

Excerpt from Public Law 28-68

Section 64. A New Subsection (k) Added to Section 1909 Chapter 19 of Title 1 Guam Code Annotated. A new Subsection (k) is *added* to Section 1909 Chapter 19 of Title 1 Guam Code Annotated relative to the duties of the Public Auditor to read:

“§1909. Duties of Public Auditor.

(k) Shall hear and decide all appeals of decisions that arise under 5 GCA §5425(c), as provided for by 5 GCA 5425(e).”

Section 65. Repeal and Reenactment. Sections 5701 and 5702 of Article 12, Chapter 5, Title 5 of the Guam Code Annotated are repealed and Sections 5703, 5704, 5705, 5706, 5707, 5708, 5709 and 5710 are *repealed, reenacted and renumbered* to read:

“Article 12

PROCUREMENT APPEALS

§5701. Rules of Procedure. The Public Auditor shall adopt rules of procedure, which, to the fullest extent possible, will provide for the expeditious resolution of controversies in accordance with the requirements of this Chapter.

The Public Auditor shall have the authority to appoint a hearing officer, who shall take written, oral or otherwise presented testimony, evaluate such testimony and make recommendations to the Public Auditor.

The Public Auditor may adopt Small Claims Procedures for the resolution of controversies involving claims of less than Twenty-five Thousand Dollars (**\$25,000.00**).

§5702. Decisions of the ~~Procurement Appeals Board~~ Public Auditor. The Public Auditor shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties, and, as appropriate, the Chief Procurement Office, the Director of Public Works and the head of a purchasing agency.

§5703. Jurisdiction of the Public Auditor. 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. Notwithstanding §5245 of this Chapter, no prior determination shall be final or conclusive on the Public Auditor or upon any appeal from 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 or public corporation. The Public Auditor may consider testimony and evidence submitted by any competing bidder, offeror or contractor of the protestant. The Public Auditor’s jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.

§5704. Standard of Review. Any determination of an issue or a finding of fact by the Public Auditor shall be final and conclusive unless 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.

§5705. Suspension or Debarment Proceedings.

(a) Scope. This §5705 applies to a review by the Public Auditor of a decision under §5426 of this Chapter.

(b) Time Limitation on Filing an Appeal. The aggrieved person shall file his/her appeal with the Public Auditor within sixty (60) days of the receipt of a decision under Subsection (c) of §5426 of this Chapter.

(c) Decision. The Public Auditor shall decide whether, or the extent to which, the debarment or suspension was in accordance with the statutes, regulations and the best interest of the the government or any autonomous agency or public corporation, and was fair. The Public Auditor shall issue her or his decision within thirty (30) days of the completion of the hearing on the issue.

§5706. Contract and Breach of Contract Controversies. (a) Scope. This §5706 applies to a review by the Public Auditor of a decision under §5427 of this Chapter.

(b) Time Limitation on Filing an Appeal. The aggrieved contractor shall file his/her appeal with the Public Auditor within sixty (60) days of the receipt of the decision or within sixty (60) days following the failure to render a timely decision as provided in §5427 of this Chapter.

(c) Decision. The Public Auditor shall decide the contract or breach of contract controversy and shall issue her or his decision within thirty (30) days of the completion of the hearing on the issue.

§5707. Appeals and Review of Public Auditor Decisions.

(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 as provided in Article D of Chapter 9 of this Chapter.

(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.

§5708. Discontinuance of Contractor's Appeal. After notice of an appeal to the Public Auditor has been filed by the Chief Procurement Officer, the Director of Public Works or the head of the Purchasing Agency, a contractor may not discontinue such appeal without prejudice, except as authorized by the Public Auditor.”

§5709. Transfer of Authority. Upon enactment, all Guam statutes and regulations which refer to the “Procurement Appeals Board” are hereby amended to reflect the “Public Auditor.” All other government of Guam documents which may refer to “Procurement Appeals Board” shall mean the “Public Auditor.”

Section 66. Amendment of 5 GCA §5251. Section 5251 of Title 5 of the Guam Code Annotated is *amended* to read:

“§5251. Public Record. The record required by § 5249 of this Chapter is a public record and, subject to rules promulgated by the Public Auditor, any person may inspect and copy any portion of the record.”

Section 67. Amendments to Subsections (e), (f), (g) (3), (h) (2) of Section 5425 of Article 9 Chapter 5 Title 5 Guam Code Annotated. Subsections (e), (f), (g)(3), and (h)(2) of Section 5425 of Article 9, Chapter 5, Title 5 of the Guam Code Annotated are *amended* to read:

“§5425. Authority to Resolve Protested Solicitations and Awards.

(e) **Appeal.** A decision under Subsection (c) of this Section including a decision there under regarding entitlement to costs as provided by Subsection (h) of this Section, may be appealed by the protestant, to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision.

(f) **Finality.** A decision of the Public Auditor is final unless a person adversely affected by the decision commences an action in the Superior Court in accordance with Subsection (a) of §5480 of this Chapter.

(g) (3) If the protest is pending before the Public Auditor or the Court, the Public Auditor or Court has confirmed such determination, or if no such protest is pending, no protest to the Public Auditor of such determination is filed prior to expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section.”

“(h)(2) **Entitlement to Costs.** (2) there is a reasonable likelihood that the protestant may have been awarded the contract but for the breach of any ethical obligation imposed by Part B of Article 11 of this Chapter or the willful or reckless violation of any applicable procurement law or regulation. The Public Auditor shall have the power to assess reasonable costs including reasonable attorney fees incurred by the government, including its autonomous agencies and public corporations, against a protestant upon its finding that the protest was made fraudulently, frivolously or solely to disrupt the procurement process.”

Section 68. Amendment to Subsections (e) of §5426 of Article 9 Chapter 5 Title 5 Guam Code Annotated. Subsection (e) of Section 5426 of Article 9, Chapter 5, Title 5 Guam Code Annotated is *amended* to read:

“§5426. Authority to Debar or Suspend. (e) Finality of Decision. A decision under Subsections (c) or (f) of this Section shall be final and conclusive, unless fraudulent, or an appeal is taken to the Public Auditor in accordance with §57076 of this Chapter.”

Section 69. Amendment to Subsection (e) of §5427 of Article 9 Chapter 5 Title 5 Guam Code Annotated. Subsection (e) of Section 5426 of Article 9, Chapter 5, Title 5 Guam Code Annotated is *amended* to read:

“§5427. Authority to Resolve Contract and Breach of Contract Controversies. (e) Finality of Decision. The decision reached pursuant to Subsection (c) of this Section shall be final and conclusive, unless fraudulent, or the contractor appeals administratively to the Public Auditor in accordance with § 57086 of this Chapter.”