ¶ 18) and to date has refused to provide any information
20 apart from the stale Lujan Declaration. (*Id.*)

21 **I. DFS Has Shown that It Will Stop at Nothing to Regain Its Position at the**
22 **Airport**

23 Ever since GIAA awarded the specialty retail concession to Lotte, DFS has appeared
24 willing to do anything to regain its lucrative position at the Airport. In addition to hiring
25 international law firm Gibson Dunn and two other law firms, DFS secretly hired the Lujan Firm, as

26 _____
27 ⁷ The declaration of Maurice Suh submitted together with the Response includes statements that
28 attorneys at the Lujan Firm have not “participated in any of the briefing or proceedings” but do not
state whether they have otherwise had involvement advising DFS or its off-island counsel. (*See*
Suh Decl. ¶¶ 50-51.)

1 discussed above, where the Public Auditor’s husband is employed. With the assistance of various
2 Guam-based “consultants,” DFS has waged a scorched earth campaign to pressure GIAA to
3 rescind its contract with Lotte and smear GIAA employees and others in the court of public
4 opinion.

5 DFS has waged this campaign on multiple fronts:

- 6 • DFS has accused individual GIAA employees of outright corruption in multiple filings
7 in the Superior Court without evidentiary basis. (*See, e.g.*, Complaint Seeking Judicial
8 Review of Denial of RFP Proposal Protest and Award of Operating Contract, Pursuant
9 to 5 GCA § 5480(a), submitted to OPA on May 31, 2013, ¶ 45.)
- 10 • DFS has made similar accusations against GIAA and its legal counsel in submissions to
11 the Public Auditor. (*See, e.g.*, Response at 5-8.)
- 12 • DFS has engaged in a comprehensive media campaign making the same accusations,
13 issuing press releases, giving radio, television, and newspaper interviews, and
14 purchasing public advertisements, to which GIAA’s employees cannot meaningfully
15 respond. (Fisher Decl. ¶ 22 & Exs. S & T.)
- 16 • DFS has made eighteen separate Sunshine Act requests to GIAA – including at least
17 one every month since DFS submitted its original protest – requesting more than eight
18 thousand pages of documents, some going back to the early 1990s. (Fisher Decl. ¶ 22.)

19 At the same time, DFS has made it clear that it unreasonably expects to receive a favorable
20 ruling from the Public Auditor granting relief to DFS that cannot be granted. In an attempt to
21 interfere with GIAA’s contract with Lotte, DFS sent a letter to Lotte advising it to breach its
22 agreement to perform critical renovations at the Airport. (Fisher Decl., Ex. I.) According to that
23 letter, the Public Auditor will order that DFS “be reinstated at the Airport,” leaving Lotte unable to
24 recoup the millions of dollars it agreed to spend on those renovations. (*Id.* at 1 [emphasis added].)
25 Since DFS has no contractual entitlement to occupy the Airport premises regardless of whether
26 GIAA’s contract with Lotte is ultimately affirmed, DFS’s forecast that the Public Auditor will
27 “reinstated” DFS at the Airport might lead a reasonable member of the public to conclude that
28 DFS’s predication is based upon something other than the law or the facts.

None of DFS’s efforts – which have been politically divisive, personally injurious, and
extremely costly to the Airport – have addressed the merits of GIAA’s original procurement
decision: that DFS made a proposal that an independent evaluation committee (relying on the

1 report of an independent consultant) determined would have provided far less money and inferior
2 services to the Airport and the people of Guam over the term of the specialty retail concession.

3 **J. The Public Auditor is Charged with the Highest Degree of Ethical Standards in**
4 **Adjudicating Procurement Appeals**

5 The Public Auditor is an elected official specifically designated as independent from the
6 three branches of the Government of Guam charged with bringing transparency and fiscal rectitude
7 to the Government through audits and other duties. *See generally* 1 GCA § 1909. Among those
8 other duties, the Public Auditor is entrusted with the power and duty to “hear and decide all
9 appeals of decisions that arise under 5 GCA § 5425(c)” of Guam’s Procurement Law. 1 GCA §
10 1909(k) (2005).

11 The unique role of the Public Auditor and her status as an elected official calls for
12 heightened concern for the integrity of that office. The Mission Statement for the Office of Public
13 Accountability exhorts the Public Auditor to “[u]phold the highest ethical standards in the
14 performance of our work and encourage such standards throughout the Government of Guam.”
15 (Fisher Decl., Ex. U.) Indeed, as part of her statutory duties, the Public Auditor was responsible for
16 developing the ethical standards for training the leaders of government agencies. *See* 4 GCA
17 § 15410 (2005) (“The Public Auditor shall develop standards for the ethics program until the
18 Guam Ethics Commission is appointed and functioning....”).

19 The Procurement Law imposes special ethical obligations on all government participants in
20 procurement, including the Public Auditor. Chief among these ethical obligations is the duty to
21 remain impartial and foster public confidence in the procurement review process:

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

25 5 GCA § 5625 (2005).

26 As the final administrative adjudicator in the procurement protest process and an elected
27 official called upon to ensure that the Government acts ethically, the Public Auditor’s compliance
28

1 with these ethical standards is a critical component of proceedings that are not only fair but appear
2 to be fair.

3 **III. ARGUMENT**

4 This motion seeks to prevent DFS's decision to hire the Lujan Firm in advance of its appeal
5 to taint the review of that appeal, particularly in the context of her public statements regarding the
6 automatic stay that reasonably call into question whether she has prejudged an issue of this appeal.
7 The Superior Court is now the tribunal in the best position to insure that the integrity of the
8 procurement process is preserved.

9 **A. The Public Auditor is Required to Recuse Herself because She Has a Conflict
10 of Interest**

11 **1. Guam Law Prohibits the Public Auditor from Presiding over an Appeal
12 When She Has a Conflict of Interest**

13 Guam's Procurement Law specifically prohibits the Public Auditor from adjudicating a
14 procurement appeal when she or any member of her immediate family has a "financial interest
15 pertaining to the procurement." 5 GCA § 5601(d); 5 GCA § 5628(a)(1).

16 The term "financial interest" is defined broadly to mean:

17 (1) ownership of any interest or involvement in any relationship from
18 which, or as a result of which, a person within the past year has received,
19 or is presently or in the future entitled to receive, more than Two
20 Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent;

21 ...

22 or

23 (3) holding a position in a business such as an officer, director, trustee,
24 partner, employee, or the like, or holding any position of management.

25 5 GCA § 5601(e).

26 A financial interest is not the only interest that can create a conflict for someone charged
27 with adjudicating a dispute impartially. "The public is entitled to have its representatives perform
28 their duties free from any personal or pecuniary interest that might affect their judgment." 4
McQuillin, *The Law of Municipal Corporations* (3d ed. Rev. 1992) § 13.35. "[A]n administrative
hearing must be attended, not only with every element of fairness but with the very appearance of

1 complete fairness.” *Cinderella Career & Finishing Sch., Inc. v. FTC*, 425 F.2d 583, 591 (D.C.
2 Cir. 1970) (quotation omitted). Any perceived bias or partiality is inconsistent with the integrity
3 of the procurement process. *See* 5 GCA § 5625. As the First Circuit Court of Appeals has stated in
4 the context of judicial disqualification, “[t]he problem... is that regardless of [a judge's] actual
5 impartiality, a reasonable person might perceive bias to exist, and this cannot be permitted.” *In re*
6 *Bos.'s Children First*, 244 F.3d 164, 171 (1st Cir. 2001) (quotation omitted).⁸

7 Therefore, when the Public Auditor’s ability to remain impartial can reasonably be
8 questioned because of a personal or financial interest, she must recuse herself. *Cf. Flier v.*
9 *Superior Court*, 23 Cal. App. 4th 165, 170 (1994) (“If a reasonable member of the public at large,
10 aware of all the facts, would fairly entertain doubts concerning the judge's impartiality,
11 disqualification is mandated.”); 28 U.S.C. § 455 (“Any justice, judge or magistrate judge of the
12 United States shall disqualify himself in any proceeding in which his impartiality might
13 reasonably be questioned”); *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973) (noting that much of
14 the law on disqualification due to interest applies equally to administrative adjudications).
15 “Indeed, the absence in the administrative process of procedural safeguards available in judicial
16 proceedings has been recognized as a reason for even *stricter* application of the requirement that
17 administrative adjudicators be impartial.” *Hummel v. Heckler*, 736 F.2d 91, 93 (3d Cir. 1984).

18 The Public Auditor has previously recognized that she may not preside over appeals in
19 which her family is involved. *In the Appeal of Teleguam Holdings, LLC dba GTA Telecom*, OPA-
20 PA-10-002, a motion to recuse the Public Auditor arose “from the fact that the Public Auditor’s
21 stepson, Terrence Brooks, Esq., is the Legal Counsel for the Appellant.” (Dec. & Order, Mar. 1,
22 2010 at 1.) The Public Auditor noted that Terrence Brooks was no longer legal counsel for the
23 Appellant and had no role in the appeal. (*Id.* at 1-2.) But the Public Auditor found that Terrence
24 Brooks had a “financial interest” because he had likely been paid more than \$2,500 by the
25 Appellant in the past year. (*Id.* at 3 [citing 5 GCA § 5601(e)(1)].) Therefore, the Public Auditor

26 _____
27 ⁸ These standards must be viewed in the specific context of this case. The Public Auditor is an
28 elected government official whose job is to ensure a fair procurement process to provide goods and
services for the Territory and ultimately its citizens; therefore the public has the right to expect
even higher standards of conduct here than in the judicial context.

1 found that “she has a conflict of interest as a result of Terrence Brooks, Esq.’s position as one of
2 the Appellant’s legal counsel” and recused herself from the proceeding. (*Id.*)

3 Likewise, in *In the Appeal of Far East Equipment Co., LLC*, OPA-PA-08-001, where the
4 Lujan Firm represented the Port and the Public Auditor’s husband, Mr. Brooks, was an employee
5 of the Lujan Firm, the Public Auditor determined that she must disqualify herself from the case.
6 (Order of Dismissal, Jan. 31, 2008.) Rather than pointing to her husband’s financial interest, the
7 Public Auditor recused herself because, according to the acting administrator, “it is appropriate
8 that the Office of the Public Auditor not be the arbiter in this procurement matter *as the*
9 *impartiality of the Public Auditor may be questioned*, regardless of whether any specific
10 discussions had taken place [emphasis added].” (*Id.*)

11 **2. Because DFS is Represented by Her Husband’s Law Firm, the Public**
12 **Auditor Has a Conflict of Interest and a Legal Duty to Recuse Herself**

13 When DFS hired the Lujan Firm to represent it concerning appeal issues, it created a
14 conflict of interest for the Public Auditor. This representation constitutes both a financial and
15 personal conflict of interest for the Public Auditor.

16 The Public Auditor’s husband, James Brooks, falls within the definition of “immediate
17 family” under 5 GCA § 5601(g). Mr. Brooks has a financial interest in the Lujan Firm as an
18 employee, 5 GCA § 5601(e)(3), and the Lujan Firm was (and perhaps still is) DFS’s legal counsel
19 in connection with the issues that are before the Public Auditor in this appeal. DFS’s payment of
20 legal fees for the Lujan Firm’s services also directly or indirectly contributes to Mr. Brooks’s
21 salary at the Lujan Firm, which certainly exceeds \$2,500 per year, *see* 5 GCA § 5601(e)(1). Under
22 5 GCA § 5628(a), it is a breach of ethical standards for the Public Auditor to adjudicate this
23 appeal given Mr. Brooks’s financial interest in the matter. *In the Appeal of Teleguam Holdings,*
24 *LLC dba GTA Telecom*, OPA-PA-10-002 (Dec. & Order, Mar. 1, 2010.)

25 Similarly, Mr. Brook’s involvement creates a scenario in which the Public Auditor’s her
26 impartiality might reasonably be questioned. The Public Auditor would understandably face
27 personal difficulty in deciding an appeal against her husband’s client. The Public Auditor has
28

1 recognized this fact in the past and appropriately recused herself. *In the Appeal of Far East*
2 *Equipment Co., LLC*, OPA-PA-08-001 (Order of Dismissal, Jan. 31, 2008.)

3 Faced with a clear financial conflict of interest involving her family and the same issues
4 regarding her appearance of partiality, the Public Auditor cannot recuse herself in other cases but
5 choose not to in this “contentious, high- profile, and high-stakes dispute.” *DFS Guam, L.P. v. A.B.*
6 *Won Pat Int’l Airport Auth.*, 2014 Guam 12 ¶ 1. The Public Auditor should recuse herself from
7 adjudicating DFS’s appeal now that Mr. Brook’s involvement is known.

8 **3. The Lujan Declaration is Insufficient to Rebut the Presumption that**
9 **Mr. Brooks has been Involved with DFS’s Case**

10 DFS’s belated attempt to minimize the role of the Lujan Firm and the Public Auditor’s
11 husband is insufficient to rebut the presumption that the entire Lujan Firm was and is involved with
12 DFS’s appeal. DFS admits that Mr. Brooks’s employment by the Lujan Firm poses a potential
13 conflict of interest for the Public Auditor. (Lujan Decl. ¶ 9.) For that very reason, according to
14 Lujan his firm supposedly erected an “ethical wall” to prevent “Mr. Brooks from having any access
15 to any information that the Firm has regarding the matter...” (*Id.* ¶ 11.)

16 But once the conflict wall issue has been raised, the burden falls on DFS to show that the
17 wall has been effective. *See People v. Tennessen*, 2009 Guam 3 ¶ 46 (“Having thus called the
18 conflict wall into question, the burden falls upon the government to show that the conflict wall
19 provided an effective screen.”) (citation omitted). While the Guam Supreme Court has suggested
20 that there may be situations where the proper application of an ethical wall may obviate the need
21 for vicarious disqualification of an entire office, *see People v. Tennessen*, 2009 Guam 3 ¶ 36, an
22 ethical wall must be sufficient to ensure that there is not an improper transmission of information,
23 *id.* ¶ 44.

24 The Guam Supreme Court has not declared the specific requirements for an ethical wall. It
25 has, however, looked to California law for guidance in previous ethical wall cases. *See, e.g.,*
26 *Tennessen*, 2009 Guam 3 ¶ 43 (citing *People v. Choi*, 94 Cal. Rptr. 2d 922, 926 (Ct.App.2000)).

27 Under California law, ethical walls are required for both attorneys and non-attorney
28 employees to avoid vicarious disqualification. The leading recent California case is *Kirk v. First*

1 *American Title Ins. Co.*, 183 Cal. App. 4th 776 (2010), which held that a law firm is not
2 automatically vicariously disqualified just because a member of the firm had confidential
3 information about an adverse party; rather, the court held, such a situation creates a rebuttable
4 presumption of disqualification, and this rebuttal can be made by showing that an adequate ethical
5 wall was in place. *Id.* at 814. The *Kirk* case involved the application of an ethical wall to an
6 attorney, but an earlier case, *In re Complex Asbestos Litigation*, applied the same “ethical wall”
7 principles to non-attorney employees of a law firm. 232 Cal. App. 3d 572, 594 (1991).

8 There are two absolute requirements for any ethical wall to overcome the presumption of
9 vicarious disqualification:

- 10 1. The ethical wall must be timely imposed when the conflict first arises, *Kirk*, 183 Cal.
11 App. 4th at 810; and
- 12 2. “[A]n effective wall involves the imposition of preventive measures to guarantee that
13 information will not be conveyed” and “a memorandum should be circulated warning the
14 legal staff to isolate the [tainted] individual from communications on the matter and to
15 prevent access to the relevant files.” *Id.* (citations and quotations omitted [emphasis
16 added]); *see also Complex Asbestos Litig.*, 232 Cal. App. 3d at 594.

17 The Lujan Declaration completely fails to satisfy the second requirement. Under California
18 law, Lujan’s declaration asserting that Mr. Brooks did not access information or participate in the
19 legal work is insufficient. *Kirk*, 183 Cal. App. 4th at 810 (“[I]t is not sufficient to simply produce
20 declarations stating that confidential information was not conveyed or that the disqualified attorney
21 did not work on the case [citation and quotation omitted].”) DFS is also required to show that a
22 memorandum was circulated to all legal staff, but DFS provides no memorandum to show that
23 everyone at the Lujan Firm was instructed to isolate Mr. Brooks and prevent him from accessing
24 relevant materials. DFS also provides no declaration from his partner Ignacio Aguiqui to establish
25 that he complied with the ethical wall. Most strikingly, DFS provides no declaration from Mr.
26 Brooks to show that he has had no involvement with the Lujan Firm’s representation of DFS
27 whatsoever. Indeed, given the highly publicized nature of this particular dispute, it is unlikely that
28 without extraordinary safeguards—of which there is no evidence here—Mr. Brooks was exposed
to confidential information favoring DFS’s position. Given the absence of legally sufficient
evidence of the existence of an ethical wall and its adequate enforcement, there exists the

1 presumption that the ethical wall was inadequate, which DFS cannot rebut.

2 Moreover, California courts impose several additional requirements when circumstances
3 are warranted. *Kirk*, 183 Cal. App. 4th at 810-11. “[T]he inquiry before a trial court considering the
4 efficacy of any particular ethical wall is not to determine whether all of a prescribed list of
5 elements (beyond timeliness and the imposition of prophylactic measures) have been established; it
6 is, instead, a case-by-case inquiry focusing on whether the court is satisfied that the tainted
7 attorney has not had and will not have any improper communication with others at the firm
8 concerning the litigation.” *Id* at 810. These additional requirements include:

9 1. Isolating the tainted individual from the attorneys handling the case in small practice
10 groups. *Id.* at 811 (“In a small practice group, separating the tainted attorney from the case
11 alone might not be sufficient; separation from the attorneys handling the case can prevent
12 inadvertent disclosure”); *see also People ex rel. Dept. of Corporations v. Speedee Oil*
13 *Change Systems, Inc.*, 20 Cal. 4th 1135, 1153-54 (1999) (The rule of vicarious
14 disqualification is based on the “everyday reality that attorneys, working together and
15 practicing law in a professional association, share each other’s, and their clients’,
16 confidential information.”);

17 2. Express prohibitions against discussion information. *Kirk*, 182 Cal. App. 4th at 811-12
18 (“In all but the most unusual case, it would be necessary for the challenged law firm to
19 establish express prohibitions against the discussion of confidential information as part of
20 its ethical wall.”);

21 3. Procedures to prevent accidental disclosure of documents. *Id.* at 812. Such procedures
22 can include storing files in a separate location where the tainted individual has no access
23 and password protecting electronic documents. *Id.*

24 4. Written notice to interested parties. *Id.* at 813. While *Kirk* deals with the situation of a
25 conflict of interest involving a former client – requiring written notice to that client when
26 the conflicted representation was undertaken – the analogous interested parties in this case
27 are the Public Auditor, GIAA, and Lotte. Given that DFS bears the burden to show that its
28 law firm established a sufficient ethical wall, DFS should have disclosed both the Lujan
Firm’s representation and all facts related to any supposed ethical wall with its first
submission to the Public Auditor, serving the same on the other parties to this appeal.

Here, these requirements impose significant if not insurmountable barriers to DFS showing
that any purported ethical wall imposed at the Lujan Firm was adequate to prevent Mr. Brooks
from involvement or access to information:

First, the Lujan Firm is a small firm, and it is unlikely that anything other than a formal
written memorandum circulated to all employees of the firm combined with total isolation of Mr.

1 Brooks could “guarantee” the sufficiency of the ethical wall.

2 *Second*, there is no reason to believe that the Lujan Firm is the unusual case that would not
3 require express prohibitions against discussing information about the DFS representation with Mr.
4 Brooks as part of its ethical wall.

5 *Third*, the Lujan Declaration does not identify any concrete measures to prevent accidental
6 disclosure to Mr. Brooks.

7 *Fourth*, DFS failed to disclose to the Public Auditor and the other parties when it submitted
8 its appeal on May 30, 2013 that it was represented by the Lujan Firm even though the Lujan Firm
9 had already supposedly recognized the potential conflict of interest in January 2013. Even when
10 DFS finally did disclose the representation more than six months later, it failed to disclose Mr.
11 Brooks’s employment by the Lujan Firm. Thereafter, instead of taking active steps to remedy this
12 lack of disclosure, DFS ignored four separate requests from GIAA and waited ten more months to
13 disclose Mr. Brooks’s employment and it offered limited and solely self-serving disclosures of his
14 involvement.

15 For the foregoing reasons, the ethical wall purportedly established by the Lujan Firm is
16 insufficient to cure the conflict of interest created by DFS’s retention of the Lujan Firm.

17 **B. The Public Auditor is Required to Recuse Herself as a Matter of Due Process**
18 **because She Appears to have Prejudged an Element of DFS’s Appeal**

19 In addition to avoiding conflicts of interest, the Public Auditor is obligated to insure that
20 appeals are conducted in a manner consistent with due process. A hearing does not comport with
21 due process if it “is totally devoid of a meaningful opportunity to be heard” because “the
22 decision-maker has predetermined the outcome of the hearing.” *Matthews v. Harney County, Or.,*
23 *Sch. Dist. No. 4*, 819 F.2d 889, 893-94 (9th Cir. 1987) (quoting *Washington v. Kirksey*, 811 F.2d
24 561, 564 (11th Cir. 1987)). “The test for disqualification has been succinctly stated as being
25 whether ‘a disinterested observer may conclude that [the agency] has in some measure adjudged
26 the facts as well as the law of a particular case in advance of hearing it.’” *Cinderella Career &*
27 *Finishing Sch., Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970) (quoting *Gilligan, Will & Co. v.*
28 *SEC*, 267 F.2d 461, 469 (2d Cir.), cert. denied, 361 U.S. 896 (1959)). “Thus, where... an

1 administrative official has made public comments concerning a specific dispute that is to come
2 before [her] in [her] adjudicatory capacity, [s]he will be disqualified on the ground of
3 prejudgment....” *1616 Second Ave. Rest. v. N.Y. State Liquor Auth.*, 75 N.Y.2d 158, 162 (1990).

4 When the Public Auditor expressed her opinion that the Airport violated the automatic
5 stay by awarding a procurement contract “the next day” after denying a protest (Fisher Decl. Ex.
6 R at 85: 10-14), she revealed that she may have prejudged GIAA’s decision that the automatic
7 stay provision of the Procurement Law did not apply to DFS’s April 23 Protest, an issue that DFS
8 is raising in this appeal. It is clear that the Public Auditor gave her opinion without the benefit of
9 any factual record, including that:

- 10 • DFS knew of the basis for its April 23 Protest months earlier;
- 11 • GIAA’s negotiations with Lotte at the time GIAA received DFS’s April 23 Protest
12 were at an advanced stage;
- 13 • GIAA immediately ceased negotiations with Lotte when GIAA received the
14 protest;
- 15 • The principal ground for GIAA’s denial of DFS’s protest was that it was
16 “untimely,” and only a “timely” protest imposes the automatic stay; and
- 17 • GIAA and Lotte finished up the negotiations the day after GIAA denied the protest
18 because at that point there were few items left to discuss, and DFS did not appeal
19 GIAA’s denial of its protest for nearly two weeks.

20 The question is not whether the Public Auditor is actually biased in DFS’s favor, although
21 GIAA has very real concerns that DFS has taken steps, including hiring the Lujan Firm, to
22 influence the Public Auditor. The question is whether the public will perceive the Public Auditor
23 to be acting without the impartiality required by the Procurement Law and call into question the
24 integrity of the process. *See* 5 GCA § 5625. “[A]n administrative hearing must be attended, not
25 only with every element of fairness but with the very appearance of complete fairness.”
26 *Cinderella Career & Finishing Sch., Inc.*, 425 F.2d at 591 (quotation omitted). As the First
27 Circuit Court of Appeals has stated in the context of judicial disqualification, “[t]he problem... is
28 that regardless of [a judge’s] actual impartiality, a reasonable person might perceive bias to exist,

1 and this cannot be permitted.” *In re Bos. ’s Children First*, 244 F.3d at 171 (quotation omitted).⁹

2 Therefore, the Public Auditor has a clear duty to recuse herself after making her public
3 comments regarding the Airport’s application of the automatic stay, particularly in light of recent
4 disclosure that the Lujan Firm represented DFS at the time she made these comments.

5 **C. Should the Public Auditor Recuse Herself, No Party will be Prejudiced**

6 The Guam Procurement Regulations provide:

7 **Disqualification of Public Auditor.** The Public Auditor may recuse
8 herself or himself at any time and notify all parties, or any party may raise
9 the issue of disqualification and state the relevant facts prior to the
10 hearing. The Public Auditor shall make a determination and notify all
11 parties. In the event of 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.

12 2 GAR Div. 4 § 12601.

13 The disqualifying facts set forth above warrant recusal. That the Public Auditor’s husband
14 worked on behalf of a party involved in an appeal before the OPA has caused the Public Auditor to
15 recuse herself. *See In the Appeal of Far East Equipment Co., LLC*, OPA-PA-08-001 (Order of
16 Dismissal, Jan. 31, 2008)). The Public Auditor should likewise recuse herself in this appeal. While
17 the Guam Supreme Court has pointed out that this appeal “is part of a contentious, high-profile,
18 and high-stakes dispute,” *DFS Guam, L.P. v. A.B. Won Pat Int’l Airport Auth.*, 2014 Guam 12 ¶1,
19 recusal is not a matter of picking and choosing which matters the Public Auditor wishes to
20 adjudicate. The ethical standard to which the Public Auditor holds herself should be the same for

21 _____
22 ⁹ DFS may argue that an “actual bias” standard applies to the disqualification of the Public Auditor
23 based on *Sule v. Guam Board of Dental Examiners*, 2008 Guam 20 ¶19. *Sule* is distinguishable.
24 *First*, *Sule* did not involve a procurement appeal, and § 5625 of the Procurement Law imposes
25 heightened ethical obligations. *See* 5 GCA § 5625. *Second*, the Supreme Court’s stated rationale in
26 *Sule* that it would be “impractical to apply an appearance of impropriety standard to a proceeding
27 in which members of the same profession in a small local area are called upon to judge another
28 member of their profession,” 2008 Guam 20 at ¶ 19, does not apply in the case of the Public
Auditor. 1 GCA § 1900. *Third*, unlike administrative bodies acting under the Administrative
Adjudication Act (like the Board of Dental Examiners), the decisions of the Public Auditor in
procurement appeals are afforded great weight and deference. *Compare* 5 GCA § 5704, with
5 GCA § 9204. Given the level of deference given by the courts to decisions of the Public Auditor,
it is critical that the Public Auditor avoid even the appearance of impropriety.

1 big, important, and highly visible cases as it is for smaller matters that exist outside of the public
2 eye. The failure of DFS to disclose the involvement of the Public Auditor's husband, even after
3 being specifically and repeatedly asked to do so by GIAA, makes it even more likely that any
4 reasonable member of the public would have serious concerns about the Public Auditor's
5 impartiality. Together with the Public Auditor's extrajudicial opinions regarding the disputed
6 issues in this appeal, her conflict of interest strongly suggests that anything other than an order of
7 recusal would cast doubt on the integrity of any outcome.

8 Should the Public Auditor recuse herself, DFS cannot claim any prejudice. As can be seen,
9 immediately after GIAA learned that the law firm employing the Public Auditor's husband
10 represented DFS in connection with the subject matter of this appeal, GIAA objected to the Public
11 Auditor's hearing this matter and to the appointment of Mr. Perez as the hearing officer. GIAA
12 also requested from DFS on four separate occasions – December 18, 2013, January 21, 2014, April
13 14, 2014, and June 9, 2014 – that DFS disclose the nature of the Lujan Firm and James Brooks's
14 involvement with DFS in this matter. (Fisher Decl., Exs. N-Q.) DFS ignored GIAA's requests
15 (Fisher Decl. ¶ 18) and only disclosed his involvement (and a clearly insufficient ethical wall) for
16 the first time this week. DFS's own conduct has placed the parties in this position. Under 2 GAR
17 Div. 4 § 12601, upon the Public Auditor's recusal, this matter will proceed directly to the Superior
18 Court of Guam, where it will be decided.

19 **IV. CONCLUSION**

20 Based on the foregoing, GIAA hereby requests that the Public Auditor recuse and
21 disqualify herself from hearing this appeal relating to the specialty retail procurement. By separate
22 motion, filed concurrently with this motion, GIAA requests that the Public Auditor extend the stay
23 of this appeal pending a decision on her recusal and disqualification.

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Respectfully submitted this 19th day of September, 2014.

CALVO FISHER & JACOB LLP
Attorneys for A.B. Won Pat International
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By: 
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11 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
12 **PROCUREMENT APPEALS**

13 IN RE THE APPEAL OF DFS GUAM L.P.,

APPEAL NO.: OPA-PA-13-006

14
15 Appellant.

CERTIFICATE OF SERVICE

1 I, Sarah L. Fabian, declare as follows:

2 1. I am an associate of the law firm of Calvo Fisher & Jacob LLP, legal counsel for
3 A.B. Won Pat International Airport Authority, Guam.

4 2. That I am a citizen of the United States of America, over the age of eighteen years,
5 have personal knowledge of the facts stated herein, and if called to testify I could and would
6 competently testify thereto.

7 3. That on the 19th day of September, 2014, I caused a copy of **(1) A.B. WON PAT**
8 **INTERNATIONAL AIRPORT AUTHORITY, GUAM'S MOTION TO DISQUALIFY**
9 **PUBLIC AUDITOR, (2) DECLARATION OF KATHLEEN V. FISHER IN SUPPORT OF**
10 **A.B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM'S MOTION TO**
11 **DISQUALIFY PUBLIC AUDITOR, (3) DECLARATION OF JANALYNN C. DAMIAN IN**
12 **SUPPORT OF A.B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM'S**
13 **MOTION TO DISQUALIFY PUBLIC AUDITOR, and (4) A.B. WON PAT**
14 **INTERNATIONAL AIRPORT AUTHORITY, GUAM'S MOTION TO MAINTAIN THE**
15 **EXISTING STAY OF APPEAL WHILE THE MOTION TO DISQUALIFY PUBLIC**
16 **AUDITOR IS PENDING**, filed with the Office of Public Accountability to be served upon the
below-listed parties via hand delivery:

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