

**I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN**  
**2015 (FIRST) Regular Session**

Bill No. 142-33 (COR)

Introduced by:

T. C. Ada 

**AN ACT TO AMEND ARTICLES 3, 9, AND 12 of CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, § 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO AMEND §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(a) AND (b) OF ARTICLE 9; AND AMEND §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND ADD A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.**

2015 Nov 11 10:23 AM

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that  
3 the Guam Procurement Code was enacted by P.L. 16-124 in December 1982.  
4 During these past three decades since the enactment of the Guam Procurement  
5 Law much has been learned through experience and from decisions resulting from  
6 protests that had been filed. A reform of Guam’s Procurement Code would enable  
7 the incorporation of lessons learned from these experiences.

8           *I Liheslaturan Guåhan* further finds that alternative source selection methods  
9 should be made available in order to be able to obtain supplies and services that  
10 would be most responsive to the Government’s needs

11           *I Liheslaturan Guåhan* finds that by reforming Guam’s procurement code the

1 Government of Guam can more effectively accomplish the procurement of  
2 supplies and services. to improve the effectiveness of the government's  
3 procurement process by providing clarification that is consistent with making the  
4 process more expeditious. It would allow the Government to provide vital services  
5 in a timely and cost effective manner.

6

7 **Section 2.** § 5201. Definitions. of Article 3 Chapter 5 of Title 5 Guam Code  
8 Annotated is hereby amended as follows:

9 **“§ 5201. Definitions.**

10 As used in this Chapter:

11 (a) Cost-Reimbursement Contract means a contract under which a  
12 contractor is reimbursed for costs which are allowable and allocable in  
13 accordance with the contract terms and the provisions of this Chapter, and a fee,  
14 if any.

15 (b) Established Catalogue Price means the price included in a catalogue,  
16 price list, schedule or other form that:

17 (1) is regularly maintained by a manufacturer or contractor;

18 (2) is either published or otherwise available for inspection by  
19 customers; and

20 (3) states prices at which sales are currently or were last made to a  
21 significant number of any category of buyers or buyers constituting the  
22 general buying public for the supplies or services involved.

23 (c) Invitation for Bids means all documents, whether attached or

1 incorporated by reference, utilized for soliciting bids.

2 (d) Purchase Description means the words used in a solicitation to  
3 describe the supplies, services or construction to be purchased, and includes  
4 specifications attached to, or made a part of, the solicitation.

5 (e) Requests for Proposals means all documents, whether attached or  
6 incorporated by reference, utilized for soliciting proposals- under either § 5212  
7 or § 5216. Unless the context indicates otherwise, the abbreviation RFP refers  
8 to the source selection method under § 5216 and Request for Competitive  
9 Sealed Proposal (RFCP) refers to the source selection method under § 5212.

10 (f) *Responsible Bidder* or ~~Officer~~ *Offeror* means a person who has the  
11 capability in all respects to perform fully the contract requirements, and the  
12 integrity and reliability which will assure good faith performance, as  
13 determined at any time before award.

14  
15 (g) *Responsive Bidder* ~~means a person who has submitted~~ a bid which  
16 conforms, at bid opening, in all material respects to the Invitation for Bids. A  
17 responsive bid is an offer by the bidder which unconditionally undertakes to  
18 provide the supply, service or construction the government intends to acquire as  
19 specified in the IFB, and only on contract terms and conditions as are materially  
20 consistent with those specified in the IFB.”

21 (h) *Responsive* means conforming in all material respects to the purchase  
22 description and contract terms contained in the Invitation for Bids or Request  
23 for Proposal or Request for Quotes or other solicitation. A nonconforming bid  
24 is nonresponsive if it contains a material nonconforming term or condition that

1 is in any respect prejudicial to other bidders, that is, the effect of such  
2 nonconforming term or condition on price, quantity, quality, delivery, or  
3 contractual terms specified in the IFB is more than negligible.

4  
5 **Section 3.** § 5210 of Article 3 in Chapter 5, Title 5 Guam Code Annotated is  
6 hereby amended as follows:

7 **“§5210. Methods of Source Selection.**

8 (a) Unless otherwise authorized by law, all ~~territorial~~ Government of  
9 Guam procurement contracts shall be awarded by one of the methods of source  
10 selection specified in this Part. ~~competitive sealed bidding, pursuant to § 5211~~  
11 of this Article, except for the procurement of professional services and except  
12 as provided in:

13 (1) ~~Section 5212 of this Article; [see note below]~~

14 (2) ~~Section 5213 of this Article;~~

15 (3) ~~Section 5214 of this Article;~~

16 (4) ~~Section 5215 of this Article;~~

17 (5) ~~Section 5216 of this Article for services specified in § 5121 of this~~

18 ~~Chapter; or~~

19 (6) ~~Section 5217 of this Article.~~

20 (b) ~~Nothing in this Section requiring competitive bidding shall prohibit~~  
21 ~~the development of specifications which require compatibility with existing~~  
22 ~~supplies, equipment or data processing systems. The competitive sealed~~  
23 bidding method of source selection is the preferred and default method of  
24 source selection, authorized for any solicitation for supplies, services or  
25 construction. All other methods allowed by this Part shall only be used in the  
26 circumstances or on the conditions specified.”

1  
2       **Section 4.**       § 5211 of Article 3 of Chapter 5, Title 5 of the Guam Code  
3 Annotated is hereby amended as follows:

4       “**§5211. Competitive Sealed Bidding.**

5               (a) Conditions for Use. Contracts shall be awarded by competitive sealed  
6 bidding except as otherwise provided in § 5210 of this ~~Part Article~~.

7               (b) Invitation for Bids. An Invitation for Bids shall be issued and shall  
8 include a purchase description, ~~a recitation of the Wage Determination most~~  
9 ~~recently issued by the U.S. Department of Labor,~~ and all contractual terms and  
10 conditions applicable to the procurement ~~including a demonstration of~~  
11 ~~compliance with §§ 5801 & 5802 of this Chapter, if applicable,~~ and may  
12 include other information or requests for information. The determination of  
13 bidder responsibility is determined as specified in § 5230 of this Article and not  
14 by information required by the Invitation for Bids.

15              (c) Public Notice. Adequate public notice of the Invitation for Bids shall  
16 be given in a manner and in a reasonable time prior to the date set forth therein  
17 for the opening of bids to foster effective competition, in accordance with  
18 regulations promulgated by the Policy Office. ~~Such notice may include~~  
19 ~~publication in a newspaper of general circulation a reasonable time prior to bid~~  
20 ~~opening. If a bid is given public notice which is within the time specified in the~~  
21 ~~Policy Office’s rules and regulations on the subject, it shall not be challenged~~  
22 ~~unless the bidder can show exceptional circumstances which would render the~~  
23 ~~rules and regulations inapplicable in the case of a particular bid being requested.~~

24              (d) Bid Opening. Bids shall be opened publicly in the presence of one or  
25 more witnesses at the time and place designated in the Invitation for Bids. The  
26 amount of each bid, and such other relevant information as may be specified by

1 regulation, together with the name of each bidder shall be recorded; the record  
2 and each bid shall be open to public inspection.

3 (e) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally  
4 accepted for evaluation without alteration or correction by either the bidder or  
5 the government, except as authorized in this Chapter or regulations promulgated  
6 by the Policy Office. Bids shall be evaluated based on the requirements set  
7 forth in the Invitation for Bids, which may include criteria to determine  
8 acceptability such as inspection, testing, quality, workmanship, delivery and  
9 suitability for a particular purpose, however in the case of equipment the  
10 requirements shall include factors that bear on the price bid shall include life  
11 cycle costs of the equipment, including acquisition, transportation, installation,  
12 operation, consumables, supplies, maintenance and disposal. Those criteria that  
13 will affect the bid price and be considered in evaluation for award shall be  
14 objectively measurable ~~such as discounts, transportation costs, and total or life~~  
15 ~~cycle costs.~~ The Invitation for Bids shall set forth the evaluation criteria to be  
16 used. No criteria may be used in bid evaluation that are not set forth in the  
17 Invitation for Bids.

18 (f) Correction or Withdrawal of Bids; Cancellation of Awards.  
19 Correction or withdrawal of inadvertently erroneous bids before or after award,  
20 or cancellation of awards or contracts based on such bid mistakes, shall be  
21 permitted in accordance with regulations promulgated by the Policy Office.  
22 After bid opening, no changes in bid prices or other provisions of bids  
23 prejudicial to the interest of the Territory Government of Guam or fair  
24 competition shall be permitted, nor shall there be permitted any material change  
25 in or waiver of any specification, evaluation factor or contract term of the  
26 Invitation for Bids. Except as otherwise provided by regulation, all decisions to

1 permit the correction or withdrawal of bids, or to cancel or alter awards or  
2 contracts based on bid mistakes of the bidder, shall be supported by a written  
3 determination made by the Chief Procurement Officer, the Director of Public  
4 Works, or head of a purchasing agency, as appropriate.

5 (g) Award. The contract shall be awarded with reasonable promptness by  
6 written notice of award to the lowest responsible bidder whose bid is responsive  
7 and is the lowest cost, meets the requirements and criteria set forth in the  
8 Invitation for Bids and whose bid amount is sufficient to comply with Article  
9 13 of this Chapter, if applicable. Written notice of award, including the dollar  
10 amount of the awarded contract, shall simultaneously be given to all other  
11 bidders, and, in the case of a contract awarded in amount greater than One  
12 Hundred Thousand Dollars (\$100,000), a copy of the contract, provided that if  
13 the contract is posted to the agency website, notice of such posting, together  
14 with notice of the URL or other locations of the site, may be given in lieu of  
15 such copy. The notice of award shall specifically state that the bid of the  
16 awardee is unconditionally accepted.

17 (h) Construction Bids in excess of available funds. In the event all bids  
18 for a construction project exceed available funds as certified by the appropriate  
19 fiscal officer, and the low responsive and responsible bid does not exceed such  
20 funds by more than five percent (5%), notwithstanding the provisions of  
21 Subsections (f) and (g) of this Section, the Chief Procurement Officer, the  
22 Director of Public Works, or the head of a purchasing agency, is authorized, in  
23 situations where time or economic considerations preclude resolicitation of  
24 work of a reduced scope, to negotiate an adjustment of the bid price, including  
25 changes in the bid requirements, with the low responsive and responsible  
26 bidder, in order to bring the bid within the amount of available funds.

1           (hi) Multi-Step Sealed Bidding. When low price is desired to be a  
2 determining factor for award to the bidder of an acceptable product or service  
3 but it is considered impractical to initially preferable to evolve or test the  
4 adequacy of prepare a purchase description's market feasibility to support an  
5 award based on price, an Invitation for Bids may be issued and conducted in  
6 two phases, the first requesting the submission of unpriced technical offers,  
7 which may involve description of service qualifications and performance, in  
8 one or more rounds in which discussions may be conducted to supplement or  
9 amend technical offers or bid specifications or both, to be followed by an  
10 Invitation for Bids limited to a second phase in which the unsealed price bids of  
11 those bidders whose offers have been or become qualified as acceptable under  
12 the criteria set forth in the first phase solicitation are requested and then opened  
13 as in a normal competitive sealed bid process. The Policy Office shall  
14 promulgate such regulations as may be efficacious to the use of this method of  
15 source selection under this Subsection."

16  
17       **Section 5.** The current § 5212 in Article 3 is hereby recodified as §5351 in  
18 Article 5, Chapter 5 of Title 5 of the Guam Code Annotated, and a new § 5212 is  
19 hereby added to Chapter 5, Title 5 of the Guam Code Annotated to read as follows:

20       **§5212. Competitive Sealed Proposals.**

21           (a) Conditions for use. The competitive sealed proposal method of  
22 source selection is available to procure supplies, services or construction if  
23 price is not intended to be a determining factor for selection for award of a  
24 contract for supplies, services or construction, and may be used for certain  
25 project delivery methods as described in Article 5 of this Chapter. Under  
26 competitive sealed proposals, the quality of competing products may be



1 compared and trade-offs made between price and quality of the products offered  
2 as described in the Request for Competitive Proposals. It shall not be used  
3 when another method of source selection is required or as appropriate. Other  
4 conditions for use include the following and if any such condition cannot be  
5 met, the competitive sealed proposal method shall not be used:

6 (1) The Chief Procurement Officer, the Director of Public Works, or  
7 the head of a purchasing agency, as the case may be, must make a  
8 determination, in writing, that price is not intended to be the determining  
9 factor for award of contract in the solicitation, and that the use of the  
10 competitive sealed bidding method is not practicable or advantageous to the  
11 Government of Guam, such determination to be made part of the Request for  
12 Competitive Sealed Proposal.

13 (2) Prior to preparing any solicitation document, the purchasing  
14 agency shall consult with the using agency and prepare a written plan for the  
15 solicitation, which plan shall include the using agency's assessment of need,  
16 the budget allocated, funding source, and market research identifying  
17 potential sources, which shall be part of the procurement record.

18 (3) A specific weighting shall be applied to the price factor, which  
19 must not be more than fifty percent (50%) of all relevant factors. However,  
20 if price is intended to weigh more than 50% of all factors, the Multi-step  
21 Competitive Sealed Bid method or, in the case of professional services, the  
22 Request for Proposal method, as provided in this Part, shall be used. All  
23 other evaluation factors shall be as objectively defined by outcomes,  
24 functions or performance specifications desired, as is practicable to specify.

25 (4) All discussions with offerors authorized by this method shall be  
26 conducted in the presence of the head of procurement of the procuring

1 agency, whether that is the Chief Procurement Officer, the Director of Public  
2 Works or the head of the purchasing agency

3 (5) All evaluators must be impartial persons acting in the best interests  
4 of the government, with sufficient knowledge of the government's needs and  
5 experience to capably appreciate the nature of the product being procured  
6 and independently assess and apply the proposals submitted to the  
7 evaluation criteria.

8 (6) The Policy Office shall specify such other conditions and  
9 procedures as it deems appropriate by regulation.

10 (b) Request and notice for Competitive Sealed Proposals. Competitive  
11 sealed proposals shall be solicited by issuance of a written Request for  
12 Competitive Sealed Proposals ("RFCP"). Adequate public notice of the RFCP  
13 shall be given in sufficient time adequate to foster and allow the preparation of  
14 competitive responses prior to the submission date specified, in accordance with  
15 regulations promulgated by the Policy Office.

16 (c) Receipt of and Publicity Regarding Competitive Proposals.  
17 Competitive sealed proposals shall not be opened publicly, so as to avoid  
18 disclosure of contents to competing offerors during the process of negotiation.  
19 A Register of Competitive Proposals shall be prepared in accordance with  
20 regulations, which shall not be opened for public inspection until after contract  
21 award.

22 (d) Evaluation Factors. The RFCP shall state the relative importance of  
23 price and the factors and subfactors, if any, to be evaluated. Except for the  
24 price factor which must be specifically weighted, all other factors including  
25 price must be specifically weighted to provide all potential offerors sufficient  
26 guidance to consider and prepare their proposals and a more objectively

1 verifiable selection process, and to assure that potential offerors have sufficient  
2 information to consider and prepare a proposal.

3 (e) Discussion with Responsible Offerors and Revisions to Proposals. As  
4 provided under regulations and, to the extent consistent therewith, the RFCP ,  
5 discussions may be conducted with responsible offerors who submit proposals  
6 determined to be reasonably qualified for selection for award for the purpose of  
7 clarification to assure full understanding of, and responsiveness to, the  
8 solicitation requirements. Offerors shall each be accorded fair and equal  
9 treatment with respect to any opportunity for discussion and revision of  
10 proposals provided to any of them. Revisions and the subject of discussions  
11 may be subjected to uniform time and other limits reasonably specified by the  
12 procurement officer. Revisions of submissions may be permitted prior to final  
13 submissions and in response to a request for the best and final offer, but there  
14 shall be no revision allowed to a best and final offer nor after award.

15 (f) Award. The contract shall be awarded to the responsible offeror  
16 whose proposal conforms to the solicitation and is determined in writing to be  
17 the most advantageous to the Government of Guam, taking into consideration  
18 only price and the evaluation factors set forth in the RFCP. No other factors or  
19 criteria shall be used to affect the evaluation. The procurement officer must  
20 prepare a written determination setting forth the comparative facts and factors  
21 which form the basis on which the award is made which shall be part of the  
22 procurement record. Written notice of the award to the successful offeror shall  
23 be promptly given to all other offerors.

24 (g) Debriefings. The procurement officer is authorized and encouraged  
25 to provide debriefings that furnish the basis for the source selection decision  
26 and contract award.”

1  
2       **Section 6.** § 5214 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
3 hereby amended to read as follows:

4       **“§5214. Sole Source Procurement.**

5           A contract may be awarded for a supply, service, or construction item  
6 without competition when, under regulations promulgated by the Policy Office,  
7 the Chief Procurement Officer, the Director of Public Works, or the head of a  
8 purchasing agency, or a designee of either officer above the level of the  
9 Procurement Officer in advance determines in writing that there is only one  
10 source for the required supply, service or construction item. A sole source  
11 contract shall not be issued for a term greater than one (1) year, with four (4)  
12 successive annual options to renew, such option being exercisable by the  
13 government and only if there is, at the time to be exercised, no other available  
14 source. Prior to and as a condition of making such determination, the  
15 purchasing agency shall prepare a written a report which shall be prepared for  
16 the person making such determination and which shall detail an analysis of the  
17 minimal needs of the government upon which the contract is based, and the  
18 findings of a thorough market research and a conclusion that there is no other  
19 source which will satisfy the government need. The report must be signed by  
20 the person or persons conducting the analysis and market research, and shall be  
21 made part of the procurement record. The purchasing agency shall also make a  
22 written determination that the price of any sole source contract is fair and  
23 reasonable, which determination shall include relevant cost and pricing  
24 information and analysis for the sole source as well as comparable or alternative  
25 sources, supplies or services. In the event any such contract, or series of related  
26 contracts, is in excess of the amount of One Hundred Thousand Dollars

1 (\$100,000), the purchasing agency shall, within fourteen (14) days of making  
2 the contract, publish notice of the making of the contract, including the name of  
3 the purchasing agency, the contractor, the contract amount and its term, and the  
4 nature of the contract, in a newspaper of general circulation on Guam and by  
5 posting such notice on its website, which shall and not be taken down for one  
6 year.”

7  
8 **Section 7.** § 5215 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
9 hereby amended to read as follows:

10 **“§5215. Emergency Procurements.**

11 (a) Determination of Emergency. Notwithstanding any other provision of  
12 this Chapter, the Chief Procurement Officer, the Director of Public Works, the  
13 head of a purchasing agency, or a designee of either officer may make or  
14 authorize others to make emergency procurements when there exists an ~~threat to~~  
15 ~~public health, welfare, or safety under~~ emergency under such conditions and as  
16 defined in Section 5030(x) and regulations promulgated by the Policy Office;  
17 provided that an independent written determination of the basis for the  
18 emergency as thus defined is first made by such officer and is included in the  
19 contract file. ~~such emergency procurements shall be made with such~~  
20 competition as is practicable under the circumstances, and further provided that  
21 the procurement agent must solicit at least three (3) informal price quotations, if  
22 time allows must give notice to all contractors from the qualified bid list who  
23 have provided the needed supplies and services to the government within the  
24 preceding twelve (12) months, and must award the procurement to the firm with  
25 the best offer, as determined by evaluating cost and delivery time. No  
26 emergency procurement or combination of emergency procurements may be

1 ~~made for an amount of goods or supplies greater than the amount of such goods~~  
2 ~~and supplies which is necessary to meet an emergency for the thirty (30) day~~  
3 ~~period immediately following the procurement. A written determination of the~~  
4 ~~basis for the emergency and for the selection of the particular contractor shall~~  
5 ~~be included in the contract file.~~ The requirements for a written determination for  
6 the emergency procurement shall be met if the procurements are being made on  
7 the basis of the Governor's declaration, by Executive Order, of an emergency  
8 situation ~~by Executive Order if such Order states that emergency procurement~~  
9 ~~may be resorted to for the purposes of the Order justifying procurement under~~  
10 this Section. Unless authorized by such an Executive Order declaring an  
11 ~~emergency~~, no emergency procurement may be made except on a certificate of  
12 emergency made under penalty of perjury by the Chief Procurement Officer,  
13 Director of Public Works or the head of a purchasing agency, as the case may  
14 be, that an emergency condition exists justifying emergency procurement.  
15 Certified copies of the certificate shall be sent, prior to award and as a condition  
16 thereof, to the Governor, who shall approve such certificate, in writing, and to  
17 the Speaker of the Legislature. The certificate shall contain the following:

18 (ai) a statement of the facts giving rise to the emergency;

19 (bii) the factual basis of the determination that an emergency exists  
20 and that procurement is necessary; and

21 (eiii) a statement that emergency procurement is not being used  
22 solely for the purpose of avoidance of the provisions of this Chapter.

23 ~~In addition to any other requirement, the Governor must approve in~~  
24 ~~writing all authorizations for emergency procurement."~~

25 (b) Award and Limitations. Emergency procurements shall be made with  
26 such competition as is practicable under the circumstances, such as including

1 requests for quotations giving notice to all contractors from the potential  
2 contractor list as authorized in § 5231, who have provided the needed supplies  
3 and services to the government within the preceding twelve (12) months.  
4 Award shall be made to the responsible firm with the best offer, as determined  
5 by evaluating cost and delivery time as required under § 5010 of this Chapter.  
6 No emergency procurement may be made for any emergency, including  
7 recurring emergency conditions of substantially similar nature, in an amount of  
8 supplies or services greater than the amount of such supplies or services which  
9 may be is necessary to meet the emergency for a ninety (90) day period  
10 immediately following the procurement, and no other procurement shall be  
11 made of any such supply or service under authority of this Section; any contract  
12 given therefor shall be void. The ninety (90) day period may be extended or  
13 exceeded by a Declaration of Emergency authorized by Executive Order of the  
14 Governor only in the event of an emergency due to a natural disaster.

15 (c) Planning. When an emergency procurement is implemented, the  
16 Chief Procurement Officer or head of the purchasing agency conducting the  
17 emergency procurement shall immediately prepare to procure, by other  
18 procurement methods of source selection authorized by this Chapter, such  
19 supplies or services as may be required as a follow on from such emergency  
20 procurement.

21  
22 **Section 8.** § 5216 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
23 hereby amended to read as follows:

24 **“§5216. Competitive Selection Procedures for Services Specified in §5121 of**  
25 **this Chapter.**

26 (a) Conditions for Use. The professionally licensed services specified in §

1 5121(a) of this Chapter or as specified in Article 5 of this Chapter may ~~shall~~ be  
2 procured in accordance with this Section, except as authorized under §§ 5214 or  
3 5215 of this Chapter. ~~Services for architecture, engineering, construction, land~~  
4 ~~surveying, environmental assessment and other such services shall be procured~~  
5 ~~in accordance with Article 5 of this Chapter.~~

6 (b) Statement of Qualifications. Persons engaged in providing the types  
7 of services specified in § 5121(a) of this Chapter may submit statements of  
8 qualifications and expressions of interest, but not prices, in providing such types  
9 of services. The Procurement Officer may specify a uniform format for  
10 statements of qualifications. Persons may amend these statements at any time  
11 by filing a new statement. Statements shall be kept by the purchasing agency  
12 only for reference in the nature of a response to a request for information and  
13 not as a solicitation to or by the purchasing agency, and shall be purged one (1)  
14 year from receipt. Submitting a statement of qualification by any person does  
15 not entitle any such person to actual notice nor shall submission of proposals by  
16 offerors be limited to those persons who have submitted any such statement.

17 (c) Public Announcement and Form of Request for Proposals.  
18 Adequate public notice of the need for such services shall be given by the  
19 purchasing agency through a Request for Proposals (“RFP”). The Request  
20 for Proposals shall describe the services required, list the type of information  
21 and data required of each offeror, specify if errors and omissions insurance  
22 must be provided as specified in Subsection (f) and the amount of coverage  
23 required, and state the relative importance of particular qualifications.

24 (d) Discussions. The head of the purchasing agency or a designee of  
25 such officer may conduct discussions with any offeror who has submitted a  
26 proposal in response to an RFP, to determine such offeror’s qualifications



1 and understanding of the evaluation factors and services sought for further  
2 consideration. Discussions shall not disclose any information derived from  
3 proposals submitted by other offerors. Price is not a factor to be discussed  
4 or considered until after the ranking of the offerors and the process of  
5 negotiation for compensation begins.

6 (e) Award. Award shall be made to the offeror determined in writing  
7 by the head of the purchasing agency or a designee of such officer to be best  
8 qualified based on the evaluation factors set forth in the Request for  
9 Proposals, and negotiation of compensation determined to be fair and  
10 reasonable. If compensation cannot be agreed upon with the best qualified  
11 offeror, the negotiations will be formally terminated with the selected  
12 offeror. If proposals were submitted by one or more other offerors  
13 determined to be qualified, negotiations may be conducted with such other  
14 offeror or offerors, in the order of their respective qualification ranking, and  
15 the contract may be awarded to the offeror then ranked as best qualified if  
16 the amount of compensation is determined to be fair and reasonable.

17 (f) Errors and Omissions Insurance. Regulations shall be promulgated  
18 that specify circumstances in which the Chief Procurement Officer or  
19 Director of Public Works shall require offerors of professional services to  
20 provide appropriate errors and omissions insurance, or equivalent, to  
21 adequately cover the particular services to be rendered under the contract  
22 awarded. Satisfactory evidence of such required insurance shall be produced  
23 prior to any award.”

24 **Section 9.** § 5217 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
25 hereby amended to read as follows:

26 **“§5217. Procurement from Nonprofit Corporations.**

1           A contract may be awarded for a supply or service without competition  
2 when the prospective contractor is a responsible nonprofit Guam incorporated  
3 and based corporation with a current certificate of good standing from the  
4 Department of Revenue and Taxation employing ~~sheltered or handicapped~~  
5 workers persons with disabilities on Guam to provide the supply or service. As  
6 a condition of the award of the contract the contractor must certify that labor  
7 employed to manufacture the supply or perform the services on the project will  
8 be performed on Guam by ~~handicapped~~ persons with disabilities except that  
9 supervisory personnel do not have to be ~~handicapped~~ persons with disabilities.  
10 A contractor awarded a contract pursuant to this Section shall not be required to  
11 post any of the bonds required under ~~Article 5~~ of this Chapter.”

12       **Section 10.** §5219 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
13 hereby amended to read as follows:

14       “**§ 5219. Unsolicited Offers.**

15           (a) Defined. An unsolicited offer is any offer to provide supplies,  
16 services or construction other than one submitted in response to a solicitation.

17           (b) Processing of Unsolicited Offers. The Chief Procurement Officer, the  
18 Director of Public Works or the head of the Purchasing Agency shall consider  
19 ~~the any unsolicited~~ offer as provided in this Section. If an agency that receives  
20 an unsolicited offer is not authorized to solicit or enter into a contract for the  
21 supplies, services or construction offered, the head of such agency shall forward  
22 the offer to the Chief Procurement Officer, or the Director of Public Works ~~or~~  
23 ~~the head of a Purchasing Agency~~, who shall consider and evaluate the offer as  
24 provided in this Section.

25           (c) Conditions for Consideration. To be considered for evaluation, an

1 unsolicited offer:

2 (1) must be in writing and contain all the elements of contract law to  
3 establish a contract if accepted ;

4 (2) must be sufficiently detailed to allow a judgment to be made  
5 concerning the potential utility of the offer to Guam and to the government;

6 (3) must be unique or innovative to Guam's and the government's  
7 use; and

8 (4) may be subject to testing under terms and conditions specified by  
9 the government.

10 (d) Evaluation. The unsolicited offer shall be evaluated to determine it's  
11 utility to Guam and to the government, and whether it would be to Guam's and  
12 the government's advantage to procure such service.

13 (e) ~~Competitive Sealed Bidding~~ Competition Required. All unsolicited  
14 offers considered as being desirable shall be subjected to the most appropriate  
15 competitive method of source selection particularly specified in § 5210 of this  
16 Part the Competitive Sealed Bidding process under § 5211. Notwithstanding  
17 any other provision of law, sole source procurement shall not be permissible in  
18 any procurement arising from an unsolicited offer. The criteria set forth in the  
19 Invitation for Bids solicitation shall *not* require the inclusion of any  
20 confidential, proprietary or trade secret item, service or method which was  
21 proposed in the unsolicited offer, and the proprietary character of an unsolicited  
22 offer or the inclusion of a proprietary item in the unsolicited offer shall *not* be  
23 used to favor the offer or any other bid, nor be a determining factor in awarding

1 a bid. ~~Such Invitation for Bids shall not contain any reference to the financial~~  
2 ~~offer of the unsolicited offeror, but shall contain a sufficient technical~~  
3 ~~description to allow other parties to identify the technical concept of the offer,~~  
4 ~~and to prepare bids.”~~

5 **Section 11.** § 5220 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
6 hereby amended to read as follows:

7 **“§5220 Publication of IFB, ~~and~~ RFP, and RFCP Documents on the**  
8 **Agency’s Website.**

9 (a) Notwithstanding any other provision of this Chapter, Invitations for  
10 Bid (IFBs), ~~and~~ Requests for Proposals (RFPs), and Requests for Competitive  
11 Sealed Proposals (RFCPs) shall be posted on the procuring agency’s website.  
12 IFBs, ~~and~~ RFPs, and RFCPs procured through the General Services Agency  
13 (GSA) or the Department of Public Works (DPW) shall be posted, on the date  
14 of the ~~IFB/RFP~~ announcement of the solicitation, simultaneously on the  
15 procuring agency’s website and the websites of GSA ~~and~~ or DPW respectively.  
16 No fees shall be assessed to prospective bidders or other parties for  
17 accessing/downloading procurement documents from an agency’s website.  
18 Such documents shall remain on the respective agencies’ websites for a period  
19 of *not less than* one hundred eighty (180) days following the award of the Bid  
20 or Proposal.

21 (b) The procuring agency, and GSA ~~and~~ or DPW if applicable, shall  
22 provide notice in each ~~IFB/RFP~~ solicitation announcement ~~that recommends~~  
23 ~~that prospective bidders/respondents/offerors shall be required to register~~  
24 ~~contact information with the agency to ensure that they receive any notices~~  
25 ~~regarding any changes or updates to the IFB/RFP solicitation, provided that~~  
26 such registration shall not be a matter of responsiveness or otherwise materially

1 nonconforming to the solicitation . The procuring agency, and GSA ~~and~~ or  
2 DPW shall not be liable for failure to provide notice to any party who did not  
3 register contact information.

4 (c) Nothing herein is intended to prevent the procuring agency, GSA, or  
5 DPW from making physical or digital media copies of procurement documents  
6 and assessing reasonable fees for such documents in a manner consistent with  
7 public law, administrative rules and regulations, and departmental policy that  
8 existed prior to the enactment of this Section.”

9 **Section 12.** A new § 5221 is hereby added to Article 3 of Chapter 5, Title 5,  
10 Guam Code Annotated to read as follows:

11 **“§ 5221. Procurement of Bridge Contracts.**

12 (a) Description of Bridge Contract. For purposes of this Section, a  
13 Bridge Contract is one written to avoid the disruption in the continued or  
14 recurring provision of supplies or rendition of services which are critical to  
15 governmental operations, between the end of one contract, the “existing”  
16 contract, and the beginning of the next, the “new” contract. The existing  
17 contract may be current, expired or terminated. The new contract is intended to  
18 continue the provision of the same or functional equivalent supply or service as  
19 was provided under the existing contract.

20 (b) Conditions of Use. A purchasing agency may award a Bridge  
21 Contract to the incumbent contractor to acquire continuing but temporary  
22 source of the supply or service described in the existing contract only in the  
23 following circumstances or upon the following conditions:

24 (1) The Chief Procurement Officer must first make a written  
25 determination of the particularized critical need for such supply or service  
26 and the urgent and compelling facts and circumstances why no other option

1 is available and that the contract is immediately necessary and in the best  
2 interests of the government.

3 (2) The term shall be tailored to meet only the minimal needs in the  
4 facts and circumstances, and shall commence as soon as practicable upon  
5 termination or expiration of the existing contract, and terminate not later  
6 than the earlier of four (4) months from commencement of the bridge  
7 contract, or the commencement of a contract awarded by competitive sealed  
8 bid, competitive sealed proposal, request for proposal or sole source, in  
9 accordance with the provisions of this Part. Commencement is the date of a  
10 purchase order or contract executing the award.

11 (3) The amount of the bridge contract throughout its entire term is at  
12 least two hundred fifty thousand dollars (\$250,000.00).

13 (4) The Governor shall in writing approve the bridge contract and  
14 each extension thereof.

15 (5) The term of a bridge contract may be extended on a month to  
16 month basis up to a total term of nine (9) months, but each extension must  
17 be signed by the Chief Procurement Officer.

18 (6) An existing contract shall not have been the result of an  
19 emergency or bridge contract method of source selection.

20 (7) The incumbent is not required, is not obligated to accept the bridge  
21 contract. The price of supplies and services acquired by the bridge contract  
22 shall be the same or substantially the same as the existing contract.

23 (c) Effect on other matters. An existing contract may be extended upon  
24 the same price and terms for a period not exceeding thirty (30) days, solely for  
25 the purpose of providing time to award a bridge contract. Notwithstanding  
26 §5425 (g) of this Chapter there shall be no stay of award or performance of the

1 bridge contract but the remedies of §§ 5451 and 5452 shall be available in any  
2 such protest. The agency granting a bridge contract shall decide a protest of the  
3 contract or award within seven (7) days of receipt of the protest, and it shall be  
4 deemed rejected if not made within that time. On an appeal to the Public  
5 Auditor from a rejected protest of a bridge contract or award, the Public Auditor  
6 shall give precedence to and expedite review and decision of the protest.”

7 **Section 13.** § 5230 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
8 hereby amended to read as follows:

9 **“§5230. Responsibility of Bidders and Offerors.**

10 (a) Determination of Nonresponsibility. A written determination of  
11 nonresponsibility of any bidder or offeror shall be made and served on such  
12 bidder or offeror prior to award, and shall be determined in accordance with  
13 regulations promulgated by the Policy Office. A finding of nonresponsibility in  
14 any particular instance does not require a finding of nonresponsibility in any  
15 dissimilar solicitation. The unreasonable failure of a bidder or offeror to  
16 promptly supply information in connection with an inquiry with respect to  
17 responsibility may be grounds for a determination of nonresponsibility with  
18 respect to such bidder or offeror.

19 (b) Right of Nondisclosure. Trade secret or confidential proprietary  
20 information furnished and identified as such by a bidder or offeror in  
21 connection with an inquiry with respect to responsibility pursuant to this  
22 Section, and confirmed as such by the Chief Procurement Officer, Director or  
23 Public Works or head of the purchasing agency, shall not be disclosed outside  
24 of the General Services Agency, the Department of Public Works or the  
25 purchasing agency without prior written consent by the bidder or offeror, but  
26 may be disclosed to the Attorney General at any time.”

1       **Section 14.** § 5231 of Article 3 Chapter 5, Title 5 Guam Code Annotated is  
2 hereby amended to read as follows:

3       “**§5231. ~~Prequalification of Suppliers. Potential Contractor Lists.~~**

4       Information and interest of Pprospective suppliers bidders or offerors may  
5 be sought by any purchasing agency prequalified for solicitation of particular  
6 types of supplies, services and construction for the purpose of providing a  
7 purchasing agency information regarding possible sources of supplies, services  
8 and construction and the potential field of competition, and to prepare and  
9 maintain lists of potential contractors. Distribution of solicitation documents  
10 and notices of Ssolicitation may be sent to such identified ~~mailing lists of~~  
11 potential contractors. Inclusion of a potential contractor on any such list of  
12 potential contractors ~~shall include but shall not be limited to such prequalified~~  
13 suppliers. does not determine responsibility and of itself, nor shall any bidder or  
14 offeror be rejected for failure to be included, nor shall public notice be limited  
15 to those who have been included.”

16       **Section 15.** § 5232 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
17 hereby amended to read as follows:

18       “**§ 5232. Cost or Pricing Data.**

19       (a) Contractor Certification. A contractor shall, except as provided in  
20 Subsection (c) of this Section, submit cost or pricing data and shall certify that,  
21 to the best of its knowledge and belief, the cost or pricing data submitted was  
22 accurate, complete, and current as of a mutually determined specified date or at  
23 any time as may be required by Policy Office regulations and prior to the date  
24 of:

25               (1) The pricing of any contract awarded by competitive sealed



1        proposals (§ 5212) or pursuant to the sole source procurement authority (§  
2        5214), or by competitive selection of professional services, including  
3        architect, engineering and land surveying services, where the total contract  
4        price is expected to exceed an amount established by Policy Office  
5        regulations; or

6                (2) the pricing of any change order or contract modification which is  
7        expected to exceed an amount established by Policy Office regulations.

8                (b) Price Adjustment. Any contract, change order, or contract  
9        modification under which a certificate is required shall contain a provision that  
10       the price to the Government of Guam Territory, including profit or fee, shall be  
11       adjusted to exclude any significant sums by which the Government of Guam  
12       ~~Territory~~ finds that such price was inaccurate, incomplete or not current as of  
13       the date agreed upon between the parties. The price shall also be adjusted to  
14       reflect non-payment by the contractor of any taxes which would have been paid  
15       by him were it not for the exclusion provided by 11 GCA §26203(k)(4415)

16                (c) Cost or Pricing Data Not Required. The requirements of this Section  
17       are intended to provide objective evidence of fair and reasonable prices and  
18       costs and need not be applied to contracts priced in good faith:

19                (1) where the contract is based on adequate price competition;

20                (2) where the contract price is based on established catalogue prices or  
21       market prices;

22                (3) where contract prices are set by law or regulation; or

1 (4) where it is determined in writing in accordance with regulations  
2 promulgated by the Policy Office that the requirements of this Section may  
3 be waived, and the reasons for such waiver are stated in writing.

4 **Section 16.** § 5233 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
5 hereby amended to read as follows:

6 **“§5233. Disclosure of ~~Major Shareholders~~ Ownership, Financial and**  
7 **Conflict of Interests.**

8 (a) Purpose: The disclosures required by this section are intended to  
9 reveal information regarding the responsibility of a bidder, and can be obtained  
10 by an inquiry regarding responsibility.

11 (b) Definitions.

12 (1) As used herein, the term “person” shall include the definition  
13 found in Title 1, Chapter 7, Section 715, Guam Code Annotated, and in §  
14 5030(n) of this Chapter, and includes a natural person as well as every  
15 person of whatever form or composition (an “artificial person”) recognized  
16 under the laws of Guam other than a natural person.

17 (2) The ownership interests to be disclosed under this section include  
18 the interest of a sole proprietor, a partner limited or otherwise, a shareholder  
19 of every class (in which case the percentage ownership interest test shall be  
20 based on each class), a member of an association or company, limited or  
21 otherwise, and any person owning a beneficial legal interest in any trust or  
22 artificial person having the power to contract, hold title to property, sue or be  
23 sued, and any other capacity or status necessary to perform the prospective  
24 contract.

25 (c) Disclosure of Ownership: Every person who is a prospective  
26 contractor under any method of source selection authorized by this Chapter,

1 except for emergency procurement under Section 5215, shall submit a  
2 Disclosure Statement, executed as an affidavit under oath, disclosing the name  
3 of each person who has owned an ownership interest in the prospective  
4 contractor, greater than ten percent (10%), at any time during the twelve (12)  
5 month period immediately preceding the date of the solicitation (the “relevant  
6 disclosure period”). If a prospective contractor is an artificial person, the  
7 Disclosure Statement shall disclose the name of each person who has owned an  
8 ownership interest in such artificial person (a “second tier owner”), greater than  
9 twenty-five percent (25%), at any time during the relevant disclosure period. If  
10 any such second tier owner is also an artificial person, the Disclosure Statement  
11 shall disclose the name of each person who has owned an ownership interest in  
12 such second tier owner (a “third tier owner”) of forty-nine percent (49%) or  
13 more during the relevant disclosure period. If the name of no natural person has  
14 been identified as an owner, or a second or third tier owner of the prospective  
15 contractor, the Disclosure Statement shall include the name and position of the  
16 natural person responsible for the performance of the prospective contract and  
17 the name of any natural person who has the power to remove and replace the  
18 responsible person or otherwise control the performance of the prospective  
19 contract during the proposed term of the contract.

20 (d) Disclosure of Financial Interest. A prospective contractor shall  
21 disclose any person who has received or is entitled to receive a commission,  
22 gratuity, contingent fee or other compensation to solicit or secure or assist in  
23 obtaining business related to the solicitation by means of a Disclosure  
24 Statement, executed as an affidavit under oath, disclosing such interest and shall  
25 also contain the amounts of any such commission, gratuity or other  
26 compensation.

1           (e) Disclosure of Conflict of Interest. A prospective contractor shall  
2           disclose any person who directly or indirectly participates in any solicitation if  
3           such person is an employee of the Government of Guam, or, if federal funds are  
4           used in payment of the contract, is an employee of the Government of the  
5           United States.

6           (f) Every disclosure of an ownership or financial interest required to be  
7           identified by this Section, shall name the person required to be disclosed, the  
8           street address of the residence or principle place of business, and, in the case of  
9           an artificial person, a Taxpayer Identification Number shall be provided. All  
10          information disclosed or meant to be disclosed under this Section is public  
11          procurement data and shall be kept as part of the public record of each  
12          procurement.

13          ~~As a condition of bidding, any partnership, sole proprietorship or corporation~~  
14          ~~doing business with the government of Guam shall submit an affidavit executed~~  
15          ~~under oath that lists the name and address of any person who has held more than~~  
16          ~~ten percent (10%) of the outstanding interest or shares in said partnership, sole~~  
17          ~~proprietorship or corporation at any time during the twelve (12) month period~~  
18          ~~immediately preceding the submission of a bid. The affidavit shall contain the~~  
19          ~~number of shares or the percentage of all assets of such partnership, sole~~  
20          ~~proprietorship or corporation which have held by each such person during the~~  
21          ~~twelve (12) month period. In addition, the affidavit shall contain the name and~~  
22          ~~address of any person who has received or is entitled to receive a commission,~~  
23          ~~gratuity or other compensation for procuring or assisting in obtaining business~~  
24          ~~related to the bid for the bidder and shall also contain the amounts of any such~~  
25          ~~commission, gratuity or other compensation. The affidavit shall be open and~~  
26          ~~available to the public for inspection and copying.”~~

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**Section 17.** § 5235 of Article 3 of Chapter 5, Title 5 of the Guam Code Annotated is hereby amended to read as follows:

**“§5235. Types of Contracts.**

Subject to the limitations of this ~~Section~~ Chapter and regulations adopted by the Policy Office, any type of contract which will promote the best interest of the Government of Guam Territory may be used; provided that the use of cost-plus-a-percentage-of-cost contract is prohibited; and provided that an indefinite quantity contract shall not be used to acquire supplies by lease. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Government of Guam Territory than any other type or that it is impracticable to obtain the supplies, services or construction required except under such contract.”

**Section 18.** § 5237 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is hereby amended to read as follows:

**“§5237. Multi-Year Contracts.**

(a) Specified Period. It is the policy of the Government of Guam to minimize the use of multi-year contracts, and to require that the terms of all contracts be for only such minimal term as is practicable. No contract shall be issued for an indefinite term nor shall it be renewable indefinitely, provided however, that a contract may be issued for supplies or services on a month to month basis provided the monthly price of the contract, when annualized, does not exceed the amount established by authority of § 5213 of this Chapter (Small Purchases). Unless otherwise provided by law, a contract for supplies or services may be entered into for any minimum period of time ~~deemed~~

1 determined to be in the best interests of the Government of Guam Territory  
2 provided the term of the contract and conditions of renewal or extension, if any,  
3 are included in the solicitation and funds are available for the first fiscal period  
4 at the time of contracting. Payment and performance obligations for succeeding  
5 fiscal periods shall be subject to the availability and appropriation of funds  
6 therefor.

7 (b) Presumption of five (5) year limit. To foster competition and  
8 maximize the purchasing value of public funds, it is presumed that it is not in  
9 the best interests of the Government of Guam Territory to make a contract,  
10 including a lease, for supplies or services for a total term, including renewals or  
11 extensions, in excess of five (5) years. A contract for supplies and services may  
12 be made for a term in excess of five (5) years (an “exceptional term”) only with  
13 the written determination, made by the Chief Procurement Officer and  
14 incorporated in the solicitation documents, describing compelling  
15 circumstances and interests of the Government of Guam Territory which justify  
16 the necessity of the exceptional term. Every exceptional term contract shall be  
17 reviewed annually, beginning at the end of year five (5) of the contract, by the  
18 Chief Procurement Officer, or the head of the purchasing agency and shall  
19 contain a termination for convenience clause in the particular form as  
20 authorized under §5306(c)(4) and §5350(c)(4) of this Chapter.

21 (bc) Determination Prior to Use. Prior to the ~~utilization~~ issuance of a  
22 solicitation of a multi-year contract, it shall be determined in writing:

23 (1) that estimated requirements for the intended supplies and services  
24 cover the period of the contract and are reasonably firm and continuing; and

25 (2) that such a contract will serve the best interests of the Government  
26 of Guam Territory by encouraging effective competition or otherwise

1 promoting economies in Government of Guam territory procurement.

2 (ed) Cancellation Due to Unavailability of Funds in Succeeding Fiscal  
3 Periods. When funds are not appropriated or otherwise made available to  
4 support continuation of performance in a subsequent fiscal period, the contract  
5 shall be cancelled and, notwithstanding any provision of the contract to the  
6 contrary, the contractor shall only be reimbursed for the reasonable value of any  
7 non-recurring costs incurred but not amortized in the price of the supplies or  
8 services delivered under the contract. The cost of cancellation may be paid  
9 from any appropriations available for such purposes.”

10 **Section 19.** § 5240 of Chapter 5 Title 5 Guam Code Annotated is hereby  
11 amended to read as follows:

12 **“§5240. Right to Inspect Plant.**

13 The Government of Guam Territory may, at reasonable times, inspect ~~the every~~  
14 part of the plant or place of business of a contractor or any subcontractor which is  
15 related to the performance of any contract awarded or to be awarded by the  
16 Government of Guam Territory.”

17 **Section 20.** § 5245 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
18 hereby amended to read as follows:

19 **“§5245. Finality of Determinations.**

20 Except as otherwise provided Article 12 of this Chapter, ¶the determinations  
21 required by §§ 5211(f), 5212(a), 5212(gf), 5214, 5215, 5216(e), 5230(a), 5232(c),  
22 5235, 5236 and 5237(bc) of this Chapter are final and conclusive unless they are  
23 clearly erroneous, arbitrary, capricious or contrary to law.”

24 **Section 21.** § 5248 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
25 hereby amended to read as follows:

26 **“§5248. Record of Procurement Actions Taken Under §§5214 and 5215 of**

1 **this Chapter.**

2 (a) Contents of Record. The Chief Procurement Officer, or the Director  
3 of Public Works or the head of the purchasing agency shall maintain a record  
4 listing of all contracts made under § 5214 (Sole Source Procurement) or § 5215  
5 (Emergency Procurement) of this Chapter for a minimum of five (5) years. The  
6 record shall contain:

7 (1) each contractor's name;

8 (2) the amount and type of each contract; and

9 (3) a listing of the supplies, services or construction procured under  
10 each contract.

11 (b) Submission to Legislature and Procurement Advisory Council. A  
12 copy of such record shall be submitted to the Legislature and to the Guam  
13 Procurement Advisory Council on an annual basis. The record shall be available  
14 for public inspection.”

15  
16 **Section 22.** § 5249 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
17 hereby amended to read as follows:

18 “§ 5249. **Record of Procurement Actions.**

19 Each procurement officer and contract officer shall collaborate to make and  
20 maintain a complete record of each procurement throughout the term of the  
21 contract. Records, either electronic or paper, that are sufficient to document  
22 decisions must be created and maintained. All records shall be made and kept in  
23 readable form capable of duplication by the public. The record shall include, but  
24 not be limited to, the following:

25 (a) the date, time, subject matter and names of participants at any meeting  
26 including government employees that is in any way related to a particular



1 procurement;

2 (b) a log of all communications between government employees and any  
3 member of the public, potential bidder, vendor or manufacturer which is in any  
4 way related to the procurement;

5 (c) sound or video recordings of all pre-bid conferences, negotiations  
6 arising from a any type of request for proposals, and discussions with vendors  
7 concerning small purchase procurement;

8 (d) brochures and submittals of potential vendors or service providers,  
9 manufacturers or contractors, and all drafts, signed and dated by the draftsman,  
10 and other papers or materials used in the development of specifications; and

11 (e) the requesting agency's determination of need and records of the  
12 planning phase of the procurement;

13 (f) all bids and proposals, unless withdrawn, and all contracts and  
14 purchase orders, provided only that no trade secret, proprietary information, or  
15 offer which is, pursuant to this Chapter or its regulations, required to be held  
16 confidential or not disclosed shall be redacted or kept apart and not available for  
17 public inspection.

18 (g) all records of contract administration, including contract disputes."

19  
20 **Section 23.** § 5251 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
21 hereby amended to read as follows:

22 **"§5251. Public Record.**

23 The record required by § 5249 of this Chapter is a public record ~~and, subject to~~  
24 ~~rules promulgated by the Public Auditor, any.~~ All records shall be presumed  
25 public and the burden of establishing that a document or record is private shall be  
26 upon the agency or person claiming that the document on record should not be

1 disclosed or inspected. Any bidder, offeror or disinterested person may inspect and  
2 copy any portion of the record except only those parts of the record which are  
3 protected as confidential or trade secret by law or regulation.

4 This Chapter does not allow limitations on access to a public record based upon  
5 the purpose for which the record is being requested, if the record is otherwise  
6 subject to disclosure.”

7 **Section 24.** § 5252 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
8 hereby amended to read as follows:

9 **“§5252. Rules for Procurement Records.**

10 The ~~rules~~ regulations that may be promulgated pursuant to § ~~5254~~ 5102 of this  
11 Chapter shall:

12 (a) protect the integrity of the ~~bidding~~ solicitation process, including, but  
13 not limited to the independent cost analysis prepared under the direction of the  
14 purchasing agency;

15 (b) protect the confidentiality of trade secrets and proprietary commercial  
16 data;

17 (c) establish reasonable charges for copying papers;

18 (d) provide for transcription of sound recordings;

19 (e) require public access to the record at the earliest possible time; ~~and~~

20 (f) not require that the record be complete or that the procurement award  
21 be made before inspection and copying are permitted; ~~and-~~

22 (g) clarify, as necessary, those records that are accessible under law  
23 during the pendency of a protest, appeal or judicial review.”

24  
25 **Section 25.** A new §5254 is hereby added to Article 3 of Chapter 5, Title 5  
26 Guam Code Annotated to read as follows:

1       **“§5254. Special Provisions Applicable to Source Selection.**

2           (a) Professional Services. It is the policy of the Government of Guam to  
3 publicly announce all requirements for the professional services of architects,  
4 engineers and land surveyors as specified in § 5216 of this Chapter on the basis  
5 of demonstrated competence and qualification of the services required, and at  
6 fair and reasonable prices, and such services shall be procured in accordance  
7 with the professional services method of source selection described in § 5216 as  
8 modified by the requirements of this Subsection.

9           (1) Notwithstanding any provision of law to the contrary, the Director  
10 of Public Works shall be responsible to conduct the procurement of such  
11 services.

12           (2) In any solicitation for architectural, engineering, or land surveying  
13 services reasonably expected to be priced above \$500,000, the Director of  
14 Public Works shall appoint the most appropriately qualified engineer in the  
15 Department to serve on the evaluation and selection team.

16           (b) Design-Build, Design-Build-Operate-Maintain, and Design-Build-  
17 Finance-Operate-Maintain Projects. All design-build, design-build-operate-  
18 maintain, and design-build-finance-operate-maintain projects shall be procured  
19 in accordance with the competitive sealed proposal method of source selection  
20 described in § 5212 of this Chapter as modified by the requirements of this  
21 Subsection.

22           (1) The RFCP for each such project:

23           (A) shall include design requirements. *Design requirements* means the  
24 written description of the infrastructure facility or service to be  
25 procured under this Article, including:

26           (a) required features, functions, characteristics, qualities, and

1 properties that are required by the [State];

2 (b) the anticipated schedule, including start, duration, and  
3 completion;

4 and

5 (c) estimated budgets (as applicable to the specific procurement)  
6 for  
7 design, construction, operation and maintenance.

8 The design requirements may, but need not, include drawings and  
9 other  
10 documents illustrating the scale and relationship of the features,  
11 functions,  
12 and characteristics of the project;

13 (B) shall solicit proposal development documents; *Proposal*  
14 *development documents* means drawings and other design related  
15 documents that are sufficient to fix and describe the size and character of  
16 an infrastructure facility as to architectural, structural, mechanical and  
17 electrical systems, materials, and such other elements as may be  
18 appropriate to the applicable project delivery method;

19 (C) may, when the Director of Public Works determines that the  
20 cost of preparing proposals is high in proportion to the size, estimated  
21 price and complexity of the procurement:

22 (i) prequalify offerors by issuing a Request for Qualifications in  
23 the time and manner required of an RFCP, in advance of the RFCP,  
24 stating that all persons intending to offer a proposal for the project  
25 must first respond to the Request for Qualifications; and,

26 (ii) select a short list of responsible offerors prior to any

1 discussions and evaluations of any proposals, provided that the  
2 number of proposals that will be short-listed is stated in the RFCP and  
3 prompt notice is given to all offerors, to such points of contact as are  
4 known as well as by public notice, as to which proposals have been  
5 short-listed; or,

6 (iii) pay stipends to unsuccessful offerors, provided that the  
7 amount of such stipends and the terms under which stipends will be  
8 paid are stated in the RFCP.

9 (D) shall state the relative importance of (i) demonstrated  
10 compliance with the design requirements, (ii) offeror qualifications, (iii)  
11 financial capability, (iv) project schedule, (v) price (if design-build) or  
12 life-cycle cost (if any other delivery method), and (vi) any other factors;  
13 and

14 (E) if the contract price is estimated to exceed \$10,000,000 or whenever the  
15 contract period of operations and maintenance is ten (10) years or longer, shall  
16 require each offeror to identify an Independent Peer Reviewer, whose competence  
17 and qualifications to provide such services shall be an additional evaluation factor  
18 in the award of contract, provided however, if the Director of Public Works  
19 determines that it is not in the best interest of the Department to contract with the  
20 Independent Peer Reviewer so designated, the Director shall contract with another  
21 Independent Peer

22 **Section 26.** § 5425 of Article 9 (Legal and Contractual Remedies), Chapter 5  
23 of Title 5, Guam Code Annotated, is *amended* to read as follows:

24 “§ 5425. ~~Authority to Resolve~~ Resolution of Protested Solicitations and  
25 Awards.

1 (a) Right to Protest. Any actual or prospective bidder, offeror, or  
2 contractor who may be aggrieved in connection with the method of source  
3 selection, solicitation or award of a contract, may protest to the Chief  
4 Procurement Officer, the Director of Public Works, or the head of a purchasing  
5 agency. The protest *shall* be submitted in writing within fourteen (14) days after  
6 such aggrieved person knows or should know of the facts giving rise ~~thereto~~. to  
7 the protest.

8 (b) Authority to Resolve Protests. Notwithstanding any other provisions  
9 of law, ¶the Chief Procurement Officer, the Director of Public Works, the head  
10 of a purchasing agency, or a designee of one of these officers, shall have the  
11 authority, prior to the commencement of an appeal to the Public Auditor or an  
12 action in court concerning the controversy, to settle and resolve a protest of an  
13 aggrieved bidder, offeror, or contractor, actual or prospective, concerning the  
14 solicitation or award of a contract. This authority shall be exercised in  
15 accordance with regulations promulgated by the Policy Office, which shall  
16 assure that interested parties are given notice of and opportunity to participate  
17 in any such settlement or resolution. Regulations shall establish an objective  
18 means by which any time limit established by this Article for the taking of any  
19 action, administrative or judicial, shall be identified and tolled during any  
20 period in which the parties are in good faith engaged to resolve and settle any  
21 dispute arising under this Article; provided, that the objective means includes,  
22 at a minimum, a written agreement of the interested parties. Interested party, for  
23 purposes of this Article, means a person who is an actual or prospective bidder,  
24 offeror, or contractor who is aggrieved in connection with the solicitation or the  
25 award of a contract, or by the protest or resolution of it.

1 (c) Decision. If the protest is *not* resolved by mutual agreement, the Chief  
2 Procurement Officer, the Director of Public Works, the head of a purchasing  
3 agency, or a designee of one of these officers, *shall* promptly issue a decision in  
4 writing accepting or rejecting the protest, in whole or in part. The decision  
5 *shall* include:

6 (1) ~~state the reasons for the action taken;~~ the government's factual  
7 and legal reasons for the decision made to accept or reject, in whole or in  
8 part; and

9 (2) ~~inform~~ that the decision to reject is a final decision and that the  
10 protestant ~~of its~~ has the right to administrative and judicial review.

11 (d) Notice of Decision. A copy of the decision under Subsection (c) of  
12 this Section *shall* be mailed electronically or otherwise furnished immediately  
13 to the protestant and any other prospective or interested party intervening  
14 actually known to the government.

15 (e) Failure to Render Timely Decision. If the protestant *does not* receive  
16 a decision on the protest as required under Subsection (c) of this Section within  
17 forty-five (45) days from the date of the protest, the protestant may make a  
18 written request to the Office where the protest was made to render such a  
19 decision on the protest. If no decision as required under Subsection (c) of this  
20 Section is made and served upon the protestant within ten (10) days after receipt  
21 of such written request, or within such longer period as may be expressly  
22 agreed upon by the parties, in writing, then the protest *shall* be deemed rejected.  
23 On any appeal from the rejection, the appellant *shall* bear the burden of  
24 establishing that there was good and sufficient reason to accept the protest  
25 based on evidence that was known to it or should have been known to it at the  
26 time the protest was rejected.

1            ~~(e)~~ (f) Appeal. A decision under Subsection (c) of this Section,  
2 including a decision there under regarding entitlement to costs as provided by  
3 Subsection (h) of this Section, may be appealed by the protestant, to the Public  
4 Auditor: (1) within fifteen (15) days after receipt by the protestant of the notice  
5 of decision to reject the protest; or (2) within fifteen (15) days after the date the  
6 protest is deemed rejected as provided in Subsection (e) of this Section.

7            (g) Disqualification of Public Auditor. If for any reason the Public  
8 Auditor determines that he must disqualify himself from hearing the appeal, the  
9 Public Auditor shall petition the Presiding Judge of the Superior Court to  
10 appoint a lawyer who is a member in good standing of the Guam Bar  
11 Association and competent in matters of procurement, as a Hearing Officer to  
12 hear and decide the matter. The Hearing Officer shall have all jurisdiction,  
13 power, authority, and duty of the Public Auditor necessary and appropriate to  
14 hear and decide the matter, including the power to contract and delegate to a  
15 hearing officer such power and authority and as is provided by regulation. The  
16 decision of the Hearing Officer shall be accorded all finality, authority, respect  
17 and entitlement as a decision of the Public Auditor. The Office of Public  
18 Accountability shall bear the fees and expenses of the Hearing Officer thus  
19 appointed, and provide the usual support for the hearing and determination of  
20 such matter as is provided to the Public Auditor, including the defense of any  
21 appeal of the Hearing Officer's decision.

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

25            (gh) Automatic Stay. In the event of a timely protest under Subsection  
26 (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the



1 ~~Territory~~ government of Guam *shall not* proceed further with the solicitation or  
2 ~~with the~~ award, or performance of the contract prior to the time allowed to  
3 appeal, or the final resolution of such protest, including a final entry of  
4 judgment, or the settlement of the protest evidenced by a writing signed by all  
5 interested parties, and any such further action is void, unless:

6 (1) the Chief Procurement Officer or the Director of Public Works,  
7 ~~after consultation with and~~ the written concurrence of the head of the using  
8 or purchasing agency and the Attorney General, or designated Deputy  
9 Attorney General, then makes a written determination that the award of the  
10 contract without delay is necessary to protect substantial interests of the  
11 ~~Territory~~ government of Guam; and

12 (2) absent a declaration of emergency procurement by *I*  
13 *Maga'lahaen Guåhan*, pursuant to § 5215, the protestant has been given *at*  
14 *least* two (2) days notice of the determination (exclusive of Guam holidays);  
15 and

16 (3) if the protest is pending before the Public Auditor or the court,  
17 the Public Auditor or the court has confirmed the validity of such  
18 determination, or if no such protest is pending, no protest to the Public  
19 Auditor of such determination is filed prior to expiration of the two (2) day  
20 period specified in Item (2) of this Subsection ~~(g)~~ (h) of this Section.;

21 (4) The two (2) days specified in Items (2) and (3) of this  
22 Subsection shall be determined as provided in 1 GCA § 1004.

23 (5) An immediate appeal of a decision of the Public Auditor to  
24 confirm or reject the determination of necessity and substantial interest may  
25 be taken to the Superior Court as provided in § 5480(a) of this Article  
26 without regard to the obligation to first fully exhaust administrative

1 remedies. Following judicial review of such decision, the matter shall be  
2 returned to the Public Auditor for final decision of the protest.

3 ~~(h)~~(i) Entitlement to Costs. In addition to any other relief or  
4 remedy granted under Subsections (c) or (e) of this Section, or under Subsection  
5 (a) of § 5480 of this Chapter, including the remedies provided by Subarticle B  
6 of Article 9 of this Chapter, when a protest is sustained, the protestant *shall* be  
7 entitled to the reasonable costs incurred in connection with the solicitation and  
8 protest, including bid preparation costs, excluding attorney's fees, if:

9 (1) the protestant should have been awarded the contract under the  
10 solicitation but was not; or

11 (2) there is a reasonable likelihood that the protestant may have  
12 been awarded the contract but for the breach of any ethical obligation  
13 imposed by Subarticle B of Article 11 of this Chapter or the willful or  
14 reckless violation of any applicable procurement law or regulation.

15 (3) The Public Auditor *shall* have the power to assess reasonable  
16 costs, including reasonable attorney fees incurred by the government,  
17 ~~including~~ to include its autonomous agencies and public corporations, or by  
18 any protestant or interested party, against a protestant upon its finding that  
19 the any party, including the government, making a protest, motion, or  
20 bringing any action was made fraudulently, frivolously, or ~~solely to~~ with  
21 predominant intent to delay or disrupt the procurement process.

22 (i) Finality. A decision of the Public Auditor is final unless a person  
23 adversely affected by the decision commences an appeal in the Superior Court  
24 as provided by § 5707(a) of this Chapter, and in accordance with the waiver of  
25 sovereign immunity conferred by Subsection (a) of § 5480 of this Chapter."

1       **Section 27.** § 5426 of Article 9 (Legal and Contractual Remedies), Chapter 5  
2 of Title 5, Guam Code Annotated, is *amended* to read as follows:

3       “§ 5426. **Authority to Debar or Suspend.**

4           (a) Authority. After reasonable notice to the person involved and  
5 reasonable opportunity for that person to be heard, the Chief Procurement  
6 Officer, the Director of Public Works, or the head of a purchasing agency, after  
7 consultation with the using agency and the Attorney General, *shall* have  
8 authority to debar a person for cause, or to suspend a person for probable cause,  
9 from consideration for award of contracts. The debarment *shall not* be for a  
10 period of more than two (2) years. ~~The same officer, after consultation with the~~  
11 ~~using agency and the Attorney General, shall have authority to suspend a person~~  
12 ~~from consideration for award of contracts if there is probable cause for~~  
13 ~~debarment.~~ The suspension *shall not* be for a period exceeding three (3)  
14 months. The authority to debar or suspend *shall* be exercised in accordance  
15 with regulations promulgated by the Policy Office.

16           (b) Causes for Debarment or Suspension. The causes for debarment or  
17 suspension include the following:

18           (1) conviction for commission of a criminal offense as an incident  
19 to obtaining or attempting to obtain a private contract or subcontract, or in  
20 the performance of such contract or subcontract;

21           (2) conviction under Guam or federal statutes of embezzlement,  
22 theft, forgery, bribery, falsification or destruction of records, receiving  
23 stolen property, or any other offense indicating a lack of business integrity or  
24 business honesty which currently, seriously and directly affects  
25 responsibility as a Guam contractor;

1 (3) conviction under federal antitrust statutes arising out of the  
2 submission of bids or proposals;

3 (4) violation of contract provisions, as set forth below, of a  
4 character which is regarded by the Chief Procurement Officer, the Director  
5 of Public Works, or the head of a purchasing agency to be so serious as to  
6 justify debarment action:

7 (A) deliberate failure without good cause to perform in  
8 accordance with the specifications or within the time limit provided in  
9 the contract; or

10 (B) a recent record of failure to perform or of unsatisfactory  
11 performance in accordance with the terms of one (1) or more  
12 procurement contracts; *provided*, that failure to perform or unsatisfactory  
13 performance caused by acts beyond the control of the contractor *shall not*  
14 be considered to be a basis for debarment; or

15 (C) upon a finding of the Department of Labor, failure to pay  
16 employees engaged on the contract in violation of the Wage  
17 Determination law or contract conditions.

18 (5) any other cause the Chief Procurement Officer, the Director of  
19 Public Works, or the head of a purchasing agency determines to be so  
20 serious and compelling as to affect responsibility as a ~~territorial~~ Guam  
21 contractor, including debarment by another governmental entity for any  
22 cause listed in regulations of the Policy Office;

23 (6) for violation of the ethical standards set forth in Article 11 of  
24 this Chapter.

25 (7) filing a frivolous or fraudulent petition, protest or appeal under  
26 § 5425(e), § 5426(f) or § 5427(e) of this Chapter.

1 (c) Decision. The Chief Procurement Officer, the Director of Public  
2 Works, or the head of a purchasing agency, *shall* issue a written decision to  
3 debar or suspend, or to reject any petition to do so brought under Subsection (f)  
4 of this Section. The decision *shall*:

5 (1) state the reasons for the ~~action taken~~ decision made; and

6 (2) inform the debarred or suspended person involved, or any  
7 person whose petition is rejected, of its rights to judicial or administrative  
8 review as provided in this Chapter.

9 (d) Notice of Decision. A copy of the decision under Subsection (c) of  
10 this Section *shall* be mailed electronically or otherwise furnished immediately  
11 to the debarred or suspended person, and any other party intervening or  
12 petitioning, and the head of all governmental bodies or purchasing agencies.

13 (e) Finality of Decision. A decision under Subsections (c) or (f) of this  
14 Section *shall* be final and conclusive, unless fraudulent, or an appeal is taken to  
15 the Public Auditor in accordance with § 5706 of this Chapter. Such a decision  
16 shall be automatically stayed during the pendency of any appeal, but any such  
17 appeal does not preclude nor require a determination of non-responsibility in  
18 any solicitation in which the person charged may participate. The officer  
19 issuing such decision shall immediately notify all persons, governmental  
20 bodies, and purchasing agencies of the fact and effect of such appeal.

21 (f) Any member of the public, including the bidder, offeror or contractor,  
22 as well as any elected official or employee of the government, may petition the  
23 Chief Procurement Officer, the Director of Public Works, or the head of a  
24 purchasing agency to take action to debar or suspend pursuant to Subsection (a)  
25 of this Section. The petition shall state the facts that the complainant believes  
26 to be true that warrant a suspension or debarment pursuant to this § 5426.

1 Immediately upon the receipt of such a petition, the person petitioned shall  
2 cause an investigation of each petition shall to be conducted. promptly and  
3 a written report should be made of findings of fact and action taken If the  
4 petitioned officer finds insufficient facts to proceed with a debarment or  
5 suspension hearing, he shall state the reasons in a written decision within sixty  
6 (60) days of receipt of the petition. If the person petitioned determines that  
7 sufficient facts may exist to debar or suspend the individual or company, then  
8 he shall hold a hearing as authorized in Subsection (a), and issue a decision as  
9 required in Subsection (c). If the petitioned officer does not issue the written  
10 decision required under Subsection (c) of this Section within sixty (60) days  
11 after written request by the petitioner for a final decision, then the petitioner  
12 may proceed with an appeal to the Public Auditor as if a the petition had been  
13 rejected.”  
14

15 **Section 28.** § 5427 of Article 9, Chapter 5 of Title 5, Guam Code Annotated, is  
16 *amended* to read as follows:

17 **“§ 5427. Authority to Resolve Contract and Breach of Contract**  
18 **Controversies.**

19 (a) Applicability. This Section applies to controversies between the  
20 Territory government of Guam and a contractor, and which arise under, or by  
21 virtue of, a procurement contract between them, as evidenced by the written  
22 demand of either party to the other for redress of a particularized claim or  
23 controversy. This includes, without limitation, controversies based upon breach  
24 of contract, mistake, misrepresentation, or other cause, for contract damages,  
25 modification, or rescission.

1 (b) Authority. The Chief Procurement Officer, the Director of Public  
2 Works, the head of a purchasing agency, or a designee of one of these officers,  
3 is authorized, prior to commencement of an action in a court concerning the  
4 controversy, to settle and resolve a controversy described in Subsection (a) of  
5 this Section. This authority *shall* be exercised in accordance with regulations  
6 promulgated by the Policy Office.

7 (c) Decision. If such a controversy is *not* resolved by mutual agreement,  
8 the Chief Procurement Officer, the Director of Public Works, the head of a  
9 purchasing agency, or the designee of one of these officers, *shall* promptly issue  
10 a decision in writing. The decision *shall*:

11 (1) state the reasons for the ~~action taken~~ decision made; and

12 (2) inform the contractor of its rights to judicial or administrative  
13 review as provided in this Chapter.

14 (d) Notice of Decision. A copy of ~~the~~ any decision under Subsection (c)  
15 of this Section *shall* be immediately served, mailed, communicated by any  
16 electronic or telephonic means used in the ordinary course of business which  
17 makes an electronic record of the communication, or otherwise furnished  
18 immediately provided to the contractor, and any right of the contractor to appeal  
19 shall be tolled by any delay of such notice.

20 (e) Finality of Decision. The decision reached pursuant to Subsection (c)  
21 of this Section *shall* be final and conclusive, *unless* fraudulent, or the contractor  
22 appeals administratively to the Public Auditor in accordance with § 5706 of this  
23 Chapter.

24 (f) Failure to Render Timely Decision. If the Chief Procurement Officer,  
25 the Director of Public Works, the head of a purchasing agency, or the designee  
26 of one of these officers, does *not* issue the written decision required under

1 Subsection (c) of this Section within sixty (60) days after written request for a  
2 final decision, or within such longer period as may be agreed upon by the  
3 parties, then the contractor may proceed as if an adverse decision had been  
4 received. If no decision is issued and no action is taken by the contractor to  
5 request a final decision, within two (2) years from the date the contract  
6 controversy arose, any claim or action thereon shall be barred.”  
7

8 **Section 29.** § 5450 of Article 9 Chapter 5 of Title 5, Guam Code Annotated, is  
9 *amended* to read as follows:

10 **“§ 5450. Applicability of this Part.**

11 The provisions of this Subarticle *only* apply where it is determined  
12 administratively, or upon administrative or judicial review, that a solicitation or  
13 award of a contract is in violation of law, and are in addition to any other  
14 remedy or relief allowed by law or equity.”

15 **Section 30.** § 5452 of Article 9 Chapter 5 of Title 5, Guam Code  
16 Annotated, is *amended* to read as follows:

17 **“§ 5452. Remedies After an Award.**

18 (a) If after an award it is determined that a solicitation or award of a contract  
19 is in violation of law, then:

20 (A)(a) if the person awarded the contract has *not* acted fraudulently or  
21 in bad faith:

22 (A)(1) the contract may be ratified and affirmed, provided it is  
23 determined that doing so is in the best interests of the Territory government  
24 of Guam; or



1           ~~(B)~~(2)the contract may be terminated and the person awarded the  
2 contract *shall* be compensated for the actual expenses reasonably incurred  
3 under the contract, plus a reasonable profit, prior to the termination.

4           ~~(2)~~(b)if the person awarded the contract has acted fraudulently or in  
5 bad faith:

6           ~~(A)~~(1)the contract may be declared null and void; or

7           ~~(B)~~(2)the contract may be ratified and affirmed if such action is in the  
8 best interests of the ~~Territory~~ government of Guam, without prejudice to the  
9 ~~Territory's~~ government's rights to such damages as may be appropriate.

10           (c)In either case, the determination to ratify or affirm the contract shall  
11 be made without regard to the interests of the person awarded the contract."

12           ~~(b) This Section shall be read as being in addition to and not in conflict with,~~  
13 ~~or repealing 4 GCA § 4137 (Prohibitions on the Activities of Government~~  
14 ~~Employees).~~

15  
16       **Section 31.** § 5480 of Subarticle D (Waiver of Sovereign Immunity;  
17 Limitations on Actions) of Article 9 (Legal and Contractual Remedies), Chapter 5  
18 of Title 5, Guam Code Annotated, is *amended* to read as follows:

19       **“§ 5480. Waiver of Sovereign Immunity by Grant of Jurisdiction in**  
20 **Connection with Contracts Controversies Arising Under Part A of this**  
21 **Article.**

22           (a) Solicitation and Award of Contracts. The Superior Court of  
23 Guam *shall* have jurisdiction over an action between the ~~Territory~~ government  
24 of Guam and a bidder, offeror, or contractor, either actual or prospective, to  
25 ~~determine whether a solicitation or award of a contract is in accordance with the~~  
26 ~~statutes, regulations, and terms and conditions of the solicitation~~ review any  
27 administrative decision or determination arising under § 5425 of this Chapter,

1 after appeal to the Public Auditor, to whether a solicitation or award of a  
2 contract is in accordance with the statutes, regulations, and the terms and  
3 conditions of the solicitation. The Superior Court *shall* have such jurisdiction  
4 in actions at law or in equity, and whether the actions are for monetary damages  
5 or other relief allowed under ~~§ 5425~~ this chapter; or for injunctive, declaratory,  
6 or other equitable relief, and whether the matter raised by the appeal is  
7 procedural or substantive in nature.

8 (b) Debarment or Suspension. The Superior Court *shall* have jurisdiction  
9 over an action between the ~~Territory~~ government of Guam and a person who is  
10 subject to a suspension or debarment proceeding, to review any decision of the  
11 Public Auditor brought pursuant to § 5705 of this Chapter to determine whether  
12 concerning the debarment or suspension or rejection of a petition to debar or  
13 suspend, is in accordance with the statutes § 5426 and § 5705 of this Chapter,  
14 and relevant statutes and regulations, whether a debarment or suspension is in  
15 accordance with § 5426 and § 5705 of this Chapter, and relevant statutes and  
16 regulations. The Superior Court *shall* have such jurisdiction, in actions at law or  
17 in equity, and whether the actions are for injunctive, declaratory, or other  
18 equitable relief.

19 (c) ~~In addition to other relief and remedies, the Superior Court shall have~~  
20 ~~jurisdiction to grant injunctive relief in any action brought under Subsections~~  
21 ~~(a), or (b) or (e) of this Section.~~ Actions Under Contract or for Breach of  
22 Contract. The Superior Court *shall* have jurisdiction over an action between the  
23 government of Guam and a contractor, brought after review by the Public  
24 Auditor in accordance with § 5706 of this Chapter, for any cause of action  
25 which arises under, or by virtue of, the contract, whether the action is at law or  
26 equity, whether the action is on contract or for breach of contract, and whether

1 the action is for monetary damages or injunctive, declaratory or other equitable  
2 relief.

3 (d) Limited Finality for Administrative Determinations. In any judicial  
4 action under this Section, factual or legal determinations by employees, agents,  
5 or other persons appointed by the ~~Territory~~ government of Guam, shall have no  
6 finality and shall not be conclusive, notwithstanding any contract provision, or  
7 regulation, *except* to the extent provided in §§ ~~5245, 5705 and 5706~~ and in  
8 Article 12 of this Chapter.

9 (e) ~~For purposes of this Section a “prospective” bidder, contractor or~~  
10 ~~offeror is one who will actually submit a bid, contract or otherwise offer his~~  
11 ~~services if, in the actions permitted by this Section, such person would prevail.~~  
12 Exhaustion of Administrative Remedies. No action shall be brought under any  
13 provision of this Section until all administrative remedies provided in this  
14 Chapter under Part A of Article 9, and Article 12, have been exhausted.

15 (f) Form of Review Under § 5480(a). ~~All actions permitted by this~~  
16 ~~Article shall be conducted as provided in the Government Claims Act.~~ All  
17 appeals permitted by Subsection (a) of this Section shall be treated as special  
18 proceedings for expeditious review of the administrative decision below, unless  
19 good cause is shown that it should proceed as a civil action.

20 (1) Form. All appeals permitted by Subsection (a) of this Section  
21 shall be treated as special proceedings for expeditious review of the  
22 administrative decision below, and judgment entered for any remedy or  
23 relief allowed thereunder. The review shall be a special proceeding  
24 conducted, however captioned, in accordance with the procedures for a  
25 Petition for Judicial Review and otherwise as compatible with the provisions  
26 of this Subarticle A.

1           (2) Effect on Automatic Stay. Upon timely appeal, the automatic stay  
2 shall be continued until there is a final decision; provided, the stay shall not  
3 be continued unless the appellant posts security in the manner required by  
4 GRCP Rule 65(c) and the provisions of Subsection (f)(3) of this Section.

5           (3) Security. The purpose of the security required by this Section is  
6 only to deter frivolous protests or appeals, including appeals made or  
7 conducted with the substantial purpose to harass or delay, and shall not be  
8 required without a finding that the protest or appeal is or is likely to be found  
9 to be frivolous. The amount of security required shall be determined by the  
10 court in sum as it deems proper, for the payment of such costs and damages  
11 as may be incurred or suffered by any party who is found to have been  
12 injured by reason of the frivolous protest or appeal; provided, the sum of  
13 security shall not exceed an amount greater than ten percent (10%) of the  
14 appellant's bid or proposal.

15           (g)Expedited Review of Appeals Under § 5480(a). Except as to criminal  
16 cases and such other cases of compelling importance as determined by the  
17 Presiding Judge of the Superior Court, proceedings before the Superior Court,  
18 as authorized by Subsection (a) of this Section, and appeals therefrom, take  
19 precedence over all cases and shall be assigned for hearing and trial or for  
20 argument at the earliest practicable date and expedited in every way. The times  
21 for responsive pleadings and for hearings in these proceedings shall be set by  
22 the Judge of the Court with the object of securing a decision as to these matters  
23 at the earliest possible time.”  
24

1       **Section 32.** § 5481 of Subarticle D (Waiver of Sovereign Immunity;  
2 Limitations on Actions) of Article 9 (Legal and Contractual Remedies), Chapter 5  
3 of Title 5, Guam Code Annotated, is *amended* to read as follows:

4       “**§ 5481. Time Limitations on Actions.**

5           (a) Protested Solicitations and Awards. Any action under § 5480(a) of  
6 this Chapter *shall* be initiated within fourteen (14) days after receipt of a final  
7 administrative decision.

8           (b) Debarments and Suspensions for Cause. Any action under § 5480(b)  
9 of this Chapter *shall* be commenced within six (6) months after receipt of the  
10 decision of the Policy Office under § 5651 of this Chapter, or the decision of  
11 the ~~Procurement Appeals Board~~ Public Auditor under § ~~5707~~ 5705 of this  
12 Chapter, whichever is applicable.

13           (c) Actions Under Contracts or for Breach of Contract. Any action  
14 commenced under § 5480(c) of this Chapter *shall* be commenced within twelve  
15 (12) months after the date of the ~~Procurement Appeals Board~~ Public Auditor’s  
16 decision.

17           (d) The limitations on actions provided by this Section are tolled during  
18 the pendency of any proceeding brought pursuant to § 5485 of this Chapter.”

19  
20       **Section 33.** § 5485(a) of Subarticle E (Procurement Data) of Article 9 (Legal  
21 and Contractual Remedies), Chapter 5 of Title 5, Guam Code Annotated, is  
22 *amended* to read as follows:

23           “(a) On complaint by any member of the public, the Superior Court  
24 has jurisdiction to enjoin a governmental body from withholding procurement  
25 data and to order the production of any government data improperly withheld  
26 from the complainant. In such a case, the court *shall* determine the matter *de*

1 *novo*, and may examine the contents of such procurement data in camera to  
2 determine whether such records or any part thereof *shall* be withheld under any  
3 of the exceptions set forth in ~~6-GCA-§ 4202~~ this Chapter and, to the extent not  
4 inconsistent, Chapter 10 of Title 5, Guam Code Annotated; and the burden is on  
5 the agency to sustain its action.”

6  
7 **Section 34.** § 5485(b) of Subarticle E of Article 9 (Legal and Contractual  
8 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
9 follows:

10 “(b) Notwithstanding any other provision of law, the government or  
11 a governmental body *shall* serve an answer or otherwise plead to any complaint  
12 made under this Section within thirty (30) days after service of the pleading in  
13 which such complaint is made, *unless* the court otherwise directs, for good  
14 cause shown.”

15  
16 **Section 35.** § 5703 of Article 12 (Procurement Appeals), Chapter 5 of Title 5,  
17 Guam Code Annotated, is *amended* to read as follows:

18 **“§ 5703. Jurisdiction of the Public Auditor.**

19 The Public Auditor *shall* have the power to review and determine *de*  
20 *novo* any matter properly submitted to her or him. The Public Auditor *shall not*  
21 have jurisdiction over disputes having to do with money owed to or by the  
22 government of Guam, *except as authorized under §§ 5427 and 5706 of this*  
23 *Chapter*. Notwithstanding § 5245 of this Chapter, no prior determination shall  
24 be final or conclusive on the Public Auditor or upon any appeal from the Public  
25 Auditor. The Public Auditor *shall* have the power to compel attendance and  
26 testimony of, and production of documents by any employee of the government

1 of Guam, including any employee of any autonomous agency or public  
2 corporation. The Public Auditor may consider testimony and evidence  
3 submitted by any competing bidder, offeror or contractor of the protestant. The  
4 Public Auditor's jurisdiction *shall* be utilized to promote the integrity of the  
5 procurement process and the purposes of Title 5 GCA Chapter 5.”

6  
7 **Section 36.** § 5705 of Article 12 (Procurement Appeals), Chapter 5 of 5, Guam  
8 Code Annotated, is *amended* to read as follows:

9 **“§ 5705. Suspension or Debarment Proceedings.**

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

12 (b) Time Limitation on Filing an Appeal. ~~The aggrieved person receiving~~  
13 an adverse decision under Subsection (c) or (f) of § 5426 of this Chapter,  
14 including a person suspended or debarred or a rejected petitioner, shall file  
15 his/her an appeal with the Public Auditor within ~~sixty (60)~~ thirty (30) days  
16 from the date of the receipt of a decision, or the date a petition is deemed  
17 rejected. ~~under Subsection (e) of § 5426 of this Chapter.~~

18 (c) Decision. The Public Auditor *shall* decide whether, or the extent to  
19 which, the decision to debar or suspend, or reject a petition to do so, ~~debarment~~  
20 or ~~suspension~~ was in accordance with the statutes, regulations and the best  
21 interest of the government or any autonomous agency or public corporation,  
22 and was fair. The Public Auditor *shall* issue her or his decision within thirty  
23 (30) days of the completion of the hearing on the issue.

24 (d) Appeal. Any person receiving an adverse decision, including the  
25 Chief Procurement Officer, the Director of Public Works, or the head of a  
26 purchasing agency, a person suspended or debarred, or a rejected petitioner,

1 may appeal from a decision by the Public Auditor to the Superior Court of  
2 Guam under the waiver of sovereign immunity provided in § 5480(b) of this  
3 Chapter.”  
4

5 **Section 37.** § 5706(b) of Article 12 (Procurement Appeals), Chapter 5 of Title  
6 5, Guam Code Annotated, is *amended* to read as follows:

7 “(b) Time Limitation on Filing an Appeal. The aggrieved contractor *shall*  
8 file ~~his/her~~ an appeal with the Public Auditor within sixty (60) days of the receipt  
9 of the decision, or within ~~sixty (60)~~ thirty (30) days following the failure to render  
10 a timely decision as provided in § 5427(f) of this Chapter.”  
11

12 **Section 38.** § 5707(a) of Article 12 (Procurement Appeals), Chapter 5 Title 5,  
13 Guam Code Annotated, is *amended* to read as follows:

14 “(a) Appeal. Any person receiving an adverse decision, including the  
15 contractor, ~~the~~ a governmental body, or a purchasing agency, ~~any autonomous~~  
16 ~~agency or public corporation, or both,~~ may appeal from a decision by the Public  
17 Auditor to the Superior Court of Guam, as provided in ~~Article D of Chapter~~ Article  
18 9 of this Chapter.”  
19

20 **Section 39.** § 5708 of Article 12 (Procurement Appeals), Chapter 5 of Title 5,  
21 Guam Code Annotated, is *amended* to read as follows:

22 **“§ 5708. Discontinuance of Contractor’s Appeal.**

23 It is the policy of this Act that procurement disputes be resolved  
24 expeditiously. Therefore, settlement agreements between the parties are  
25 encouraged, and appeals by a protestant or by the Chief Procurement Officer,  
26 the Director of Public Works, or the head of the purchasing agency, may be



1 settled by them, with or without prejudice, except to the extent that the Public  
2 Auditor determines that such a settlement would work an injustice on the  
3 integrity of the procurement system and an unconscionable prejudice on an  
4 intervening party. After notice of an appeal to the Public Auditor has been filed  
5 by the Chief Procurement Officer, the Director of Public Works, or the head of  
6 the purchasing agency, a contractor may *not* unilaterally discontinue such  
7 appeal without prejudice, except as authorized by the Public Auditor.”

8  
9 **Section 40.** A new § 5710 is hereby *added* to Article 12, Chapter 5, Title 5,  
10 Guam Code Annotated, to read as follows:

11 “§ 5710. Notwithstanding any other provision of Article 2 of this Chapter, the  
12 Public Auditor shall be authorized and responsible to promulgate regulations  
13 consistent with this Act, in accordance with the applicable provisions of the  
14 Administrative Adjudication Law, within one hundred eighty (180) days from the  
15 date of enactment of this Act, which regulations shall supersede any other  
16 regulations of any body specified in § 5131 of this Chapter.”

17 **Section 41. Severability.** *If* any provision of this law or its application to  
18 any person or circumstance is found to be invalid or contrary to law, such  
19 invalidity *shall not* affect other provisions or applications of this law which can be  
20 given effect without the invalid provisions or application, and to this end the  
21 provisions of this law are severable.

22 **Section 42. Effective Date.** This Act *shall* be effective one hundred eighty  
23 (180) days after enactment, but *shall not* apply to controversies that have been filed  
24 or administratively or judicially appealed prior to the date of enactment of this Act.