



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

October 4, 2011

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Unu Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

31-11-999
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 10/4/11
Time 4:00 PM
Received by [Signature]

Dear Madame Speaker:

Transmitted herewith is Substitute Bill No. 159-31 (COR) "AN ACT TO ADD A NEW ARTICLE 14 TO CHAPTER 5, RELATIVE TO ESTABLISHING THE GUAM PROCUREMENT ADVISORY COUNCIL; TO ADD NEW §§5118 AND 5119 TO PART B, ARTICLE 2 OF CHAPTER 5, RELATIVE TO PROCUREMENT COUNSEL, AND LEGISLATIVE INQUIRIES AND HEARINGS; AND TO AMEND §20512 OF DIVISION 1, ARTICLE 1 OF CHAPTER 20, RELATIVE TO THE SPECIAL SURPLUS PROPERTY FUND, ALL OF TITLE 5, GUAM CODE ANNOTATED", which was signed into law on September 30, 2011 as Public Law 31-93.

Senseramente,

EDDIE BAZA CALVO

2011 OCT -5 AM 8:07
[Signature]

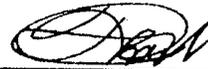
Attachment: copy of Bill

939

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 159-31 (COR), "AN ACT TO ADD A NEW ARTICLE 14 TO CHAPTER 5, RELATIVE TO ESTABLISHING THE GUAM PROCUREMENT ADVISORY COUNCIL; TO ADD NEW §§5118 AND 5119 TO PART B, ARTICLE 2 OF CHAPTER 5, RELATIVE TO PROCUREMENT COUNSEL, AND LEGISLATIVE INQUIRIES AND HEARINGS; AND TO AMEND §20512 OF DIVISION 1, ARTICLE 1 OF CHAPTER 20, RELATIVE TO THE SPECIAL SURPLUS PROPERTY FUND, ALL OF TITLE 5, GUAM CODE ANNOTATED," was on the 19th day of September, 2011, duly and regularly passed.



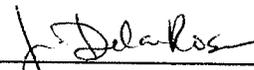
Judith T. Won Pat, Ed.D.
Speaker

Attested:



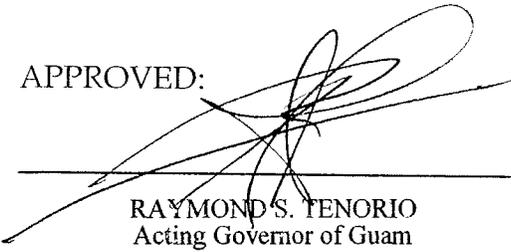
Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 20th day of Sept., 2011, at
4.10 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



RAYMOND S. TENORIO
Acting Governor of Guam

SEP 30 2011

Date: _____
Public Law No. 31-931

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 159-31 (COR)

As substituted by the Committee on Youth, Cultural Affairs,
Government Operations, Procurement and Public Broadcasting,
and amended on the Floor.

Introduced by:

B. J.F. Cruz
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
Chris M. Dueñas
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
v. c. pangelinan
Dennis G. Rodriguez, Jr.
R. J. Respicio
M. Silva Taijeron
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *ADD* A NEW ARTICLE 14 TO CHAPTER 5, RELATIVE TO ESTABLISHING THE GUAM PROCUREMENT ADVISORY COUNCIL; TO *ADD* NEW §§5118 AND 5119 TO PART B, ARTICLE 2 OF CHAPTER 5, RELATIVE TO PROCUREMENT COUNSEL, AND LEGISLATIVE INQUIRIES AND HEARINGS; AND TO *AMEND* §20512 OF DIVISION 1, ARTICLE 1 OF CHAPTER 20, RELATIVE TO THE SPECIAL SURPLUS PROPERTY FUND, ALL OF TITLE 5, GUAM CODE ANNOTATED.

1 (j) a Guam resident experienced in procurement from the retail or
2 service sector selected by *I Maga'lahen Guåhan*;

3 (k) the Chairman of the Board of Accountancy; and

4 (l) the Dean of the School of Business and Public Administration
5 of the University of Guam.

6 (m) The Council *shall* elect its Chairperson.

7 **§ 5902. Duties.** The Council is empanelled to perform the
8 following duties:

9 (a) to conduct studies, research and analysis on all matters
10 relating to the effectiveness, responsiveness and timeliness of
11 government procurement, including the review and comparison with
12 model procurement code legislation and consultation with division
13 heads, school principals and other mid-level managers, and end users
14 of government procured goods and services;

15 (b) to critically examine the substantive and procedural
16 aspects of the Guam Procurement Act and existing administrative
17 rules and regulations governing procurement, including the legal
18 authorities, composition, and effectiveness of the Procurement Policy
19 Office;

20 (c) to review the legal infrastructure of the government
21 procurement system to ensure the uniformity of law, regulation and
22 practice;

23 (d) to propose recommendations for the improvement and
24 modernization and the use of “best value” and “performance based”
25 methods as the basis for evaluation of government procurement
26 activities;

1 (e) to make recommendations and identify methods to
2 address new industries and technologies and financial systems, while
3 maintaining the general principles of procurement law;

4 (f) to review, make recommendations and provide advice on
5 any aspect of law, regulation or policy that affect procurement,
6 including laws and processes *not* directly found in the Guam
7 Procurement Act; and

8 (g) to review the statutes and process for procurement
9 appeals and recommend improvements, if any.

10 **§ 5903. Limitations.** The Council *shall not* have any executive
11 participation in the day-to-day implementation of the Guam Procurement
12 Act. It *shall not* have any executive, legislative, or adjudicative review
13 authority over procurement matters.

14 **§ 5904. Reports.** The Council *shall* provide reports to the
15 Speaker of *I Liheslaturan Guåhan* and *I Maga'lahaen Guåhan* as follows:

16 (a) **First Report.** The first report of the Council *shall* be
17 made on December 1, 2011 indicating its progress. The report may
18 include any recommendations for proposed legislation, revisions to
19 administrative rules and regulations, or any relevant matter.

20 (b) **Second Report.** The second report of the Council *shall*
21 be made on April 1, 2012 indicating its progress. The report may
22 include any recommendations for proposed legislation, revisions to
23 administrative rules and regulations, or any relevant matter.

24 (c) **Final Report.** The final report of the Council *shall* be
25 made on August 1, 2012, and *shall* include draft legislation, revisions
26 to administrative rules and regulations, or any relevant matter.

1 **§ 5905. Administration.** The Council *shall* have the authority to
2 retain professional and support staff to assist it with its duties, and *shall*
3 designate an Administrative Director. However, the Director of
4 Administration *shall* provide and coordinate administrative support services
5 to the Council from the Department of Administration. The Office of *I*
6 *Maga'lahi* (the Governor), the Office of the Attorney General, the Office of
7 the Public Auditor, and other executive branch agencies may provide, loan
8 or transfer resources to the Council to support its operations.

9 **§ 5906. Guam Procurement Advisory Council Support Fund.**
10 There is hereby established a Guam Procurement Advisory Council Support
11 Fund (Fund) to be maintained by the Director of Administration. *I*
12 *Maga'lahaen Guåhan* and the Director of Administration are authorized to
13 transfer amounts into the Fund to support the operations of the Council. Any
14 legislative appropriations to support the operations of the Council *shall* be
15 deposited into the Guam Procurement Advisory Council Support Fund. The
16 Chief Procurement Officer is authorized to transfer funds from the Special
17 Surplus Property Fund to support the operations of the Guam Procurement
18 Advisory Council.

19 **§ 5907. Responsiveness of the Government.** The Guam
20 Procurement Advisory Council may compel department and agency heads to
21 provide or compile any information relative to the procurement of goods and
22 services. Department and agency heads *shall* facilitate compliance with any
23 requests from the Council.

24 **§ 5908. General Services Agency (GSA) Staff & Procurement**
25 **Counsel Support.** The Chief Procurement Officer, Procurement Counsel,
26 and GSA staff *shall* provide administrative and technical assistance to the
27 Council. Such assistance *shall* be at the discretion of the Chief Procurement

1 Officer. However, the Procurement Counsel *shall* assist with the preparation
2 of any legislation, rules or regulations.”

3 **Section 2.** §20512 of Division 2, Article 5 of Chapter 20, Title 5, Guam
4 Code Annotated, is hereby *amended* to read as follows:

5 **“§ 20512. Special Surplus Property Fund.**

6 (a) There is hereby established a fund to be known as the *Special*
7 *Surplus Property Fund*, which *shall* be maintained separate and apart from
8 any other funds from the government of Guam, and independent records and
9 accounts thereof *shall* be established in connection therewith. The Chief
10 Procurement Officer *shall* be the Certifying Officer of this Fund.

11 (b) All appropriations made for the purpose of implementing this
12 Article *shall* be deposited with the Special Fund. All receipts from charges
13 or fees assessed pursuant to §20511 of this Article *shall* additionally be
14 placed in the Special Fund. All proceeds from the sale or disposition of
15 surplus supplies *shall* also be placed in the Special Fund. All debts,
16 liabilities, obligations and operating expenses to manage this Fund, incurred
17 pursuant to this Article *shall* be paid by the Chief Procurement Officer from
18 said Fund. The Chief Procurement Officer is authorized to expend said
19 funds for the training and development of GSA personnel and to support the
20 operations of the Guam Procurement Advisory Council.

21 (c) The Chief Procurement Officer *shall* render quarterly to *I*
22 *Maga’lahi* (the Governor) and to *I Liheslatura* (the Legislature) a statement
23 reflecting the financial condition of the Special Fund and a financial
24 statement of operations of the said Special Fund for the period covered.”

25 **Section 3.** A new §5118 is hereby *added* to Part B of Article 2 of Chapter
26 5, Title 5, Guam Code Annotated, to read as follows:

1 **“§ 5118. Procurement Counsel.** The Department of
2 Administration may employ an attorney to assist the General Services
3 Agency, to be called the Procurement Counsel. The Director of
4 Administration *shall* set the terms and conditions of employment for the
5 attorney and determine his or her compensation consistent with the laws of
6 Guam. The attorney *shall* be a full-time employee, and *shall* be admitted to
7 practice before the courts of Guam under the same conditions as are
8 attorneys employed by the government pursuant to Title 7 GCA, §§9A114
9 and 9A114A. The Procurement Counsel *shall* assist and advise the Chief
10 Procurement Officer on all civil matters in which the General Services
11 Agency is legally interested, provided that the Office of the Attorney
12 General *shall* represent the General Services Agency. The attorney *shall*
13 provide technical assistance to the Guam Procurement Advisory Council,
14 and *shall* assist with the preparation of any legislation, rules or regulations.
15 The incumbent procurement advisor *shall* be designated as the procurement
16 counsel.”

17 **Section 4.** A new §5119 is hereby *added* to Part B of Article 2 of Chapter
18 5, Title 5, Guam Code Annotated, to read as follows:

19 **“§ 5119. Legislative Inquiries & Hearings.** The Chief
20 Procurement Officer *shall* be directly responsive to any legislative inquiries
21 and *shall* provide oral or written testimony on any matter relative to
22 procurement to *I Liheslaturan Guåhan* (the Guam Legislature) without the
23 approval of any executive branch official.”

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (FIRST) Regular Session

Date: Sept. 19, 2011

VOTING SHEET

SBill No. 159-31(COR)

Resolution No. _____

Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.	✓				
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera		✓			
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana	✓				
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				

TOTAL

14 1 0 0 0

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



July 19, 2011

The Honorable Judith T. Won Pat
Speaker
I Mina' Trentai Unu Na Liheslatuaran Guahan
31st Guam Legislature
155 Hesler Place
Hagatna, Guam 96910

2011 JUL 25 AM 10:17
MM

VIA: The Honorable Rory J Respicio
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 159-31 (COR)- As Substituted

Dear Speaker Won Pat:

Transmitted herewith is the Report of Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting the on Substitute Bill No. 159-31(COR) "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated." – sponsored by Vice Speaker Benjamin J.F. Cruz, and referred to the Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting.

Committee votes are as follows:

<u>6</u>	TO DO PASS
_____	TO NOT PASS
<u>1</u>	TO REPORT OUT ONLY
_____	TO ABSTAIN
_____	TO PLACE IN INACTIVE FILE

Sincerely,

BENJAMIN J.F. CRUZ
Chairperson



July 19, 2011

The Honorable Judith T. Won Pat
Speaker
I Mina' Trentai Unu Na Liheslatuaran Guahan
31st Guam Legislature
155 Hesler Place
Hagatna, Guam 96910

VIA: The Honorable Rory J Respicio
Chairperson, Committee on Rules

2011 JUL 25 AM 10:17
mw

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Committee votes are as follows:

<u>5</u>	TO DO PASS
_____	TO NOT PASS
<u>1</u>	TO REPORT OUT ONLY
_____	TO ABSTAIN
_____	TO PLACE IN INACTIVE FILE

Sincerely,

BENJAMIN J.F. CRUZ
Chairperson



COMMITTEE REPORT

ON

Bill No. 159-31 (COR)

“An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated”

**As Substituted by the
Committee on Youth, Cultural Affairs,
Procurement, General Government Operations
and Public Broadcasting**



July 19, 2011

MEMORANDUM

TO: All Members
Committee on Youth, Cultural Affairs, Procurement, General
Government Operations and Public Broadcasting

FROM: Vice Speaker Benjamin J.F. Cruz

SUBJECT: Committee Report on Bill No. 159-31(COR)- As Substituted

Transmitted herewith for your consideration is the Committee Report on Bill No. 159-31(COR)-
"An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to
Title 5 of the Guam Code Annotated."

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Bill No. 159-31(COR)
- Substitute Bill No. 159-31(COR)
- Public Hearing Sign-in Sheet
- COR Referral of Bill No. 159-31(COR)
- Fiscal Note Requirement
- Notices of Public Hearing
- Public Hearing Agenda

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Benjamin J.F. Cruz".

BENJAMIN J.F. CRUZ
Chairperson



COMMITTEE VOTING SHEET

Bill No. 159-31(COR) - "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated"

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
CRUZ, BENJAMIN J.F. Chairperson		✓ 7/19/11				
MUÑA BARNES, TINA ROSE Vice-Chairperson						
WON PAT, JUDITH T. Speaker and Ex-Officio Member						
ADA, THOMAS C. Member		✓ 7/19/11				
GUTHERTZ, JUDITH P. Member		✓ 7/19/11				
RESPICIO, RORY J. Member						
RODRIGUEZ, DENNIS G. JR. Member				7/19/11		
ADA, V. ANTHONY Member		✓ 7/19/11				
DUENAS, CHRISTOPHER Member		✓ 7/19/11				
MABINI, SAM Member						
YAMASHITA, ALINE Member		7/19/11				



Committee Report Digest

I. OVERVIEW

The Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting convened a public hearing on Thursday April 28th, 2011 at 1:00 p.m. in the Public Hearing Room of *I Liheslatura*. Among the items on the agenda was the consideration of Bill No. 159-31(COR) - "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated."

Bill No. 159-31(COR) would establish a procurement council charged with reviewing existing procurement laws and making suggestions about improving the procurement process. These duties are as follows;

1. Conduct studies, research and analysis on all matters relating to the effectiveness, responsiveness and timeliness of government procurement including the review and comparison with model procurement code legislation and consultation with division heads, school principals and other mid-level managers and end users of government procured goods and services;
2. Critically examine the substantive and procedural aspects of the Guam Procurement Act and existing administrative rules and regulations governing procurement including the legal authorities, composition, and effectiveness of the Procurement Policy Office;
3. Review the legal infrastructure of the government procurement system to ensure the uniformity of law, regulation and practice;
4. Propose recommendations for the improvement and modernization and the use of "best value" and "performance based" methods as the basis for evaluation of government procurement activities;
5. Make recommendations and identify methods to address new industries and technologies and financial systems, while maintaining the general principles of procurement law; and



6. Review, make recommendations and provide advice on any aspect of law, regulation or policy that affect procurement, including laws and processes not directly found in the Guam Procurement Act; and
7. Review the statutes and process for procurement appeals and recommend improvements if any.

Public Notice Requirements

All legal requirements for public notices were met, with requests for publication sent to all media and all senators on April 21st and 26th via email. Copies of the hearing notices are appended to the report.

Senators Present

Vice Speaker Benjamin J.F. Cruz, Chairperson
Senator Thomas C. Ada, Committee Member
Senator Aline A. Yamashita, Ph.D., Committee Member
Senator Ben Pangelinan, Senator
Senator V. Anthony Ada, Committee Member
Senator Chris Duenas, Committee Member

The public hearing was called to order at 1:05 p.m.

II. SUMMARY OF TESTIMONY AND DISCUSSION

Vice Speaker Benjamin J.F. Cruz called the public hearing to order at 1:05 p.m. and announced the afternoon's agenda and public hearing notices. Senator Cruz thanked all for their attendance and started the hearing off with Bill No. 159-31.

Vice Speaker Cruz lamented that the bill was not his original idea, and that it was actually an idea he had seen in the Marianas Variety in an article by John Thomas Brown, a local attorney. He noted the attendance of Mr. Brown and stated he would be honored if Mr. Brown would testify on the bill since it was his idea anyway.

John Thomas Brown wished the Senators a good afternoon and stated that the idea was not an original idea of his either and that it was in the original ABA model procurement code which was passed as Bill 124 in the 16th Guam Legislature. The intent of bill 159-31 is to create a "college" if you will of informed people of who can have an intelligent debate about procurement. He said he was honored that the Vice Speaker chose to follow his composition but



felt that the compiler of laws should be the mediator. He noted that the legislation seems to have a bias to procurement which is a relatively new approach for government and since it's untested it may have its own problems.

Phil Tydingco, Deputy Attorney General stated he supported the bill as drafted.

Anthony Camacho, Attorney. Wholeheartedly supports the passage of this bill. He agrees that Government should reevaluate its procurement process. He does feel however that the legislature needs to ensure that the council does not share the same fate as the Guam Procurement Policy Office created by 5GCA §5101A and placed under the Office of the Governor of Guam. It consisted of 3 members appointed by the Governor and also included the Director of DPW and the Director of DOA who sits as chairman of the Commission. It is not known if any governor has ever appointed any members, but the office has never promulgated any policy on procurement. He believes that the council created by Bill No. 159-31 should supersede and replace the Procurement Policy Office.

Vice Speaker Cruz thanked Attorney Camacho for his excellent testimony and called the next person to testify.

Joe Roberto. Owner Island Tinting, Mr. Roberto said he is testifying in his capacity as a member of the Guam Contractors Association. He asks the legislature to consider creating this body as it will go a long way creating better procurement practices within the Government.

Vice Speaker Cruz thanked all for their participation and stated he would keep the committee report open for a few months as all shareholders took place in negotiating the language.

Written Testimony attached was provided by;

John Thomas Brown, Local Attorney

Anthony Camacho, Local Attorney

Doris Flores Brooks, Public Auditor

The proposed changes to Bill No. 159-31 are as follows;

- (1) Add the senior member of the Governor's staff to chair the counsel to ensure prioritization by the Executive Branch.
- (2) Added the following duties to the Council:



- (2) Added the following duties to the Council:
 - a. Examine the legal authorities, composition, and effectiveness of the Procurement Policy Office'
 - b. Review the statutes and process for procurement appeals and recommend improvements
- (3) Adopted realistic dates for report submission
- (4) Create the Procurement Advisory Council Support Fund
- (5) Amend the Special Surplus Property Fund to support Training and Council Operations
- (6) Authorize the Director of Administration to employ a Procurement Counsel
- (7) Enable the Chief Procurement Officer to respond directly on legislative inquiries and public hearings

III. FINDINGS AND RECOMMENDATION

The Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting to which was referred Bill No. 159-31(COR) finds that this legislation will aid the Government by providing a council to provide new and standardized procurement guidelines. This will aid the government by streamlining the process and perhaps reducing the amount of procurement challenges and make the process easier to get projects awarded to the correct vendor.

The Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting to which was referred Bill No. 159-31(COR) "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated" hereby submits these findings to *I Mina' Trentai Unu na Liheslaturan Guahan* and reports out Bill No. 159-31(COR) with a recommendation **TO PASS.**

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) REGULAR SESSION

Bill No. 159-3i(car)

Introduced by:

B.J.F. CRUZ
T.R. MUNA BARNES

2011 APR 20 11 44 AM

**AN ACT TO ESTABLISH THE GUAM PROCUREMENT
ADVISORY COUNCIL BY ADDING A NEW ARTICLE
14 TO TITLE 5 OF THE GUAM CODE ANNOTATED**

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

2 **Section 1.** A new Article 14 is added to Title 5 of the Guam Code

3 Annotated as follows:

4 **“ARTICLE 14**

5 **GUAM PROCUREMENT ADVISORY COUNCIL**

6 **§ 5900. Guam Procurement Advisory Council.** There is hereby
7 established within the Government of Guam, the Guam Procurement
8 Advisory Council (Council) to research, evaluate, analyze, review and make
9 recommendations to improve, address and modernize government
10 procurement and contracting.

11 **§ 5901. Composition.** The Council shall be comprised of the
12 following members:

- 13 1. The Attorney General of Guam or his designee, who shall serve
14 as Chairperson of the Council;
- 15 2. The Public Auditor or his designee;
- 16 3. The Compiler of Laws;
- 17 4. The Chief Procurement Officer;

- 1 5. The Director of Administration;
- 2 6. The Director of Public Works;
- 3 7. An attorney in private practice admitted to the Guam Bar
- 4 selected by *I Maga'lahaen Guåhan*;
- 5 8. A Guam resident experienced in the construction industry
- 6 selected by *I Maga'lahaen Guåhan*;
- 7 9. A Guam resident experienced in the retail or service sector
- 8 selected by *I Maga'lahaen Guåhan*;
- 9 10. The Chairman of the Board of Accountancy; and
- 10 11. The Dean of the School of Business and Public Administration
- 11 of the University of Guam.

12 **§ 5902. Duties.** The Council is empanelled to perform the following
13 duties:

- 14 1. Conduct studies, research and analysis on all matters relating to the
- 15 effectiveness, responsiveness and timeliness of government
- 16 procurement including the review and comparison with model
- 17 procurement code legislation and consultation with division heads,
- 18 school principals and other mid-level managers and end users of
- 19 government procured goods and services;
- 20 2. Critically examine the substantive and procedural aspects of the
- 21 Guam Procurement Act and existing administrative rules and
- 22 regulations governing procurement;
- 23 3. Review the legal infrastructure of the government procurement
- 24 system to ensure the uniformity of law, regulation and practice
- 25 4. Propose recommendations for the improvement and modernization
- 26 and the use of “best value” and “performance based” methods as
- 27 the basis for evaluation of government procurement activities;

- 1 5. Make recommendations and identify methods to address new
2 industries and technologies and financial systems, while
3 maintaining the general principles of procurement law; and
4 6. Review, make recommendations and provide advice on any aspect
5 of law, regulation or policy that affect procurement, including laws
6 and processes not directly found in the Guam Procurement Act.

7 **§ 5903. Limitations.** The Council shall not have any executive
8 participation in the day-to-day implementation of the Guam Procurement
9 Act. It shall not have any executive, legislative, or adjudicative review
10 authority over procurement matters.

11 **§ 5904. Reports.** The council shall provide reports to the Speaker of *I*
12 *Lihselaturan Guåhan* and to *I Maga'láhen Guåhan* as follows:

13 (a.) **First Report.** The first report of the Council shall be made on
14 October 01, 2011 indicating its progress. The report may
15 include any recommendations for proposed legislation,
16 revisions to administrative rules and regulations or any relevant
17 matter.

18 (b.) **Second Report.** The second report of the Council shall be
19 made on February 01, 2012 indicating its progress. The report
20 may include any recommendations for proposed legislation,
21 revisions to administrative rules and regulations or any relevant
22 matter.

23 (c.) **Final Report.** The final report of the Council shall be made on
24 July 01, 2012 and shall include draft legislation, revisions to
25 administrative rules and regulations or any relevant matter.

26 **§ 5905. Administration.** The Council shall have the authority to
27 retain professional and support staff to assist it with its duties. However, the

1 Director of Administration shall provide and coordinate administrative
2 support services to the Council from the Department of Administration. The
3 Office of Attorney General, the Office of the Public Auditor, and other
4 executive branch agencies may provide, loan or transfer resources to the
5 Council to support its operations.”

- 1 1. A senior member of the Governor's staff designated by the
2 Governor of Guam, who shall serve as Chairperson of the
3 Council;
- 4 2. The Attorney General of Guam or his designee;
- 5 3. The Public Auditor or his designee;
- 6 4. The Compiler of Laws;
- 7 5. The Chief Procurement Officer;
- 8 6. The Director of Administration;
- 9 7. The Director of Public Works;
- 10 8. An attorney in private practice admitted to the Guam Bar with
11 procurement experience selected by *I Maga'lahaen Guåhan*;
- 12 9. A Guam resident experienced in procurement from the
13 construction industry selected by *I Maga'lahaen Guåhan*;
- 14 10. A Guam resident experienced in procurement from the retail or
15 service sector selected by *I Maga'lahaen Guåhan*;
- 16 11. The Chairman of the Board of Accountancy; and
- 17 12. The Dean of the School of Business and Public Administration
18 of the University of Guam.

19 **§ 5902. Duties.** The Council is empanelled to perform the following
20 duties:

- 21 1. Conduct studies, research and analysis on all matters relating to the
22 effectiveness, responsiveness and timeliness of government
23 procurement including the review and comparison with model
24 procurement code legislation and consultation with division heads,
25 school principals and other mid-level managers and end users of
26 government procured goods and services;

- 1 2. Critically examine the substantive and procedural aspects of the
2 Guam Procurement Act and existing administrative rules and
3 regulations governing procurement including the legal authorities,
4 composition, and effectiveness of the Procurement Policy Office;
- 5 3. Review the legal infrastructure of the government procurement
6 system to ensure the uniformity of law, regulation and practice;
- 7 4. Propose recommendations for the improvement and modernization
8 and the use of “best value” and “performance based” methods as
9 the basis for evaluation of government procurement activities;
- 10 5. Make recommendations and identify methods to address new
11 industries and technologies and financial systems, while
12 maintaining the general principles of procurement law; and
- 13 6. Review, make recommendations and provide advice on any aspect
14 of law, regulation or policy that affect procurement, including laws
15 and processes not directly found in the Guam Procurement Act;
16 and
- 17 7. Review the statutes and process for procurement appeals and
18 recommend improvements if any.

19 **§ 5903. Limitations.** The Council shall not have any executive
20 participation in the day-to-day implementation of the Guam Procurement
21 Act. It shall not have any executive, legislative, or adjudicative review
22 authority over procurement matters.

23 **§ 5904. Reports.** The council shall provide reports to the Speaker of *I*
24 *Liheslaturan Guåhan* and to *I Maga’lahen Guåhan* as follows:

- 25 (a.) **First Report.** The first report of the Council shall be made on
26 December 01, 2011 indicating its progress. The report may
27 include any recommendations for proposed legislation,

1 revisions to administrative rules and regulations or any relevant
2 matter.

3 (b.) **Second Report.** The second report of the Council shall be
4 made on April 01, 2012 indicating its progress. The report may
5 include any recommendations for proposed legislation,
6 revisions to administrative rules and regulations or any relevant
7 matter.

8 (c.) **Final Report.** The final report of the Council shall be made on
9 August 01, 2012 and shall include draft legislation, revisions to
10 administrative rules and regulations or any relevant matter.

11 **§ 5905. Administration.** The Council shall have the authority to
12 retain professional and support staff to assist it with its duties and shall
13 designate an Administrative Director. However, the Director of
14 Administration shall provide and coordinate administrative support services
15 to the Council from the Department of Administration. The Office of the
16 Governor, the Office of the Attorney General, the Office of the Public
17 Auditor, and other executive branch agencies may provide, loan or transfer
18 resources to the Council to support its operations.

19 **§ 5906. Procurement Advisory Council Support Fund.** There is
20 hereby established a Guam Procurement Advisory Council Support Fund
21 'fund' to be maintained by the Director of Administration. *I Maga'laha*
22 *Guåhan* and the Director of Administration are authorized to transfer
23 amounts into the fund to support the operations of the Council. Any
24 legislative appropriations to support the operations of the Council shall be
25 deposited into the Procurement Advisory Council Support Fund. The Chief
26 Procurement Officer is authorized to transfer funds from the Special Surplus

1 Property Fund to support the operations of the Procurement Advisory
2 Council.

3 **§ 5907. Responsiveness of the Government.** The Guam Procurement
4 Advisory Council may compel department and agency heads to provide or
5 compile any information relative to the procurement of goods and services.
6 Department and agency heads shall facilitate compliance with any requests
7 from the Council.

8 **§ 5908. GSA Staff & Procurement Counsel Support.** The Chief
9 Procurement Officer, Procurement Counsel, and GSA staff shall provide
10 administrative and technical assistance to the Council. Such assistance shall
11 be at the discretion of the Chief Procurement Officer. However, the
12 Procurement Counsel shall assist with the preparation of any legislation,
13 rules or regulations.”

14 **Section 2.** § 20512 of Division 1, Article 1 of Chapter 20 of the Guam
15 Code Annotated is hereby amended to read as follows:

16 **“§ 20512. Special Surplus Property Fund.**

17 (a) There is hereby established a fund to be known as the *Special*
18 *Surplus Property Fund*, which shall be maintained separate and
19 apart from any other funds from the government of Guam and
20 independent records and accounts thereof shall be established in
21 connection therewith. The Chief Procurement Officer shall be the
22 Certifying Officer of this fund.

23 (b) All appropriations made for the purpose of implementing this
24 Article shall be deposited with the Special Fund. All receipts from
25 charges or fees assessed pursuant to § 20511 of this Article shall
26 additionally be placed in the Special Fund. All proceeds from the

1 sale or disposition of surplus supplies shall also be placed in the
2 Special Fund. All debts, liabilities, obligations and operating
3 expenses to manage this Fund, incurred pursuant to this Article
4 shall be paid by the ~~Director~~ Chief Procurement Officer from said
5 funds. The Chief Procurement Officer is authorized to expend said
6 funds for the training and development of GSA personnel and to
7 support the operations of the Procurement Advisory Council.

8 (c) The ~~Director~~ Chief Procurement Officer shall render quarterly
9 to the Governor and to the Legislature a statement reflecting the
10 financial condition of the Special Fund and a financial statement of
11 operations of the said Special Fund for the period covered.”

12 **Section 3.** A new § 5118 is hereby added to Part B of Article 2 of
13 Title 5 of the Guam Code Annotated to read as follows:

14 **“§ 5118. Procurement Counsel.** The Department of
15 Administration may employ an attorney to assist the General
16 Services Agency to be called the Procurement Counsel. The
17 Director of Administration shall set the terms and conditions of
18 employment for the attorney and determine his or her
19 compensation consistent with the laws of Guam. The Attorney
20 shall be a full-time employee and shall be admitted to practice
21 before the courts of Guam under the same conditions as are
22 attorneys employed by the government pursuant to 7 GCA Section
23 9A114 and 9A114A. The Procurement Counsel shall assist and
24 advise the Chief Procurement Officer on all civil matters in which
25 the General Services Agency is legally interested or in which the
26 General Services Agency is legally interested, provided that the

1 Office of the Attorney General shall represent the General Services
2 Agency. The Attorney shall provide technical assistance to the
3 Procurement Advisory Council and shall assist with the
4 preparation of any legislation, rules or regulations. The
5 incumbent procurement advisor shall be designated as the
6 procurement counsel.”

7 **Section 4.** A new § 5119 is hereby added to Part B of Article 2 of
8 Title 5 of the Guam Code Annotated to read as follows:

9 “**§ 5119. Legislative Inquiries & Hearings.** The Chief
10 Procurement Officer shall be directly responsive to any legislative
11 inquiries and shall provide oral or written testimony on any
12 matter relative to procurement at the Guam Legislature without
13 the approval of any executive branch official.”

JOHN THOS. BROWN
ATTORNEY AT LAW *

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Hon. Vice Speaker and Senator Benjamin J.F.Cruz
Chairman, Committee on Youth, Cultural Affairs, Procurement,
General Government Operations, and Public Broadcasting
31st Guam Legislature

COMMENTS ON BILLS 159-31 and 160-31

Dear Senator Cruz,

Thank you for this opportunity to comment on the referenced bills. These comments are fundamentally my own, but as the Chair of the Guam Chamber of Commerce Procurement Committee, I have also received the blessing and support of the Chamber to present these comments on its behalf.

I do intend to appear at the hearing, but there is not enough coffee on Guam to keep us all awake through a detailed reading or presentation of my comments. I tender these comments in writing, therefore, for a more leisurely study by your Committee and staff. I hope they take the opportunity, because quick passage of this bill without critical study would be detrimental to both private and public sectors.

I immediately appreciated the significance of introducing Bill 159 before Bill 160. Would that it have been introduced a year before.

The Procurement Advisory Council envisioned in Bill 159 would be the more appropriate forum for a more collegiate debate and consideration on the merits of Bill 160, and for attempts to achieve an accommodative balance, than the typical legislative processes enjoy, especially when they are acting in haste.

I would begin these Comments, therefore, as I did in my comments to Bill 336-30, by quoting the observations of the drafters of the American Bar Association's 2000 Revisions to the Model Procurement Code (Commentary 1, MPC § 2-503):

“The 2000 Code revision process has shown that many of the obstacles procuring agencies and officials encounter are those that have been written into the Code by enacting jurisdictions.”

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COMMENTS ON BILL 159:

I was flattered that the composition for the Advisory Council proposed in Bill 159 was influenced by my proposal for the Council. I believe that, as I proposed, the Compiler of Laws would be a more appropriate Chair for the Council than the Attorney General because, as is apparent in Bill 160, the Attorney General has a particular barrow to push.

I'm not denigrating that perspective, I'm just calling it for what it is. The Attorney General is the government's defender in things procurement. The AG's Office has undoubtedly taken some very pro-active and positive actions in the last year or so to improve the integrity of the procurement system over all, but in any particular procurement dispute it must take the advocate's role, and that often boils down to defending the government with technical procedural obstacles that stifle scrutiny of the controversies on the merits.

I would have preferred that the Governor at least be asked to confer with the Bar, Chamber and Contractor's Association before selecting the representatives of those respective constituencies.

One thing in particular in Bill 159 that I would temper is the provision in § 5902(4) which requires recommendations for the use of "best value" and "performance based" notions as a basis for the evaluation of procurement activities. Both notions sound fantastic, but come with assumptions not always borne out, and results unintended.

Best value is a fairly recent introduction to sophisticated procurement regimes. It was introduced into the Federal system in the mid to late 1990's, were the jury is still not "in" on the subject. It is a rose with thorns. It is highly discretionary and allows flexibility in the selection process so great that it is difficult to impossible (other than in the most flagrant circumstances) to objectively rationalize selection decisions. It is a system that functions at its best when it relies on the same old contractors whose "past performance" is well know; not that the past performance is necessarily well deserved or better than new competition, just that it has a track record akin to the "old boy" network.

There is a must-read critique of the method from 2007 when Minnesota decided to try it on at http://www.fwhtlaw.com/files/pdf/A_Critique_of_Best_Value_Contracting1.pdf. Another, and shorter, article worth considering discusses best value in the context of construction contracts, when that idea was floated as part of the ABA Model Code in 2001: http://www.constructionweblinks.com/Resources/Industry_Reports_Newsletters/April_29_2002/best_value_procurement.htm. Both articles were written by or with the same author, but that does not diminish the counsel given.

Best value depends on the honesty and integrity of highly trained, impartial and discriminating purchasing personnel. The other idea of performance based standards depends on highly trained, impartial and diligent contract management keeping an eagle eye on contractors, both at the negotiation stage as well as the performance stage, to assure contract compliance. In practice, state and local government procurement personnel typically get out-classed and out-witted by bigger private contractors in these regimes. This is a case of being careful of what you wish for.

I would recommend that the provision be amended as follows:

4. ~~Study and propose~~ ~~Propose~~ recommendations for the improvement and modernization and the use of "best value" and "performance based" alternate methods of evaluating proposals and contract outcomes as the basis for ~~evaluation~~ improvement of effective government procurement activities.

COMMENTS ON BILL 160:

I have not commented on every section of the Bill. My comments are addressed to the particular sections noted. This is a long slog. There is much to consider.

As an over-all observation, however, I do not see anything in the Bill that is so particularly urgent, including anything that might possibly be ARRA related, that requires immediate attention before the Advisory Council proposed by Bill 159 is implemented and impeneled to more fully debate these issues.

Many of the issues are quite controversial and, being proposed by the government's defense lawyers, clearly one-sided. It is, in short, sponsored by what would be called in any other context an interest group. While it is not *all* biased or unfair, there is a slant that must be recognized – and discounted – for what it is, just as I am sure my comments are considered.

§ 5126. Joinder or Mutual Use of Contracts by Governmental Entities.

This is a new provision to our laws, and an ill-conceived one. It is called a "piggy-back" method of source selection. This basically abrogates local procurement principles to the procurement regimes, whatever they are, of "other states or other government units within or outside Guam". This means, literally, local agencies can acquire whatever they like through the contracts created in any other procurement anywhere in the whole world. It would negate any power or right to review any such contract locally, or to cause any such review to be conducted on Guam or under its processes.

This provision effectively takes the informal small purchase procedure available on Guam, strips it of any dollar limitation, strips it of any requirement to obtain bids on Guam, and gives unfettered discretion to an agency to buy what it wants from anywhere, so long as there is a contract upon which it can piggy-back. This could be done without any notice to anyone either before or after a purchase takes place. It does not even provide the strictures imposed on the Federal GSA Supply Schedule program, which includes, among many safeguards, the requirement that any contractor provide the best price available to any customer.

This provision would do away with *any* competition from Guam vendors, in contradiction to the essential requirements of our law to foster *effective* competition. It, in effect, gives all GovGuam agencies a **sole source blank check** to buy whatever they want from any other foreign state they want. The prior Bill 336-30, in an Official Note, added a proviso that the foreign contractor must

go through some kind of “competitive procurement process”, but it did not say what kind, and it was totally ineffective protection. This Bill even eliminates that slim possibility of oversight.

This provision allows a contract to be made with a foreign vendor without consideration whether any Guam contractors could effectively or at all compete for the contract in that foreign place, and gives no heed to the local Guam preference provision. There is no requirement that Guam vendors have any notice or be able to effectively compete against the vendors in the foreign place where the contract is given. If the laws of the foreign place allow (and most do to one extent or other) or expressly give preference to contractors from that place, foreign contractors are given preference over Guam vendors, even if the Guam vendor had a fighting chance at the contract.

If GovGuam “uses the contract” from a foreign place, it would have to negotiate changes to the base contract to take into account the substantial delivery, logistic, support and other requirements the contractor would have to recover to service GovGuam. Under normal Guam law, such changes could easily be of such magnitude as to constitute a new solicitation. Would this provision also override that “scope of contract” limitation?

Apart from procurement law anomalies, this has disastrous economic impacts on Guam’s economy. Local vendors pay income tax, maintain infrastructure, hire employees, and contribute to Guam’s tax base. Foreign contractors do not.

The scale of Guam’s economy means Guam’s vendors cannot possibly compete with the likes of foreign companies. California is in the top 10 economies in the world. How can a Guam contractor, scaled to Guam’s economy, compete with contractors dealing with that scale?

This kind of arrangement *may* make sense in the Mainland, where the national economy is not that much differentiated within the various states and transportation between states may not be an issue, and local governments do not care about the local economy. But on Guam, it is both impractical to administer and amounts to cutting off your nose to spite your face: is whatever cost savings worth the deprivation this will have on the local economy?

And, even on the Mainland, this piggy-back arrangement is proving controversial in particular instances, as I mentioned in this post on my blawg:

<http://bloggeddowninprocurement.blogspot.com/2010/12/blanket-purchasing-pulling-wool-over.html> .

This provision should be rejected.

§ 8 re § 5215 Emergency Procurement.

Among various other changes, the Bill adds the following to § 5215 (emergency procurement):

If the procuring agency determines in writing that it is impractical to obtain goods or supplies for thirty (30) days because of the nature of the emergency, then the procuring agency may obtain an amount of goods and 25 supplies sufficient for up to ninety (90) days.

I would amend the amendment to read:

If the procuring agency determines in writing that it is impractical to obtain goods or supplies for thirty (30) days because of ~~the nature of the~~ a natural emergency, then the procuring agency may obtain an amount of goods and supplies sufficient for up to ninety (90) days.

I suggest this change because the phrase, “the nature of the emergency”, is too vague. The emergency procurement method has been too often abused in violation of the very *definition* of “emergency” found in § 5030, which is:

*“Emergency means a condition posing an imminent threat to public health, welfare, or safety **which could not have been foreseen through the use of reasonable and prudent management procedures**, and which cannot be addressed by other procurement methods of source selection.” (Bold added.)*

It should be appreciated that the 30 day supply limit is not expected to provide *all* goods and supplies for whatever the duration of the emergency may be. It is intended to get what is *immediately* needed while other procurement methods are utilized to meet the needs 30 days hence. It is only in natural disasters that supply systems, communication and normal commerce become so disrupted that more time is often needed to satisfy the immediate needs.

Emergency procurement, when used because of a failure to use “reasonable and prudent management procedures”, is a man-made problem and inexcusable mismanagement. Use of emergency measures in this instance hides mismanagement, excuses incompetence, and is fertile ground for mischief. It simply compounds the failure of government when a longer period of supply or service is allowed due to a failure of government’s own making. The government should not be given that extra time to compromise its own shortcomings.

§ 9 re § 5216 RFPs for Professional Services – subsection (a)

I don’t object to the changes made in subsection (a), regarding the conditions for use of this method, but I do not think they actually go far enough to meet requirements we see in many RFPs being issued these days. This is the relevant provision in the bill:

(a) Conditions for Use. The services specified in § 5121(a) of this Chapter shall be procured in accordance with this Section, except as authorized under §§ 5214 or 5215 of this Chapter. Services for ~~architecture, engineering, construction, and land surveying, environmental assessment and other such services~~ shall be procured by competitive sealed bidding and shall also follow the requirements in accordance with Article 5 of this Chapter.

I believe the need is there to expressly include the licensed professional services associated with construction with the other licensed professionals expressly mentioned in §5121(a) here, as well as certain “highly specialized” services, such as IT, trustee and bond specialists. We have seen

many RFPs being improperly used for these highly specialized services: improper because the existing provisions do not technically include such services. I would therefore change the provision to read as follows:

(a) Conditions for Use. The services specified in § 5121(a) of this Chapter, as well as the services of architecture, engineering, land surveying, environmental assessment and other such services when not included as incidental to or an element of a construction solicitation, shall be procured in accordance with this Section, except as authorized under §§ 5214 or 5215 of this Chapter. “Highly specialized” services may be procured in like manner provided there is a written determination made by the Chief Procurement Officer, the Director of Public Works, or the Head of the Purchasing Agency, whichever is responsible for the particular solicitation, articulating how the particular service qualifies as a “highly specialized service” and justifying why the competitive sealed bid method is inappropriate in the particular solicitation. For this purpose, “highly specialized services” shall require an advanced education beyond Bachelor or equivalent degree, or equivalent credential, training and experience for the particular service sought, and where selection of non-priced qualifications are significantly more important for contract outcomes than price. Services for ~~architecture, engineering, construction, land surveying, environmental assessment and other such services~~ shall be procured by competitive sealed bidding and shall also follow the requirements in accordance with Article 5 of this Chapter.

§ 9 re § 5216 RFPs for Professional Services – subsection (f)

This section is inconsistent with prior amendments made in this Bill as well as with the RFP process carefully defined in the existing law and described in regulation. It allows price to be considered in the evaluation of the offeror.

The whole purpose of the negotiated method of procurement described in the RFP process is to separate price considerations from qualification considerations, based on the notion that some services are not fungible and cannot be determined on lowest price, as is the case with competitive sealed bids. This bifurcation of evaluation and price is the same theme found in multi-step sealed bidding. If the government wants the lowest price to be considered as determinative, it should use the multi-step bid method, not an RFP.

It recognizes the common knowledge that not all doctors or lawyers or dentists, etc., have the same skill; some have more or more relevant skill to a particular task. Economist refer to this as price elasticity: you will pay more for (perceived) critical needs.

Thus, it is the specification and selection of critical needs that is essential here. Adding price into the equation not only muddies the assessment of need, it distorts the objective analysis of the ultimate selection. The unfortunate – and wrongful – insertion of price into qualification evaluation factors was at the core of the confusion and dispute in the JFK procurement and led to the protracted resolution of the dispute, as noted in the OPA’s Decision in the GEF Appeal

(page 10). It was also at the root of the long drawn out saga of the Guam Retirement Fund's trustee services Appeal. If price had been kept separate from qualification evaluations, and dealt with at the compensation negotiations stage, those disputes may likely have not arisen at all, or at least would have been determined sooner.

The RFP selection process is described in the law. First, the agency enters into discussions with the offerors to determine who is qualified to perform the required service. (§ 5216(d).) As the regulations elaborate, these discussions are restricted to "greater detail [to determine] such offeror's qualifications" and to "explore with the offeror the scope and nature of the required service, the offeror's proposed method of performance, and the relative utility of alternate methods of approach". (2 GAR § 3114(i).) As a result of these discussions, the government ranks the qualified offerors from most desired offer ("best qualified") on down.

Next, the government and the best qualified offeror negotiate "compensation determined to be fair *and* reasonable". If the government cannot get the best qualified offeror to agree to what it considers to be "fair and reasonable" compensation, that offeror is rejected and negotiations begin anew with the next best qualified. (§ 5216(e).) It is only during the negotiations over fair and reasonable compensation that the offeror who has been determined to be best qualified is required to submit cost or pricing data. (2 GAR § 3114(k), (l).)

The problem with interjecting price into qualification evaluation is that it can too easily affect *ranking* before you actually know what an offeror will really require by way of compensation, that is to say, before you actually know the final cost of the teaser price tag.

That was the gist of the controversy in the JFK procurement. The price factor in the JFK RFP rated 70% of the whole evaluation score, so even though others may have been more qualified, and if negotiated with sooner might have accepted a better final price, **the government was stuck negotiating with what was, in effect, the lowest bidder**, and the ultimately agreed *compensation* was miles above the low teaser price that got that offeror selected as "best" *qualified*.

There is also an inconsistency in this Bill because a prior amendment has already declared that price should *not* be part of the initial selection process. Section 3 amends § 5008 (for determining local preference) to say: "This section shall not apply to professional services *which are awarded on the basis of best qualifications without pricing* pursuant to § 5216 of this Chapter." (Italics added.) They got it right the first time. Leave pricing out of the qualification evaluation.

§ 10, § 5233 re Disclosure of Major Shareholders

This provision comes pre-loaded with issues, and the amendments simply compound the confusion and misunderstanding that permeates this law.

To begin to understand this law, you need a clear understanding of the distinctions between responsiveness and responsibility, and few on Guam seem to. One OPA Decision finally noted the differences, but subsequent decisions seem to want to backtrack from the basic distinctions. I've written about the confusion, terming it "Responsivebility".

Without going into the details, suffice it that bidder responsibility is not the same thing as bid responsiveness. They are simply defined differently, they are judged at different times and in different processes. Responsibility is all about determining if the bidder has the integrity and capability to perform a contract. And that is the subject matter of § 5233 – who are its significant owners? The whole purpose of § 5233 is to require bidders to disclose certain owners whose identity may not be evident on the face of the bid. It has a related purpose to disclose anyone who might receive a commission.

It is important to note that the determination of responsibility is not intended to be made from information in the bid package; it is to be made at any time prior to award from information confirmed or obtained in an inquiry after bids are opened. Thus, a low responsive bidder is *conditionally entitled* to award, in a designation the regulation describes as a “*prospective contractor*” (2 GAR § 3116). The prospective contractor is only entitled to the award once the prospective contractor is determined to be responsible.

Notice that the responsibility inquiry is only directed to the prospective contractor. That saves time and money, and trees, in gathering information about a bidder that will not be necessary to evaluate if the bid is not low or responsive.

Confusion of this provision arises in part because it begins, “*as a condition of bidding*” the bidder shall disclose the matters already mentioned. It would seem that this provision is a requirement for determining bidder responsibility because its subject matter is only concerned with the identity of the bidder, not with the thing that is actually being procured. Also, this provision is included in a Part of the Act that contains other provisions only dealing with bidder responsibility.

Unfortunately, a recent OPA Decision has concluded that the “as a condition of bidding” language plainly and clearly means the provision is a matter of responsiveness. This ignores both the subject matter and the fact that there is more than one kind of “condition” in the law, including conditions subsequent, concurrent, and precedent. In this case, the OPA simply assumed it meant a condition precedent or concurrent that must be satisfied by putting the information in the bid package – in other words, that this was a matter of responsiveness, not a matter of responsibility. Although the information was subsequently corrected, the Decision held that matters of responsiveness, unlike issues of responsibility, cannot be corrected after bids are opened. This was an unfortunate holding for the bidder, who was admittedly a responsible bidder.

This Bill uses the same “as a condition of bidding” phrase in the new subsection (b), which imposes an obligation of continuing disclosure “during the pendency of the bid” and “as a condition of accepting an award” and “during the pendency of the contract”. Assuming the disclosure is an issue of responsiveness, making the bid nonresponsive if the disclosure is not made in the bid package, how can the requirement to disclose after opening, indeed after the contract has been granted, have any effect? It is easy to now see how that confusing “as a condition of bidding” got in the law in the first place; it is due to a failure to understand the legal effect and purpose of conditions. How can a bid giving rise to a contract be tossed out after the contract is executed? This is nonsense. The requirement to disclose is perhaps useful, but it is nonsense in the manner in which the disclosure is implemented.

Moreover, the whole disclosure requirement is of no effect, in the context of procurement. Let's just assume that a bidder properly discloses an ownership whereby, for example, the Head of the Agency is the majority owner. What effect does that have on the solicitation? None. There is no requirement in the procurement law that precludes the bid. Conflict of interest is not a stated "standard of responsibility", nor is it a limitation on evaluation of bid responsiveness.

Conflicts of interest do most certainly implicate ethical violations, but there is nothing in the ethics requirements which actually preclude award of a contract to a company whose owners may have a conflict of interest. The owner may be precluded from engaging in the procurement process, and could be personally liable for breach of the ethics standards, but those are not procurement issues. Not even the OPA has jurisdiction over such ethical matters; only the Civil Service Commission has authority and jurisdiction to enforce ethical violations, and there is nothing that suggests the information disclosed in the procurement process is passed on to the Commission. So what's the point of the disclosure in the first place?

What's the point of adding subsection (c) to the law, as this Bill does, to require disclosure by subcontractors "as a condition of bidding" when they are not even typically known or contracted at the time of a bid?

The whole section needs to be re-thought.

I would propose, first, that § 5233 be repealed. Second a new subsection (b) should be added to § 5230 – Responsibility of Bidders and Offerors (with existing subsection (b) be re-codified to new subsection (c)). The new subsection (b) would read:

“(b) A prospective contractor shall be required to disclose the name and address of any person who has held more than ten percent (10%) ownership interest in the bidder or offeror at any time during the twelve (12) month period immediately preceding the date of the solicitation, and shall not be determined to be responsible if anything disclosed thereby would, in relation to the contract to be awarded, constitute a violation of any Standard of Conduct specified in Part B of Article 11 of this Chapter.”

The Procurement Act deals with provisions appropriate to construction contracts in a separate Article from provisions applicable to contracts for goods and services. Thus, we need to deal with each separately, as follows.

I would enact a new § 5306(e) – relative to Construction contracts – which would read:

(1) Every contract for the provision of construction awarded by the Government of Guam shall require a continuing duty of the contractor to disclose any change to the information disclosed pursuant to § 5230(b) of this Chapter for the duration of the contract.

(2) Every such contract shall also require the contractor to include a provision in any subcontract thereunder which requires any such subcontractor whose subcontract has a value more than fifty-one percent (51%) of the prime contract to

disclose to the contracting agency the name and address of any person who has held more than ten percent (10%) ownership interest in the subcontractor at any time during the twelve (12) month period immediately preceding the date of the subcontract.

(3) The contracting agency shall determine if any information so disclosed is such as might constitute a violation of any Standard of Conduct specified in Part B of Article 11 of this Chapter, and, if so, transmit such information to the Civil Service Commission with a request to investigate the matter further.

I would enact a new § 5351 – relative to contracts for Goods and Services – which would read:

(a) Every contract for the provision of goods and services awarded by the Government of Guam shall require a continuing duty of the contractor to disclose any change to the information disclosed pursuant to § 5230(b) of this Chapter for the duration of the contract.

(b) Every such contract shall also require the contractor to include a provision in any subcontract thereunder which requires any such subcontractor whose subcontract has a value more than fifty-one percent (51%) of the prime contract to disclose to the contracting agency the name and address of any person who has held more than ten percent (10%) ownership interest in the subcontractor at any time during the twelve (12) month period immediately preceding the date of the subcontract.

(c) The contracting agency shall determine if any information so disclosed is such as might constitute a violation of any Standard of Conduct specified in Part B of Article 11 of this Chapter, and, if so, transmit such information to the Civil Service Commission with a request to investigate the matter further.

Prior to discussing this next provision, and others like it, I suggest the Legislature take counsel from the following comments of the American Bar Association’s Official Comment (No. 1) to the 2000 Model Procurement Code, § 9-101, which is the basis for our 5 GCA § 5425, including the MPC’s recommendation of a 14 day protest period:

“It is essential that bidders, offerors, and contractors have confidence in the procedures for soliciting and awarding contracts. **This can best be assured by allowing an aggrieved person to protest** the solicitation, award or related decision.”

As the procurement law reveals, and our own history with procurement on Guam records, there is no adequate mechanism for policing our procurement regime. That is because our law is based on a user-pays model of policing, putting responsibility for it in the hands of the people who may be “aggrieved” – *wronged* – by the procurement process.

This means we don’t waste time, money and resources reviewing the many solicitations that did

no harm. But we must allow ourselves to depend on wronged bidders and offerors to come forward, and not penalize them, or discourage them, or otherwise prevent them, for doing so. Many of the changes sought in this Bill are impediments to bringing procurement protests, and do nothing to enhance the integrity of the procurement process. Those things should be rejected.

§ 11, § 5425(a) re Right to Protest

For many reasons, **this is perhaps the most objectionable provision in this Bill.**

First: The Bill proposes this amendment: “Any actual or prospective bidder, offeror, or contractor who ~~may be~~ is aggrieved” may protest. This change is circular and illogical. The whole point of the protest and review procedure is to determine *IF* the bidder is aggrieved. Only allowing a bidder who *is* aggrieved to protest puts the cart plainly in front of the carabao. It assumes the conclusion and simply invites litigation over semantics. A bidder is not aggrieved until its protest is upheld and the government is found to have acted wrongly. Until then, it “may be” aggrieved, but the official finding of the fact of aggrievement, that is, wrongdoing, is not established.

Second: Only a bidder “whose economic interest might be affected *substantially*” can protest. The substantiality qualification is not found in other jurisdictions which use an “economic interest” test of standing. It is vague and invites diverting contests and protracted litigation over the intricacies of the business and economic affairs of a bidder. And the test does not fall on all bidders in like manner: in the same bid, one bidder may be substantially affected but another not so. Tests like this just invite litigation. It may be adequate enough to have a plain “economic interest” test, but not a substantial one.

As well, there are other tests, including the “interested party” test and any other test of traditional legal “standing”. By fixing on the one economic interest test, the law restricts the broader “standing” parameters that would otherwise allow equitable flexibility for the particular case.

But even before conceding that, we need proof that this has been an issue. There has not been one OPA decision that I know of where this has been raised as an issue. We hear vague statements that anyone off the street comes in and protests. Give examples. I do not believe that anyone who comes in off the street would satisfy the core “aggrieved” test to get so far as to even have to consider an economic interest test. The whole introduction of economic interest may only open a can of worms, which would be unfortunate if there is no problem to be solved. Are we fixing something that isn’t broken?

There is a remedy if people file frivolous protests, but there has not been one case decided by OPA, and I am not aware of any court case, where a bidder has been accused of filing such a case. I think this is a matter of tilting at windmills and not worth complicating something that isn’t a problem.

Third: This cuts the protest time from 14 days to 7 days. Why? What grievous delays have ever been alleged that result from the extra 7 days? It should be up to the proponent of this bill to justify the change. Understand that the less time there is to protest, the more likely it will not be

fully framed or thought through, which contributes to “bad” protests rather than ameliorating them. We have had a 14 day protest period for almost 30 years. What are the horror stories to cause a change of this magnitude? If the time is to be shortened, and I do not agree it is called for or appropriate, the provision ought to at least provide for waiver of the time limit for good cause shown.

Fourth: The bar on later discovered issues. This provision absolutely bars consideration of any issues raised after the 7 day protest period. But notice: the protest deadline is from the time when a party knows or should know of facts by which he/she is aggrieved. If, then, you discover additional facts after the initial protest, a common occurrence as documents become available and the real story emerges, you must file multiple protests based on each new discovery. That is a recipe for drawn out protest action, not a solution to it. Matters discovered after the initial protest should be heard, not subject to a new protest, in the same matter.

Fifth: The protest bond. As seen in proposed § 5425.2, **Section 12 of this Bill**, this is a cost imposed on the fundamental right to seek redress from wrongs committed by the government. It is prepayment for damages that may never be imposed. It is a chilling effect on free speech, the complaint of a citizen against the government for actions taken contrary to law. It is a presumption of guilt, requiring an upfront payment on the mere chance that the complaint is wrongfully laid to begin with. It is a charge for the simple act of doing business with the government. If any large company on Guam required its customers to pay up front before even hearing a complaint, the government would be down hard on them for gross violation of consumer rights. But this is ok? No it is not. It is an affront to democracy.

This bond, or tie-up of money for an indefinite time, is not free. It creates an expense just to bring a protest. And what is the purpose if not to discourage protests? There are two stated purposes.

First, the bond is intended to secure “payment of all costs which may be adjudged against the protester in the administrative or appeal hearing before the Public Auditor in which the action is brought and in any subsequent court or appellate court proceedings”.

This is a solution for which there is no problem. Require the AG to produce evidence of the instances where the government was unable to collect such costs. I am unaware of any *one* such instance, let alone any number of instances which would justify imposing this cost on *all* protesters.

The second intent of the bond is meant to be a penalty for filing a frivolous protest, and the bill extends the definition of a frivolous protest to include “the purpose of harassing, causing unnecessary delay, or causing needless cost to the government”. There are already penalties in place for filing frivolous protests, including debarring or suspending a contractor, as well as an award of legal fees to the government after an appeal.

It has to be appreciated that many of the motions and actions taken in procurement proceedings are instituted by the government attorneys, including attorneys from the AG’s office, and many of these contribute as much or more so to harassing bidders, causing unnecessary delay or needless cost to the government. Yet there is no penalty applied to the government for these tactics.

Protestors are never allowed to recover any legal fees or lost profits or other needless costs – even when their protest is adjudged *valid* and the government has been found to have engaged in improper procurement conduct. There are no penalties against the government when an improper contract is affirmed because of some overriding “best interest” of the government. Moreover, penalties are already skewed in favor of the government; protestors are never allowed to recover any legal fees regardless of government conduct, but the government is allowed to recover its attorney fees on appeal if the protest is deemed frivolous.

There are other problematic issues with the provision, but to discuss them would simply be to clean up this dirty piece of work. This whole section is ill conceived, outrageous, vindictive, unbalanced and should be rejected totally.

§ 11, § 5425(c) re Decision on Protest

This provision concerns the time to render a decision on the protest: This is a joke. It requires the government to render a decision on the protest within 7 days. In all my experience that has never happened. And, what does this provision provide by way of remedy? Nothing. This is an empty and useless law. If a protest is to be barred after 7 days, I would suggest, as a matter of fair symmetry, that if a protest decision is not rendered within 7 days it is deemed accepted, approved. If that sounds ridiculous, it is no more outrageous than cutting off protest rights.

§ 11, § 5425(e) re Appeal to OPA

First, this provision cuts the time for appeal from 15 days to 7 days from the date of decision. Protest decisions are not rendered with any predictability, especially as to timing. What if you are off island when it is rendered? You are simply out of luck if your time runs on you.

If framing a protest takes some time and consideration, but no particular formality, bringing an appeal takes considerable time and effort and formality, as does pursuing it. Typically, it takes legal research and a lawyer’s involvement. Just consider how long it takes the AG’s office to review procurement contracts. A lawyer must not only review the contract but everything that has happened through the protest. It is not an easy decision to undertake an appeal, and the more time allowed to consider it, the more likely it will be that the appeal is shown to be well founded, fairly framed and legally sufficient to advocate the protester’s claim. Shortening the time simply ends up requiring a party to file something, anything, just to preserve rights. And that can end up looking like a frivolous claim when more time would flesh it out better – or convince yourself it is not worth it.

Again, if the time should be shortened, there should be an express waiver of the time for good cause shown.

Second, this provision puts time limits on the OPA review process. This is unnecessary as the OPA’s actions are generally driven by motions and other actions brought by the parties. One of the biggest delays is simply getting paperwork out of the agencies. The AG’s office is quite familiar with motions that do more to delay than deliberate, as are other government lawyers.

The time limits are empty fluff and should be eliminated.

§ 11, § 5425(f) re Finality of Review

This provision doesn't add anything substantive to the nature of the final decision, but does create an anomalous condition on finality. Existing law says the OPA decision is final unless "a person adversely affected" appeals to the Superior Court. This provision changes that to say unless "*an aggrieved* person adversely affected" appeals. What is meant by that? Aggrieved by what? The only mention of aggrieve in the procurement law is in the context of the initial wrongful action by the government in the procurement process, and it is only the aggrieved person who can protest. Does this provision say, then, that only the original protestor can appeal? What if one bidder was selected for award, another aggrieved bidder protested, and won on appeal to OPA. Does that mean the initial awardee has no right to court review of the administrative decision? That would be an anomalous situation, surely. Or does it imply that "aggrieved" means "you lost the case"? Losing a case, whether in court or an administrative proceeding, is not generally thought of as aggrieving anyone. It is a simple contest, like the original bid: assuming no fraud or other wrongdoing, the loser is simply a loser, fair and square, not somehow wronged and aggrieved by the decision.

§ 11, § 5425(g) re Automatic Stay

There are two subsections here. First, subsection (2). This introduces a new concept to the procurement law: the notion that the interests of the Territory are different from the interests of a particular agency. The change made here puts the interests of the agency above the interests of the Territory. I do not understand why that result is sought, but I think it sets a dangerous precedent when, everywhere else in the procurement law, determinations and elections are made on what is in the best interests of the Territory. Absent compelling explanation, and there is nothing explained in this Bill, I would reject this provision on the simple ground it is out of step with all other law.

Second, subsection (3). Here, the AG wishes to divest the Public Auditor of her jurisdiction. It should first be appreciated that one large factor holding back the development of effective procurement oversight has been the rule of law, based in part on the traditional separation of powers, that the judiciary will not second guess an executive agency. This is called the deferential standard of review. As is said, a Court will not overturn an agency's determination of fact even if the agency is, in the eyes of the Court, dead wrong, so long as there is no fraud, illegality or arbitrary action. The procurement act, however, gives the OPA, which is an independent arm of the executive agency and thus not constrained by separation of powers, a *de novo* right of review, which means she can take a fresh look, without regard to the initial agency decision. It is generally a more critical look at the facts, unconstrained by the demands and turf of the agency. In this subsection (3), the AG would deny OPA *de novo* review and saddle her executive authority with the judicial deferential standard of review. It should not be allowed to do so. Agency decisions, we have seen too many times to be sanguine about it, deserve a critical fresh look. Being critical, after all, does not mean she will always disagree, and she often does not disagree. It just means she can require the agency to substantiate its decision when the courts cannot.

§ 13, § 5480(a) re Jurisdiction of Superior Court to review

Changes are made in this provision which undermine the principle of exhaustion of administrative remedy and opens the door wide with an invitation for parties to pursue procurement disputes in court. If you think the OPA review process might be slow, you have not seen anything. The changes do not in any way limit the jurisdiction already granted. It does, however, allow the government or anyone else interested, to bypass administrative review by OPA by taking a court appeal on the basis of an agency decision. This is an obvious attempt by the AG to avoid the critical, substantive review by OPA, in favor of an uncritical, procedurally driven court process. It will not advance the cause of effective procurement, but it will assure a more prolonged – and expensive – review time.

It has to be appreciated that we have seen decades of procurement abuse without any effective corrective action until the OPA was given *de novo* review and jurisdiction of the administrative review procurement process. While the review process has not been entirely perfect, it has cast a light on the dark corners of procurement and it has improved greatly over the course of its learning curve. We would not be here today debating this subject without this history. The procurement regime has been made more accountable, not less accountable, by this experience. It has been made more transparent, not less transparent, by this experience.

This legislation should enshrine the doctrine of exhaustion of administrative review of procurement controversies, not curtail it. It does not advance any expeditious resolution of procurement controversies. If we are to pre-empt the work of the Advisory Council and tackle the matter now, I would propose the following amendment to § 5480(a) rather than the AG's version:

(a) Solicitation and Award of Contracts. Provided administrative remedies have been exhausted, the, The Superior Court of Guam shall have jurisdiction over an action between the Territory and a bidder, offeror, or contractor, either actual or prospective, to determine whether a solicitation or award of a contract is in accordance with the statutes, regulations, and the terms and conditions of the solicitation. The Superior Court shall have jurisdiction over questions of law arising from any interim motion or ruling made prior to a final decision but shall not retain jurisdiction to decide the merits of the action absent compelling ground to abdicate the administrative remedies. The Superior Court shall have such jurisdiction in actions at law or in equity, and whether the actions are for monetary damages or for declaratory, or other equitable relief. Any such action may be brought regardless of form of action and expedited as a special proceeding.

§ 14, § 5481(a) re Time to bring Court Action

Again, this provision cuts the amount of time, from 14 days to 7, to bring an action, but does nothing to expedite the proceeding once brought. It is another hurdle needlessly and inexplicably placed in the way of effective procurement review.

It also uses language not quite consistent with the language used in Section 13 of the Bill to describe the type of actions affected, and what does that implicate? Or complicate?

§ 16, new § 5634 re Organizational Conflicts of Interest

While this is a very interesting provision and addresses issues close to my heart, I would be cautious about incorporating this into our law at this early stage in our development of an efficacious procurement regime.

This “OCI” clause, as it is known, is taken almost whole cloth from fairly recent developments in the Federal Acquisition Regulations (“FAR”). Even within the much more robust Federal system, it is still something of an experiment and an evolving work in progress. I have made reference to this in my procurement blawg in the post Appearances are (almost) everything, also noting in another post these comments from Daniel I. Gordon, Administrator for Federal Procurement Policy:

While a vendor who, as part of contract performance, drafts the specification for a future procurement will almost certainly be barred by OCI rules from competing for that future procurement, pre-solicitation communications are generally less structured, less binding, and much less problematic. When a vendor, in its role supporting the government, is drafting specifications for a future acquisition, the government is relying on the vendor to provide impartial advice regarding the requirements needed to meet the government’s future needs. Ensuring that the vendor will not be motivated by a desire to win the future contract is the way we try to ensure that this advice will be impartial. This differs dramatically from the pre-solicitation context. In the latter context, the government is not looking for impartial advice from one source, but is instead looking for a variety of options from a variety of sources, each one understandably, and reasonably, attempting to demonstrate the value of its own approach. These marketing efforts, in themselves, do not raise OCI concerns.

From this, it is apparent that both the identification of OCIs as well as the three commonly accepted means of addressing them, avoidance, neutralization and mitigation, call for educated and discriminating analysis and principle-based judgment. Can we expect that from our procurement operatives before appropriate training regimes are put in place? I’d rather wait.

The OCI concept is a good one, but one that is not quite ready for prime time in an under trained and under resourced jurisdiction. The United Nations’ procurement model written in 1994 did not use OCI, but has since been studying means of implementing it in its model, or variations of it. An excellent paper on this subject is “Addressing Conflicts of Interest in Procurement: First Steps on the World Stage, Following the Un Convention Against Corruption”, 2008, by Christopher R. Yukins, online at <http://www.ipppa.ws/IPPC3/Proceedings/Chaper%2061.pdf>.

Professor Yukins is a colleague and co-author of other papers with Prof. Steven Schooner at the George Washington University Government Procurement Program. I have been making arrangements for Prof. Schooner to come to Guam in late June to give a series of presentations on

procurement, and I am sure he could offer valuable insights then to make sure we get the OCI issues right. I am sure he would also enlist the assistance of Prof. Yukins if that would help us.

If we don't get it right, it will only serve as more fertile ground for protest and court review. Do we really want to rush into this? Isn't this a particularly appropriate topic for an Advisory Council to study, debate and propose?

With Respect,

/s/

John Thos. Brown

PS: Thank you for taking the time to carefully read and consider this. It also took me an enormous amount of time to review the Bill. This Bill should not get blindly passed simply because it was put in the too hard basket. Indeed, if anything, it's difficulty of comprehension alone should mitigate against passage until the Procurement Advisory Council gets a crack at it.

LAW OFFICE OF ANTHONY R. CAMACHO, ESQ.

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VIA-HAND-DELIVERY

Committee on Youth, Cultural Affairs,
Procurement, General Government Operations
And Public Broadcasting
31st Guam Legislature
155 Hesler Place
Hagåtña, Guam, 96910

April 28, 2011

**RE: Written Testimony of Anthony R. Camacho, Esq., supporting the passage of
Bill No. 159-31 (COR).**

Greetings,

I am submitting this testimony as a private attorney who has extensively practiced in the area of Government of Guam Procurement and as a Hearing Officer for Procurement Appeals with the Office of Public Accountability. I agree that the Government of Guam must research, evaluate, analyze, review and make recommendations to improve the Government of Guam procurement and contracting process. Bill 159-31's creation of a Guam Procurement Advisory Council fulfills this need in a collaborative manner that ensures all the Government of Guam's procurement and contracting stakeholders have a forum for their valuable input.

However, the Legislature must ensure that the Guam Procurement Advisory Council does not share the same fate of the Procurement Policy Office. The Procurement Policy Office was created by 5 G.C.A. §5101(a) as part of the Office of the Governor and consists of three (3) officers or employees of the Government of Guam appointed by the Governor, the Director of Public Works, and the Director of the Department of Administration who is the chairperson of said office. The Procurement Policy Office is the only entity that has the authority and responsibility to promulgate regulations governing procurement management, control and disposal of any and all supplies, services, and construction procured by the Government of Guam. See 5 G.C.A. §5102. It is not known whether any Governor has ever appointed members to fill the procurement policy office. What is known is that the Procurement Policy Office has not promulgated any regulations since its creation as our existing procurement regulations were promulgated contemporaneously with the Guam Procurement Act, and only amended by Legislative action since that time. Like the Procurement Policy Office, Bill 159-31 requires the Governor of Guam to appoint three (3) of its members. This should be amended to identify existing government officials as members of the Guam Procurement Advisory Council to prevent the Council from suffering from a lack of gubernatorial appointees. Further, like the Procurement Policy Office, the Guam Procurement Advisory Council does not have any funding or income stream to support its operations. This should be amended to provide dedicated funding, or a dedicated funding source, to that the Council can function as intended. Finally, unlike the

ORIGINAL

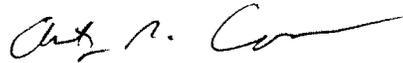
April 28, 2011

Written Testimony of Anthony R. Camacho, Esq. , concerning Bill 160-30

Procurement Policy Office, the Guam Procurement Advisory Council will only exist until July 1, 2012, which is the date the Council's final report is due. The Council should be made a permanent Council, it should replace the Guam Procurement Policy Office, and it should be given the authority and responsibility to promulgate procurement regulations as well as recommend changes to Guam's Procurement Law.

The foregoing are the substantial amendments that I recommend prior to the passage of Bill 159-31. Thank you for your time and consideration. Please contact me if you have any questions.

Sincerely,



ANTHONY R. CAMACHO, ESQ.
Hearing Officer, Office of Public Accountability



OFFICE OF PUBLIC ACCOUNTABILITY

Doris Flores Brooks, CPA, CGFM

Public Auditor

April 28, 2011

The Honorable Benjamin J. F. Cruz
Vice Speaker
Chairman, Committee on Youth,
Cultural Affairs, Procurement,
General Government Operations and
Public Broadcasting
31st Guam Legislature
155 Hesler Place
Hagåtña, Guam 96910

Subject: Testimony on Bill Nos. 159-31 and 160-31

Dear Senator Cruz and Committee Members:

The two bills propose changes to Guam procurement law [5 G.C.A., Chapter 5] that are complex and would have far reaching consequences on the expenditure of public funds. Given the short time since this hearing was noticed, my testimony will be limited. I would have preferred that my staff and I had more time to thoroughly review Bills Nos. 159-31 and 160-31.

It was just a little over a year ago, that OPA Hearing Officer Anthony Camacho and I submitted testimony on similar proposed legislation (Bill 336-30 COR). Among the suggestions we made was that a more comprehensive approach towards procurement reform be made with the establishment of a task force comprised of appropriate government officials and private sector representatives tasked to review the Government of Guam's procurement law and regulations.

Sadly, another year has passed without the benefit of such a task force review. I appreciate Vice Speaker Cruz's initiative in making procurement reform a priority. However, again proposing legislation that has not been thoroughly reviewed and vetted by stakeholders other than the Attorney General's office does not provide a holistic approach to procurement reform.

Even the Legislative Finding states " 4) there are even more serious claims that the current procurement protests statues and regulations unnecessarily allow frivolous, costly, and time-consuming litigation where delay of the procurement becomes a more important aim than having a procurement system that provides for the fair,

equitable and expeditious treatment of all parties in the procurement system” is misleading. This Legislative Finding smears vendors who protest. Our body of law would not be where it is today without the actions of protestors because many protests have been found to be with merit.

In the five years that OPA has been hearing procurement appeals; there has been an average of 11 procurement appeals filed per year, a total off 55 to date. A good number of these appeals have been resolved through mutually stipulated agreements. Of the decisions reached, more than half were decided against the government. This indicates a lack of understanding and training on the part of government procurement officials.

With respect to **Section 11 of Bill 160**, the portion dealing with the OPA:

Section 5425 (a). We recommend the time period to protest remain at 14 days and not be reduced to 7 days. This would allow a vendor more time to consider the merits of whether to protest or not. Shortening the time may encourage more protests to keep within the shorter time constraint.

Section 5425 (c). We wholeheartedly agree that there needs to be a time limit placed on GSA and government entities to issue a decision on a vendor’s protest. In OPA PA 11-01, GSA took more than four months to issue a denial of the protest thus triggering the procurement appeal process. However, we suggest that GSA and entities be given more time, more than the seven days to review and issue a decision on the protest. We suggest a minimum of 14 days.

Section 5425 (e). Following the same trend of thought to allow all parties sufficient time to deliberate, we do not support shortening the time for a vendor to appeal within seven (7) calendar days. We urge that it remain at fifteen (15) calendar days.

Similarly, we do not support establishing mandatory time frames for OPA to hold a hearing within forty (40) calendar days or even up to sixty (60) calendar days. Likewise, we do not support the requirement that a written decision be issued within thirty (30) calendar days of the completion of the hearing. The Superior Court has an analogous constraint; 7 G.C.A. § 21302 which requires that “[u]pon the trial of a question of fact by the court, its decision must be given in writing and filed with the clerk within thirty (30) days after the cause is submitted for decision.” I believe it is the general consensus among the legal community that the statute is more hallowed in its breach than in its observance. Court Rule 5.E(1) even finesses the statute by stating that “[n]o motion addressing the lack of a decision may be filed with the Court prior to the expiration of ninety (90) days from the last hearing on a motion.”

Hearings are scheduled at the mutual convenience of all parties. Delays in scheduling are primarily due to various parties being off-island. OPA has established an internal policy, a best practice guideline, of completing an appeal within 90 days from date of the initial filing of the appeal, and similarly for issuing a decision within 30 days from the conclusion of the hearing. However, there are times when these guidelines are not met and again primarily because parties are off island.

While OPA procurement rule 2 GAR § 2110 states that a written decision shall be issued within thirty (30) calendar days, of late, that has proven to be difficult to achieve, again, primarily because parties are off-island. We will be going through the administrative adjudication process to revise this section of the rule to be discretionary and not mandatory.

For your information, the last four procurement appeal decisions issued were all completed within 92 to 112 days, from the date the appeal was filed to the issuance date of the decision. Likewise, for the JFK appeals, 09-05 was completed in 93 days and 09-07 in 110 days. It took nearly as long for DPW to make its selection of the best-qualified offeror.

The decisions in the earlier years took longer. That was primarily due to the learning curve all new processes experience. We respectfully request that OPA be given discretionary authority through its rules, and timelines not be established in law.

Section 12. 5425.2 Protest Bond. We are not in favor of mandating a protest bond without a dollar threshold of \$1 million or greater. Including a \$1 million threshold helps to ensure that small businesses have access to a competitive playing field. OPA has heard appeals with procurement values ranging from \$5,000 to \$69 million. If the protest bond requirement were mandated without a dollar threshold limit, small businesses would not have the financial resources to have their “day in court”.

Proposed New Section: Disqualification of Public Auditor

We respectfully request the Committee incorporate an amendment relative to the disqualification of the Public Auditor. We propose that in the event of the disqualification or recusal of the Public Auditor, the Public Auditor shall designate a member of the OPA staff or the Hearing Officer to preside over an appeal. If no member of the OPA’s staff or the appointed Hearing Officer is able to preside over the appeal due to disqualification, then such appeal may be taken to the Superior Court of Guam.

Honorable Benjamin J.F. Cruz
April 28, 2011
Testimony of Public Auditor re
Bills 159 and 160
Page 4

On several occasions, Senator Cruz has introduced bills that address procurement reform. We applaud these initiatives. However, we request that a comprehensive approach be taken on this bill through the review of a task force composed of appropriate government officials and private sector representatives whose objective would be to collaboratively review the entire procurement process and come back with a revised version in 90 to 120 days.

There are other sections of Bill 160 that should be deliberated, but the limited time did not allow a more thorough review and similarly for Bill 159.

Senseramente,

A handwritten signature in black ink, appearing to read "Doris Flores Brooks". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Doris Flores Brooks, CPA, CGFM,
Public Auditor



COMMITTEE ON RULES

I Mina'trentai Unu na Libeslaturan Guåhan • The 31st Guam Legislature
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Judith P. Guthertz
VICE CHAIRPERSON
ASST. MAJORITY LEADER

MAJORITY MEMBERS:

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Senator
vicente c. pangelinan

MINORITY MEMBERS:

Senator
Aline A. Yamashita
ASST. MINORITY LEADER

Senator
Christopher M. Ducnas

June 9, 2011

Memorandum

To: Pat C. Santos
Clerk of the Legislature

From: Senator Rory J. Respicio
Chairperson, Committee on Rules

Subject: Fiscal Notes

Hafa Adai!

Attached please find the fiscal notes for the bill numbers listed below. Please note that the fiscal notes, or waivers, are issued on the bills as introduced.

- Bill Nos.:
- 133-31 (LS)
 - 159-31 (COR)
 - 182-31 (LS)
 - 190-31 (LS)
 - 198-31 (COR)
 - 199-31 (COR)
 - 201-31 (COR)
 - 202-31 (COR)
 - 204-31 (COR)

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Si Yu'os ma'åse'!

2011 Jun 10 AM 9:23

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 159-31(COR)**

AN ACT TO ESTABLISH THE GUAM PROCUREMENT ADVISORY COUNCIL BY ADDING A NEW ARTICLE 14 TITLE 5 OF THE GUAM CODE ANNOTATED.

Department/Agency Appropriation Information

Dept./Agency Affected: Government -Wide	Dept./Agency Head:
Department's General Fund (GF) appropriation(s) to date:	-
Department's Other Fund (Specify) appropriation(s) to date:	-
Total Department/Agency Appropriation(s) to date:	\$0

Fund Source Information of Proposed Appropriation

	General Fund:	(Specify Special Fund):	Total:
FY 2010 Unreserved Fund Balance ¹		\$0	\$0
FY 2011 Adopted Revenues	\$535,231,228	\$0	\$535,231,228
FY 2011 Appro. (P.L. 30-196) thru 30-235	(\$535,492,693)	\$0	(\$535,492,693)
Sub-total:	(\$261,465)	\$0	(\$261,465)
Less appropriation in Bill	\$0	\$0	\$0
Total:	(\$261,465)	\$0	(\$261,465)

Estimated Fiscal Impact of Bill

	One Full Fiscal Year	For Remainder of FY 2011 (if applicable)	FY 2012	FY 2013	FY 2014	FY 2015
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

- Does the bill contain "revenue generating" provisions?
If Yes, see attachment / / Yes /X/ No
- Is amount appropriated adequate to fund the intent of the appropriation?
If no, what is the additional amount required? \$ _____ /X/ N/A / / Yes / / No
- Does the Bill establish a new program/agency?
If yes, will the program duplicate existing programs/agencies? / / Yes /X/ No
Is there a federal mandate to establish the program/agency? / / Yes /X/ No
- Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: /X/ Yes / / No
/ / Requested agency comments not received by due date / / Other: _____

Analyst: Alex Date: 5.3.11 Director: BENITA A. MANGLONA Date: 6/9/11
BENITA A. MANGLONA, Director

Footnotes: The Bill has a potential for additional funding impact for administrative services in §5905, however, in its present form that impact cannot be determined at this time.



COMMITTEE ON RULES

I Mina'trentai Unu na Liheslaturan Guåhan • The 31st Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Judith P. Guthertz
VICE CHAIRPERSON
ASST. MAJORITY LEADER

MAJORITY MEMBERS:

Speaker
Judith T. Won Pat

Vice Speaker
Benjamin J. F. Cruz

Senator
Tina Rose Muña Barnes
LEGISLATIVE SECRETARY
MAJORITY WHIP

Senator
Dennis G. Rodriguez, Jr.
ASST. MAJORITY WHIP

Senator
Thomas C. Ada

Senator
Adolpho B. Palacios, Sr.

Senator
vicente c. pangelinan

MINORITY MEMBERS:

Senator
Aline A. Yamashita
ASST. MINORITY LEADER

Senator
Christopher M. Duenas

April 19, 2011

MEMORANDUM

To: Pat Santos
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio 
Chairperson, Committee on Rules

Subject: Referral of Bill Nos. 158-31 (COR) and 161-31 (COR)

As Chairperson of the Committee on Rules, I am forwarding my referral of Bill Nos. 158-31(COR) and 161-31 (COR).

Please ensure that the subject bills are referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all Senators of *I Mina'trentai Unu na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os ma'åse!

(3) Attachments

2011 APR 21 PM 5:38

I Mina'Trentai Umu Na Liheslaturan Guåhan

Bill Log Sheet

April 20, 2011

Page 1 of 1

Bill No.	Sponsor(s)	Title	Date Introduced	Date Referred	120 Day Deadline	Committee Referred	Public Hearing Date	Date Committee Report Filed	Status (Date) Passed? Failed? Vetoed? Overridden? Public Law?
159-31 (COR)	B. J.F. Cruz, T. R. Muna Barnes	AN ACT TO ESTABLISH THE GUAM PROCUREMENT ADVISORY COUNCIL BY ADDING A NEW ARTICLE 14 TO TITLE 5 OF THE GUAM CODE ANNOTATED	4/20/11 11:20 a.m.	4/21/11		Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting.			
160-31 (COR)	B. J.F. Cruz, T. R. Muna Barnes	AN ACT TO AMEND §§ 5004, 5008, 5030, 5121, 5122, 5215, 5216, 5233, 5425, 5480, 5481, 5601, AND 5707 OF TITLE 5, GUAM CODE ANNOTATED AND TO ADD NEW §§ 5126, 5425.2, AND 5634 TO TITLE 5, GUAM CODE ANNOTATED; RELATIVE TO GOVERNMENT OF GUAM PROCUREMENT.	4/20/11 11:20 a.m.	4/21/11		Committee on Youth, Cultural Affairs, Procurement, General Government Operations and Public Broadcasting.			

Chris Carillo

From: Chris Carillo [chris.carillo@senatorbjcruz.com]
Sent: Thursday, April 21, 2011 12:45 PM
To: 'speaker@judiwonpat.com'; 'Senator Tom Ada'; 'senatortonyada@guamlegislature.org'; 'senator@tinamunabarnes.com'; 'Senator Frank F. Blas, Jr.'; 'senator@senatorbjcruz.com'; 'duenasenator@gmail.com'; 'judiguthertz@gmail.com'; 'senatorsam@senatormabini.com'; 'Senator Ben C. Pangelinan'; 'cor@guamlegislature.org'; 'senatorrodriguez@gmail.com'; 'senatormana@gmail.com'; 'Aline Yamashita'; 'phnotice@guamlegislature.org'; 'dmgeorge@guampdn.com'; 'hottips@kuam.com'; 'Sabrina Salas'; 'mindy@kuam.com'; 'dcrisostomo@guampdn.com'; 'Janela'; 'thebigshow@k57.com'; 'therese.hart.writer@gmail.com'; 'Therese Hart'; 'Ray Gibson'; 'bmkelman@guampdn.com'; 'William Gibson'
Cc: 'clerks@guamlegislature.org'; 'Pat Santos'; 'Rennae Perez'; 'Atty. Therese Terlaje'; 'yong@guamlegislature.org'; 'mis@guamlegislature.org'; 'sgtarms@guamlegislature.org'; 'Steven A. Dierking'; 'cyrus@senatorada.org'; 'louise_atalig@yahoo.com'; 'chelsea@tinamunabarnes.com'; 'Mary Fejeran'; 'garrett.duenas@senatorbjcruz.com'; 'chris.carillo@senatorbjcruz.com'; 'joshua.tenorio@senatorbjcruz.com'; 'leonguerrero.angela@gmail.com'; 'leslie.g@senatormabini.com'; 'cipo@guamlegislature.org'; 'Stephanie Mendiola'; 'cherbert.senatorrodriguez@gmail.com'; 'chechsantos@gmail.com'; 'alerta.jermaine@gmail.com'; 'evelyn4families@gmail.com'
Subject: 1st Notice of Public Hearing- Thursday April 28th 2011
Attachments: BJCRUZ PublicHearing0428011.pdf

Hafa Adai All,

Hafa Adai!

Please be advised that the **Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting** will conduct a Public Hearing on **Thursday, April 28, 2011**, beginning at **1 P.M.**, in the Legislature's Public Hearing Room for the following items:

- **Bill No. 149-31 (COR) - J.T. Won Pat, Ed.D.** "An act to add new § 26217 of Article 2, Chapter 26 of Title 11 GCA relative to electronic filing (e-filing) and payment of monthly gross receipt tax returns to the Department of Revenue and Taxation.
- **Bill No. 159-31 (COR) - B.J.F. Cruz / T.R. Muna-Barnes** "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated.
- **Bill No. 160-31 (COR) - B.J.F. Cruz / T.R. Muna-Barnes** "An act to amend §§ 5004, 5008, 5030, 5121, 5122, 5215, 5216, 5233, 5425, 5481, 5601, and 5707 of Title 5, Guam Code Annotated and to add new §§ 5126, 5425.2, and 5634 to Title 5, Guam Code Annotated; relative to government of Guam procurement."

If written testimonies are to be presented at the hearing, we request that you provide copies for distribution, or they may be submitted one day prior to the Office of the Vice Speaker Benjamin J.F Cruz, 155 Hesler Place, Hagatna Guam 96910. They may be sent via facsimile to 477-2522, or via email to chris.carillo@senatorbjcruz.com.

We comply with Title II of the Americans with Disabilities Act (ADA) should you require assistance or accommodations please contact Garrett Duenas at the Office of the Vice Speaker Benjamin J.F Cruz at 477-2521 or via email at garrett.duenas@senatorbjcruz.com

Senseramente,

Chris Carillo
Office of the Vice-Speaker, Senator Benjamin J.F.Cruz
Chairman,Committee on Youth, Cultural Affairs,Procurement,
General Government Operations, and Public Broadcasting

I Mina'Trentai Unu na Liheslaturan Guåhan
The 31st Guam Legislature
155 Hesler Place
Hagåtña, Guam 96910
Phone: (671) 477-2520/1
Fax: (671) 477-2522
Web Address: <http://www.senatorbjcruz.com>
E-mail: chris.carillo@senatorbjcruz.com

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April 21, 2011

MEMORANDUM

TO: All Members/All Senators

FROM: Vice Speaker Benjamin J.F. Cruz 

RE: First Notice of Public Hearing – April 28, 2011

Hafa Adai!

Please be advised that the **Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting** will conduct a Public Hearing on **Thursday, April 28, 2011**, beginning at **1 P.M.**, in the Legislature's Public Hearing Room for the following items:

- **Bill No. 149-31 (COR) - J.T. Won Pat, Ed.D.** "An act to add new § 26217 of Article 2, Chapter 26 of Title 11 GCA relative to electronic filing (e-filing) and payment of monthly gross receipt tax returns to the Department of Revenue and Taxation.
- **Bill No. 159-31 (COR) - B.J.F. Cruz / T.R. Muna-Barnes** "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated.
- **Bill No. 160-31 (COR) - B.J.F. Cruz / T.R. Muna-Barnes** "An act to amend §§ 5004, 5008, 5030, 5121, 5122, 5215, 5216, 5233, 5425, 5481, 5601, and 5707 of Title 5, Guam Code Annotated and to add new §§ 5126, 5425.2, and 5634 to Title 5, Guam Code Annotated; relative to government of Guam procurement."

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cc: Clerk of the Legislature
Protocol
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Chris Carillo

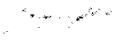
From: Chris Carillo [chris.carillo@senatorbjcruz.com]
Sent: Tuesday, April 26, 2011 9:45 AM
To: 'speaker@judiwonpat.com'; 'Senator Tom Ada'; 'senatortonyada@guamlegislature.org'; 'senator@tinamunabarnes.com'; 'Senator Frank F. Blas, Jr.'; 'senator@senatorbjcruz.com'; 'duenasenator@gmail.com'; 'judiguthertz@gmail.com'; 'senatorsam@senatormabini.com'; 'Senator Ben C. Pangelinan'; 'cor@guamlegislature.org'; 'senatorrodriguez@gmail.com'; 'senatormana@gmail.com'; 'Aline Yamashita'; 'phnotice@guamlegislature.org'; 'dmgeorge@guampdn.com'; 'hottips@kuam.com'; 'Sabrina Salas'; 'mindy@kuam.com'; 'dcrisostomo@guampdn.com'; 'Janela'; 'thebigshow@k57.com'; 'therese.hart.writer@gmail.com'; 'Therese Hart'; 'Ray Gibson'; 'bmkelman@guampdn.com'; 'William Gibson'
Cc: 'clerks@guamlegislature.org'; 'Pat Santos'; 'Rennae Perez'; 'Atty. Therese Terlaje'; 'yong@guamlegislature.org'; 'mis@guamlegislature.org'; 'sgtarms@guamlegislature.org'; 'Steven A. Dierking'; 'cyrus@senatorada.org'; 'louise_atalig@yahoo.com'; 'chelsea@tinamunabarnes.com'; 'Mary Fejeran'; 'garrett.duenas@senatorbjcruz.com'; 'chris.carillo@senatorbjcruz.com'; 'joshua.tenorio@senatorbjcruz.com'; 'leonguerrero.angela@gmail.com'; 'leslie.g@senatormabini.com'; 'cipo@guamlegislature.org'; 'Stephanie Mendiola'; 'cherbert.senatorrodriguez@gmail.com'; 'chechsantos@gmail.com'; 'alerta.jermaine@gmail.com'; 'evelyn4families@gmail.com'
Attachments: BJCruz PublicHearing04280112.pdf

Hafa Adai All...

This is your 48 hour notice for our public hearing on April 28th...

April 26, 2011

MEMORANDUM

TO: All Members/All Senators
FROM: Vice Speaker Benjamin J.F.Cruz 
RE: Second Notice of Public Hearing – April 28, 2011

Hafa Adai!

Please be advised that the **Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting** will conduct a Public Hearing on **Thursday, April 28, 2011**, beginning at **1 P.M.**, in the Legislature's Public Hearing Room for the following items:

- **Bill No. 149-31 (COR)** - J.T. Won Pat, Ed.D. "An act to add new § 26217 of Article 2, Chapter 26 of Title 11 GCA relative to electronic filing (e-filing) and payment of monthly gross receipt tax returns to the Department of Revenue and Taxation.
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We comply with Title II of the Americans with Disabilities Act (ADA) should you require assistance or accommodations please contact Garrett Duenas at the Office of the Vice Speaker Benjamin J.F Cruz at 477-2521 or via email at garrett.duenas@senatorbjcruz.com .

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Senseramente,

Chris Carillo
Office of the Vice-Speaker, Senator Benjamin J.F.Cruz
Chairman,Committee on Youth, Cultural Affairs,Procurement,
General Government Operations, and Public Broadcasting

I Mina'Trentai Unu na Liheslaturan Guåhan
The 31st Guam Legislature
155 Hesler Place
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April 26, 2011

MEMORANDUM

TO: All Members/All Senators

FROM: Vice Speaker Benjamin J.F. Cruz 

RE: Second Notice of Public Hearing – April 28, 2011

Hafa Adai!

Please be advised that the **Committee on Youth, Cultural Affairs, Procurement, General Government Operations, and Public Broadcasting** will conduct a Public Hearing on **Thursday, April 28, 2011**, beginning at **1 P.M.**, in the Legislature's Public Hearing Room for the following items:

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- **Bill No. 159-31 (COR) - B.J.F. Cruz / T.R. Muna-Barnes** "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated.
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**Committee on Youth, Cultural Affairs, Procurement, General Government Operations,
and Public Broadcasting**

April 28, 2011

Agenda

1:00 P.M. - *I Liheslaturan Guahan* Public Hearing Room

Public Notice Requirements:

Five day: Published Thursday April 21st, 2011
48 Hour: Published Tuesday April 26th 2011

- **Bill No. 149-31 (COR)** - J.T. Won Pat, Ed.D. "An act to add new § 26217 of Article 2, Chapter 26 of Title 11 GCA relative to electronic filing (e-filing) and payment of monthly gross receipt tax returns to the Department of Revenue and Taxation."
- **Bill No. 159-31 (COR)** - B.J.F. Cruz / T.R. Muna Barnes "An act to establish the Guam Procurement Advisory Council by adding a new Article 14 to Title 5 of the Guam Code Annotated"
- **Bill No. 160-31 (COR)** - B.J.F. Cruz / T.R. Muna Barnes "An act to amend §§ 5004, 5008, 5030, 5121, 5122, 5215, 5216, 5233, 5425, 5481, 5601, and 5707 of Title 5, Guam Code Annotated and to add new §§ 5126, 5425.2, and 5634 to Title 5, Guam Code Annotated; relative to government of Guam procurement."

- 1 5. The Director of Administration;
- 2 6. The Director of Public Works;
- 3 7. An attorney in private practice admitted to the Guam Bar
- 4 selected by *I Maga'lahaen Guåhan*;
- 5 8. A Guam resident experienced in the construction industry
- 6 selected by *I Maga'lahaen Guåhan*;
- 7 9. A Guam resident experienced in the retail or service sector
- 8 selected by *I Maga'lahaen Guåhan*;
- 9 10. The Chairman of the Board of Accountancy; and
- 10 11. The Dean of the School of Business and Public Administration
- 11 of the University of Guam.

12 **§ 5902. Duties.** The Council is empanelled to perform the following
13 duties:

- 14 1. Conduct studies, research and analysis on all matters relating to the
- 15 effectiveness, responsiveness and timeliness of government
- 16 procurement including the review and comparison with model
- 17 procurement code legislation and consultation with division heads,
- 18 school principals and other mid-level managers and end users of
- 19 government procured goods and services;
- 20 2. Critically examine the substantive and procedural aspects of the
- 21 Guam Procurement Act and existing administrative rules and
- 22 regulations governing procurement;
- 23 3. Review the legal infrastructure of the government procurement
- 24 system to ensure the uniformity of law, regulation and practice
- 25 4. Propose recommendations for the improvement and modernization
- 26 and the use of “best value” and “performance based” methods as
- 27 the basis for evaluation of government procurement activities;

- 1 5. Make recommendations and identify methods to address new
2 industries and technologies and financial systems, while
3 maintaining the general principles of procurement law; and
4 6. Review, make recommendations and provide advice on any aspect
5 of law, regulation or policy that affect procurement, including laws
6 and processes not directly found in the Guam Procurement Act.

7 **§ 5903. Limitations.** The Council shall not have any executive
8 participation in the day-to-day implementation of the Guam Procurement
9 Act. It shall not have any executive, legislative, or adjudicative review
10 authority over procurement matters.

11 **§ 5904. Reports.** The council shall provide reports to the Speaker of *I*
12 *Liheslaturan Guåhan* and to *I Maga'lahren Guåhan* as follows:

13 (a.) **First Report.** The first report of the Council shall be made on
14 October 01, 2011 indicating its progress. The report may
15 include any recommendations for proposed legislation,
16 revisions to administrative rules and regulations or any relevant
17 matter.

18 (b.) **Second Report.** The second report of the Council shall be
19 made on February 01, 2012 indicating its progress. The report
20 may include any recommendations for proposed legislation,
21 revisions to administrative rules and regulations or any relevant
22 matter.

23 (c.) **Final Report.** The final report of the Council shall be made on
24 July 01, 2012 and shall include draft legislation, revisions to
25 administrative rules and regulations or any relevant matter.

26 **§ 5905. Administration.** The Council shall have the authority to
27 retain professional and support staff to assist it with its duties. However, the

1 Director of Administration shall provide and coordinate administrative
2 support services to the Council from the Department of Administration. The
3 Office of Attorney General, the Office of the Public Auditor, and other
4 executive branch agencies may provide, loan or transfer resources to the
5 Council to support its operations.”