

1 Appellant seeks review by the Public Auditor pursuant to 5 GCA § 5427(a), (e) and (f), and § 5406,
2 and pursuant to its contract with GACS; however, its appeal to the Public Auditor is not proper. 5 GCA §
3 5427(a) permits the Public Auditor to resolve contract and breach of contract between the Territory and a
4 Contractor. GACS is not the “Territory” or the Government of Guam, as utilized under the statute. While
5 the Charter Schools are required to enter into contracts “subject to Chapter 5, Title 5, Guam Code
6 Annotated,” 5 GCA § 12107(c)(4) and shall exercise control over its expenditures “subject to Chapter 5, Title
7 5, Guam Code Annotated” 5 GCA § 12107(f), the Public Auditor is not granted jurisdiction to hear appeals
8 over contractual disputes of Charter Schools. Neither does Guam law permit private parties to expand
9 resolution of private disputes to the Public Auditor.
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11 Assuming *arguendo* that GACS is the “Territory” or the “Government of Guam,” 5 GCA § 5703
12 prohibits the Public Auditor from asserting jurisdiction over the dispute. It provides, “The Public Auditor
13 shall not have jurisdiction over disputes having to with money owed to or by the government of Guam.”
14 Because Appellant has asserted a claim for moneys owed, assuming the applicability of 5 GCA § 5703 to
15 Charter Schools, the Public Auditor lacks jurisdiction over the dispute.
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17 Notwithstanding the inapplicability of 5 GCA § 5427, GACS and Appellant entered into a contractual
18 provision permitting the Public Auditor to resolve “disputes concerning questions of fact.” *See Exhibit R,*
19 *Section 7, GACS Procurement Record (May 24, 2019).* There are no issues of fact to which Appellant seeks
20 review; and no issue of fact presented to GACS to which it failed to render a decision subject to appeal to the
21 Public Auditor. *See Notice of Appeal (May 17, 2019).* Rather, GACS asserts that the issue in dispute as
22 between the parties, is one of law, which is not subject to the jurisdiction of the Public Auditor under Section
23 7. GACS without waiving objection to the jurisdiction of the Public Auditor, further objects on the basis that
24 Section 7 is impossible, as a matter of law, because private parties cannot bind the Public Auditor to determine
25 private disputes without an express provision of Guam law.
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1 Moreover, § 12103 provides:

2 The Public Auditor shall have the power to review and determine de novo any matter properly
3 submitted to her or him. The Public Auditor shall not have jurisdiction over disputes having
4 to do with money owed to or by the government of Guam . . . The Public Auditor's
jurisdiction shall be utilized to promote the integrity of the procurement process and the
purposes of 5 GCA Chapter 5.

5 § 5425(e) of Title 5, Guam Code Annotated (GCA) provides:

6 A decision under Subsection (c) of this Section including a decision thereunder regarding
7 entitlement to costs as provided by Subsection (h) of this Section, may be appealed by the
8 protestant, to the Public Auditor within fifteen (15) days after receipt by the protestant of the
notice of decision.

9 5 GCA § 5425 (c) specifically refers to a decision related to the protest of "the method of source selection,
10 solicitation or award of a contract." 5 GCA § 5425(a). The jurisdiction of the Public Auditor is limited to
11 those matters specifically authorized by statute. 5 GCA § 5703 *in accord* 2 GARR Div. 4 § 12103. Because
12 no Guam law specifically authorizes the Public Auditor to hear disputes between charter schools and its
13 contractors, the Public Auditor lacks jurisdiction to hear the appeal of Rex International.

14 CONCLUSION

15 In lieu of an Agency Report and with all rights reserved to file said report in the event of the denial
16 of this motion, GACS moves to dismiss the appeal on the basis that no jurisdiction is conferred on the Office
17 of Public Accountability to address the issues raised by Appellant on appeal.
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19 RESPECTFULLY SUBMITTED this 3rd day of June, 2019.

20 LAW OFFICE OF
21 JACQUELINE TAITANO TERLAJE, PC

22
23 By:



24 JACQUELINE TAITANO TERLAJE
25 Attorney for *Guahan Academy Charter School*