

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



FAX

To:	Ms. Carmen T. Charfauros Supply Management Administrator Department of Education 501 Mariner Avenue B-Building, Suite 116 Barrigada, Guam 96913 Phone: (671) 475-0438 Fax: (671) 472-5001 Email: ctcharfauros@gdoe.net Mr. James L.G. Stake, Esq. Legal Counsel 501 Mariner Avenue Barrigada, Guam 96913 Phone: (671) 300-1537 Email: jlgstake@gdoe.net ; legal-admin@gdoe.net	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	10 (including cover page)
CC:	Mr. Sedfrey Linsangan President Guam Pacific Enterprise, Inc. Phone: (671) 649-6994/7/8 Email: guampacific@gmail.com	Date:	February 8, 2022
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-22-003 Notice of Receipt of Appeal

- For Review
 Please Comment
 Please Reply
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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

February 8, 2022

Ms. Carmen T. Charfauros
Supply Management Administrator
Department of Education
501 Mariner Avenue
B-Building, Suite 116
Barrigada, Guam 96913

VIA FACSIMILE: (671) 472-5001

Re: Notice of Receipt of Appeal – OPA-PA-22-003

Dear Ms. Charfauros,

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 February 4, 2022, regarding the Department of Education’s (DOE) denial of protest related to the procurement for Cafeteria Tables (Invitation for Bid: GDOE IFB 001-2022). OPA has assigned this appeal case number OPA-PA-22-003.

Immediate action is required of DOE 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 seven 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 **Tuesday, February 15, 2022**, 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 **Tuesday, February 22, 2022**, 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 DOE 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', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Seven Pages of the Notice of Appeal – OPA-PA-22-003

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)) NOTICE OF APPEAL
<u>Guam Pacific Ent. Inc.</u>)	
(Name of Company), APPELLANT)	
_____)	
_____)	
)	Docket No. OPA-PA _____

PART II- Appellant Information

Name: Guam Pacific Ent. Inc.
Mailing Address: P.O. Box 23128 Barrigada
Guam 96921
Business Address: 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: Department of Education
- B) Identification/Number of Procurement, Solicitation, or Contract: IFB 001-2022
- C) Decision being appealed was made on Jan. 28 (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
(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:

LI' LLC
USA Contractors Inc
Product Solutions

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 4 day of Feb, 2021

By: _____

APPELLANT

or

By: _____

Appellant's Duly Authorized Representative

(Address)

(Phone No.)

APPENDIX A



**Appendix B: Declaration Form
PROCUREMENT APPEAL**

In the Appeal of _____)
)
)
(Name of Company), APPELLANT) Docket No. OPA-PA _____
)
)
_____)

DECLARATION RE COURT ACTION
(To be signed by the Government Purchasing Agency.)

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 4th day of Feb, 202.

By: [Signature]
DECLARANT

Sedfrey M. Linsangan
Print Declarant's Name



**Appendix D: Hearing Request/Waiver Form
PROCUREMENT APPEAL**

In the Appeal of)
)
) **HEARING**
) **REQUEST/WAIVER**
)
(Name of Company), APPELLANT) Docket No. OPA-PA _____
Guam Pacific Ent. Inc)

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 ___ day of _____, 20__.

By: (Please select one)

- APPELLANT
- ___ Chief Procurement Officer
- ___ Director of Public Works
- ___ Head of Purchasing Agency


Signature

Sedfrey M. Linsangan
Print Name

Concise Statement

On Nov. 4, 2021, I filed a Notice of Protest. DOE issued a Stay of Procurement on Nov. 8, 2021 and Protest decision was issued on Jan. 28, 2022. (EXHA)

My complaint is DOE is imposing delivery date that is unrealistic. Factory for the table indicated a 90 days manufacturing process plus inland freight from Florida to Los Angeles California. The 90 days could be extended due to supply of components, labor shortage and trucking. California to Guam is around 4 weeks to be exact including waiting and minor delays. So, we are talking about 130-140 days. How did DOE come up with 60 days delivery? Did they contact the factory? Violations of Section 5001, Purposes and Rules of Construction and Section 5003, Requirement of Good Faith

and Buy American Act provisions and Exec. Order of Pres. Biden 14005 (Section 1)

My concern was also raised by USA Contractors.

15%. Bid bond should not be required because Section 5501 of CHS, Guam Procurement law conflicts with the 15% Bid bond which is a requirement for Gov. Guam local funded project. Section 5501 provides that any conflict with Federal law against local law, Procurement officers have to adhere to Federal laws, executive orders that covers federal financial assistance Awards. (American Rescue Act Funds)


15% Bid bond is a violation to the intent of Buy American Act, Made in America provisions. (Section 1 and 3 of Exec. Order 14005 of President Biden's Executive Order)

Ruling Requested

I am requesting that bidders should be the one offering their delivery date because they are the one coordinating with the factory. Other Gov. Guam agencies leave it to the bidders to offer our delivery date.

I am also requesting that 15% bid bond be waived since the funds being used is Federal Financial assistance Award. So many Federal funds were disbursed by the Gov. Guam but no additional tax or bid bond was added because its intention is to help the people, economy and small business owners and workers without restricting them.

Dated: 2/4/20

Respectfully Submitted

Sedfray M. Linsangan



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-22-003 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Tue, Feb 8, 2022 at 10:54 AM

To: "Carmen T. Charfauros" <ctcharfauros@gdoe.net>, "James L.G. Stake" <jlgstake@gdoe.net>, Legal Admin <legal-admin@gdoe.net>

Cc: GPE INC <guampacific@gmail.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-22-003. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

Office of Public Accountability – Guam

www.opaguam.org

Tel. (671) 475-0390 ext. 204

Fax (671) 472-7951

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**22-003 Notice of Receipt of Appeal.pdf**

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