

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

§ 8192. Private Sector Assistance Agreement Review.

Notwithstanding 1 CMC § 9101 et seq., 1 CMC § 7811 et seq., 2 CMC § 2301 et seq., or any other provision of law:

(a) Review of procurement decision in general.

(1) An aggrieved person may seek review of a CUC procurement for goods or services through a private sector assistance agreement (a "CUC PSAA procurement") by filing a protest.

(2) The protest shall be filed in writing with CUC within ten days after the aggrieved person knows, or by the exercise of reasonable diligence should know, of the decision of CUC, including but not limited to the awarding of a CUC PSAA.

(3) CUC shall respond in writing to the protest within ten days. The protest, CUC's response, and any reply by the aggrieved party shall be forwarded to PUC in the event that the protest is for an award of a CUC contract subject to PUC review and approval.

(4) PUC shall consider any protest filed in reaching its determination whether to approve or disapprove any given award subject to its review.

(5) An expedited procedure shall govern the review of a CUC PSAA procurement. Filings and document exchanges accomplished and distributed by electronic means shall be favored.

(6) Except as otherwise provided in this section, no person shall have standing to obtain review of a CUC PSAA procurement unless the person shall show actual prejudice from the decision.

(7) The Public Auditor shall have no involvement in a CUC PSAA procurement, nor jurisdiction over an appeal arising from such a procurement; provided that nothing in this subsection shall be construed to limit the authority of the Public Auditor set forth in article III, § 12 of the Constitution of the Northern Mariana Islands.

(8) In deciding whether to approve or disapprove a CUC award, PUC shall issue a written decision on any protest filed.

(9) CUC shall bear the costs of any PUC review of CUC's actions in any protest, rate case, or any other PUC action in which CUC's past, present or future courses of action are being reviewed or considered by PUC.

(b) PUC review.

(1) CUC shall file its final PSAA procurement decision with the PUC, including such supporting information as the PUC shall require, within seven days of reaching its decision.

(2) Upon CUC's filing, PUC shall immediately commence its review of a CUC PSAA procurement decision. PUC shall adopt procedures for an expedited review and for notice and participation of the person/s who participated in the CUC PSAA procurement.

(3) The following persons may participate by right before the PUC proceeding:

- (i) CUC;
- (ii) The Attorney General; and

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(iii) The person/s in whose favor the procurement decision was entered. A person who participates by right shall file a timely notice of participation in lieu of an answer. The notice shall state the person's position regarding a CUC decision. Any other person shall petition for leave to intervene.

(4) Within 42 days of the date of CUC's filing, PUC shall complete its review proceedings and enter final orders adjudicating a protest, if any, and approving or disapproving CUC's decision. PUC's substantive review shall be pursuant to 4 CMC §§ 8439, 8440, or 8441.

(5) PUC's failure to enter an order shall constitute a final agency action dismissing the protest and approving the CUC PSAA.

(6) PUC's final action on a protest shall be subject to review pursuant to the Administrative Procedure Act (1 CMC § 9101 et seq.), and this article.

(7) PUC's final action on a decision approving or disapproving a PSAA shall be subject to review pursuant to the Administrative Procedure Act (1 CMC § 9101 et seq.), and this article.

(c) Superior Court: expedited review of PUC decision.

(1) The appeal of a PUC decision shall be an expedited appeal of an administrative agency decision to the Superior Court, and not an original action. Except as otherwise provided by this article, judicial review of the PUC decision shall be pursuant to the Administrative Procedure Act, under the standard of review set forth in 1 CMC § 9112(f). The facts shall not be subject to trial de novo.

(2) The following persons shall participate by right before the courts:

- (i) The appellant;
- (ii) CUC;
- (iii) The Attorney General; and
- (iv) The person in whose favor the procurement decision was entered.

No answer shall be required. Each such person shall file a notice of participation stating the person's position regarding the appeal. Any other person shall petition for leave to intervene. The Court shall not grant the intervention unless the person shall clearly and convincingly demonstrate an interest in the CUC PSAA decision.

(3) A person who desires to appeal a PUC decision shall, within seven days following the date the PUC enters that decision, file its appeal with the Superior Court. This is a jurisdictional prerequisite. The appellant shall not have perfected the appeal until the appellant has served a copy on the Attorney General and CUC. The notice of appeal shall be accompanied by a legal memorandum and supporting materials demonstrating plainly why the PUC decision should be reversed or modified.

(4) The Court shall conduct its review on an expedited basis. Within fourteen days following the filing of an appeal:

- (i) A respondent shall file its notice of participation and legal memorandum;
- (ii) An intervenor shall file its petition and supporting legal memorandum;

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(iii) The Court shall issue its notice for a hearing, if any.

(5) There shall be no oral argument unless a party so requests or the Court orders oral argument.

(6) The Court shall issue its opinion expeditiously and enter judgment no later than seven days thereafter.

(d) Supreme Court: expedited review.

(1) A party may appeal the judgment of the Superior Court to the Supreme Court as in other cases, provided that:

(i) From the date of the entry of judgment, as a prerequisite for jurisdiction, a notice of appeal shall be filed within seven days;

(ii) The appellant's brief shall be filed within fourteen days of filing the notice of appeal;

(iii) The appellee's brief shall be filed within twenty-eight days of filing the notice of appeal;

(iv) A party may file a declaration and relevant materials in lieu of filing the record, in order to meet the expedited schedule; and

(v) There shall be no oral argument unless the Court shall, upon a party's request or its own motion, grant it.

(2) Unless the Supreme Court determines there is good cause for delay, the Court's judgment shall issue within forty-two days after the filing of a notice of appeal.

(3) No stay of a Superior Court decision shall be issued absent compelling evidence requiring immediate relief.

Source: PL 16-17 § 4, modified.

Commission Comment: The Commission modified this section pursuant to 1 CMC § 3806(d), (e) and (f).