

1 **GUAM DEPARTMENT OF EDUCATION**  
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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 10/19/2018

TIME: 9:20  AM  PM BY: Chris

FILE NO OPA-PA: 18-006

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF

10 Guam Cleaning Masters,

11 Appellant.

APPEAL NO.: OPA-PA-18-006

**GDOE'S MOTION TO DISMISS GUAM  
CLEANING MASTERS' APPEAL;  
MOTION TO STRIKE EX PARTE  
SUPPLEMENTAL DOCUMENTS  
FROM GUAM CLEANING MASTERS  
AND PROHIBIT DISCUSSION AT THE  
FORMAL HEARING.**

16 Comes now the Guam Department of Education (GDOE), by and through its Legal  
17 Counsel James L.G. Stake and files its Motion to Dismiss Guam Cleaning Masters'  
18 (Appellant or GCM) Appeal of GDOE Invitation for Bid (IFB) 013-2018; Motion to Strike  
19 ex parte supplemental documents submitted by Guam Cleaning Masters to the Office of the  
20 Public Auditor (OPA) and prohibit discussion at the formal hearing, pursuant to Title 2 of  
the Guam Administrative Rules and Regulations (GAR) Division 4 Section 12104.

22 **I. BACKGROUND INFORMATION**

1 On September 5, 2018, GCM filed ex parte to the OPA, a twenty-eight (28) page  
2 document titled "Supporting Explanation and Analysis for the Appeal re: Protest Letter  
3 Submitted to GDOE for IFB-013-2018." See GCM bate stamp pages GCM\_T118.1-001-028.  
4 The ex parte submission was not filed with GDOE at that time.

5 On September 5, 2018, Appellant, through their legal counsel, filed their Notice of  
6 Appeal to the OPA, for IFB 013-2018 and served GDOE on September 6, 2018. On October 1,  
7 2018, GDOE filed its Agency Statement. On October 11, 2018, Appellant filed their  
8 Comments in response to GDOE's Agency Statement. Included in Appellant's Comments was  
9 the improper ex parte submission, filed with GDOE for the first time **thirty-five (35) days**  
10 **passed the deadline.**

## 11 II. DISCUSSION

12 Title 2 GAR Div. 4 Section 12104 provides the form and filing of an Appeal. The  
13 Appellant shall file a copy of the Appeal, and **all supporting documents with the Chief**  
14 **Procurement Officer, or the head of a Purchasing Agency within 24 hours of filing said**  
15 **Appeal with the Office of the Public Auditor.** 2 GAR Div. 4 §12104(c)(1).

16 Title 2 GAR Div. 4 Section 12104(b)(7) states, a protest may be **dismissed for failure**  
17 **to comply with any of the requirements of this section.** Therefore, GDOE hereby moves the  
18 OPA to: (a) dismiss Guam Cleaning Masters' Appeal because of failure to follow Guam  
19 Procurement Regulations; (b) strike Appellant's improper ex parte submission in its entirety  
20 from the record and any consideration thereof and prohibit any discussion or raising of the  
21 issues stated in the improper ex parte submission at the formal hearing.

### 22 (a) Motion to Dismiss GCM's Appeal before the OPA.

23 As previously stated, Guam Procurement Regulations dictate that appellant shall file a  
24 copy of all supporting documents with the Purchasing Agency within 24 hours of filing their  
Appeal. 2 GAR Div. 4 §12104(c)(1). The Regulations state that Appellant "shall" file all

1 supporting documents, not “may” file. *Id.* On September 5, 2018, GCM filed ex parte  
2 supplemental documents titled “**Supporting Explanation and Analysis for the Appeal.**” See  
3 GCM bate stamp pages GCM\_T118.1-001-028. Unquestionably, based on the title and content  
4 of the documents, they were required to be filed with the original appeal. However, these  
5 documents were not filed with GDOE. **This is in direct violation of Guam Procurement**  
6 **Regulations.**

7 On the same day, Appellant, through their legal counsel, filed their formal appeal with  
8 the OPA. On September 6, 2018, Appellant served only their formal Appeal to GDOE. The ex  
9 parte submission that GCM provided to the OPA was never filed with GDOE, and was only  
10 recently made aware upon receiving Appellant’s Comments on October 11, 2018. See  
11 Appellant’s Comments p. 8. This is **thirty-five (35) days** after Appellant was required by  
12 Guam Procurement Regulations to file these documents with GDOE. This is unacceptable.  
13 The Regulations do not allow Appellant to provide ex parte information to the OPA. GDOE is  
severely concerned about Appellant filing ex parte any other information to the OPA.

14 This is a serious violation that should be rectified. The Regulations provide that in the  
15 event an Appellant does not comply with any of the requirements, such as this, the OPA has the  
16 authority to dismiss. 2 GAR Div. 4 § 12104(b)(7). Appellant has clearly violated the  
17 regulations, and because of this, GDOE respectfully requests that the OPA dismiss this Appeal.  
18 In the alternative, GDOE moves that the entirety of the improper ex parte submission be  
stricken from the record as well as any discussion on such submission at the formal hearing.

19 **(b) Motion to Strike Ex Parte Supplemental Documents**

20 As stated above, Appellant did not comply with Guam Procurement Regulations  
21 regarding filing of the Appeal and now GDOE is effectively robbed of an opportunity to  
22 properly respond in writing to any claims stated in the improper ex parte submission.  
23 Appellant inserting such ex parte submission in their Agency Comments, over a month after it

1 was required to be filed with GDOE is against the law. The improper documents should be  
2 stricken from the record in their entirety. Therefore, GDOE formally requests that the OPA  
3 prohibit any discussion or raising of information contained in the ex parte documents at the  
4 formal hearing.

5 **III. CONCLUSION**


6 In conclusion, Appellant's improper filing of the ex parte twenty-eight (28) page  
7 document to the OPA has directly violated procurement regulations because Appellant  
8 provided the documents thirty-five (35) days after the deadline. Because of this, GDOE  
9 respectfully moves the OPA to exercise its lawful authority and dismiss this Appeal. In the  
10 alternative, GDOE respectfully moves the OPA strikes the ex parte submission and bar any  
11 discussion of said ex parte submission at the formal hearing.

12 Dated this 19<sup>th</sup> day of October, 2018.

13 Respectfully submitted,

14  
15 **GUAM DEPARTMENT OF EDUCATION**

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

  
**JAMES L.G. STAKE**  
*Legal Counsel*