

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



FAX

To:	Ms. Emily G. Gumataotao Supply Management Administrator University of Guam UOG Station Mangilao, Guam 96923 Phone: (671) 735-2925 Fax: (671) 735-3010 Email: eggumataotao@triton.uog.edu ; uog.bids@triton.uog.edu	From:	Benjamin J.F. Cruz Hearing Officer Office of Public Accountability
	Mr. Anthony R. Camacho, Esq. Legal Counsel University of Guam UOG Station Mangilao, Guam 96923 Email: arcamacho@triton.uog.edu	Pages:	9 (including cover page)
CC:	Mr. Sedfrey Linsangan President Guam Pacific Enterprise, Inc. Phone: (671) 649-6994/7/8 Email: guampacific@gmail.com	Date:	December 9, 2021
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-21-015 Notice of Receipt of Appeal

For Review
 Please Comment
 Please Reply
 Please Recycle

Comments:

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,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

December 9, 2021

Ms. Emily G. Gumataotao
Supply Management Administrator
University of Guam
UOG Station
Mangilao, Guam 96923

VIA FACSIMILE: (671) 735-3010

Re: Notice of Receipt of Appeal – OPA-PA-21-015

Dear Ms. Gumataotao,

Please be advised that Guam Pacific Enterprises Inc. (hereinafter referred to as “GPE INC” filed an appeal with the Office of Public Accountability (OPA) on December 8, 2021, regarding the University of Guam’s (UOG) bid UOG-IFB-21-17 for Purchasing HVAC Equipment. OPA has assigned this appeal case number OPA-PA-21-015.

Immediate action is required of UOG pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first eight pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Thursday, December 16, 2021**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, December 23, 2021**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to GPE INC. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that UOG provide one original and one electronic file of the said record, which

will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Benjamin J.F. Cruz".

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Six Pages of the Notice of Appeal – OPA-PA-21-015

Cc: Sedfrey M. Linsangan, GPE Inc. President



**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

PART I- To be completed by OPA

In the Appeal of)

Guam Pacific Ent. Inc.)

(Name of Company), APPELLANT)

NOTICE OF APPEAL

Docket No. OPA-PA _____

PART II- Appellant Information

Name:

Guam Pacific Ent. Inc.

Mailing Address:

P.O. Box 23128 Ba.

Business Address:

Krigada Guam 96921
Harmon Guam

Email Address:

guampacific@gmail.com

Daytime Contact No:

649-6997-8-4

Fax No.:

649-6988

PART III- Appeal Information

A) Purchasing Agency: University of Guam

B) Identification/Number of Procurement, Solicitation, or Contract: IFB 21-17

C) Decision being appealed was made on Dec. 6 (date) by:

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

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

Tony's Workshop
JWS Guam
All Business Enterprise
Guam Pacific Ent. Inc.

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 Public Accountability 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 Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 8 day of Dec 2021

By: Guam Pacific Ent. Inc.
APPELLANT

or

By: [Signature]
Appellant's Duly Authorized Representative
(Address) Hatmon, Guam
(Phone No.) 1646-6997-8-4

Dec. 8, 2021

Statement of the grounds
for appeal

I raised the 15% Bid bond requirement because VOG confirmed that federal financial assistance award will be used to purchase the HVAC equipments. Please see Exh 5, dated Nov. 5, 2021. However I only got a response on Dec. 3, 2021 after 5:00pm which is a Friday and Bid is already on Monday (Dec. 6) Please see Exh. 13. I also followed up with them why my bid bond concern is not being answered. Please see Exh. 15 and 16

I filed a protest on Dec. 6 in the morning. I received a decision on the same day, around 3:05pm. Please see Exh. 8 (Protest) and Exh. 9 (VOG Decision on Protest)

In my Protest, I am requesting a Stay of Procurement but instead was criticised by the Procurement that my Protest has deficiencies. Please see Exh. 10 on my reply to their decision. Their response is a Protest Decision because they are denying my protest even they do not regard it as a protest. They are doing it to go ahead with the scheduled Bid Opening on Dec. 6. There's still sufficient time to issue a Stay of Procurement but they did not adhere to the Procurement Chg. 5 Law on the process of handling the protest.

My other concern is the lowest bidder did not submit the literature or specs for his offer. It is not being evaluated yet but UOG issued already a Notice

of Intent of Award in the same day of the bid. Please see Exh. 17. How could they award it on the same day since it could take a week to examine all the brochures or literature for the 15 units and also if it complies with Buy American Act? Then they have to evaluate too the offer of the 2 bidders that participated before making a determination.

I am requesting a ruling that 15% Bid bond which is a Local Law does not apply to Federal Financial assistance awards. Chura was not implementing 15% Bid bond for 30 years until the Procurement Officer Mr. Lastimosa retired then the new one changes the policy which is wrong and a rebid.