



OFFICE OF THE PUBLIC AUDITOR

Appendix A: Notice of Appeal Form  
PROCUREMENT APPEAL

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

JUN 24 2011  
5:20 BY: AC  
FILE NO. OPA-PA: 11-009

**PART I- To be completed by OPA**

In the Appeal of )

NOTICE OF APPEAL

HUBTEC INTERNATIONAL CORP. )

(Name of Company), APPELLANT )

Docket No. OPA-PA \_\_\_\_\_ )

**PART II- Appellant Information**

Name: HUBTEC INTERNATIONAL CORP.  
Mailing Address: P.O. BOX 25260  
BARRIGADA, GUAM 96921  
Business Address: 106 BLDG. 502 ROUTE 8  
MTM, GUAM  
Daytime Contact No: (671)727-7178; 472-3315

APPELLANT'S REPRESENTATIVE:  
Teker Torres & Teker  
130 Aspinall Ave. Ste.2A  
Hagatna, Guam 96910  
TEL: (671)477-9891  
FAX: (671)472-2601

**PART III- Appeal Information**

- A) Purchasing Agency: DEPARTMENT OF PUBLIC WORKS  
B) Identification/Number of Procurement, Solicitation, or Contract: DPW PROJECT NO. GU-NH-0002(104)  
C) Decision being appealed was made on FINAL DECISION (date) by: NEVER RECEIVED  
\_\_\_ Chief Procurement Officer \_\_\_ Director of Public Works \_\_\_ Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

\_\_\_ Decision on Protest of Method, Solicitation or Award

\_\_\_ Decision on Debarment or Suspension

Decision on Contract or Breach of Contract Controversy

(Excluding claims of money owed to or by the government)

\_\_\_ Determination on Award not Stayed Pending Protest or Appeal

(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

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E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**PART IV- Form and Filing**

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

*Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.*

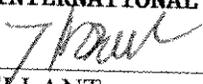
**PART V- Declaration Re Court Action**

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 22 day of June, 2011.

**HUBTEC INTERNATIONAL CORP.**

By: 

**APPELLANT  
Young C. Kim It's Duly Authorized  
Representative**

or

By: \_\_\_\_\_

Appellant's Duly Authorized Representative

(Address)

(Phone No.)

## GROUNDS OF APPEAL STATEMENT

Following The DEPARTMENT OF PUBLIC WORKS' ("DPW") termination of Appellant HUBTEC INTERNATIONAL CORP.'s ("Hubtec") involvement in DPW Project No.: GU-NH-0002 (104), a dispute arose between the parties with regard to the obligations under the contract.

On April 21, 2011 Appellant Hubtec requested from the DPW a final decision with regard to the contract dispute, informing the department that if no response was issued by April 25, 2011, the silence would be construed as a refusal to issue a final decision on the dispute.<sup>1</sup> See Correspondence, April 21, 2011, attached as *Exhibit A*. No response came, and is Appeal to the OPA of the contract dispute has been initiated. Hubtec asserts that the contract was breach by DPW and wrongfully terminated. DPW has used the termination as an excuse not to honor its obligation to pay Hubtec for Change Orders and other work done on the job sites. Hubtec seeks a review of the termination and determination of DPW compliance with the terms of the Contract and its obligations therein.

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<sup>1</sup>The Department had confusingly issued a bid-protest decision on April 13, 2011 despite the fact that Hubtec was the sole contractor under the project and had raised a contract, rather than bid-protest, dispute with the Department. The April 21 letter was an effort by Hubtec to allow the Department an opportunity to rectify its confusion.

**EXHIBIT**

**A**

LAW OFFICES

**TEKER TORRES & TEKER, P.C.**

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Of Counsel:  
Nagatomo Yamaoka

April 21, 2011

**VIA HAND DELIVERY**

Joanne M. S. Brown  
Acting Director  
**Department of Public Works**  
542 North Marine Corps Drive  
Tamuning, Guam 96913



**Re: *Route 2 Culverts and Slide Repair.***

DPW Project No.: GU-NH-0002(104)  
Contractor: Hubtec International Co.

Dear Ms. Brown:

On April 13, 2011 we received correspondence from your department indicating that "DPW respectfully denies Hubtech's protest on the grounds that the protest is legally time-barred." To support that claim, the department cites to Guam Procurement Law and the fourteen (14) day bid protest limitation provision detailed in 5 GCA §4525(a).

It appears that your office, rather than responding to the contract dispute that our client has raised pursuant to 5 GCA §5427 *et seq.*, has chosen to respond to our dispute as though you were responding to a bid protest. As your legal counsel will undoubtedly inform you, contract disputes and bid protests are distinct from each other, and are resolved through different administrative processes, timelines, and regulations.

If you would like to correct some aspect of your April 13<sup>th</sup> correspondence, please inform our office of your error. If we do not hear from you by the close of business on Monday, April 25, 2011, we will construe your silence as a refusal to issue a final decision on the dispute as required by law, and proceed with administrative and judicial review of your decision.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Phillip Torres".

**Phillip Torres**

cc: Hubtec International Co.  
*Via electronic mail*





OFFICE OF THE PUBLIC AUDITOR

*Appendix C: Notice of Hearing Form*  
**PROCUREMENT APPEAL**

In the Appeal of	)	
	)	
	)	<b>NOTICE OF HEARING</b>
<b>HUBTEC INTERNATIONAL CORP.</b>	)	
(Name of Company), APPELLANT	)	Docket No. OPA-PA _____
	)	
_____	)	

You are hereby notified that a hearing will be held before the Public Auditor or the Hearings Officer for Procurement Appeals at the Office of the Public Auditor on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_, relative to the above referenced Procurement Appeal. You may be present at the hearing; may be, but need not be, represented by counsel; may present any relevant evidence; and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Hearings Officer for Procurement Appeals, Office of the Public Auditor.

Please acknowledge receipt of this Notice and return to the Office of the Public Auditor immediately.

**Acknowledged receipt:**

\_\_\_\_\_  
Receiver's Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date



OFFICE OF THE PUBLIC AUDITOR

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PROCUREMENT APPEALS

JUN 24 2011

Appendix D: Hearing Request/Waiver Form  
PROCUREMENT APPEAL

5:00  
AC  
11-009  
FILE NO. OPA-PA

In the Appeal of )  
)  
)

**HUBTEC INTERNATIONAL CORP.**  
(Name of Company), APPELLANT )  
)  
)  
\_\_\_\_\_ )

**HEARING  
REQUEST/WAIVER**

Docket No. OPA-PA \_\_\_\_\_

Please select one:

Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.

Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this 22 day of JUNE, 20 11.

By: (Please select one)

APPELLANT

\_\_\_ Chief Procurement Officer

\_\_\_ Director of Public Works

\_\_\_ Head of Purchasing Agency

**HUBTEC INTERNATIONAL CORP.**

Signature

**Young C. Kim Its Duly Authorized  
Representative**

Print Name

**ORIGINAL**