

CHAPTER 5  
GUAM PROCUREMENT LAW

ARTICLE 12  
PROCUREMENT APPEALS

**SOURCE:** This entire Article was repealed and reenacted by P.L. 28-068:IV:5 (Sept. 30, 2005) replacing the Procurement Appeals Board with the Public Auditor.

- § 5701. Rules of Procedure.
- § 5702. Decisions of the Public Auditor.
- § 5703. Jurisdiction of the Public Auditor.
- § 5704. Standard of Review.
- § 5705. Suspension or Disbarment Proceedings.
- § 5706. Contract and Breach of Contract Controversies.
- § 5707. Appeals and Review of Public Auditor Decisions.
- § 5708. Discontinuance of Contractor's Appeal.
- § 5709. Transfer of Authority.

**§ 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 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

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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

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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.

**SOURCE:** The entire Article 12, Procurement Appeals Board, was added as § 6983, et seq. of the Government Code by P.L. 18-44, effective on January 4, 1987. Subsections (d)(1) and (d)(2) amended by P.L. 26-90:2 & 3. The entire Article 12 was repealed and reenacted by P.L. 28-068:IV:65 (Sept. 30, 2005).

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