

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



# FAX

|            |   |                              |  |
|------------|---|------------------------------|--|
| <b>To:</b> | <b>Fe Valencia-Ovalles, Chairwoman</b><br>Board of Trustees<br>Guahan Academy Charter School<br>P.O. Box CS<br>Hagåtña, Guam 96932<br>Email: <a href="mailto:info.gacsbot@gmail.com">info.gacsbot@gmail.com</a> | <b>From:</b>                 | <b>Peter C. Perez</b><br><b>Hearing Officer</b><br>Office of Public Accountability |
|            | <b>Jacqueline Taitano Terlaje, Esq.</b><br>Law Office of Jacqueline Taitano Terlaje, P.C.<br>284 W Chalan Santo Papa<br>Hagåtña, Guam 96910<br>Fax: (671) 648-9002  | <b>Pages:</b>                | 4 (including cover page)   |
| <b>CC:</b> | <b>Georgette Bello Concepcion, Esq.</b><br><b>Attorney for Appellant Rex International</b><br>Brooks Concepcion Law, P.C.<br>247 Martyr Street, Ste. 101<br>Hagåtña, Guam 96910<br>Fax: (671) 477-5790          | <b>Date:</b>                 | November 15, 2019  |
|            |   | <b>Phone:</b><br><b>Fax:</b> | (671) 475-0390 x. 208<br>(671) 472-7951  |

**Re:** OPA-PA-19-004 Decision on Motion to Dismiss

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Thank you,  
 Jerrick Hernandez, Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)



**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

IN THE APPEAL OF  
REX INTERNATIONAL,  
Appellant,  
GUAHAN ACADEMY CHARTER  
SCHOOL,  
Purchasing Agency.

**Appeal No: OPA-PA-19-004**

**DECISION ON MOTION TO DISMISS**

On May 16, 2019, Rex International (“Rex”) filed a Notice of Appeal to the Office of Public Accountability (OPA). On June 3, 2019, Guahan Academy Charter School (“GACS”) filed a Motion to Dismiss for Lack of Jurisdiction. In response, Rex relies upon the averments made in its Notice of Appeal. The parties through their respective counsel have agreed to submission of this motion to the OPA based upon the documents filed, without oral argument. For the reasons stated, GACS Motion to Dismiss is GRANTED.

**DISCUSSION**

GACS asserts that the OPA lacks jurisdiction over this appeal *inter alia* because the Public Auditor does not have jurisdiction over disputes having to do with money owed to or by the Government of Guam.

The OPA agrees. 5 G.C.A. § 5703(b). Jurisdiction of the Public Auditor, provides “The Public Auditor shall not have jurisdiction over disputes having to do with money owed to or by the government of Guam.” Rex’s Notice of Appeal is based on a dispute having to do with money owed to or by the

1 government of Guam. Assuming *arguendo* and without making a finding that GACS is a  
2 government of Guam included entity, Rex's appeal ultimately is based upon its claims for money  
3 allegedly owed to it by GACS.

4 In its Notice of Appeal, Rex states that it appeals the constructive denial of its *demand for*  
5 *payment* by GACS. In Notice of Appeal § II(D) Rex states that "This appeal arises from GACS  
6 failure to respond within 60 days after Rex's demand for *final payment*." Although Rex asserts as  
7 grounds for its appeal that (1) GACS breached the Rex International Contract; and, (2) GACS  
8 breached the implied covenant of good faith and fair dealing, in its request for relief, Rex asks the  
9 OPA to rule that GACS is in breach of the terms of the [Formal] Contract by *failing to pay Rex in*  
10 *full... GACS owes Rex International \$566,762.50...*" Notice of Appeal, § V(1) and (3). [Emphases  
11 added]. Exhibit B to the Notice of Appeal is a letter dated March 5, 2019, from Rex's counsel to  
12 GACS's Board of Trustees regarding GACS Project No. 2017-03 stating *inter alia* that GACS  
13 "has failed to pay Rex's applications for payments in full... Pursuant to Section 7 of the Contract,  
14 Rex hereby DEMANDS GACS pay the outstanding balance owed to Rex in the amount of  
15 \$566,762.50 plus interests and attorney's fees and costs within thirty days of receipt of this letter."  
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## 19 CONCLUSION

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21 Rex's appeal involves a dispute having to do with money owed to Rex by GACS. Pursuant  
22 to 5 G.C.A. § 5703(b), the OPA lacks jurisdiction and the appeal is DISMISSED. The parties shall  
23 bear their respective costs and fees associated with this appeal.  
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This is a Final Administrative Decision. The parties are hereby informed of their right to appeal from a Decision by the OPA to the Superior Court of Guam in accordance with Part D of Article 9 of 5 G.C.A. 5481(a) within fourteen (14) days after receipt of a Final Administrative Decision.

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. 5702, and shall be made available for review on the OPA website at [www.opaguam.org](http://www.opaguam.org).

Dated this 15<sup>th</sup> day of November 2019.



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**PETER C. PEREZ, ESQ.**  
**Hearing Officer**

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Jerrick Hernandez, Auditor

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

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**Abbreviations:**

|                  |                   |                   |                        |                          |
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| HS: Host send    | PL: Polled local  | MP: Mailbox print | CP: Completed          | TS: Terminated by system |
| HR: Host receive | PR: Polled remote | RP: Report        | FA: Fail               | G3: Group 3              |
| WS: Waiting send | MS: Mailbox save  | FF: Fax Forward   | TI: Terminated by user | FC: Error Correct        |