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CC:	Generoso M. Bangayan President Phil-Gets (Guam) International Training Corp. dba J & B Modern Tech P.O. Box 9788 Hagatna, Guam 96931 (Appellant)		
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Re: OPA-PA-17-011 Order Re: Objection to Hearing Officer and Motion for Continuance

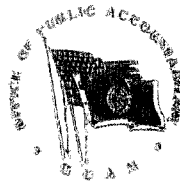
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 Vincent Duenas
 Auditor
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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF

Docket No. OPA-PA-17-011

PHIL-GETS (GUAM) INTERNATIONAL
TRADING CORP. dba J & B MODERN
TECH,

**ORDER RE: OBJECTION TO HEARING
OFFICER AND MOTION FOR
CONTINUANCE**

Appellant.

And

GUAM COMMUNITY COLLEGE,

Purchasing Agency.

Before the Public Auditor are an Objection to Hearing Officer filed by Appellant Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech and Appellant's Motion for Continuance, both filed on November 13, 2017. The Public Auditor hereby issues this Order on the Objection and Motion.

I. Objection to Hearing Officer

Appellant objects to the hearing officer for the reason that "the appointed Hearing Officer's impartiality might be reasonably questioned," as Appellant's counsel represents clients who are adversarial and opposed to parties represented by the Hearing Officer and/or her partner in "active and vigorously contested civil litigation in two (2) separate matters in the Superior Court of Guam[.]" (Objection at 1.)

1 In Sule v. Guam Bd. of Dental Examiners, the Guam Supreme Court held that the standard
2 for determining whether administrative adjudicators have a disqualifying bias is the actual bias
3 standard, which is higher than an appearance of impropriety standard. 2008 Guam 20 ¶ 19. The
4 Supreme Court held that “in order to prove that an adjudicator is biased, there must be a concrete
5 showing that bias actually exists.” Sule, 2008 Guam 20 ¶ 20. One party’s “unilateral perceptions
6 of an appearance of bias cannot be a ground for disqualification.” Id. (quoting Andrews v. Agric.
7 Labor Relations Bd., 623 P.2d 151, 157 (Cal. 1981)). Administrative adjudicators “are presumed
8 to be free from bias. Moreover, mere allegations of impartiality are insufficient to set aside an
9 administrative determination.” Id. (quoting Goldsmith v. De Buono, 665 N.Y.S.2d 727, 731 (N.Y.
10 App. Div. 1997)).

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12 Here, Appellant merely alleges that the Hearing Officer’s impartiality might reasonably be
13 questioned, which is an appearance of impropriety standard. The fact that the Hearing Officer and
14 her partner and Appellant’s counsel represent parties who are opposed to each other in civil actions
15 before the Superior Court of Guam is not enough to demonstrate actual bias by the Hearing Officer
16 against Appellant or its counsel. As Appellant has failed to make a concrete showing that the
17 Hearing Officer is actually biased, the Public Auditor denies Appellant’s objection.


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19 **II. Motion for Continuance**

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21 Appellant requests that the Pre-Hearing Conference, currently scheduled for November 17,
22 2017, be continued “to any reasonable date after November 21, 2017, commencing November 22,
23 2017[,]” for the reasons that it has a pending objection to the Hearing Officer, counsel for Appellant
24 was retained on November 8, 2017, and the file is substantial and significant time is needed to
25 review the record of the procurement. (Mot. at 1-2.) Appellant represents that Guam Community
26 College does not object to the requested continuance. Although Appellant’s objection to the
27 Hearing Officer is addressed herein and no longer pending, the Public Auditor finds that the
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remaining reasons for continuance provide sufficient cause for the continuance. Accordingly, the Public Auditor orders that the Pre-Hearing Conference is rescheduled to December 4, 2017, at 9:00 a.m.

SO ORDERED this 15th day of November, 2017.



DORIS FLORES BROOKS, CPA, CGFM
Public Auditor of Guam