

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:	9 (including cover page)
CC:	Mr. Sedfrey Linsangan President Guam Pacific Enterprise, Inc. Phone: (671) 649-6994/7/8 Email: guampacific@gmail.com	Date:	January 26, 2022
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-22-001 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

January 26, 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-22-001

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 January 25, 2022, regarding the Department of Education’s (DOE) denial of protest related to the procurement for High Efficiency Particulate Absorbing (HEPA) Filtration System and Maintenance (Invitation for Bid: GDOE IFB 002-2022. OPA has assigned this appeal case number OPA-PA-22-001.

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 six 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 **Wednesday, February 2, 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 **Wednesday, February 9, 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 Six Pages of the Notice of Appeal – OPA-PA-22-001

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**
Guam Pacific Ent. Inc.)
(Name of Company), APPELLANT)
)
)
)
)

PART II- Appellant Information

Name: Guam Pacific Enterprises Inc.
Mailing Address: P.O. Box 23128 Ba
Trigada Guam 96921
Business Address: Hatmon Industrial Park
Guam
Email Address: guam.pacific@gmail.com
Daytime Contact No: 671-649-6997-8-4
Fax No.: 649-6988

PART III- Appeal Information

- A) Purchasing Agency: Department of Education
- B) Identification/Number of Procurement, Solicitation, or Contract: GDOE IFB 002-2022
- C) Decision being appealed was made on 1/14/22 (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:

Johnston Supply
Pacific Global Tech.
JMI Edison
JWS
Docomo Pacific

J & B Modern Tech
VSA Contractor
Inland Builders
Hanna Ent. Inc.
Carrier
Surface Solution

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.

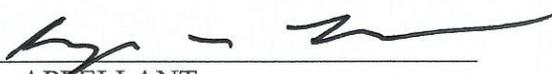
Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

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 23 day of Jan, 2022

By: 

APPELLANT

or

By: _____
Appellant's Duly Authorized Representative
(Address)
(Phone No)



**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 25 day of Jan, 20 20

By: (Please select one)

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

[Signature]
Signature

Sedfrey Linsangan
Print Name

Concise Statement

I filed a protest on Nov. 0, 2021. (Please see Exh. A) Notice of Stay of Procurement was issued on Nov. 15, 2021. (Please see Exh. B) Protest Decision was made on Jan. 14, 2022. Therefore my appeal is timely. Below are my complaints

1) Author of the IFB No. 002 - 2002 are educators not Architects and Engineers that is specified in Section 5266 of CH. 50 of S.C.A, Procurement law. The authors have no background in drafting specifications that requires engineering background. The reason why there are so many concerns from the prospective bidders and DOE had no definite answers on many concerns.

2) Delivery date was unrealistic that was also raised by the 7 bidders. (GPE, JMI

Edison, JWS, J & B Modern Tech, USA

Contractors Inc, Inland Builders, Surface

Solutions) Please see EXH. D. Violation of Section 5001 of Ch. 5 of 5 GCA and Section 5003, Requirement of Good faith. DOE never coordinated with the different manufacturers in USA so how did they come out with the delivery?

This could be construed as misconduct, to manipulate the bid and prone to corruption. My concern on delivery was also raised by 6 bidders (JMI Edison, JWS, J & B Modern Tech, USA Contractors Inc., Inland Builders and Surface Solutions. "Please see EXH D")

3) 15%. Bid bond should not be required because it conflicts with Buy American Act provisions, Executive Order of Pres Trump and Executive Order of President Biden (Section 1 and 3 of Exec. Order 14005 and Section 5501 of Article 10 Ch. 5 of 5 GCA of Guam Procurement law.

Please see EXH. E and F that GTHRA waived the bid bond due to Federal Funds. Its also an open book that past and present Governor bought supplies, tables, etc., and procure hotel services for quarantine without 15% bid bond.

4) DOE should not inform other Bidder that if it is assemble in USA but made in Foreign Country it qualifies for Buy American Act. That is wrong because it needs to get a waiver first from federal agency and comply with 51% US components.

Ruling Requested

I request that OPA order DOE to follow the laws and adhere or comply to my 4 concerns because it is justified and consistent or appropriate with the Clean Procurement Law (CPL, 56CA) and Buy American Act Provisions and Executive Order of Pres. Biden.



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-22-001 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Wed, Jan 26, 2022 at 3:56 PM

To: "Carmen T. Charfauros" <ctcharfauros@gdoe.net>, "James L.G. Stake" <jlgstake@gdoe.net>

Cc: Legal Admin <legal-admin@gdoe.net>, GPE INC <guampacific@gmail.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-22-001. 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.

--

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

This e-mail transmission and accompanying attachment(s) may contain confidential or privileged information. If you are not the intended recipient of this e-mail, please inform the sender and delete it and any other electronic or hard copies immediately. Please do not distribute or disclose the contents to anyone. Thank you.

**22-001 Notice of Receipt of Appeal.pdf**

1999K