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9 ATTORNEYS FOR APPELLANT DFS GUAM, L.P.

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PROCUREMENT APPEALS

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FILE NO OPA-PA: 15-002

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12 **PROCUREMENT APPEAL**
13 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

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16 In the Appeal of
17
18 DFS Guam L.P., Appellant, of the Decision of
19 the A.B. Won Pat International Airport
Authority, Guam, Respondent.

DOCKET NO. OPA-PA-15 _____

REQUEST FOR RECUSAL

1 Appellant DFS Guam L.P. (“DFS”) files this Request for Recusal to seek an order from the
2 Public Auditor recusing herself from hearing the instant appeal so that DFS can pursue its
3 procurement appeal before the Superior Court of Guam without delay. DFS seeks this recusal in light
4 of (1) the Public Auditor’s determinations to recuse herself from hearing the previous two
5 procurement appeals brought by DFS with respect to the same procurement at issue here, RFP No.
6 GIAA 010-FY12 (“RFP”), *see* Office of Public Accountability’s (“OPA”) September 30, 2014
7 Dismissal Order Declining Public Auditor Hearing, and the OPA’s January 23, 2015 Order of
8 Recusal, true and correct copies of which are attached hereto as Exhibits A and B respectively; and
9 (2) the OPA’s response to the writ issued by the Superior Court, dated February 12, 2015, a copy of
10 which is attached as Exhibit C hereto. Given that the Appellant (DFS), the Respondent (the A.B.
11 Won Pat International Airport Authority, Guam (“GIAA”)), the Real-Party-in-Interest (Lotte Duty
12 Free Guam, LLC (“Lotte”)), and the RFP at issue in the instant appeal are identical to those in the
13 previous appeals from which the Public Auditor recused herself, the Public Auditor’s recusal from
14 this appeal is a pro forma matter. Further, because it has been DFS’s opponents—GIAA and Lotte—
15 that have been urging the Public Auditor’s recusal, there can be no good-faith objection from any
16 relevant party to the Public Auditor’s recusal.

17 Accordingly, DFS requests that the OPA recuse herself from the current appeal, which would
18 permit DFS to expeditiously receive a merits review of its protest denial that it has been awaiting for
19 so long.

20 Respectfully submitted on February 20, 2015.

21
22
23 By: 

24 G. Patrick Civile
25 *Attorneys for Appellant*
26 *DFS Guam L.P.*

EXHIBIT A

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	A.B. Won Pat Int'l Airport, Government of Guam C/O Sarah L. Fabian, Esq. Calvo Fisher & Jacob, LLP Fax: 646-9403	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
	DFS Guam, L.P. C/O William J. Blair, Esq. Blair Sterling Johnson & Martinez, PC Fax: 472-4290 C/O Maurice M. Suh, Esq. Gibson, Dunn & Crutcher, LLP VIA E-Mail C/O Joyce C.H. Tang Civile & Tang, PLLC Fax: 477-2511	Pages:	3 (including cover page)
		Date:	September 30, 2014
	Lotte Duty Free Guam, LLC C/O Cesar C. Cabot Cabot Mantanona, LLP Fax: 646-0777	Phone:	475-0390 x. 208
		Fax:	472-7951

Re: OPA-PA-13-006 Dismissal Order Declining Public Auditor Hearing

Urgent
 For Review
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 Please Reply
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Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
 Joy Bulatao, Auditor
 jbulatao@guamopa.org

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

PROCUREMENT APPEALS

IN THE APPEAL OF,

APPEAL NO: OPA-PA-13-006

DFS GUAM L.P.

**DISMISSAL ORDER DECLINING
PUBLIC AUDITOR HEARING**

Appellant

To: Purchasing Agency:

A.B. Won Pat International Airport, Government of Guam
C/O Michael A. Pangelinan, Esq.
Calvo Fisher & Jacob, LLP
259 Martyr St.
Ste. 100
Hagatna, Guam 96910
Facsimile: (671) 646-9403

Appellant:

DFS Guam, L.P.
C/O William J. Blair, Esq.
Blair Sterling Johnson & Martinez, PC
1008 DNA Building
238 Archbishop Flores St.
Hagatna, Guam 96910
Facsimile: (671) 472-4290

AND

C/O Maurice M. Suh, Esq.
Gibson, Dunn & Crutcher, LLP
333 S. Grand Ave.
Los Angeles, CA 90071
Email: MSuh@gibsondunn.com

Interested Party:

Lotte Duty Free Guam, LLC
C/O Cesar C. Cabot, Esq.
Cabot Mantanona LLP
Edge Building, Second Floor
929 South Marine Corps Drive
Tamuning, Guam 96913
Facsimile: (671) 646-0777

Dismissal Order - 1

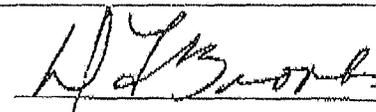
Suite 401, DNA Building
258 Archbishop Flores Street, Hagatna, Guam 96910
Tel (871) 475-0390 • Fax (871) 472-7851
www.guamopa.org • Hotline: 47AUDIT (472-8348)

1 This matter came before the Public Auditor on May 31, 2013 pursuant to the request of
2 Appellant DFS Guam L.P., (Hereafter "DFS") for the Public Auditor to stay any and all further
3 proceeding on this administrative appeal pursuant to 5 G.C.A., Chapter 5. On the same day,
4 the Guam International Airport Authority, Government of Guam (Hereafter "GIAA") also
5 issued a request for an order regarding whether the Public Auditor will or will not stay the
6 Appeal that was filed on May 30, 2013. The Public Auditor hereby FINDS and ORDERS the
7 following:
8

- 9
- 10 1. On June 5, 2013, the Public Auditor declined taking any further action on this appeal
11 due to *DFS Guam L.P., v. The A.B. Won Pat International Airport Authority, Guam,*
12 *Lotte Duty Free Guam LLC* (Hereafter "Lotte"), *et. al.*, Civil Case No. CV 0685-13
13 (Superior Court of Guam), which concerns the subject of this appeal.
14
 - 15 2. On September 15, 2014, DFS filed a Request for (1) Scheduling Order and (2) Status
16 Conference and Hearing.

17 Numerous other filings and declarations have been filed by various parties. Having
18 considered the record in this matter, including certain objections to the hearing officer in this
19 case, the limited budgetary resources available to the Office of Public Accountability, and in
20 the interest in avoiding delays in the disposition of the issues raised, the Public Auditor
21 declines this matter. Accordingly, this matter is DISMISSED. In accordance with 5 G.C.A. §
22 5480, this procurement appeal must be taken to the Superior Court of Guam.
23

24 **SO ORDERED** this 30th day of September, 2014.
25

26 

27 DORIS FLORES BROOKS, CPA, CGFM
28 PUBLIC AUDITOR

EXHIBIT B

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Charles H. Ada II Executive Director A.B. Won Pat International Airport	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Fax:	(671) 646-8823	Pages:	2 (including cover page)
CC:	G. Patrick Civile, Esq. Joyce C.H. Tang, Esq. Attorneys for DFS Guam, L.P. Phone: (671) 472-8868/69 Fax: (671) 477-2511	Date:	January 23, 2015
	Maurice M. Suh, Esq. Jay P. Srinivasan, Esq. Attorneys for DFS Guam, L.P. Phone: (213) 229-7000 Fax: (213) 229-7520	Phone: Fax:	475-0390 x. 211 472-7951

Re: OPA-PA-15-001 Order of Recusal

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Comments:

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
 Llewelyn Terlaje
 Audit Supervisor
 lterlajc@guamopa.org

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

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

**IN THE MATTER OF
DFS GUAM, L.P.**

Appellant.

DOCKET NO. OPA PA-15-001

ORDER OF RECUSAL

Pursuant to 2 G.A.R. Div. 4 §12601, and based on the Public Auditor's review of all of the arguments and filings by the parties *In The Appeal of DFS Guam L.P.*, No. OPA-PA-13-006 ("DFS' Initial Procurement Appeal") and the above-captioned appeal, the Public Auditor declined taking any further action from DFS' Initial Procurement Appeal and has determined to recuse herself from the above-captioned appeal arising from RFP No. GIAA-010-FY12, and hereby notifies the parties of this determination. This appeal must now be taken to the Superior Court of Guam in accordance with 5 G.C.A. §5480.

SO ORDERED this 23rd day of January 2015.

**DORIS FLORES BROOKS, C.P.A., C.G.F.M.
PUBLIC AUDITOR**

EXHIBIT C

1 **OFFICE OF PUBLIC ACCOUNTABILITY**
2 **Doris Flores Brooks, CPA, CGFM**
3 **Public Auditor**
4 Suite 401, DNA Building
5 238 Archbishop Flores Street
6 Hagatna, Guam 96910
7 Telephone: (671) 475-0390
8 Facsimile: (671) 472-7951

FILED
SUPERIOR COURT
FEB 12 PM 3:18
CLERK OF COURT

6 **IN THE SUPERIOR COURT OF GUAM**

7 DFS GUAM L.P.,
8 Petitioner

9 vs.

10 DORIS FLORES BROOKS, as Public Auditor
11 and THE OFFICE OF PUBLIC
12 ACCOUNTABILITY,

13 Respondents.

14 THE A.B. WON PAT INTERNATIONAL
15 AIRPORT AUTHORITY, GUAM; LOTTE
16 DUTY FREE GUAM LLC; and THE
17 TERRITORY OF GUAM.

18 Real Parties in Interest.

18 DFS GUAM L.P.,
19 Plaintiff,

20 vs.

21 THE A.B. WON PAT INTERNATIONAL
22 AIRPORT AUTHORITY, GUAM; LOTTE
23 DUTY FREE GUAM LLC; and THE
24 TERRITORY OF GUAM; and DOES 1-10,
25 INCLUSIVE

26 Defendants.

SPECIAL PROCEEDINGS NO. SP0149-14
CIVIL CASE NO. CV0943-14

RESPONSE TO WRIT OF MANDATE

RECEIVED
CIVILLE & TANG
A Professional Limited Liability Company

DATE: 2-12-15
TIME: 4:50 AM PM BY: [Signature]

27 Doris Flores Brooks, the Public Auditor, and the Office of Public Accountability, respond
28 to the court's Writ of Mandate filed on January 28, 2015, as follows:

1 (a) The Dismissal Order in OPA-PA-13-006 (the "Appeal") issued on September 30, 2014, was
2 intended as a recusal from the exercise of jurisdiction.

3 (b) The basis for the recusal and declination of the exercise of jurisdiction were:

4
5 2 G.A.R., Div. 4, §12601, provides that, "The Public Auditor may recuse herself or himself at
6 any time and notify all parties..." The Dismissal Order in OPA-PA-13-006 issued on September
7 30, 2014, was intended as a recusal from the exercise of jurisdiction pursuant to 2 G.A.R., Div. 4,
8 §12601 and a notification to all parties of that recusal.

9
10 As stated in the Dismissal Order, the Public Auditor considered the numerous filings and
11 declarations by the various parties, considered the record in the appeal, including certain objections
12 to the hearing officer in the case, the limited budgetary resources available to the Office of Public
13 Accountability, and in the interest of avoiding delays in the disposition of the issues raised, the
14 Public Auditor declined to hear the matter.

15
16 Included in the Appeal record, on December 13, 2013, counsel for DFS Guam L.P. filed a
17 Response to Notice of Appointment of Hearing Officer. In that Response, DFS noted that it retained
18 David Lujan to generally advise DFS about issues related to the Guam International Airport
19 Authority's determination that Lotte Duty Free Guam LLC was the successful proposer for the RFP
20 that is the subject of this Appeal. DFS noted that neither Mr. Lujan nor anyone else at LAP has had
21 any role in the judicial or administrative proceedings brought by DFS in connection with the RFP
22 at issue in this Appeal.

23
24 On September 19, 2014, Lotte Duty Free, Guam, LLC filed a Request to Public Auditor to
25 Consider Potentially Disqualifying Facts. In Lotte's Request, it noted, *inter alia*: (1) DFS wrote a
26
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1 letter disclosing that it had retained Lujan Aguigui & Perez LLP ("Lujan Firm") to advise it; (2)
2 the Public Auditor's spouse, James Brooks, works for the Lujan Firm.

3 On September 19, 2014, the A.B. Won Pat International Airport Authority, Guam, filed a
4 Motion to Disqualify the Public Auditor. In its Motion, GIAA noted *inter alia* that DFS disclosed
5 that it had retained the Lujan Firm and that the Public Auditor's spouse was an employee of that
6 firm.

7
8 The Public Auditor voluntarily, out of an abundance of caution, and without making a
9 determination on the merits of the recusal requests and out of concern for the limited budgetary
10 resources available to the Office of Public Accountability, and for the reasons stated in the
11 Dismissal Order, recused herself from the Appeal.

12 Respectfully submitted this 12th day of February, 2015.

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DORIS FLORES BROOKS, CPA, CGFM
Public Auditor of Guam

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