

**The following Chapter 12 is added to  
Division 4, Title 2 of the Guam  
Administrative Rules and  
Regulations**

**CHAPTER 12  
PROCUREMENT APPEALS TO THE  
PUBLIC AUDITOR**

- 12101. Authority and Purpose of Rules of Procedure
- 12102. Jurisdiction of the Public Auditor; Exhaustion of Remedies
- 12103. Definitions
- 12104. Form and Filing of Appeal
- 12105. Agency Report
- 12106. Making Information on Appeals Available
- 12107. Ex Parte Communications with Hearing Officer
- 12108. Hearing Procedures
- 12109. Authority of the Hearing Officer
- 12110. Decisions of the Public Auditor
- 12111. Finality of Decisions
  
- 12201. Appeal to Public Auditor relative to Method, Solicitation, or Award
  
- 12301. Appeal to Public Auditor relative to Contract or Breach of Contract Controversies
  
- 12401. Appeal to Public Auditor of Debarment or Suspension
  
- 12501. Review of Public Auditor of Award Pending Protest or Appeal
  
- 12601. Disqualification of Public Auditor.

2 GAR - ADMINISTRATION  
Div. 4 - Procurement Regulations

(b) *Interested Party* means an actual or prospective bidder, offeror, or contractor that (1) may be aggrieved by the solicitation or award of a contract, by the protest, or by the Appeal, and who filed a protest or Appeal or (2) who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied.

(c) A *prospective bidder, contractor or offeror* is one who will actually submit a bid, contract or otherwise offer his services if such person would prevail in the Appeal.

(d) The *affected agency or using agency* is that agency that has used or is intending to use the supplies, services, or construction, the procurement of which is being Appealed. If more than one affected using agency is involved, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency may designate one or more representatives to be consulted in respect to this action.

(e) *File and submit* mean receipt in the offices of the Public Auditor, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, as the case may be.

(f) In computing any period of *time* prescribed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, a Sunday, a legal holiday or when the Office of the Public Auditor is closed by order of the Governor, in which event a period extends until the end of the next day which is not a Saturday, a Sunday, a legal holiday or when the Office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays and days that government offices are closed by order of the Governor shall be excluded in the computation.

**12104. Form and Filing of Appeal.**

(a) When Filed. Appeals shall be made in writing to the Public Auditor and shall be filed in triplicate. Electronic filing may also be allowed when available and approved by the agency. An Appeal is considered filed when received by the Office of the Public Auditor, which shall cause evidence of the date of filing to be stamped upon each Appeal and triplicate. Appeals filed after the allowable filing period set forth in statute or these rules shall not be considered.

2 GAR - ADMINISTRATION  
Div. 4 - Procurement Regulations

Public Auditor shall also notify the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency by telephone or via facsimile or hand delivery within 24 hours of the receipt of an Appeal. It shall be the duty of the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency to give notice of the Appeal to the Attorney General or other counsel for the agency.

- (2) The Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall give notice of the Appeal to the contractor if award has been made or, if no award has been made, to all Interested Parties, and shall communicate to the Public Auditor the identities and addresses of said parties. The Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall furnish copies of the Appeal documents to such parties on request with instructions to communicate further directly with the Public Auditor.
- (3) The Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall submit to the Public Auditor a detailed Agency Report in answer to the Appeal within five (5) working days of receiving notice of an Appeal and shall furnish a copy of the report to the Appellant and other Interested Parties. This Agency Report shall comply to the requirements of § 12105 of this Chapter.
- (4) Comments on the agency report shall be filed with the Public Auditor within ten (10) days after the Public Auditor's receipt of the report, with a copy to the agency office that furnished the report and to other Interested Parties. Any rebuttal an Appellant or Interested Party may care to make shall be filed with the Public Auditor within five (5) days after receipt by the Public Auditor of the comments to which rebuttal is directed, with a copy to the agency office which furnished the report, the Appellant, and Interested Parties, as the case may be. Unsolicited agency rebuttals shall be considered if filed within five (5)

Auditor shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with an Appeal and shall do so by an appropriate order.

**12105. Agency Report.** The Agency Report should be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file and shall include:

- (a) A copy of the protest;
- (b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested;
- (c) A copy of the solicitation, including the specifications or portions thereof relevant to the protest;
- (d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest;
- (e) Any other documents which are relevant to the protest; including the contract, if one has been awarded, pertinent amendments, and plans and drawings;
- (f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant;
- (g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal;
- (h) If the award was made after receipt of the protest, the report will include the determination required under 2 GAR § 9101(e); and
- (i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding.

(Source: ABA Model Procurement Rules)

2 GAR - ADMINISTRATION  
Div. 4 - Procurement Regulations

(b) Time and Place for Hearings. Hearings shall be held at the Office of the Public Auditor unless a different place is set by the Hearing Officer. The time for Hearings shall be set by the Hearing Officer. Ordinarily, only one hearing will be held on an Appeal. Such hearing may be held by telephone conference call or other means at the discretion of the Hearing Officer.

(c) Notice of Hearing. The Hearing Officer shall send a written notice of the time and place of the hearing to the Appellant, to Interested Parties, and to the Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency at least ten (10) days prior to the hearing unless the parties agree on a shorter period. It shall be the duty of each of these entities to notify the Attorney General or its own counsel, and the affected using agency. Notice shall be sent by the Hearing Officer by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and shall state the nature and purpose of the proceedings, and shall substantially follow the format of Appendix C, attached to this Chapter. The notice shall also state that the Appellant may be represented by counsel. Notices of hearings shall be promptly acknowledged by the parties. The Hearing Officer can require attendance of parties he or she deems appropriate.

(d) Hearing Proceedings. Hearings shall be as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure except as provided by the Guam Procurement Law, Chapter 5 of Title 5, Guam Code Annotated, and with these procurement regulations. The testimony presented shall be written, oral or otherwise. The weight to be attached to evidence presented in any particular form will be within the discretion of the Hearing Officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Hearing Officer may require evidence in addition to that offered by the parties. Where not otherwise provided for by these rules and regulations or statute, and where not inconsistent herewith, hearings shall be conducted in accordance with the Administrative Adjudication Law in Chapter 9 of Title 5, Guam Code Annotated.

(e) Record of Hearings. A hearing shall be recorded, but need not be transcribed, except at the request and expense of the person making the request. The audio recording, together with the written

2 GAR - ADMINISTRATION  
Div. 4 - Procurement Regulations

(a) Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;

(b) Require parties to state their positions with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control;

(d) Rule on motions, and other procedural items on matters pending before such officer;

(e) Regulate the course of the hearing and conduct of participants therein;

(f) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(g) Fix time limits for submission of written documents in matters before such officer;

(h) Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:

- (1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
- (2) Excluding all testimony of an unresponsive or evasive witness;
- (3) Expelling any party or person from further participation in the hearing; and
- (4) Taking official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.

(c) Standard of Review. Any determination of an issue or a finding of fact by the Public Auditor shall be final and conclusive unless found by a court to be arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law. Any decision of the Public Auditor, including any determination regarding the application or interpretation of the procurement law or regulations, shall be entitled to great weight and the benefit of reasonable doubt, although it shall not be conclusive on any court having competent jurisdiction. (Source: 5 GCA §5704)

**12201. Appeal to Public Auditor relative to Method, Solicitation, or Award.**

(a) Authority. Pursuant to 5 GCA §5425(e) an Interested Party may Appeal a decision under 5 GCA §5425(c) relative to the protest of a method of selection, a solicitation, an award of a contract, or a decision under 5 GCA §5425(h) regarding entitlement to costs, within fifteen (15) days of the receipt by protestant of the decision. The Public Auditor shall determine whether a decision on the protest of method of selection, solicitation or award of a contract, or entitlement to costs is in accordance with the statutes, regulations, and the terms and conditions of the solicitation.

**12301. Appeal to the Public Auditor of Contract and Breach of Contract Controversies.**

(a) Pursuant to 5 GCA §5706, Appeals shall be made in writing to the Public Auditor within 60 days after receipt by contractor of a decision on a contract or breach of contract controversy pursuant to 5 GCA §5427; within 60 days of the failure to render a timely decision as provided in 5 GCA §5427; or within 60 days of the time established by the parties for a decision to be rendered. Disputes having to do with money owed to or by the government of Guam shall not be submitted. (Source: 5 GCA §5703)

(b) A decision on Appeal of a contract controversy shall set forth the reasons for such action and shall inform the persons involved of his or her right to judicial review as provided in these regulations and 5 GCA Chapter 5, Article 9 (Legal and Contractual Remedies) of the Guam Procurement Law.

**12401. Appeal to Public Auditor of Debarment or Suspension.** This section applies to Appeals of debarment or suspensions of persons from consideration for award of contracts imposed by the Chief

issuance, together with any information used or considered by the agency in making that determination.

(d) Any additional information requested by the Public Auditor or Hearings Officer for Procurement Appeals should be submitted within the time periods established by the requesting source in order to expedite consideration of the Appeal. Failure of any party to comply expeditiously with a request for information by the Public Auditor or Hearings Officer for Procurement Appeals may result in resolution of the Appeal or review of award pending Appeal without consideration of any information, which is untimely filed pursuant to such request.

**12601. Disqualification of Public Auditor.** The Public Auditor may recuse herself or himself at any time and notify all parties, or any party may raise the issue of disqualification and state the relevant facts prior to the hearing, after which the Public Auditor shall make a 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.



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

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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**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.*

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**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 \_\_\_ day of \_\_\_\_\_, 20\_\_.

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

or

By: \_\_\_\_\_  
Appellant's Duly Authorized Representative  
(Address)  
(Phone No.)



OFFICE OF THE PUBLIC AUDITOR

Appendix C: Notice of Hearing Form

PROCUREMENT APPEAL

In the Appeal of	)	
	)	
	)	<b>NOTICE OF HEARING</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