



OFFICE OF THE PUBLIC AUDITOR
Doris Flores Brooks, CPA, CGFM
Public Auditor
PROCUREMENT APPEALS

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5 IN THE APPEAL OF,) APPEAL NO. OPA-PA-10-002
6 TELEGUAM HOLDINGS, LLC dba GTA)
7 TELECOM,) **DECISION AND ORDER RE**
8 Appellant.) **PURCHASING AGENCY'S MOTION**
) **FOR THE PUBLIC AUDITOR TO**
) **RECUSE SELF**

9
10 To: **Appellant Teleguam Holdings, LLC dba GTA Telecom**
11 c/o Jeffrey A. Cook, Esq.
12 Cunliffe & Cook, P.C.
13 210 Archbishop Flores St., Ste 200
14 Hagatna, Guam 96910
15 FACSIMILE: (671) 472-2422

16 **Purchasing Agency General Services Agency, Government of Guam**
17 c/o John Weisenberger, Esq.
18 Assistant Attorney General
19 Office of the Attorney General
20 287 West O'Brien Drive
21 Hagatna, Guam 96910
22 FACSIMILE: (671) 472-2493

23 **THIS MATTER** came before the Public Auditor pursuant to the Purchasing Agency's
24 February 17, 2010 Motion for the Public Auditor to recuse herself from this matter.

25 **FACTS**

26 Said motion arises from the fact that the Public Auditor's stepson, Terrence Brooks, Esq.,
27 is the Legal Counsel for the Appellant. However, the Appellant has confirmed that it did not
28

1 consult Terrence Brooks, Esq., for the formation of this appeal and that the Appellant has
2 retained Jeffrey A. Cook, Esq., to represent Appellant in this matter.¹

3 4 **DISCUSSION**

5 The Purchasing Agency moves the Public Auditor to Recuse herself to avoid any
6 appearance of impropriety. Generally, the Public Auditor may recuse herself at any time and
7 notify all parties, or any party may raise the issue of disqualification and state the relevant facts
8 prior to hearing and the Public Auditor shall make a determination and notify all parties. 2
9 G.A.R., Div. 4, Chap. 12, §12601. However, the appearance of impropriety standard does not
10 apply to adjudicators of administrative hearings such as the Public Auditor. Instead, the
11 standard for disqualification of administrative adjudicators such as the Public Auditor is the
12 higher standard of actual bias. *Sule v. Guam Board of Dental Examiners*, 2008 Guam 20, ¶19
13 (Supreme Court of Guam). Hence, in order to prove that an administrative adjudicator is biased,
14 there must be a concrete showing that bias actually exists and a party's unilateral perceptions of
15 an appearance of bias cannot be a ground for disqualification. *Id.*, at ¶20. Thus, the correct
16 standard is whether actual bias exists justifying the recusal of the Public Auditor from this
17 matter. The Public Auditor affirms that an actual bias does not exist. Thus, the Public Auditor
18 finds that she is unable to recuse herself under the actual bias standard.

19 However, the Public Auditor finds that she has a conflict of interest as a result of
20 Terrence Brooks, Esq.'s position as one of the Appellant's legal counsel. It is a breach of
21 ethical standards for any government employee to participate directly or indirectly in a
22 procurement when the government employee knows that she or any member of her immediate
23 family has a financial interest pertaining to the procurement. 5 G.C.A. §5628(a)(1). The term
24 "direct or indirect participation" means involvement through decision, approval, disapproval,

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26
27 ¹ Letter from Eric N. Votaw to Anne T.S. Camacho dated February 9, 2010,
28 Exhibit 1 to Purchasing Agency's February 17, 2010 Motion for Public Auditor
to Recuse Herself.

1 recommendation, preparation of any part of a purchase request, influencing the content of any
2 specification or procurement standard, rendering of advice, investigation, auditing, or in any
3 other advisory capacity. 5 G.C.A. §5601(d). Here, the Public Auditor finds that her role as the
4 administrative adjudicator of the Appellant's procurement appeal constitutes indirect
5 participation in this procurement because such role involves investigating, auditing, and
6 ultimately deciding the Appellant's procurement appeal. The term "immediate family" as used
7 in the aforementioned statute means spouse, children, parents, brothers, and sisters. 5 G.C.A.
8 §5601(g). Here, Terrence Brooks, Esq., is a member the Public Auditor's immediate family
9 because he is the Public Auditor's stepson. The term "financial interest" means involvement in
10 any relationship from which, or as a result of which, a person within the past year has received,
11 or is presently or in the future entitled to receive , more than two-thousand-five-hundred-dollars
12 (\$2,500) per year, or its equivalent. 5 G.C.A. §5601(e)(1). Here, based on information and
13 belief, Terrence Brooks, Esq., has a financial interest in Appellant because, as one of Appellant's
14 legal counsels, he has likely been paid more than two-thousand-five-hundred (\$2,500) in the past
15 year by the Appellant. Thus, the Public Auditor finds that she has the ethical duty not to
16 participate in this appeal because Terrence Brooks, Esq., who is a member of her immediate
17 family, has a financial interest in this matter because he is one of the Appellant's legal counsels.

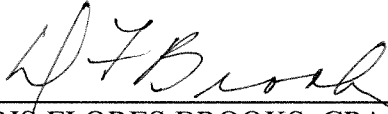
18 19 **CONCLUSION**

20 Based on the foregoing, the Purchasing Agency's Motion for the Public Auditor to
21 Recuse Herself is hereby GRANTED. Pursuant to 2 G.A.R., Div. 4, Chap. 12, §12601, the
22 Public Auditor hereby recuses herself from this matter and this appeal must be taken to the
23 Superior Court of Guam in accordance with 5 G.C.A. §5480.

24
25 This is a Final Administrative Decision. The Parties are hereby informed of their right to
26 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with
27 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative
28 Decision. 5 G.C.A. §5481(a).

1 A copy of this Decision shall be provided to the parties and their respective attorneys, in
2 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
3 www.guamopa.org.
4

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6 **DATED** this 1st day of March, 2010.
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11 _____
12 DORIS FLORES BROOKS, CPA, CGFM
13 PUBLIC AUDITOR
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OFFICE OF THE PUBLIC AUDITOR

Fax

To: Mr. John Weisenberger, Asst. AG, Legal Counsel for General Services Agency
From: Doris Flores Brooks, Public Auditor
OPA Procurement Appeals

Mr. Jeffrey Cook, Esq.,
Legal Counsel for Appellant
Law Offices of Cunliffe and Cook

Agency: Media **Pages:** 5 (Including cover)

CC: Media **Date:** Monday, March 1, 2010

Fax: 472-2493(OAG) **Phone:** 475-0390 x 219 (Anne Camacho)
472-2422 (J. Cook, Esq.)

Re: OPA-PA-10-002: Decision and Order Re Purchasing Agency's Motion for the Public Auditor to Recuse Self

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Anne Camacho – acamacho@quamopa.org

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