

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2017 (FIRST) Regular Session

Bill No. 28-34(COR)

Introduced by:

Thomas C. Ada 

AN ACT TO AMEND §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481, AND 5485(a) AND (b), ALL OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED; AND TO AMEND §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND ADD A NEW § 5710, ALL OF ARTICLE 12, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. § 5425 of Article 9, Chapter 5, Title 5, Guam Code Annotated, is amended to read as follows:

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

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

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

19 (c) Decision. If the protest is *not* resolved by mutual agreement, the
20 Chief Procurement Officer, the Director of Public Works, the head of a
21 purchasing the agency issuing the solicitation, or a designee of one of these
22 officers, *shall* promptly issue a decision in writing accepting or rejecting the
23 protest, in whole or in part. The decision shall include:

- 24 (1) ~~state the reasons for the action taken~~ the government's factual
25 and legal reasons for the decision made to accept or reject, in whole or in
26 part; and

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

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

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

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

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

4 (g) Disqualification of Public Auditor. The Public Auditor may recuse
5 herself or himself at any time and notify all parties, or any party may raise the
6 issue of disqualification and state the relevant fact prior to the hearing. The Public
7 Auditor shall make a determination and notify all parties. In the event of
8 disqualification or recusal of the Public Auditor, the Public Auditor shall
9 designate the senior member of his or her audit staff to be the appointed hearing
10 officer for procurement appeals to preside over the matter. If no member of the
11 Public Auditor’s staff or the appointed hearing officer is able to preside over the
12 matter due to disqualification, then such matter may be taken to the Superior
13 Court of Guam in accordance with 5 GCA § 5480.

14 ~~(g)(h) Automatic Stay. In the event of a timely protest under Subsection~~
15 ~~(a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory~~
16 ~~government of Guam shall not proceed further with the solicitation or with the~~
17 ~~award, or performance of the contract prior to the time allowed to appeal, or the~~
18 ~~final resolution of such protest, including a final entry of judgment, or the~~
19 ~~settlement of the protest evidenced by a writing signed by all interested parties,~~
20 ~~and any such further action is void, unless:~~

21 ~~(1) The Chief Procurement Officer or the Director of Public~~
22 ~~Works, after consultation with and the written concurrence of the head of~~
23 ~~the using or purchasing agency and the Attorney General or designated~~
24 ~~Deputy Attorney General, then makes a written determination that the~~
25 ~~award of the contract without delay is necessary to protect substantial~~
26 ~~interests of the Territory government of Guam; and~~

1 (2) ~~A~~bsent a declaration of emergency procurement by the
2 Governor, pursuant to § 5215, the protestant has been given *at least* two
3 (2) days notice of the determination (exclusive of ~~territorial~~ government of
4 Guam holidays); and

5 (3) ~~I~~f the protest is pending before the Public Auditor or the
6 Court, the Public Auditor or the Court has confirmed the validity of such
7 determination, or if no such protest is pending, no protest to the Public
8 Auditor of such determination is filed prior to expiration of the two (2) day
9 period specified in Item (2) of this Subsection (~~g~~) (h) of this Section.

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

12 (5) an immediate appeal of a decision of the Public Auditor to
13 confirm or reject the determination of necessity and substantial interest
14 may be taken to the Superior Court as provided in § 5480(a) of this Article
15 without regard to the obligation to first fully exhaust administrative
16 remedies. Following judicial review of such decision, the matter shall be
17 returned to the Public Auditor for final decision of the protest.

18 ~~(h)~~ (i) Entitlement to Costs. In addition to any other relief or remedy
19 granted under Subsections (c) or (e) of this Section, or under Subsection (a) of §
20 5480 of this Chapter, including the remedies provided by Subarticle B of Article
21 9 of this Chapter, when a protest is sustained, the protestant *shall* be entitled to
22 the reasonable costs incurred in connection with the solicitation and protest,
23 including bid preparation costs, excluding attorney's fees, if:

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

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

5 (3) ~~¶~~the Public Auditor *shall* have the power to assess reasonable
6 costs, including reasonable attorney fees incurred by the government,
7 ~~including to include~~ its autonomous agencies and public corporations, or
8 by any protestant or interested party, against a protestant upon its finding
9 that the any party, including the government, making a protest, motion, or
10 bringing any action was made fraudulently, frivolously, or solely to with
11 predominant intent to delay or disrupt the procurement process.

12 (j) Finality. A decision of the Public Auditor is final unless a person
13 adversely affected by the decision commences an appeal in the Superior Court as
14 provided by § 5707(a) of this Chapter, and in accordance with the waiver of
15 sovereign immunity conferred by Subsection (a) of § 5480 of this Chapter.”

16 **Section 2.** § 5426 of Article 9, Chapter 5, Title 5, Guam Code Annotated, is
17 *amended* to read as follows:

18 **“§ 5426. Authority to Debar or Suspend.**

19 (a) Authority. After reasonable notice to the person involved and
20 reasonable opportunity for that person to be heard, the Chief Procurement
21 Officer, the Director of Public Works, or the head of the a purchasing agency
22 issuing the solicitation, after consultation with the using agency and the Attorney
23 General, *shall* have authority to debar a person for cause, or to suspend a person
24 for probable cause, from consideration for award of contracts. The debarment
25 *shall not* be for a period of more than two (2) years. ~~The same officer, after~~
26 ~~consultation with the using agency and the Attorney General, shall have authority~~

1 to suspend a person from consideration for award of contracts if there is probable
2 cause for debarment. The suspension *shall not* be for a period exceeding three (3)
3 months. The authority to debar or suspend *shall* be exercised in accordance with
4 regulations promulgated by the Policy Office.

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

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

10 (2) conviction under ~~territorial~~ Guam or federal statutes of
11 embezzlement, theft, forgery, bribery, falsification or destruction of
12 records, receiving stolen property, or any other offense indicating a lack of
13 business integrity or business honesty which currently, seriously and
14 directly affects responsibility as a ~~territorial~~ Guam contractor;

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

17 (4) violation of contract provisions, as set forth below, of a
18 character which is regarded by the Chief Procurement Officer, the Director
19 of Public Works, or the head of the a purchasing agency issuing the
20 solicitation, to be so serious as to justify debarment action, to include:

21 (A) deliberate failure without good cause to perform in
22 accordance with the specifications or within the time limit provided
23 in the contract; or

24 (B) a recent record of failure to perform or of unsatisfactory
25 performance in accordance with the terms of one (1) or more
26 procurement contracts; provided, that failure to perform or

1 unsatisfactory performance caused by acts beyond the control of the
2 contractor *shall not* be considered to be a basis for debarment; or

3 (C) upon a finding of the Department of Labor, failure to
4 pay employees engaged on the contract in violation of the wage
5 determination law or contract conditions.

6 (5) any other cause the Chief Procurement Officer, the Director
7 of Public Works, or the head of the a-purchasing agency issuing the
8 solicitation, determines to be so serious and compelling as to affect
9 responsibility as a territorial Guam contractor, including debarment by
10 another governmental entity for any cause listed in regulations of the
11 Policy Office; or

12 (6) for violation of the ethical standards set forth in Article 11 of
13 this Chapter; or

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

16 (c) Decision. The Chief Procurement Officer, the Director of Public
17 Works, or the head of the a-purchasing agency issuing the solicitation, *shall* issue
18 a written decision to debar or suspend, or to reject any petition to do so brought
19 under Subsection (f) of this Section. The decision *shall*:

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

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

24 (d) Notice of Decision. A copy of the decision under Subsection (c) of
25 this Section *shall* be mailed electronically or otherwise furnished immediately to

1 the debarred or suspended person, and any other party intervening or petitioning,
2 and the head of all governmental bodies or purchasing agencies.

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

11 (f) Any member of the public, including the bidder, offeror or
12 contractor, as well as any elected official or employee of the government, may
13 petition the Chief Procurement Officer, the Director of Public Works, or the head
14 of a ~~purchasing~~ the agency issuing the solicitation, to take action to debar or
15 suspend pursuant to Subsection (a) of this Section. The petition shall state the
16 facts that the complainant believes to be true that warrant a suspension or
17 debarment pursuant to this § 5426. Immediately upon the receipt of such a
18 petition, the person petitioned shall cause ~~An an~~ an investigation of each petition
19 shall to be conducted promptly and a written report should be made of findings
20 of fact and action taken. If the petitioned officer finds insufficient facts to proceed
21 with a debarment or suspension hearing, he shall state the reasons in a written
22 decision within sixty (60) days of receipt of the petition. If the person petitioned
23 determines that sufficient facts may exist to debar or suspend the individual or
24 company, then he shall hold a hearing as authorized in Subsection (a), and issue
25 a decision as required in Subsection (c). If the petitioned officer does not issue
26 the written decision required under Subsection (c) of this Section within sixty

1 (60) days after written request by the petitioner for a final decision, then the
2 petitioner may proceed with an appeal to the Public Auditor as if the petition had
3 been rejected.”

4 **Section 3.** § 5427 of Article 9, Chapter 5, Title 5, Guam Code Annotated, is
5 *amended* to read as follows:

6 “§ 5427. **Authority to Resolve Contract and Breach of Contract**
7 **Controversies.**

8 (a) Applicability. This Section applies to controversies between the
9 Territory government of Guam and a contractor, and which arise under, or by
10 virtue of, a procurement contract between them, as evidenced by the written
11 demand of either party to the other for redress of a particularized claim or
12 controversy. This includes, without limitation, controversies based upon breach
13 of contract, mistake, misrepresentation, or other cause, for contract damages,
14 modification, or rescission.

15 (b) Authority. The Chief Procurement Officer, the Director of Public
16 Works, the head of a purchasing the agency issuing the solicitation, or a designee
17 of one of these officers, is authorized, prior to commencement of an action in a
18 court concerning the controversy, to settle and resolve a controversy described in
19 Subsection (a) of this Section. This authority *shall* be exercised in accordance
20 with regulations promulgated by the Policy Office.

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

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

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

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

9 (e) Finality of Decision. The decision reached pursuant to Subsection
10 (c) of this Section *shall* be final and conclusive, *unless* fraudulent, or the
11 contractor appeals administratively to the Public Auditor in accordance with §
12 5706 of this Chapter.

13 (f) Failure to Render Timely Decision. If the Chief Procurement
14 Officer, the Director of Public Works, the head of a ~~purchasing~~ the agency issuing
15 the solicitation, or the designee of one of these officers, does *not* issue the written
16 decision required under Subsection (c) of this Section within sixty (60) days after
17 written request for a final decision, or within such longer period as may be agreed
18 upon by the parties, then the contractor may proceed as if an adverse decision
19 had been received. If no decision is issued and no action is taken by the contractor
20 to request a final decision, within two (2) years from the date the contract
21 controversy arose, any claim or action thereon shall be barred.”

22 **Section 4.** § 5450 of Article 9, Chapter 5, Title 5, Guam Code Annotated, is
23 *amended* to read as follows:

24 “§ 5450. **Applicability of this Part.**

25 The provisions of this Subarticle *only* apply where it is determined
26 administratively, or upon administrative or judicial review, that a solicitation or

1 award of a contract is in violation of law, and are in addition to any other remedy
2 or relief allowed by law or equity.”

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

5 “§ 5452. **Remedies After an Award.**

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

8 (+) (a) if the person awarded the contract has *not* acted
9 fraudulently or in bad faith:

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

13 (B) (2) the contract may be terminated and the person
14 awarded the contract *shall* be compensated for the actual expenses
15 reasonably incurred under the contract, plus a reasonable profit,
16 prior to the termination;

17 (2) (b) if the person awarded the contract has acted
18 fraudulently or in bad faith:

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

20 (B) (2) the contract may be ratified and affirmed if such
21 action is in the best interests of the Territory government of Guam,
22 without prejudice to the Territory’s government of Guam’s rights to
23 such damages as may be appropriate.

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

1 (c) In either case, the determination to ratify or affirm the
2 contract shall be made without regard to the interests of the person
3 awarded the contract.”

4 **Section 6.** § 5480 of Subarticle D, Article 9, Chapter 5, Title 5, Guam Code
5 Annotated, is *amended* to read as follows:

6 “§ 5480. **Waiver of Sovereign Immunity by Grant of Jurisdiction**
7 **in Connection with ~~Contracts~~ Controversies Arising Under Part A of this**
8 **Article.**

9 (a) Solicitation and Award of Contracts. The Superior Court of Guam
10 shall have jurisdiction over an action between the Territory government of Guam
11 and a bidder, offeror, or contractor, either actual or prospective, to ~~determine~~
12 ~~whether a solicitation or award of a contract is in accordance with the statutes,~~
13 ~~regulations, and terms and conditions of the solicitation~~ review any
14 administrative decision or determination arising under § 5425 of this Chapter,
15 after appeal to the Public Auditor, to whether a solicitation or award of a contract
16 is in accordance with the statutes, regulations, and the terms and conditions of
17 the solicitation. The Superior Court *shall* have such jurisdiction in actions at law
18 or in equity, and whether the actions are for monetary ~~damages~~ or other relief
19 allowed under this Chapter; or for injunctive, declaratory, or other equitable
20 relief, and whether the matter raised by the appeal is procedural or substantive in
21 nature.

22 (b) Debarment or Suspension. The Superior Court *shall* have
23 jurisdiction over an action between the ~~Territory~~ government of Guam and a
24 person who is subject to a suspension or debarment proceeding, to review any
25 decision of the Public Auditor brought pursuant to § 5705 of this Chapter ~~to~~
26 ~~determine whether~~ concerning the debarment or suspension or rejection of a

1 petition to debar or suspend, is in accordance with the statutes § 5426 and § 5705
2 of this Chapter, and relevant statutes and regulations, whether a debarment or
3 suspension is in accordance with § 5426 and § 5705 of this Chapter, and relevant
4 statutes and regulations. The Superior Court *shall* have such jurisdiction, in
5 actions at law or in equity, and whether the actions are for injunctive, declaratory,
6 or other equitable relief.

7 (c) ~~In addition to other relief and remedies, the Superior Court shall~~
8 ~~have jurisdiction to grant injunctive relief in any action brought under~~
9 ~~Subsections (a), (b) or (c) of this Section.~~ Actions Under Contract or for Breach
10 of Contract. The Superior Court *shall* have jurisdiction over an action between
11 the government of Guam and a contractor, brought after review by the Public
12 Auditor in accordance with § 5706 of this Chapter, for any cause of action which
13 arises under, or by virtue of, the contract, whether the action is at law or equity,
14 whether the action is on the contract or for breach of contract, and whether the
15 action is for monetary damages or injunctive, declaratory or other equitable relief.

16 (d) Limited Finality for Administrative Determinations. In any judicial
17 action under this Section, factual or legal determinations by employees, agents,
18 or other persons appointed by the Territory government of Guam, *shall* have no
19 finality and shall not be conclusive, notwithstanding any contract provision, or
20 regulation, *except* to the extent provided in §§ 5245, 5705 and 5706 and in Article
21 12 of this Chapter.

22 (e) ~~For purposes of this Section a “prospective” bidder, contractor or~~
23 ~~offeror is one who will actually submit a bid, contract or otherwise offer his~~
24 ~~services if, in the actions permitted by this Section, such person would prevail.~~
25 Exhaustion of Administrative Remedies. No action shall be brought under any

1 provision of this Section until all administrative remedies provided in this
2 Chapter under Part A of Article 9, and Article 12, have been exhausted.

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

8 (1) Form. All appeals permitted by Subsection (a) of this Section
9 shall be treated as special proceedings for expeditious review of the
10 administrative decision below, and judgment entered for any remedy or
11 relief allowed thereunder. The review shall be a special proceeding
12 conducted, however captioned, in accordance with the procedures for a
13 Petition for Judicial Review and otherwise as compatible with the
14 provisions of this Subarticle A.

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

20 (3) Security. The purpose of the security required by this Section
21 is only to deter frivolous protests or appeals, including appeals made or
22 conducted with the substantial purpose to harass or delay, and shall not be
23 required without a finding that the protest or appeal is or is likely to be
24 found to be frivolous. The amount of security required shall be determined
25 by the court in a sum as it deems proper, for the payment of such costs and
26 damages as may be incurred or suffered by any party who is found to have

1 been injured by reason of the frivolous protest or appeal; provided, the sum
2 of security shall not exceed an amount greater than ten percent (10%) of
3 the appellant's bid or proposal.

4 (g) Expedited Review of Appeals Under § 5480(a). Except as to
5 criminal cases and such other cases of compelling importance as determined by
6 the Presiding Judge of the Superior Court, proceedings before the Superior Court,
7 as authorized by Subsection (a) of this Section, and appeals therefrom, take
8 precedence over all cases and shall be assigned for hearing and trial or for
9 argument at the earliest practicable date and expedited in every way. The times
10 for responsive pleadings and for hearings in these proceedings shall be set by the
11 Judge of the Court with the object of securing a decision as to these matters at
12 the earliest possible time.”

13 **Section 7.** § 5481 of Subarticle D, Article 9, Chapter 5, Title 5, Guam Code
14 Annotated, is *amended* to read as follows:

15 **“§ 5481. Time Limitations on Actions.**

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

19 (b) Debarments and Suspensions for Cause. Any action under §
20 5480(b) of this Chapter *shall* be commenced within six (6) months after receipt
21 of the decision of the Policy Office under § 5651 of this Chapter, or the decision
22 of the ~~Procurement Appeals Board~~ Public Auditor under § ~~5707~~ 5705 of this
23 Chapter, whichever is applicable.

24 (c) Actions Under Contracts or for Breach of Contract. Any action
25 commenced under § 5480(c) of this Chapter *shall* be commenced within twelve

1 (12) months after the date of the ~~Procurement Appeals Board~~ Public Auditor's
2 decision.

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

5 **Section 8.** § 5485(a) of Subarticle E, Article 9, Chapter 5, Title 5, Guam Code
6 Annotated, is *amended* to read as follows:

7 “(a) On complaint by any member of the public, the Superior Court has
8 jurisdiction to enjoin a governmental body from withholding procurement data
9 and to order the production of any government data improperly withheld from
10 the complainant. In such a case, the court *shall* determine the matter *de novo*, and
11 may examine the contents of such procurement data in camera to determine
12 whether such records or any part thereof *shall* be withheld under any of the
13 exceptions set forth in ~~6 GCA § 4202~~ this Chapter and, to the extent not
14 inconsistent, Chapter 10 of Title 5, Guam Code Annotated; and the burden is on
15 the agency to sustain its action.”

16 **Section 9.** § 5485(b) of Subarticle E, Article 9, Chapter 5, Title 5, Guam Code
17 Annotated, is *amended* to read as follows:

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

23 **Section 10.** § 5703 of Article 12, Chapter 5, Title 5, Guam Code Annotated, is
24 *amended* to read as follows:

25 “§ 5703. **Jurisdiction of the Public Auditor.**

1 The Public Auditor *shall* have the power to review and determine *de novo*
2 any matter properly submitted to her or him. The Public Auditor *shall not* have
3 jurisdiction over disputes having to do with money owed to or by the government
4 of Guam, except as authorized under §§ 5427 and 5706 of this Chapter.
5 Notwithstanding § 5245 of this Chapter, no prior determination shall be final or
6 conclusive on the Public Auditor or upon any appeal from the Public Auditor.
7 The Public Auditor *shall* have the power to compel attendance and testimony of,
8 and production of documents by any employee of the government of Guam,
9 including any employee of any autonomous agency or public corporation. The
10 Public Auditor may consider testimony and evidence submitted by any
11 competing bidder, offeror or contractor of the protestant. The Public Auditor’s
12 jurisdiction *shall* be utilized to promote the integrity of the procurement process
13 and the purposes of Title 5 GCA Chapter 5.”

14 **Section 11.** § 5705 of Article 12, Chapter 5, Title 5, Guam Code Annotated, is
15 *amended* to read as follows:

16 “§ 5705. **Suspension or Debarment Proceedings.**

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

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

25 (c) Decision. The Public Auditor *shall* decide whether, or the extent to
26 which, the decision to debar or suspend, or reject a petition to do so, debarment

1 ~~or suspension~~ was in accordance with the statutes, regulations and the best
2 interest of the government or any autonomous agency or public corporation, and
3 was fair. The Public Auditor *shall* issue her or his decision within thirty (30) days
4 of the completion of the hearing on the issue.

5 (d) Appeal. Any person receiving an adverse decision, including the
6 Chief Procurement Officer, the Director of Public Works, or the head of the
7 agency issuing the solicitation, a person suspended or debarred, or a rejected
8 petitioner, may appeal from a decision by the Public Auditor to the Superior
9 Court of Guam under the waiver of sovereign immunity provided in § 5480(b) of
10 this Chapter.”

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

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

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

19 “(a) Appeal. Any person receiving an adverse decision, including the
20 contractor, the governmental body, or the agency issuing the solicitation, any
21 ~~autonomous agency or public corporation, or both,~~ may appeal from a decision
22 by the Public Auditor to the Superior Court of Guam, as provided in ~~Article D~~ of
23 ~~Chapter~~ Article 9 of this Chapter.”

24 **Section 14.** § 5708 of Article 12, Chapter 5, Title 5, Guam Code Annotated, *is*
25 *amended* to read as follows:

26 “§ 5708. **Discontinuance of Contractor’s Appeal.**

1 It is the policy of this Act that procurement disputes be resolved
2 expeditiously. Therefore, settlement agreements between the parties are
3 encouraged, and appeals by a protestant or by the Chief Procurement Officer, the
4 Director of Public Works, or the head of the agency issuing the solicitation, may
5 be settled by them, with or without prejudice, except to the extent that the Public
6 Auditor determines that such a settlement would work an injustice on the integrity
7 of the procurement system and an unconscionable prejudice on an intervening
8 party. After notice of an appeal to the Public Auditor has been filed by the Chief
9 Procurement Officer, the Director of Public Works, or the head of the Purchasing
10 Agency issuing the solicitation, a contractor may *not unilaterally* discontinue
11 such appeal without prejudice, except as authorized by the Public Auditor.”

12 **Section 15.** A new § 5710 is hereby *added* to Article 12, Chapter 5, Title 5,
13 Guam Code Annotated, to read as follows:

14 “§ 5710. Promulgation of Regulations by the Office of Public
15 Accountability (OPA). Notwithstanding any other provision of Article 2 of this
16 Chapter, the Public Auditor shall be authorized and responsible to promulgate
17 regulations consistent with this Act, in accordance with the applicable provisions
18 of the Administrative Adjudication Law, within one hundred eighty (180) days
19 from the date of enactment of this Act. Regulations adopted by the Office of
20 Public Accountability (OPA) may be changed or rescinded by the Policy Office
21 acting under the authority granted in § 5102. The Office of Public Accountability
22 (OPA) shall perform as the Policy Office until the Policy Office is established
23 with its full complement of members.”

24 **Section 16. Severability.** If any provision of this law or its application to any
25 person or circumstance is found to be invalid or contrary to law, such invalidity *shall*
26 *not* affect other provisions or applications of this law that can be given effect without

1 the invalid provisions or application, and to this end the provisions of this law are
2 severable.

3 **Section 17. Effective Date.** This Act *shall* be effective one hundred eighty
4 (180) days after enactment, but *shall not* apply to controversies that have been filed or
5 administratively or judicially appealed prior to the date of enactment of this Act.