

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.”

**ARTICLE 13
WAGE AND BENEFIT DETERMINATION**

SOURCE: This Article was added by P.L. 25-111:2 (Mar. 24, 2000).

- § 5801. Wage Determination Established.
- § 5802. Benefits.
- § 5802.1. Employment Right of First Refusal.
- § 5803. Department of Labor Monitoring and Penalizing Authority.
- § 5804. Probation and Appeal.
- § 5805. Awards and Compliance.

§ 5801. Wage Determination Established.

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation (‘contractor’) for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall

be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

§ 5802.1. Employment Right of First Refusal.

Any and all outsourcing of government of Guam services that replace in part or whole the services presently being provided by a government entity shall require that the employees providing such services, who will be separated from the government as a result of any award, be provided the Right of First Refusal for employment openings under such award in positions for which they are qualified. Except for employees possessing information not available to all other subsequent bidders that would give unfair advantage to a subsequent bidder, the post-government employment conflict of interest standards or 5 GCA § 5632 and § 5633 shall not restrict the hiring of employees upon outsourcing as provided by this Act.

Within ten (10) days after the award, the Department of Administration will provide to the Awardee a list of all government employees who have been or will be separated as a result of such award. The Awardee shall report back to the Department of Administration the names of individuals identified on the list who are employed by the prime or any sub-awardee no later than thirty (30) days upon the commencement of such service. Furthermore, the Awardee shall include the substance of this clause in all subcontracts under this Award. The minimum and prevailing wage, and benefits criteria established within Public Law No. 26-111 shall be applicable.

SOURCE: Added by P.L. 27-016:2 (Apr. 25, 2003).

§ 5803. Department of Labor Monitoring and Penalizing Authority.

The Guam Department of Labor, or its successor, shall monitor compliance with the provisions of this Article. The Director of the Department of Labor, or that person's successor, shall investigate possible or reported violations of the provisions of this Article, and shall forward such findings to the Chief Procurement Officer of the General Services Agency, or that person's successor.

The Department of Labor, or its successor, shall promulgate rules and regulations, pursuant to the Administrative Adjudication Law, as needed to ensure the equitable investigation of violations and the maintenance of due process, as well as the assessment of monetary penalties in the event of a violation, providing that such monetary penalties shall be limited to the assessment of daily penalties of no less than One Hundred Dollars (\$100.00) per day, and no more than One Thousand Dollars (\$1,000.00) per day, until such time as a violation has been corrected, as well as the payment of all back wages and benefits due.

§ 5804. Probation and Appeal.

A contractor who violates the provisions of this Article, as determined by the process authorized in § 5803 of this Article, may be placed on a probationary status by the Chief Procurement Officer of the General Services Agency, or its successor, for a period of one (1) year. During such probationary status, a contractor shall not be awarded any contract by any instrumentality of the government of Guam. A contractor who has been placed on probationary status pursuant to this Article, or who has been assessed a monetary penalty pursuant to this Article, may appeal such penalty or probationary status to the Superior Court of Guam.

§ 5805. Awards and Compliance.

The Chief Procurement Officer shall require bidders to submit declarations made pursuant to Title 6 GCA § 4308 to demonstrate their compliance with §§ 5801 and 5802 of this Chapter, if applicable.

SOURCE: Added by P.L. 28-165:1 (Jan. 4, 2007).
