

## Notice of Intended Action

Office of Procurement intends to promulgate the administrative rules below, pursuant to the authority vested in the Office of Procurement in A.S.C.A. §§ 12.0208(b) and 12.0214. In summary, these changes will clarify the procedure for appealing the decisions of the Chief Procurement Officer. Interested persons who wish to submit comments or request a hearing on this matter may submit comments in person to Sapi Ma'o-Ena at the Office of Procurement in Tafuna, by email to [sapi.asgprocurement@gmail.com](mailto:sapi.asgprocurement@gmail.com), or by mail at Office of Procurement, American Samoa Government, Pago Pago, AS 96799 by November 3, 2021.

A.S.C.A. § 10.0282 was promulgated in 1984. Since then the legislature passed the Administrative Law Judge Act of 1998 which included A.S.C.A. § 4.0604 which gives the Administrative Law Judge the jurisdiction to "To take appeals of procurement officer's final decision in a procurement bidding dispute as described in section 10.0282 A.S.C.A.[sic]" A.S.C.A. § 4.0604 (f) further states, "The Governor's authority to appoint a three member board to hear disputes of matters pertaining to procurement disputes is hereby repealed."

In order to carry out the Legislature's instruction to mandate the repeal of a portion of A.S.A.C. § 10.0282 (c), the Office of Procurement intends to amend A.S.A.C. § 10.0282 as follows:

"10.0282 Disputes and appeals.

(a) Definition. "Dispute" means any disagreement between contractors or potential contractors and the government regarding a procurement officer's decision on mistakes-in-bidding, source selection, contract interpretation, or termination for convenience or default.

(b) Requirements. All such disputes shall be submitted in writing to the procurement officer making the decision. The procurement officer shall acknowledge receipt of the dispute within 5 working days of receipt and shall render a final decision within 30 working days after receipt of the dispute.

(c) Appeals. Appeals of a procurement officer's final decision in a dispute may be made within 60 days of the date of the decision, provided such appeal is submitted in writing to the Administrative Law Judge Governor. ~~The Governor shall appoint a board of at least three persons knowledgeable of procurement to review such appeals and recommend appropriate action to the Governor. None of the board members shall have participated in the action under appeal. At least one of the board members shall be a qualified attorney. Hearing procedures and documentation shall be as set forth in the Administrative Procedure Act, 4.1025 A.S.C.A., et seq., and the rules.~~

(d) ~~Limitation. A termination for default may only be converted to a termination for convenience as a result of a finding by the appeals board on behalf of the appellant.~~"

Notice Approved,



P'ialemasunu Mikaele Etuale

Chief Procurement Officer  
Office of Procurement

10/14/21  
Date

