



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

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

IN THE APPEAL OF  
PURESTONE, LLC.,

Appellant,

GUAM ECONOMIC DEVELOPMENT  
AUTHORITY (GEDA) / CHAMORRO  
LAND TRUST COMMISSION (CLTC),

Purchasing Agency.

DOCKET NO. OPA-PA-16-009

**DECISION AND ORDER**

On September 23, 2016, a hearing on Appellant, Purestone, LLC's ("Purestone") Motion for Disqualification and Request for dismissal was heard before Doris Flores Brooks, C.P.A., C.G.F.M., Public Auditor of Guam, and Peter C. Perez, Esq., Hearing Officer. Jacqueline Taitano Terlaje, Esq. appeared on behalf of Purestone along with Samantha Stern, Purestone's duly authorized representative, who appeared telephonically. Thomas J. Fisher, Esq. appeared on behalf of the Guam Economic Development Authority ("GEDA"). Kristan Finney, Esq. appeared on behalf of the Chamorro Land Trust Commission ("CLTC") along with Michael Borja, the CLTC Administrative Director. At said hearing, the Public Auditor, having considered the filings submitted by the parties, the arguments presented, and the procurement record in this case, DENIED Appellant's motion.

1 **BACKGROUND**

2 On June 1, 2016, GEDA issued a letter to Purestone advising that “In accordance with the  
3 CLTC resolution [2016-05 *Declaration and Position on Guam Economic Development Authority*  
4 *Request for Proposal Number 14-002*], the Guam Economic Development Authority is issuing this  
5 letter to you informing you that the above mentioned RFP is hereby cancelled.” On June 2, 2016,  
6 Pursetone filed a formal protest with GEDA. The protest was based upon GEDA’s decision to  
7 cancel the RFP and asserted: (1) P.L. 33-95 did not declare RFP14-002 null and void as asserted  
8 by CLTC resolution No. 2016-005; (2) GEDA/CLTC’s cancellation of RFP14-002 after bid  
9 opening fails to comply with both statutory and regulatory provisions; and, (3) GEDA/CLTC are  
10 required to act in good faith, and its assertion that a development agreement was not executed prior  
11 to the enactment of Public Law 33-95 is not made in good faith.  
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13 In a letter dated June 28, 2016, GEDA denied Purestone’s protest.  
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15 On July 13, 2016, Purestone filed a Notice of Appeal in this matter asserting: (1) GEDA  
16 and CLTC’s determination that Guam Public Law P.L. 33-95...mandates the termination of RFP-  
17 14-002 was erroneous; (2) GEDA and CLTC violated Guam Procurement Law in the cancellation  
18 of the procurement without abiding by the mandatory provisions of 5 GCA § 5225 and 2 GAR Div.  
19 4 § 3115(d)(2); it is not in the best interests of Guam to cancel RFP-14-002; and, (3) GEDA and  
20 CLTC violated Guam Procurement Law Regulations by not acting in good faith in the  
21 administration of this procurement.  
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23 On August 30, 2016, Appellant filed a Motion for Disqualification and Request for  
24 Dismissal. The motion was accompanied by the Declaration of Samantha Stern in Support of  
25 Appellant’s Motion for Disqualification and Request for Dismissal. Appellant’s disqualification  
26 motion is based upon *inter alia* the assertions that Attorney Terrence Brooks, the stepson of the  
27 Public Auditor’s spouse, was involved in the negotiation and drafting of the Development  
28

1 Agreement in RFP-14-002, was responsible for communicating with the Appellant on behalf of the  
2 CLTC in reference to the progress of the adoption of rules and regulations then pending before the  
3 Guam Legislature, and that Attorney Brooks will be a material witness in this appeal.

#### 4 DECISION

5 The issues raised by Appellant in both the protest and in this appeal concern GEDA and  
6 the CLTC's decision to cancel the RFP. The pre-cancellation proceedings, including Attorney  
7 Brooks' purported role in negotiating and drafting the Development Agreement, his role  
8 regarding the RFP, and the communications between and Attorney Brooks and the Appellant, as  
9 described by Appellant, do not, in the Public Auditor's determination require her disqualification  
10 or recusal from these proceeding. 2 GAR § 12601 provides:

11  
12 The Public Auditor may recuse herself or himself at any time and notify all  
13 parties, or any party may raise the issue of disqualification and state the  
14 relevant facts prior to the hearing. The Public Auditor shall make a  
15 determination and notify all 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.

16 As stated at the hearing on this motion, and as is now reiterated, based upon the Appellant's  
17 protest and appeal, and the grounds asserted in the motion, the Public Auditor has determined that  
18 disqualification or recusal is not required in this matter. The Supreme Court of Guam requires a  
19 showing of actual bias to disqualify the Public Auditor in procurement appeals. *Sule v. Guam Board*  
20 *of Dental Examiners*, 2008 Guam 20. Appellant's motion does not establish the existence of actual  
21 bias with respect to the grounds raised by Appellant in its motion that would require disqualification  
22 or recusal.

#### 23 ORDER

24 Appellant's Motion for Disqualification and Request for Dismissal is DENIED. IT IS  
25 FURTHER ORDERED:

- 26  
27 1. Comments to the Agency Report:

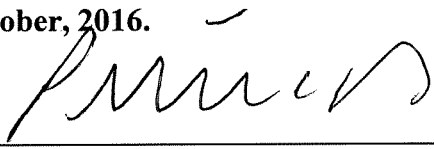
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- a. Appellant shall file comments to the Agency Report by October 10, 2016.
  - b. Appellee shall file its response to Appellant's comments by October 17, 2016.
2. Motions:
- a. The deadline for the parties to file any motions is October 24, 2016.
  - b. Oppositions to motions shall be filed by October 31, 2016.
  - c. Replies to motions shall be filed by November 4, 2016.
  - d. The hearing on any motions shall be held on November 10, 2016 at 9:00 a.m. at the Office of Public Accountability's Hearing Room, Suite 907, DNA Building, Hagatna, Guam.
3. The parties shall file the following materials by November 10, 2016:
- a. Formal hearing briefs stating the parties' respective positions supported by applicable authorities;
  - b. A statement of stipulated facts;
  - c. Witness lists;
  - d. Exhibit lists; and,
  - e. Pre-marked exhibits.
4. A hearing on the merits of the appeal shall be held on November 17, 2016 at 9:00 a.m. at the Office of Public Accountability's Hearing Room, Suite 907, DNA Building, Hagatna, Guam.
5. It is further ordered that GEDA shall serve a copy of this Decision and Order upon each other person or company who submitted an offer or is a prospective offeror, in order that any of the other offerors or prospective offerors may seek to participate in this appeal as an interested party.

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6. It is ordered that GEDA file with the Public Auditor proof of service of this Decision and Order and that it is served in accordance with the immediately preceding paragraph. The responsibility to serve a copy of this Decision and Order on the other offerors or prospective offerors is imposed upon GEDA because it is the entity that is most likely to have the correct names and addresses for such competing bidders or prospective bidders.

**IT IS SO ORDERED this 5<sup>th</sup> day of October, 2016.**



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**PETER C. PEREZ, Esq.**  
**Hearing Officer**