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PROCUREMENT APPEALS

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FILE No. OPA-PA 08-011

4 **PROCUREMENT APPEAL**

6 In the Appeal of) APPEAL NO.: OPA-PA-08-011
7)
TOWN HOUSE DEPARTMENT STORES,)
8 INC., dba ISLAND BUSINESS SYSTEMS) **Objection**
& SUPPLIES,)
9)
Appellant.)
10)

11 Comes Now the Guam Public School System through Legal Counsel, Fred Nishihira,
12 **Objecting** to the Public Auditor hearing this Appeal. Pursuant to 2 GAR §12104(c)(9) GPSS
13 objects to the Public Auditor and the Hearing Officer hearing this Appeal based on the
14 Decision and the Findings and Recommendations of the Hearing Officer in case OPA-PA-08-
15 003. The primary purpose of an appeal is for the two disputing parties to come before a fair
16 and unbiased hearing officer to make a decision based on the facts presented. In OPA-PA-08-
17 003 the Public Auditor dismissed the Appeal based on a lack of jurisdiction. The Decision
18 further ordered GPSS to produce a decision for the protest filed by Appellant on December 4,
19 2007.

20 If the matter of OPA-PA-08-003 ended without further findings or conclusions GPSS
21 would raise no objections to the Hearing Officer or Public Auditor hearing this case. The
22 Public Auditor issued a Decision on July 11, 2008 one hundred and fifty-five (155) days after
23 the initial appeal was filed by Appellant. Notwithstanding the fact that the matter was
24 dismissed for no jurisdiction, the Decision further elaborated state that "[T]he Public Auditor
25 finds that she has authority to compel GPSS to produce the Decision in IBSS' December 4,

1 2007 Protest because GPSS' sixty-five (65) day delay in issuing the decision is an act of **bad**
2 **faith and threatens the integrity of the procurement process.**"¹ (Emphasis added) The term
3 bad faith or bad faith act was attributed to GPSS a total of twelve times between the Decision
4 and the Findings and Recommendations of Hearing Officer.

5 To complicate matters the Decision has determined that the existing contract is most
6 likely an "illegal contract" and GPSS' failure to render the statutorily required prompt and
7 expeditious decision on IBSS' protest is **intended** to prevent review of the DSA on appeal.²

8 It must be emphasized that the case was dismissed for no jurisdiction, yet the Decision
9 makes it clear, that for the case at hand, the Public Auditor and Hearing Officer have pre-
10 determined the intent of GPSS, ruled that such actions are bad faith and that the existing
11 contract is most likely illegal. The Appellant uses such findings and conclusions numerous
12 throughout his appeal.

13 Taking all the aforementioned facts into consideration, GPSS objects to the Public
14 Auditor and the Hearing Officer hearing in this case. Given the written Decision and Findings
15 and Recommendations of the Hearing Officer, GPSS is of the position that moving forth with
16 the same panel would not be an appeal before a fair and unbiased decision maker. Therefore,
17 GPSS request that the Public Auditor disqualify and recuse herself as permitted by 2 GAR
18 §12601

19 Dated this 1st day of August, 2008.

20 GUAM PUBLIC SCHOOL SYSTEM

21 By: 

22 **FRED NISHIHIRA**
23 Legal Counsel

24 ¹In the Appeal of IBSS OPA-PA-08-003, Decision page 5, lines 12-14

25 ² Ibid page 6, lines 11-14