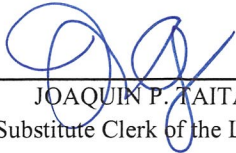


I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session
VOTING RECORD

NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Bill No. 149-37 (COR) As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; substituted; and further amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building August 3, 2023					
Senator Chris Barnett	✓					
Senator Frank Blas, Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator Thomas J. Fisher	✓					
Senator Jesse A. Lujan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator William A. Parkinson					✓	✓
Senator Sabina Flores Perez	✓					
Senator Roy A. B. Quinata	✓					
Senator Joe S. San Agustin	✓					
Senator Dwayne T. D. San Nicolas	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Speaker Therese M. Terlaje	✓					
TOTAL	14	0			1	1
	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused

CERTIFIED TRUE AND CORRECT:


 JOAQUIN P. TAITAGUE
 Substitute Clerk of the Legislature

I = Pass

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 149-37 (COR)

As amended by the Committee on
Environment, Revenue and Taxation,
Labor, Procurement, and Statistics,
Research, and Planning; and
substituted on the Floor.

Introduced by:

Sabina Flores Perez

AN ACT TO *ADD* A NEW § 12117(a) – (n), DIVISION 4, CHAPTER 12, OF TITLE 2, OF GUAM ADMINISTRATIVE RULES AND REGULATIONS, TO *AMEND* § 12117 TABLE OF CONTENTS, § 12117(a), § 12117 (b), § 12117 (g), § 12117 (h), § 12117 (j); § 12117 (l); AND TO *ADD A NEW* § 12117 (m), TO RENUMBER CURRENT § 12117 (m), ALL OF DIVISION 4, CHAPTER 12, OF TITLE 2, OF GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE ADOPTION OF RULES AND REGULATIONS PROVIDING TEMPORARY EXPEDITED PROCUREMENT PROTEST PROCEDURES FOR ACQUISITIONS FUNDED WITH AMERICAN RESCUE PLAN ACT, EDUCATION STABILIZATION FUND, OR HEAD START GRANT MONEYS ALLOTTED TO THE GUAM DEPARTMENT OF EDUCATION ATTACHED HERETO AS “EXHIBIT A.”

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the proposed Rules and Regulation providing temporary expedited procurement
4 protest procedures for acquisitions funded with the American Rescue Plan Act,
5 Education Stabilization Fund, or Head Start Grant monies allotted to the Guam
6 Department of Education were submitted by the Public Auditor to *I Liheslaturan*

1 *Guåhan* pursuant to Public Law 37-6 on June 1, 2023. Public Law 37-6 added a new
2 § 5425.2 of Subarticle A of Article 9, Chapter 5, Title 5, Guam Code Annotated,
3 which authorized the Public Auditor to adopt and promulgate rules and regulations
4 to carry out the provisions of the mandate.

5 It is therefore the intent of *I Liheslaturan Guåhan* to adopt the rules and
6 regulations providing temporary expedited procurement protest procedures for
7 acquisitions funded with the American Rescue Plan Act, Education Stabilization
8 Fund, or Head Start Grant monies allotted to the Guam Department of Education.

9 **Section 2.** *I Liheslaturan Guåhan* hereby adopts a new § 12117, Division 4,
10 Chapter 12, of Title 2, Guam Administrative Rules and Regulations, attached hereto
11 as “Exhibit A,” entitled: “Expedited Protest Procedure for Procurements Funded in
12 Whole or in Part by Funds Allotted to the Department of Education from the
13 American Rescue Plan Act of 2021, Education Stabilization Fund, or Head Start
14 Grant.”

15 **Section 3.** Notwithstanding any other law, § 12117 Table of Contents,
16 Division 4, Chapter 12, of Title 2, Guam Administrative Rules and Regulations is
17 hereby *amended* to read as follows:

18 **“§ 12117. Expedited Protest Procedure for Procurements**
19 **Funded in Whole or in Part by Funds Allotted to the Department of**
20 **Education from the American Rescue Plan Act of 2021, Education**
21 **Stabilization Fund, or Head Start Grant.**

22 **Table of Contents**

23 **(a) Definitions.**

24 (1) Aggrieved Person.

25 (2) ARPA.

26 (3) Capital Improvement Project.

27 ~~(3)~~(4) Decision.

28 ~~(4)~~(5) DOE.

1 (6) Interested Party.

2 ~~(5)~~(7) Person.

3 ~~(6)~~(8) Procedure.

4 ~~(7)~~(9) Procurement.

5 ~~(8)~~(10) Protest.

6 ~~(9)~~ (11) Regulation.

7 **(b) Exclusive Jurisdiction.**

8 **(c) Exclusive Procedure for Protests.**

9 **(d) Right to Protest.**

10 **(e) Service.**

11 **(f) Protest Resolution by Mutual Agreement.**

12 **(g) Procurement Record.**

13 **(h) Response to Protest.**

14 **(i) Decision of the Public Auditor.**

15 **(j) Hearing on the Merits of the Protest.**

16 **(k) No Automatic Stay of Procurement or Award.**

17 **(l) Notice of Expedited Procedures.**

18 **(m) Requirement of Signed Affidavit.**

19 ~~(m)~~**(n) Last Effective Date of this Regulation.”**

20 **Section 4.** Notwithstanding any other law, § 12117(a), Division 4, Chapter
21 12, of Title 2, Guam Administrative Rules and Regulations is hereby *amended* to
22 read as follows:

23 “ **(a) Definitions.** When used in this Regulation, the following
24 definitions shall apply:

25 (1) An “Aggrieved Person” shall mean a non-selected actual or
26 prospective vendor, contractor or service provider who may be aggrieved in
27 connection with a solicitation or an award of a contract that is funded in whole
28 or in part by funds allotted to the Department of Education, government of

1 Guam from the American Rescue Plan of 2021, the Education Stabilization
2 Fund, or Head Start Grant.

3 (2) “ARPA” shall refer to the American Rescue Plan of 2021; “ESF”
4 shall refer to the Education Stabilization Fund; and “HSG” shall refer to the
5 Head Start Grant.

6 (3) “Capital improvement project” shall refer to any project that
7 results in a permanent addition to assets through the acquisition of property,
8 new construction, or rehabilitation of an existing facility to a like-new
9 condition.

10 ~~(3)~~ (4) “Decision” shall mean a written decision or order of the
11 Public Auditor that is issued pursuant to 5 GCA, Chapter 5, Article 9, Part A,
12 § 5425.2 and the procedure found in this Regulation.

13 ~~(4)~~ (5) “DOE” shall refer to the Department of Education of the
14 government of Guam.

15 (6) “Interested Party” shall refer to an actual or prospective bidder
16 or offeror whose direct economic interest would be affected by the award of
17 a contract or by failure to award the contract.

18 ~~(5)~~ (7) “Person” shall refer to both natural and non-natural
19 persons, depending on the context.

20 ~~(6)~~ (8) “Procedure” shall refer to the expedited procedure for
21 resolution of protests pursuant to this Regulation, as mandated by Public Law
22 37-6 and the Legislature’s intent as announced in Section 1 of Public Law 37-
23 6.

24 ~~(7)~~ (9) “Procurement” shall refer to any procurement or stage of
25 procurement for a capital improvement project that is funded in whole or in
26 part by funds allotted to the Department of Education, government of Guam,
27 from the American Rescue Plan of 2021, the Education Stabilization Fund, or
28 Head Start Grant.

1 (8) (10) _____ “Protest” shall refer to a written dispute of a procurement
2 solicitation, selection, award, or contract for a capital improvement project
3 funded in whole or in part by funds allotted to the Department of Education,
4 government of Guam from the American Rescue Plan of 2021, the Education
5 Stabilization Fund, or Head Start Grant.

6 (9) (11) “Regulation” shall refer to the regulation required to be
7 promulgated by the Public Auditor pursuant to Section 2 of Public Law 37-6,
8 and as promulgated and codified in this 2 GAR, Division 4, Chapter 12 §
9 12117, to provide for final, conclusive and exclusive resolution of Protests of
10 Procurements.”

11 **Section 5.** Notwithstanding any other law, § 12117(b), Division 4, Chapter
12 12, of Title 2, Guam Administrative Rules and Regulations is hereby *amended* to
13 read as follows:

14 “**(b) Exclusive Jurisdiction.** The Public Auditor shall have exclusive
15 jurisdiction over a Protest under this Expedited Procedure. ~~The Public~~
16 ~~Auditor’s exclusive jurisdiction under 5 GCA § 5425.2 and this regulation~~
17 ~~shall lapse on the fifteenth (15th) calendar day after the Aggrieved Person~~
18 ~~knew or should have known of the facts giving rise to a Protest.~~ The Public
19 Auditor’s Decision under this Procedure shall be final and conclusive, and
20 there is no right to file an action under 5 GCA, Chapter 5, Article 9, Subarticle
21 D, § 5480, no right to judicial review or appellate review, and no interlocutory
22 appeal of a Decision or order that is issued under this Procedure.”

23 **Section 6.** Notwithstanding any other law, § 12117(g), Division 4, Chapter
24 12, of Title 2, Guam Administrative Rules and Regulations is hereby *amended* to
25 read as follows:

26 “**(g) Procurement Record.** The Aggrieved Person is required to
27 provide DOE no less than one (1) business day advanced notice prior to filing
28 a Protest to notify DOE in writing of its intent to file a Protest with the Public

1 Auditor so that, DOE may timely produce the procurement record. DOE shall
2 provide the procurement record to the Public Auditor within two (2) business
3 days of the filing of the Protest. The Public Auditor may treat either the
4 Aggrieved Person’s failure to timely provide DOE notification of an intent to
5 file a Protest or a failure of DOE to timely provide the procurement record as
6 a default and render a Decision on such default.”

7 **Section 7.** Notwithstanding any other law, § 12117(h), Division 4, Chapter
8 12, of Title 2, Guam Administrative Rules and Regulations is hereby *amended* to
9 read as follows:

10 “(h) **Response to Protest.** The interested party and DOE shall
11 have seven (7) days, Saturdays, Sundays, and Government of Guam holidays
12 excepted, from the date of the filing of the Protest to file a response to the
13 Protest. The Public Auditor may treat a failure to file a timely response to the
14 Protest as a default and render a Decision on such default.”

15 **Section 8.** Notwithstanding any other law, § 12117(j), Division 4, Chapter
16 12, of Title 2, Guam Administrative Rules and Regulations is hereby *amended* to
17 read as follows:

18 “(j) **Hearing on the merits of the Protest.** The Public Auditor shall
19 hear the merits of the Protest within fifteen (15) days, Saturdays, Sundays and
20 government of Guam Holidays excepted, of the filing of the Protest. The
21 hearing on the merits of the Protest is to determine whether the method of
22 selection, solicitation or award of a contract, or entitlement to costs under 5
23 GCA § Chapter 5, Article 9, Subarticle A, § 5425 (h) is in accordance with
24 statutes, regulations, and the terms and conditions of the solicitation.

25 (1) Where not provided for in this 2 GAR Division 4, § 12117; 2
26 GAR Division 4, Chapter 12, § 12108 shall be read and interpreted to apply
27 to the hearing on the merits of the Protest by substitution of “Protest” for
28 “Appeal”. Where not provided for in 2 GAR, Division 4, Chapter 12, the

1 Public Auditor shall treat issues that arise during the Protest as sui generis and
2 decide the issues on such basis.

3 (2) A party may be present at the hearing; may present any relevant
4 evidence; will be given full opportunity to cross-examine all witnesses
5 testifying against the party; and if the party is a natural person, the party may
6 be, but need not be, represented by counsel.

7 (3) A party shall be entitled to the issuance of subpoenas to compel
8 the attendance of witnesses and the production of books, documents or other
9 things by applying to the Public Auditor.

10 ~~(3)~~ (4) The Aggrieved Person shall have the burden of proof to
11 show by a preponderance of the evidence that the method of selection,
12 solicitation or award of a contract or entitlement to costs under 5 GCA,
13 Chapter 5, Article 9, § 5425 (h) was not in accordance with statutes,
14 regulations or the terms and conditions of the solicitation.

15 ~~(4)~~ (5) The Aggrieved Person may waive a hearing on the merits
16 of the Protest pursuant to 2 GAR, Division 4, Chapter 12, § 12108 (a).”

17 **Section 9.** Notwithstanding any other law, § 12117(l), Division 4, Chapter
18 12, of Title 2, Guam Administrative Rules and Regulations is hereby *amended* to
19 read as follows:

20 “(l) **Notice of Expedited Procedures.** The Department of Education
21 shall ensure that the expedited procedures implemented by this Regulation
22 shall be prominently displayed in the notice and the solicitation. The notice
23 and the solicitation shall at a minimum state the following:

24 **Notice of Expedited Procedures for Resolution of Protests of**
25 **Procurements Funded in whole or in part with funds Allotted to GDOE**
26 **from American Rescue Plan Act of 2021, Education Stabilization Fund,**
27 **or Head Start Grant.** The Department of Education is soliciting
28 proposals/invitations for a procurement no. _____ for a capital

1 improvement project that is to be funded with an allocation to the Department
2 of Education from the American Rescue Plan Act of 2021 (“ARPA”),
3 Education Stabilization Fund (“ESF”), or Head Start Grant (“HSG”). Any
4 protest at any stage of this procurement shall be subject to the Expedited
5 Procedure Regulation found at 2 GAR Division 4, Chapter 12, § 12117. Under
6 the Expedited Procedure Regulation, among other things: (1) an Aggrieved
7 Person shall have the right to file a Protest with the Public Auditor within
8 fourteen (14) days from the date that such Person knew or should have known
9 of the facts giving rise to the protest; (2) the Aggrieved Person is required to
10 provide DOE no less than one (1) business day advanced notice prior to filing
11 a protest to notify DOE in writing of its intent to file a protest with the Public
12 Auditor; ~~(2)~~ (3) DOE shall provide the procurement record to the Public
13 Auditor within two (2) business days of the date of the filing of the Protest;
14 ~~(3)~~ (4) the Aggrieved Person, DOE, and the interested party shall have up to
15 twenty (20) days from the date of the filing of the Protest to resolve it by
16 mutual agreement; ~~(4)~~ (5) a hearing on the merits of the Protest shall be held
17 within fifteen (15) days, Saturdays, Sundays and government of Guam
18 holidays excepted, of the filing of the Protest and ~~(5)~~ (6) the Public Auditor
19 shall expedite the administrative review process and decide the Protest by
20 issuing a written Decision within twenty (20) days, Saturdays, Sundays and
21 government of Guam holidays excepted, after the date of the filing of the
22 Protest. The Decision of the Public Auditor shall be final and conclusive, and
23 no action, judicial review, appellate review or interlocutory appeal shall be
24 available to any unsuccessful party. Prospective bidders, offerors and
25 contractors who respond to this solicitation are required as part of their
26 response to this solicitation to acknowledge and sign an affidavit stating that
27 they are aware of the Expedited Procedure Regulation and that they agree to
28 abide by the rules and the deadlines in the Regulation.”

1 **Section 10.** Notwithstanding any other law, § 12117(m), Division 4, Chapter
2 12, of Title 2, Guam Administrative Rules and Regulations is hereby *added* to read
3 as follows:

4 “(j) **(m) Requirement of Signed Affidavit.** DOE shall require that
5 prospective bidders, offerors, and contractors acknowledge and sign an affidavit
6 stating that they are aware of the expedited process and agree to abide by the rules
7 and deadlines in this Regulation. The affiant shall at a minimum attest under penalty
8 of perjury:

- 9 (1) that the affiant is aware of and agrees to be bound by the Expedited
10 Procedure Regulation found in this 2 GAR, Division 4, Chapter 12, § 12117;
11 (2) that, under the Procedure an Aggrieved Person shall have the right to file
12 a Protest with the Public Auditor within fourteen (14) days from the date that
13 such person knew or should have known of the facts giving rise to the Protest;
14 (3) that, DOE is required to provide the procurement record to the Public
15 Auditor within two (2) business days of the date of the filing of the Protest;
16 (4) that, the Aggrieved Person, DOE, and the interested party have up to
17 twenty (20) calendar days from the date of the filing of the Protest to resolve
18 it by mutual agreement; (5) that, a hearing on the merits of the Protest shall be
19 held within fifteen (15) days, Saturdays, Sundays and government of Guam
20 holidays excepted, of the filing of the protest; (6) that, the Public Auditor is to
21 expedite the administrative review process and decide the Protest by issuing
22 a written Decision within twenty (20) days, Saturdays, Sundays and
23 government of Guam holidays excepted, after the date of the filing of the
24 Protest; (7) and that, the Decision of the Public Auditor shall be final and
25 conclusive, and no action, judicial review, appellate review or interlocutory
26 appeal is available to any unsuccessful party.”

1 **Section 11.** Notwithstanding any other law, § 12117(m), Division 4, Chapter
2 12, of Title 2, Guam Administrative Rules and Regulations is hereby *amended* to
3 read as follows:

4 “~~(m)~~ (n) **Last effective date of this regulation.**

5 This regulation shall be effective until the latter of December 31, 2024,
6 or the latest date under any extension of time for expenditure of ARPA funds
7 by the grantor agency.”

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EXHIBIT A

**2 GAR Div. 4 § 12217. Expedited Protest Procedure for Procurements Funded in Whole or
in Part by Funds Allotted to the Department of Education from the American Rescue Plan
Act of 2021, Education Stabilization Fund, or Head Start Grant.**

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3	(1). Aggrieved Person.
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17	(g) Procurement Record.
18	(h) Response to Protest.
19	(i) Decision of the Public Auditor.
20	(j) Hearing on the merits of the Protest.

1 **(k) No automatic stay of Procurement or award.**

2 **(l) Notice of Expedited Procedures.**

3 **(m) Last effective date of this recognition.**

1 **(a) Definitions.** When used in this Regulation, the following definitions shall apply:

2 (1) An “Aggrieved Person” shall mean a non-selected actual or prospective
3 vendor, contractor or service provider who may be aggrieved in connection with a solicitation or
4 an award of a contract that is funded in whole or in part by funds allotted to the Department of
5 Education, government of Guam from the American Rescue Plan of 2021, the Education
6 Stabilization Fund, or Head Start Grant.

7 (2) “ARPA” shall refer to the American Rescue Plan of 2021; “ESF” shall refer to
8 the Education Stabilization Fund; and “HSG” shall refer to the Head Start Grant.

9 (3) “Decision” shall mean a written decision or order of the Public Auditor that is
10 issued pursuant to 5 GCA § 5425.2 and the procedure found in this Regulation.

11 (4) “DOE” shall refer to the Department of Education of the government of
12 Guam.

13 (5) “Person” shall refer to both natural and non-natural persons, depending on the
14 context.

15 (6) “Procedure” shall refer to the expedited procedure for resolution of protests
16 pursuant to this Regulation, as mandated by P.L. 37-6 and the Legislature’s intent as announced
17 in Section 1 of P.L. 37-6.

18 (7) “Procurement” shall refer to any procurement or stage of procurement for a
19 capital improvement project that is funded in whole or in part by funds allotted to the
20 Department of Education, government of Guam, from the American Rescue Plan of 2021, the
21 Education Stabilization Fund, or Head Start Grant.

22 (8) “Protest” shall refer to a written dispute of a procurement solicitation,
23 selection, award, or contract for a capital improvement project funded in whole or in part by

1 funds allotted to the Department of Education, government of Guam from the American Rescue
2 Plan of 2021, the Education Stabilization Fund, or Head Start Grant.

3 (9) "Regulation" shall refer to the regulation required to be promulgated by the
4 Public Auditor pursuant to Section 2 of P.L. 37-6, and as promulgated and codified at this 2
5 GAR Div. 4 § 12217, to provide for final, conclusive and exclusive resolution of Protests of
6 Procurements.

7 **(b) Exclusive jurisdiction.** The Public Auditor shall have exclusive jurisdiction over a
8 Protest under this Expedited Procedure. The Public Auditor's exclusive jurisdiction under
9 5 GCA § 5425.2 and this regulation shall lapse on the fifteenth (15th) calendar day after the
10 Aggrieved Person knew or should have known of the facts giving rise to a protest. The Public
11 Auditor's Decision under this Procedure shall be final and conclusive, and there is no right to file
12 an action under 5 GCA § 5480, no right to judicial review or appellate review, and no
13 interlocutory appeal of a Decision or order that is issued under this Procedure.

14 **(c) Exclusive Procedure for Protests.** This Procedure is the exclusive procedure to file
15 a Protest of a Procurement. An Aggrieved Person must utilize this Procedure to file a legally
16 cognizable Protest.

17 **(d) Right to Protest.** An Aggrieved Person shall have the right under this Procedure to
18 file a Protest with the Public Auditor within fourteen (14) calendar days from the date that such
19 Person knew or should have known of the facts giving rise to the Protest. The Protest may be of
20 any phase of solicitation or award. Such right to protest shall lapse and be unenforceable on the
21 fifteenth (15th) calendar day after the date that the Aggrieved Person knew or should have
22 known of the facts giving rise to the Protest.

1 (1) The Protest at a minimum should include (a) the name and address of the
2 Aggrieved Person; (b) appropriate identification of the procurement and, if a contract has been
3 awarded, its number; (c) a statement of the reasons for the Protest; (d) the earliest date that the
4 Aggrieved Person had reason to know of the fact(s) giving rise to the Protest; and (e) supporting
5 exhibits, evidence or documents to substantiate the Protest.

6 (e) **Service.** The Aggrieved Person shall serve the Protest through any means authorized
7 by the Guam Rules of Civil Procedure for service of process. Service of all other documents
8 filed with the Public Auditor may be effected through email to the party's attorney of record or
9 to the party's email on record with DOE. If a party serves a filed document by email, a notice of
10 service by email together with the email transmittal shall be filed with the Public Auditor.

11 (f) **Protest resolution by mutual agreement.** The Aggrieved Person, the Department of
12 Education, and the interested party shall have up to twenty (20) calendar days from the date of
13 the filing of a Protest to resolve, by mutual agreement, the Protest under this Procedure. Such
14 mutual agreement shall be in writing and shall be filed with the Public Auditor by the twentieth
15 (20th) calendar day after a Protest has been filed under this Procedure.

16 (g) **Procurement Record.** The Aggrieved Person is required to provide DOE no less
17 than one (1) business day advanced notice prior to filing a Protest to notify DOE in writing of its
18 intent to file a Protest with the Public Auditor so that, DOE may timely produce the procurement
19 record. DOE shall provide the procurement record to the Public Auditor within two (2) days of
20 the filing of the Protest. The Public Auditor may treat either the Aggrieved Person's failure to
21 timely provide DOE notification of an intent to file a Protest or a failure of DOE to timely
22 provide the procurement record as a default and render a Decision on such default.

1 **(h) Response to Protest.** The interested party and DOE shall have seven (7) days from
2 the date of the filing of the Protest to file a response to the Protest. The Public Auditor may treat
3 a failure to file a timely response to the Protest as a default and render a Decision on such
4 default.

5 **(i) Decision of the Public Auditor.** If there is no mutual agreement within twenty (20)
6 calendar days of the filing of the Protest, the Public Auditor shall expedite the administrative
7 review process and decide the Protest by issuing a written Decision within twenty (20) days of
8 the filing of the protest, Saturdays, Sundays and government of Guam holidays excepted. .

9 (1) The Decision of the Public Auditor shall provide the reasoning for the
10 Decision and shall inform the unsuccessful party that they have no right to an action under
11 5 GCA § 5480, judicial review, final or interlocutory appeal of the Decision.

12 (2) The Decision shall be served by certified mail at the addresses provided in the
13 procurement record or through personal service to DOE, the vendor, contractor, or service
14 provider who filed the protest (i.e. the Aggrieved Person), as well as to the person awarded the
15 contract (i.e., the interested party), and to all other non-selected bidders or offerors.

16 (3) A party may elect to receive service of the Decision via email to the party or
17 the party's attorney of record, in lieu of service by certified mail or by personal service, by filing
18 a waiver of service of the Decision with the Public Auditor and designating in the waiver the
19 email to be used for such service.

20 **(j) Hearing on the merits of the Protest.** The Public Auditor shall hear the merits of the
21 Protest within 15 days, Saturdays, Sundays and government of Guam Holidays excepted, of the
22 filing of the Protest. The hearing on the merits of the Protest is to determine whether the method

1 of selection, solicitation or award of a contract, or entitlement to costs under 5 GCA § 5425 (h) is
2 in accordance with statutes, regulations, and the terms and conditions of the solicitation.

3 (1) Where not provided for in this 2 GAR Div. 4 § 12217; 2 GAR Div. 4 § 12108
4 shall be read and interpreted to apply to the hearing on the merits of the Protest by substitution of
5 “Protest” for “Appeal”. Where not provided for in 2 GAR Div. 4 CH. 12, the Public Auditor
6 shall treat issues that arise during the Protest as *sui generis* and decide the issues on such basis.

7 (2) A party may be present at the hearing; may present any relevant evidence; will
8 be given full opportunity to cross-examine all witnesses testifying against the party; and if the
9 party is a natural person, the party may be, but need not be, represented by counsel.

10 (3) A party shall be entitled to the issuance of subpoenas to compel the attendance
11 of witnesses and the production of books, documents or other things by applying to the Public
12 Auditor.

13 (3) The Aggrieved Person shall have the burden of proof to show by a
14 preponderance of the evidence that the method of selection, solicitation or award of a contract or
15 entitlement to costs under 5 GCA § 5425 (h) was not in accordance with statutes, regulations or
16 the terms and conditions of the solicitation.

17 (4) The Aggrieved Person may waive a hearing on the merits of the Protest
18 pursuant to 2 GAR § 12108 Div. 4 (a).

19 **(k) No automatic stay of Procurement or award.** There shall be no stay, automatic or
20 otherwise, pursuant to 5 GCA § 5425 (g) or 4 GAR Div. 4 § 9101, of the Procurement, or of an
21 award of a contract, unless the Public Auditor shall exercise discretion to order a stay. Such
22 discretion, if it is to be exercised, shall be exercised within five (5) days of the filing of the
23 Protest.

1 (1) The Aggrieved Person, DOE and the interested party may, within three (3)
2 days of the filing of the Protest, file a statement with the Public Auditor in support of, or against,
3 the stay of the Procurement or award.

4 (2) The Public Auditor’s discretion to order or deny a stay of the Procurement or
5 award shall be exercised upon consideration of whether the solicitation or award of contract
6 without delay is necessary to protect the substantial interests of DOE.

7 (3) The Attorney General’s written concurrence of the Public Auditor’s order
8 staying or denying a stay of the Procurement or award is not a requirement under this Procedure.

9 **(l) Notice of Expedited Procedures.** The Department of Education shall ensure that the
10 expedited procedures implemented by this Regulation shall be prominently displayed in the
11 notice and the solicitation. The notice and the solicitation shall at a minimum state the
12 following:

13 **Notice of Expedited Procedures for Resolution of Protests of Procurements Funded**
14 **in whole or in part with funds Allotted to the Guam Department of Education from**
15 **American Rescue Plan Act of 2021, Education Stabilization Fund, or Head Start**
16 **Grant.** The Department of Education is soliciting proposals/invitations for a procurement
17 no. _____ for a capital improvement project that is to be funded with an
18 allocation to the Department of Education from the American Rescue Plan of 2021
19 (“ARPA”), Education Stabilization Fund (“ESF”), or Head Start Grant (“HSG”). Any
20 protest at any stage of this procurement shall be subject to the Expedited Procedure
21 Regulation found at 2 GAR Div. 4 GCA § 12217. Under the Expedited Procedure
22 Regulation, among other things: (1) an Aggrieved Person shall have the right to file a
23 Protest with the Public Auditor within 14 days from the date that such Person knew or

1 should have known of the facts giving rise to the Protest; (2) DOE shall provide the
2 procurement record to the Public Auditor within two (2) days of the date of the filing of
3 the Protest; (3) the Aggrieved Person, DOE, and the interested party shall have up to 20
4 days from the date of the filing of the Protest to resolve it by mutual agreement; (4) a
5 hearing on the merits of the Protest shall be held within 15 days, Saturdays, Sundays and
6 government of Guam holidays excepted, of the filing of the Protest and (5) the Public
7 Auditor shall expedite the administrative review process and decide the Protest by issuing
8 a written Decision within twenty (20) days, Saturdays, Sundays and government of Guam
9 holidays excepted, after the date of the filing of the protest. The Decision of the Public
10 Auditor shall be final and conclusive, and no action, judicial review, appellate review or
11 interlocutory appeal shall be available to any unsuccessful party. Prospective bidders,
12 offerors and contractors who respond to this solicitation are required as part of their
13 response to this solicitation to acknowledge and sign an affidavit stating that they are aware
14 of the Expedited Procedure Regulation and that they agree to abide by the rules and the
15 deadlines in the Regulation.

16 (j) DOE shall require that prospective bidders, offerors, and contractors acknowledge and
17 sign an affidavit stating that they are aware of the expedited process and agree to abide by the
18 rules and deadlines in this Regulation. The affiant shall at a minimum attest under penalty of
19 perjury:

20 that, the affiant is aware of and agrees to be bound by the Expedited Procedure Regulation
21 found at 2 GAR Div. 4 GCA § 12217; that, under the Procedure an Aggrieved Person shall
22 have the right to file a Protest with the Public Auditor within 14 days from the date that
23 such Person knew or should have known of the facts giving rise to the Protest; that, DOE

1 is required to provide the procurement record to the Public Auditor within two (2) days of
2 the date of the filing of the Protest; that, the Aggrieved Person, DOE, and the interested
3 party have up to 20 calendar days from the date of the filing of the Protest to resolve it by
4 mutual agreement; that, a hearing on the merits of the Protest shall be held within 15 days,
5 Saturdays, Sundays and government of Guam holidays excepted, of the filing of the
6 Protest; that, the Public Auditor is to expedite the administrative review process and decide
7 the Protest by issuing a written Decision within twenty (20) days, Saturdays, Sundays and
8 government of Guam holidays excepted, after the date of the filing of the Protest; and that,
9 Decision of the Public Auditor shall be final and conclusive, and no action, judicial review,
10 appellate review or interlocutory appeal is available to any unsuccessful party.

11 **(m) Last effective date of this regulation.** This regulation shall be effective until the
12 later of December 31, 2024, or the latest date under any extension of time for expenditure of
13 ARPA funds by the grantor agency.

FILE NAME

I MINA 'TRENTAI SIETTE NA LIHESLATURAN GUÁHAN
2023 (FIRST) Regular Session
FLOOR AMENDMENT

SBill No. 149-37 (COR)

SFP
Senator Proposing Amendment

PAGE 1

To *add* co-sponsors to the Bill to read:

“
Chris Barnett
Frank Blas, Jr.
Joanne Brown
Christopher M. Dueñas
Thomas J. Fisher
Jesse A. Lujan
Tina Rose Muña Barnes
William A. Parkinson
Roy A. B. Quinata
Joe S. San Agustin
Dwayne T.D. San Nicolas
Amanda L. Shelton
Telo T. Taitague
Therese M. Terlaje”

Commented [JT1]: 8/2/23 11:29 a.m. FA1. SFP. To Add. N/O. Passed.

(Below only for Clerk of Legislature's use and processing)

Date: 8/2/23 Floor Amendment No. 1

AMENDMENT PASSED: ✓ N/O Votes For: _____ Votes Against: _____ Failed: _____ Withdrawn: _____

APPROVED AS TO FORM PASSED SFP Concur (initial) [Signature]

Engrossment Staff

AUTHOR OF AMENDMENT

CLERK OF THE LEGISLATURE