

**2 GAR DEPARTMENT OF ADMINISTRATION  
DIV. 4 PROCUREMENT REGULATIONS  
CH. 12 PROCUREMENT APPEALS TO THE PUBLIC AUDITOR**

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

**SOURCE:** Filed with the Guam Legislature on July 17, 2006, effective after 90 days pursuant to the Administrative Adjudication Law (5 GCA, Chapter 9, Article 3).

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**§ 12101. Authority and Purpose of Rules of Procedure.**

These Rules of Procedure are promulgated under the authority of 5 GCA Chapter 5, Article 12, and P.L. 28-068, which gives the Public Auditor the duty to be in control of and be responsible for procurement Appeals in Guam, and the authority to adopt rules of procedure pursuant to 5 GCA § 5701. These rules shall be construed and applied to provide for the expeditious resolution of controversies in accordance with the requirements of 5 GCA Chapter 5 (Guam Procurement Law) and the Guam Procurement Regulations contained in 2 GAR Division 4.

**§ 12102. Definitions.**

As used in this Chapter, unless the context in which they are used requires a different meaning, the following definitions shall apply.

- (a) “Appellant” means an aggrieved person who Appeals to the Public Auditor a decision of the Chief Procurement Officer, the Director of Public Works, the head of a Purchasing Agency, or the designee of such officer.

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(b) “Interested Party” means an actual or prospective bidder, offeror, or contractor who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied.

(c) “Protestor” means any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract and who filed a protest, or who has received a notice of suspension or debarment. Such a protestor is sometimes referred to herein as an “aggrieved person.”

(d) 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.

(e) 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.

(f) “File” and “submit” mean receipt in the Office of Public Accountability, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, as the case may be.

(g) 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 Public Accountability is closed by order of I Maga’håga/Maga’låhi, 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 I Maga’håga/Maga’låhi shall be excluded in the computation.

**2026 NOTE:** References to the “Office of the Public Auditor” replaced with the “Office of Public Accountability” pursuant to P.L. 30-027:3 (June 16, 2009). References to the “Governor” replaced with I Maga’håga/Maga’låhi pursuant to 5 GCA § 1510.

**§ 12103. Jurisdiction of the Public Auditor; Exhaustion of Remedies.**

(a) The Public Auditor shall have the power to review and determine de novo any matter properly submitted to her or him. The Public Auditor shall not have jurisdiction over disputes having to do with money owed to or by the government of Guam. No prior determination shall be final or conclusive on the Public Auditor. The Public Auditor shall have the power to compel attendance and testimony of, and production of documents by, any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission. The Public Auditor may consider testimony and evidence submitted by any competing bidder, offeror or contractor of the Appellant. The Public Auditor’s jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.

(b) Effect of Judicial Proceedings. If an action concerning the procurement under Appeal has commenced in court, the Public Auditor shall not act on the Appeal except to notify the parties and decline the matter due to Judicial involvement. This Section shall not apply where a court requests the decision of the Public Auditor. Parties are required to notify and provide copies to the Public Auditor within 24 hours of any action in court concerning the procurement under Appeal.

**2019 NOTE:** Prior publications of the GAR included information from the OPA indicating 5 GCA § 5703 as the source for subsection (a).

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**§ 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. Timely facsimile, electronic, or magnetic filing may also be authorized by the Office of Public Accountability upon the adoption of appropriate guidelines. An Appeal is considered filed when received by the Office of Public Accountability, 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.

(b) Form. To expedite handling of Appeals, the envelope, transmittal letter, and the actual Appeal shall be labeled "Procurement Appeal." The written Appeal shall be in substantially the same format as Appendix A to this Chapter, and include at a minimum the following:

(1) The name, mailing and business address of the Appellant;

(2) Appropriate identification of the procurement or solicitation, soliciting or procuring agency, and, if a contract has been awarded, its number; a concise, logically arranged, and direct statement of the grounds for Appeal;

(3) A statement specifying the ruling requested;

(4) 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;

(5) A copy of prior decisions or determinations of the protests, contract disputes, or debarment action that are being Appealed; or copy of the request for final decision and any agreement to extend the decision deadline;

(6) An Appeal shall be signed by an Appellant, by an officer of the Appellant corporation or a member of the Appellant firm, or by the Appellant's duly authorized representative or attorney, and the facts therein verified.

(7) A protest may be dismissed for failure to comply with any of the requirements of this section, except that a protest shall not be dismissed for failure to comply with this section where the contracting officer has actual knowledge of the basis of the protest, or the agency, in the preparation of its report, was not prejudiced by the protester's noncompliance.

(c) Notice of Appeal, Submission of Report and Time for Filing of Comments on Report.

(1) The Appellant shall file a copy of the Appeal, and all supporting documents with the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency within 24 hours of filing of said Appeal with the Office of Public Accountability. The Public Auditor shall notify the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency by telephone and in writing 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; shall instruct said parties to communicate directly with the Public Auditor regarding the status of the Appeal, and directly with the procurement officer as allowed by law regarding the protested procurement action; and shall communicate to the Public Auditor the identities and addresses of said parties.

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(3) The Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall submit to the Public Auditor a complete copy of the procurement record relevant to the appeal within five (5) working days of receiving notice of an Appeal, in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents. It shall additionally submit an answer to the appeal in the form of a detailed Agency Report, and shall furnish a copy of the report to the Appellant. This Agency Report shall comply to the requirements of § 12105 of this Chapter. The Agency Report shall be submitted within ten working days of receipt of by the Agency of the notice of Appeal of a Method, Solicitation, or Award; or notice of Appeal of a Suspension. The Agency Report shall be submitted within twenty days of receiving notice of Appeal on a Contract Dispute, or notice of Appeal of a Debarment.

(4) Comments on the agency report by an Appellant or an Interested Party, including testimony and evidence by any competing bidder, offeror or contractor of the Appellant, 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. Any rebuttal an Agency may care to make shall be filed with the Public Auditor within five (5) working days after receipt by the Public Auditor of the comments to which rebuttal is directed, with a copy to the Appellant. Unsolicited agency rebuttals shall be considered if filed within five (5) days after receipt by the Public Auditor of the comments to which rebuttal is directed.

(5) The failure of an Appellant or any Interested Party to comply with the time limits stated in this section may result in resolution of the Appeal without consideration of the comments untimely filed.

(6) If the Appellant or the Agency considers that the Appeal, the Procurement File, the Agency Report, or any other report or material submitted contains material which shall be withheld pursuant to law or regulation, a statement advising of this fact must be affixed to the front page of the document and the allegedly exempted information must be so identified wherever it appears.

(7) Requested Information Time for Filing. In order to expedite consideration of the Appeal, any additional information requested by the Hearing Officer shall be submitted within five working (5) days of receipt of such request unless another time is established in the request. Failure of any party to comply expeditiously with a request for information by the Hearing Officer may result in resolution of the Appeal without consideration of any information, which is untimely filed pursuant to such request.

(8) After notice of an Appeal to the Public Auditor has been filed a party may not discontinue such Appeal without prejudice, except as authorized by the Public Auditor.

(9) Any objection or motion addressed to the jurisdiction of the Public Auditor shall be promptly filed. The Public Auditor shall have the right motion to raise the issue of its jurisdiction and shall do so by an appropriate order.

**SOURCE:** Filed with the Guam Legislature on July 17, 2006, effective after 90 days pursuant to the Administrative Adjudication Law. Amendment to subsection (c)(9) filed April 14, 2009, effective after 90 days pursuant to the Administrative Adjudication Law.

**2026 NOTE:** References to the "Office of the Public Auditor" replaced with the "Office of Public Accountability" pursuant to P.L. 30-027:3 (June 16, 2009).

**2019 NOTE:** Prior publications of the GAR included information from the OPA indicating 5 GCA § 5708 as the source for this provision.

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**§ 12105. Agency Report.**

The Agency Report shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file and shall include the following, if not already submitted to the OPA as part of the procurement record required by § 12104(c)(3):

- (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, if any had been submitted prior to the protest;
- (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.

**2019 NOTE:** Prior publications of the GAR included information from the OPA indicating the ABA 2002 Model Procurement Rules as the source of this provision.

**§ 12106. Making Information on Appeals Available.**

The Public Auditor shall, upon written request, make available to any Interested Party or member of the public information submitted that bears on the substance of the Appeal except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential shall so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information.

**§ 12107. Ex Parte Communications with Hearing Officer.**

(a) No person directly or indirectly involved in an Appeal shall communicate with the Hearing Officer or the Office of Public Accountability staff regarding any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an Appeal except:

- (1) At a hearing; or
- (2) With the consent of all other parties or their counsel in such matters; or
- (3) In the presence of all other parties or their counsel in such matters; or

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(4) By means of papers provided for or allowed by these rules or by law.

(b) Nothing in this rule shall prevent the OPA staff from entertaining questions or complaints that are not related to the substance of the pending appeals. OPA staff shall report communications regarding pending appeals to all the parties in the pending appeal.

**2026 NOTE:** References to the “Office of the Public Auditor” replaced with the “Office of Public Accountability” pursuant to P.L. 30-027:3 (June 16, 2009).

**§ 12108. Hearing Procedures.**

(a) Request for Hearing. In all Appeals to the Public Auditor of suspension or debarment, a hearing shall be conducted. In all other Appeals, including Appeals of protests or contract disputes, the parties shall either request a hearing in writing or waive their right to a hearing and submit the case on the record without a hearing. Request for a hearing shall be made prior to the expiration of the time period allowed for filing comments on the agency report, and shall be in a form substantially similar to Appendix D to this Chapter. Except in unusual circumstances, requests for a hearing received after such time will not be honored.

(b) Time and Place for Hearings. Hearings shall be held at the Office of Public Accountability 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 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 appeals 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, including those provisions on subpoenas and contempt.

(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 record of the time, place, and persons present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record. An audio copy of the recorded hearing shall be made available to the parties in electronic or digital format at the fee prescribed by 5 GCA § 10304, and shall be available on the website of the Office of Public Accountability, [www.guamopa.org](http://www.guamopa.org).

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(f) Opening Statements. Opening statements may be made unless a party waives this right, subject to time limits that may be set by the Hearing Officer.

(g) Public Hearings. Hearings shall be open and accessible to the public.

(h) Judicial Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of Guam. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, subject to time constraints imposed by the Hearing Officer.

**2026 NOTE:** References to the “Office of the Public Auditor” replaced with the “Office of Public Accountability” pursuant to P.L. 30-027:3 (June 16, 2009).

**§ 12109. Authority of the Hearing Officer.**

The Public Auditor may appoint a Hearing Officer for Procurement Appeals. If no Hearing Officer is appointed or in the event of the Hearing Officer’s recusal, the Public Auditor may appoint and contract with another Guam-licensed attorney, who may be an attorney in full time service of the government of Guam, or an attorney in private practice, to act as Hearing Officer for all further proceedings with respect to that matter. The Hearing Officer shall receive written, oral, or otherwise presented testimony, evaluate such testimony and make recommendations to the Public Auditor. No prior determination shall be final or conclusive. The Hearing Officer has the power, among others, to:

(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.

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(i) Compel attendance and testimony of and production of documents by any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission;

(j) Consider testimony and evidence submitted by any competing bidder, offeror or contractor of the protestant or appellant.

**§ 12110. Decisions of the Public Auditor.**

(a) Within thirty (30) days of a hearing on an appeal or after the parties have formally waived a hearing, as provided for by 2 GAR, Div. 4, Chap. 12, § 12108(a), the Public Auditor shall issue a final written decision or take other appropriate action. The Public Auditor's final decision, which shall be made part of the record, shall recite the evidence relied upon which the decision is based.

(b) The final decision shall inform the parties of their right to judicial review under 5 GCA Chapter 5, Article 9 (Legal and Contractual Remedies) of the Guam Procurement Law.

(c) A copy of any final decision on Appeal shall be immediately mailed via certified mail, return receipt requested, or furnished by any other method that provides evidence of receipt, to the Appellant; to any other participating party; and, as appropriate, to the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency. All decisions shall be posted on the website of the Office of Public Accountability within ten (10) days of issuance.

**SOURCE:** Filed with the Guam Legislature on July 17, 2006, effective after 90 days pursuant to the Administrative Adjudication Law. Amendment to section (a) filed April 14, 2009, effective after 90 days pursuant to the Administrative Adjudication Law.

**2026 NOTE:** References to the "Office of the Public Auditor" replaced with the "Office of Public Accountability" pursuant to P.L. 30-027:3 (June 16, 2009)

**§ 12111. Finality of Decision.**

(a) Appeal. Any person receiving an adverse decision, the government or any autonomous agency or public corporation, or both, may Appeal from a decision by the Public Auditor to the Superior Court of Guam.

(b) Authorization of Appeal by the Government. No such Appeal shall be made by the government or an autonomous agency or public corporation unless recommended by the Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency involved.

(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.

**2019 NOTE:** Prior publications of the GAR included information from the OPA indicating 5 GCA § 5707 as the source for subsections (a) and (b), and 5 GCA § 5704 as the source for subsection (c).

**§ 12112. Appeal to Public Auditor Relative to Method, Solicitation, or Award.**

Authority. Pursuant to 5 GCA § 5425(e) a protestor 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 receipt by protestor of the decision. The Public Auditor shall determine whether a decision on the protest of method of selection,

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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.

**2019 NOTE:** Originally promulgated as § 12201, renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606.

**2016 NOTE:** Subsection designation was removed to adhere to the Compiler's general codification scheme pursuant to the authority granted by 1 GCA § 1606.

**§ 12113. 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 an aggrieved 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.

(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.

**2019 NOTE:** Prior publications of the GAR included information from the OPA indicating 5 GCA § 5703 as the source for subsection (a). Originally promulgated as § 12301, renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606.

**§ 12114. Appeal to Public Auditor of Debarment or Suspension.**

(a) This section applies to Appeals of debarment or suspensions of persons from consideration for award of contracts imposed by the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency. Pursuant to 5 GCA § 5705 an aggrieved person may Appeal a suspension or debarment action within 60 days of receipt of a decision under subsection (c) of 5 GCA § 5426. The Public Auditor shall review actions between Guam and a person who is subject to a suspension or debarment proceeding, to determine whether, or the extent to which the debarment or suspension was imposed on a Contractor in accordance with applicable statutes, regulations and the best interest of the government or any autonomous agency or public corporation, and was fair.

(b) A decision on Appeal of a suspension or debarment shall set for the reasons for such action and shall inform the debarred or suspended person involved of his 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.

**2026 NOTE:** Subsection designations added pursuant to authority granted by 1 GCA § 1606. Reference to "territory" replaced with "Guam" pursuant to 1 GCA § 420.

**2019 NOTE:** Prior publications of the GAR included information from the OPA indicating 5 GCA § 5705 as the source for this provision. Originally promulgated as § 12401, renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606.

**§ 12115. Review of Award Pending Protest or Appeal.**

(a) Any protestor may protest a determination by the Chief Procurement Officer or the Director of Public Works pursuant to 5 GCA § 5425(g) that award of a contract without delay pending Appeal is necessary to protect the substantial interests of the government of Guam. Said protest must be filed in writing at the Office of Public Accountability within two (2) days of receipt by protestor of the notice of determination. The Public Auditor shall either confirm or reject the determination.

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(b) After an Appeal is filed with the Public Auditor relative to method of selection, solicitation, or award pursuant to 5 GCA § 5425(e) and § 9301 of this Chapter, the Public Auditor shall review and confirm or reject any determination by the Chief Procurement Officer or the Director of Public Works pursuant to 5 GCA § 5425(g) that award of a contract without delay pending Appeal is necessary to protect the interests of the government.

(c) The Chief Procurement Officer and the Director of Public Works shall file with the Office of Public Accountability a copy of all determinations made pursuant to 5 GCA § 5425(g) on the date of 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 shall 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.

**2026 NOTE:** References to the “Office of the Public Auditor” replaced with the “Office of Public Accountability” pursuant to P.L. 30-027:3 (June 16, 2009).

**2019 NOTE:** Originally promulgated as § 12501, renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606.

**§ 12116. 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. The Public Auditor shall make a determination and notify all parties. In the event of disqualification or recusal of the Public Auditor, § 5480 the Public Auditor shall designate a member of his or her staff or the appointed Hearing Officer for procurement appeals to preside over the matter. If no member of the Public Auditor’s staff or the appointed Hearing Officer is able to preside over the matter due to disqualification, then such matter may be taken to the Superior Court of Guam in accordance with 5 G.C.A. §5480.

**SOURCE:** Filed with the Guam Legislature on July 17, 2006, effective after 90 days pursuant to the Administrative Adjudication Law. Amendment filed on April 14, 2009, effective after 90 days pursuant to the Administrative Adjudication Law.

**2019 NOTE:** Originally promulgated as § 12601, renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606.

**§ 12117. Expedited Protest Procedure for Procurements Funded in Whole or in Part by Funds Allotted to the Department of Education from the American Rescue Plan Act of 2021, the Education Stabilization Fund, or the Head Start Grant.**

(a) Definitions. When used in this regulation, the following definitions shall apply:

(1) “Aggrieved Person” shall mean a non-selected actual or prospective vendor, contractor or service provider who may be aggrieved in connection with a solicitation or an award of a contract that is funded in whole or in part by funds allotted to the Department of Education, government of Guam from the American Rescue Plan Act of 2021, the Education Stabilization Fund, or the Head Start Grant.

(2) “ARPA” shall refer to the American Rescue Plan of 2021; “ESF” shall refer to the Education Stabilization Fund; and “HSG” shall refer to the Head Start Grant.

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(3) “Capital improvement project” shall refer to any project that results in a permanent addition to assets through the acquisition of property, new construction, or rehabilitation of an existing facility to a like-new condition.

(4) “Decision” shall mean a written decision or order of the Public Auditor that is issued pursuant to 5 GCA, Chapter 5, Article 9, Subarticle A, § 5425.2, and the procedure found in this regulation.

(5) “DOE” shall refer to the Department of Education of the government of Guam.

(6) Interested party shall refer to an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by failure to award the contract.

(7) “Person” shall refer to both natural and non-natural persons, depending on the context.

(8) “Procedure” shall refer to the expedited procedure for resolution of protests pursuant to this regulation, as mandated by P.L. 37-006 and I Liheslatura’s intent in Section 1 of P.L. 37-006.

(9) “Procurement” shall refer to any procurement or stage of procurement for a capital improvement project that is funded in whole or in part by funds allotted to the Department of Education, government of Guam, from the American Rescue Plan Act of 2021, the Education Stabilization Fund, or the Head Start Grant.

(10) “Protest” shall refer to a written dispute of a procurement solicitation, selection, award, or contract for a capital improvement project funded in whole or in part by funds allotted to the Department of Education, government of Guam from the American Rescue Plan Act of 2021, the Education Stabilization Fund, or the Head Start Grant.

(11) “Regulation” shall refer to the regulation required to be promulgated by the Public Auditor pursuant to Section 2 of P.L. 37-006, and as promulgated and codified in this 2 GAR, Division 4, Chapter 12 § 12117, to provide for final, conclusive and exclusive resolution of protests of procurements.

(b) Exclusive Jurisdiction. The Public Auditor shall have exclusive jurisdiction over a protest under this expedited procedure. The Public Auditor’s decision under this procedure shall be final and conclusive, and there is no right to file an action under 5 GCA, Chapter 5, Article 9, Subarticle D, § 5480, no right to judicial review or appellate review, and no interlocutory appeal of a decision or order that is issued under this procedure.

(c) Exclusive Procedures for Protests. This procedure is the exclusive procedure to file a protest of a procurement. An aggrieved person must utilize this procedure to file a legally cognizable protest.

(d) Right to Protest. An aggrieved person shall have the right under this procedure to file a protest with the Public Auditor within fourteen (14) calendar days from the date that such person knew or should have known of the facts giving rise to the protest. The protest may be of any phase of solicitation or award. Such right to protest shall lapse and be unenforceable on the fifteenth (15th) calendar day after the date that the aggrieved person knew or should have known of the facts giving rise to the protest.

(1) The protest at a minimum should include:

(A) the name and address of the aggrieved person;

(B) appropriate identification of the procurement and, if a contract has been awarded, its number;

(C) a statement of the reasons for the protest;

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(D) the earliest date that the aggrieved person had reason to know of the fact(s) giving rise to the protest; and

(E) supporting exhibits, evidence or documents to substantiate the protest.

(e) Service. The aggrieved person shall serve the protest through any means authorized by the Guam Rules of Civil Procedure for service of process. Service of all other documents filed with the Public Auditor may be effected through email to the party's attorney of record or to the party's email on record with DOE. If a party serves a filed document by email, a notice of service by email together with the email transmittal shall be filed with the Public Auditor.

(f) Protest Resolution by Mutual Agreement. The aggrieved person, the Department of Education, and the interested party shall have up to twenty (20) calendar days from the date of the filing of a protest to resolve, by mutual agreement, the protest under this procedure. Such mutual agreement shall be in writing and shall be filed with the Public Auditor by the twentieth (20th) calendar day after a protest has been filed under this procedure.

(g) Procurement Record. The aggrieved person is required to provide DOE no less than one (1) business day advance notice prior to filing a protest to notify DOE in writing of its intent to file a protest with the Public Auditor, so that DOE may timely produce the procurement record. DOE shall provide the procurement record to the Public Auditor within two (2) business days of the filing of the protest. The Public Auditor may treat either the aggrieved person's failure to timely provide DOE notification of an intent to file a protest or a failure of DOE to timely provide the procurement record as a default and render a decision on such default.

(h) Response to Protest. The interested party and DOE shall have seven (7) days, Saturdays, Sundays, and government of Guam holidays excepted, from the date of the filing of the protest to file a response to the protest. The Public Auditor may treat a failure to file a timely response to the protest as a default and render a decision on such default.

(i) Decision of the Public Auditor. If there is no mutual agreement within twenty (20) calendar days of the filing of the protest, the Public Auditor shall expedite the administrative review process and decide the protest by issuing a written decision within twenty (20) days of the filing of the protest, Saturdays, Sundays, and government of Guam holidays excepted.

(1) The decision of the Public Auditor shall provide the reasoning for the decision and shall inform the unsuccessful party that they have no right to an action under 5 GCA § 5480, judicial review, final or interlocutory appeal of the decision.

(2) The decision shall be served by certified mail at the addresses provided in the procurement record or through personal service to DOE, the vendor, contractor, or service provider who filed the protest (i.e. the aggrieved person), as well as to the person awarded the contract (i.e., the interested party), and to all other non-selected bidders or offerors.

(3) A party may elect to receive service of the decision via email to the party or the party's attorney of record, in lieu of service by certified mail or by personal service, by filing a waiver of service of the decision with the Public Auditor and designating in the waiver the email to be used for such service.

(j) Hearing on the Merits of the Protest. The Public Auditor shall hear the merits of the protest within fifteen (15) days, Saturdays, Sundays, and government of Guam holidays excepted, of the filing of the protest. The hearing on the merits of the protest is to determine whether the method of selection, solicitation

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or award of a contract, or entitlement to costs under 5 GCA § Chapter 5, Article 9, Subarticle A, § 5425(h) is in accordance with statutes, regulations, and the terms and conditions of the solicitation.

(1) Where not provided for in this § 12117, § 12108 of this Chapter shall be read and interpreted to apply to the hearing on the merits of the protest by substitution of “Protest” for “Appeal.” Where not provided for in 2 GAR, Division 4, Chapter 12, the Public Auditor shall treat issues that arise during the protest as *sui generis* and decide the issues on such basis.

(2) A party may be present at the hearing; may present any relevant evidence; will be given full opportunity to cross-examine all witnesses testifying against the party; and if the party is a natural person, the party may be, but need not be, represented by counsel.

(3) A party shall be 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 Public Auditor.

(4) The aggrieved person shall have the burden of proof to show by a preponderance of the evidence that the method of selection, solicitation or award of a contract or entitlement to costs under 5 GCA, Chapter 5, Article 9, Subarticle A, § 5425(h) was not in accordance with statutes, regulations, or the terms and conditions of the solicitation.

(5) The aggrieved person may waive a hearing on the merits of the protest pursuant to § 12108(a) of this Chapter.

(k) No Automatic Stay of Procurement or Award. There shall be no stay, automatic or otherwise, pursuant to 5 GCA, Chapter 5, Subarticle A of Article 9, § 5425(g), or 4 GAR, Division 4, Chapter 9, § 9101, of the procurement, or of an award of a contract, unless the Public Auditor shall exercise discretion to order a stay. Such discretion, if it is to be exercised, shall be exercised within five (5) days of the filing of the protest.

(1) The aggrieved person, DOE, and the interested party may, within three (3) days of the filing of the protest, file a statement with the Public Auditor in support of, or against, the stay of the procurement or award.

(2) The Public Auditor’s discretion to order or deny a stay of the procurement or award shall be exercised upon consideration of whether the solicitation or award of contract without delay is necessary to protect the substantial interests of DOE.

(3) The Attorney General’s written concurrence of the Public Auditor’s order staying or denying a stay of the procurement or award is not a requirement under this procedure.

(l) Notice of Expedited Procedures. The Department of Education shall ensure that the expedited procedures implemented by this regulation shall be prominently displayed in the notice and the solicitation. The notice and the solicitation shall at a minimum state the following:

**Notice of expedited procedures for resolution of protests of procurements funded in whole or in part with funds allotted to GDOE from the American Rescue Plan Act of 2021, the Education Stabilization Fund, or the Head Start Grant.**

The Department of Education is soliciting proposals/invitations for a Procurement No. \_\_\_\_\_ for a capital improvement project that is to be funded with an allocation to the Department of Education from the American Rescue Plan Act of 2021 (ARPA), the Education Stabilization Fund (ESF), or the Head Start Grant (HSG). Any protest at any stage of this procurement shall be subject to the expedited procedure regulation found in this § 12117. Under the expedited procedure regulation, among other things:

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(1) an aggrieved person shall have the right to file a protest with the Public Auditor within fourteen (14) days from the date that such person knew or should have known of the facts giving rise to the protest;

(2) the aggrieved person is required to provide DOE no less than one (1) business day advance notice prior to filing a protest to notify DOE in writing of its intent to file a protest with the Public Auditor;

(3) DOE shall provide the procurement record to the Public Auditor within two (2) business days of the date of the filing of the protest;

(4) the aggrieved person, DOE, and the interested party shall have up to twenty (20) days from the date of the filing of the protest to resolve it by mutual agreement;

(5) a hearing on the merits of the protest shall be held within fifteen (15) days, Saturdays, Sundays, and government of Guam holidays excepted, of the filing of the protest; and

(6) the Public Auditor shall expedite the administrative review process and decide the protest by issuing a written decision within twenty (20) days, Saturdays, Sundays, and government of Guam holidays excepted, after the date of the filing of the protest.

The decision of the Public Auditor shall be final and conclusive, and no action, judicial review, appellate review or interlocutory appeal shall be available to any unsuccessful party. Prospective bidders, offerors and contractors who respond to this solicitation are required as part of their response to this solicitation to acknowledge and sign an affidavit stating that they are aware of the expedited procedure regulation and that they agree to abide by the rules and the deadlines in the regulation.

(m) Requirement of Signed Affidavit. DOE shall require that prospective bidders, offerors, and contractors acknowledge and sign an affidavit stating that they are aware of the expedited process and agree to abide by the rules and deadlines in this regulation. The affiant shall at a minimum attest under penalty of perjury:

(1) that the affiant is aware of and agrees to be bound by the expedited procedure regulation found in this § 12117;

(2) that under the procedure, an aggrieved person shall have the right to file a protest with the Public Auditor within fourteen (14) days from the date that such person knew or should have known of the facts giving rise to the protest;

(3) that DOE is required to provide the procurement record to the Public Auditor within two (2) business days of the date of the filing of the protest;

(4) that the aggrieved person, DOE, and the interested party have up to twenty (20) calendar days from the date of the filing of the protest to resolve it by mutual agreement;

(5) that a hearing on the merits of the protest shall be held within fifteen (15) days, Saturdays, Sundays, and government of Guam holidays excepted, of the filing of the protest;

(6) that the Public Auditor is to expedite the administrative review process and decide the protest by issuing a written decision within twenty (20) days, Saturdays, Sundays, and government of Guam holidays excepted, after the date of the filing of the protest; and

(7) that the decision of the Public Auditor shall be final and conclusive, and no action, judicial review, appellate review or interlocutory appeal is available to any unsuccessful party.

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(n) Last Effective Date of This Regulation. This regulation shall be effective until the latter of December 31, 2024, or the latest date under any extension of time for expenditure of ARPA funds by the grantor agency.

**SOURCE:** Added by P.L. 37-041:2 (Aug. 15, 2023).

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**APPENDIX A: NOTICE OF APPEAL FORM**

**PROCUREMENT APPEAL**

**PART I - To be completed by OPA**

In the Appeal of \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ ) **NOTICE OF APPEAL**  
\_\_\_\_\_ )  
(Name of Company), APPELLANT )  
Docket No. OPA-PA \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

**PART II - Appellant Information**

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Daytime Contact No: \_\_\_\_\_

**I. PART III - Appeal Information**

- A) Purchasing Agency: \_\_\_\_\_
- B) Identification/Number of Procurement, Solicitation, or Contract: \_\_\_\_\_
- C) Decision being appealed was made on \_\_\_\_\_ (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)

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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.*

**II. 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.: \_\_\_\_\_

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**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 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: \_\_\_\_\_  
DECLARANT

\_\_\_\_\_  
Print Declarant's Name

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**APPENDIX C: NOTICE OF HEARING FORM**

**PROCUREMENT APPEAL**

In the Appeal of	)	
	)	
	)	NOTICE OF HEARING
	)	
_____ (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

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**APPENDIX D: HEARING REQUEST/WAIVER FORM**

**PROCUREMENT APPEAL**

In the Appeal of \_\_\_\_\_ )  
 )  
 ) HEARING REQUEST/WAIVER  
 )  
(Name of Company), APPELLANT )  
 )  
Docket No. OPA-PA \_\_\_\_\_ )  
 )  
 )  
\_\_\_\_\_ )

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Sign Name

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