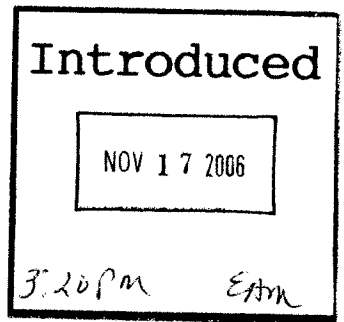


MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session



Bill No. 389 (LS / EC)

Introduced by:

R. Klitzkie
A. R. Unpingco
Mark Forbes

AN ACT TO ADD A NEW SUBSECTION (9) TO TITLE 5 G.C.A., DIVISION 1, CHAPTER 5, ARTICLE 1, PART A, § 5001(b) TO REQUIRE TRANSPARENCY OF GOVERNMENT OF GUAM PROCUREMENT ACTIVITIES; TO ADD A NEW SUBSECTION (iv) TO TITLE 5 G.C.A., DIVISION 1, CHAPTER 5, ARTICLE 1, PART A, § 5113(c)(1) TO REQUIRE THE CHIEF PROCUREMENT OFFICER TO PROVIDE INTERNET ACCESS TO PROCUREMENT ACTIVITIES; TO ADD A NEW SUBSECTION (iii) TO TITLE 5 G.C.A., DIVISION 1, CHAPTER 5, ARTICLE 1, PART A, § 5113(c)(2) TO REQUIRE THE DIRECTOR OF PUBLIC WORKS TO PROVIDE INTERNET ACCESS TO PROCUREMENT ACTIVITIES; TO ADD A NEW SUBSECTION (y) TO TITLE 5 G.C.A., DIVISION 1, CHAPTER 5, § 5030 TO DEFINE 'ESSENTIAL DETAILS' UNDER THE PROCURMENT LAW; TO ADD A NEW SUBSECTION ITEM 16 TO TITLE 1 G.C.A., CHAPTER 7, § 715 TO DEFINE 'POST & NOTICE'; TO ADD A NEW ITEM 17 TO TITLE 1 G.C.A, CHAPTER 7, § 715 TO DEFINE 'INDEFINITE POSTING'; TO ADD A NEW § 5011 TO TITLE 5 G.C.A., DIVISION 1, CHAPTER 5, ARTICLE 1, PART A TO DEFINE 'DISASTERS'; TO AMEND VARIOUS PROVISIONS OF THE GUAM PROCUREMENT ACT TO PROVIDE TRANSPARENCY OF ALL PROCURMENT ACTIVITIES; AND TO ENACT THE TRANSPARENCY IN PROCUREMENT ACT OF 2006.

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

2 **Section One. Short Title.** This Act shall be cited as the Transparency in Procurement
3 Act of 2006.

4 **Section Two. Purposes & Policies.** A new subsection (9) is added to Title 5 G.C.A.,
5 Division 1, Chapter 5, Article 1, Part A, § 5001(b) to read:

6 “(9) to provide transparency of the procurement system by allowing public access
7 through the posting and noticing of the essential details of the procurement activities of the
8 government of Guam on the world wide web.”

9 **Section Three. Duties of the Chief Procurement Officer.** A new Title 5 G.C.A.,
10 Division 1, Chapter 5, Article 1, Part B, § 5113(c)(1)(iv) is added to read:

1 “(iv) provide public access to all of the essential details of government of Guam
2 procurement activities with respect to supplies and services by posting and noticing such details
3 on a government of Guam official website in accordance with Items 16 & 17 of Title 1 G.C.A.,
4 Chapter 7, § 715 prior to, or concurrently with, the awarding of contracts. Failure to comply with
5 the posting and noticing requirements of either Items 16 & 17 of Title 1 G.C.A., Chapter 7, § 715
6 voids the subject procurement.”

7 **Section Four. Duties of the Director of Public Works.** A new Title 5 G.C.A., Division
8 1, Chapter 5, Article 1, Part B, § 5113(c)(2)(iii) is added to read:

9 “(iii) provide public access to all of the essential details of government of Guam
10 procurement activities with respect to construction by posting and noticing such details on a
11 government of Guam official website in accordance with Items 16 & 17 of Title 1 G.C.A.,
12 Chapter 7, § 715 prior to, or concurrently with, the awarding of contracts. Failure to comply with
13 the posting and noticing requirements of either Items 16 & 17 of Title 1 G.C.A., Chapter 7, § 715
14 voids the subject procurement.”

15 **Section Five. Definition: Essential Details.** A new Title 5 G.C.A., Division 1, Chapter
16 5, Part C, § 5030(y) to read:

17 “(y) *Essential details*, as used in this Chapter, means detailed information relating to the
18 promulgation of rules and regulations, authorization of contracts, establishment of lists, creation
19 of programs, quotations and bids, licenses and registrations, and all supporting documentation
20 related to the procurement of supplies, services, and construction for the Government of Guam.”

21 **Section Six. Definition: Post & Notice** A new Item 16 is added to Title 1 G.C.A.,
22 Chapter 7, § 715 to read:

23 “**16. Post & notice** means to post notice of the essential details of government of Guam
24 activities on the agency’s official government website for a minimum of ten (10) days
25 (Saturdays, Sundays, and government of Guam holidays excepted) and to provide prompt notice
26 of the postings to newspapers of general circulation and broadcasting stations which air a regular
27 local news program on Guam. All essential details shall be archived on the agency’s official
28 website for a period of ninety (90) days following the initial date of posting.”

29 **Section Seven. Definition: Indefinite Posting.** A new Item 17 is added to Title 1
30 G.C.A., Chapter 7, § 715 to read:

1 “**17. Indefinite posting** means the permanent posting of government documents on the
2 official website of a government of Guam agency. Such documents, if amended, shall be
3 replaced accordingly and the posting of amended documents shall be noticed in accordance with
4 Title 1 G.C.A., Chapter 7, § 715, Item 16. All government documents replaced shall be archived
5 on the agency’s website for a period of one year following the date of posting of the amended
6 document.”

7 **Section Eight. Disasters.** A new § 5011 to Title 5 G.C.A., Chapter 5, Division 1, Article
8 1, Part A is added to read:

9 “**§ 5011. Disasters.** In the event of a disaster, as defined in subsection (c) of Title 10
10 G.C.A., Chapter 65A, § 65A103(c), the Governor shall authorize the Chief Procurement Officer
11 & the Director of Public Works to temporarily suspend the posting and noticing required by Title
12 5 Guam Code Annotated, Division 1, Chapter 5, Article 1, Part A, § 5001(b) and to further
13 resume said requirement when Guam is declared not to be the subject of the national disaster.”

14 **Section Nine. Delegation of Authority.** § 5114 of Title 5 G.C.A., Division 1, Chapter 5
15 is amended to read:

16 “**§ 5114. Delegation of Authority by the Chief Procurement Officer and the Director**
17 **of Public Works.** Subject to the regulations of the Policy Office, the Chief Procurement Officer
18 or the Director of Public Works may delegate authority to designees or to any governmental
19 body or official. The name and position of the designee, governmental body, or official and the
20 nature of the authority delegated shall be posted and noticed in accordance with Title 1 G.C.A.,
21 Chapter 7, § 715, Item 16 before the designation becomes effective.”

22 **Section Ten. Procurement by fisherman and farmers.** Subsection (e) of Title 5
23 G.C.A., Division 1, Chapter 5, Part A, § 5001 is amended to read:

24 “(e) Procurement of local produce and fish from local farmers and fishermen may be
25 made without competition provided that the farmers or fishermen are registered with the
26 Department of Agriculture and their registration is posted and noticed in accordance with Title 1
27 G.C.A., Chapter 7, § 715, Item 16 and further provided that the prices offered do not exceed the
28 standard of pricing as negotiated by the Department of Agriculture and that both the prices
29 offered by the farmers and fisherman and the standard of pricing as negotiated by the
30 Department of Agriculture are posted and noticed in accordance with Title 1 G.C.A., Chapter 7,
31 § 715, Item 16. Any farmer or fisherman awarded a contract pursuant to this section shall not be

1 required to post any of the bonds required under Article 5 of Chapter 5, Title 5, Guam Code
2 Annotated, the *Guam Procurement Act*.”

3 **Section Eleven. Air Travel Vouchers.** Subsection (f) of Title 5 G.C.A., Division 1,
4 Chapter 5, § 5001 is amended to read:

5 “(f) Notwithstanding any other provisions of law, procurement of air travel vouchers by
6 the government of Guam, including the legislative, judiciary and executive branches, and all
7 autonomous and semiautonomous agencies, including the A. B. Won Pat Guam International
8 Airport Authority, the Guam Telephone Authority, the Guam Power Authority, the Guam
9 Housing & Urban Renewal Authority, the Guam Housing Corporation, the Guam Economic
10 Development and Commerce Authority, the Guam Memorial Hospital Authority, the University
11 of Guam, the Port Authority of Guam, the Guam Rental Corporation, the Guam Community
12 College, the Guam Water Works Authority, the Government of Guam Retirement Fund, the
13 Guam Mass Transit Authority, the Guam Visitor’s Bureau, the Public Defenders Service
14 Corporation, the Guam Educational Telecommunication Corporation, the Guam Election
15 Commission, the Civil Service Commission, the Guam Public School System, the Guam
16 Environmental Protection Agency and the Guam Vocational Rehabilitation, shall be procured
17 from local travel agencies with a valid business license and ~~on~~ in good standing with the
18 Department of Revenue and Taxation but not until there is proper posting and noticing in
19 accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16 that the procurement of travel
20 vouchers has been rotated fairly and competitively to insure that no single travel agency or a
21 small group of travel agencies monopolize the sale of air travel vouchers to the government of
22 Guam. The Director of ~~the Department of~~ Administration, who shall be responsible ~~in~~ for
23 administering this Act as it applies to the executive branch, with representatives from the
24 executive, judiciary and legislative branches, ~~shall be~~ is responsible, ~~within ninety (90) days~~
25 ~~from the enactment of this Act, for the development~~ developing and keeping current ~~of the~~
26 necessary rules and regulations to insure that the intent of this Act is followed and implemented
27 by all branches and agencies of the government of Guam and pursuant to the Administrative
28 Adjudication Law. The rules and regulations shall be posted and noticed in accordance with
29 Title 1 G.C.A., Chapter 7, § 715, Item 17. Each branch of the government of Guam, executive,
30 legislative and judiciary, shall be responsible in implementing and adhering to the rules and
31 regulations developed herein in their own respective branches. Failure to procure air travel

1 vouchers following the rules and regulations developed herein shall invalidate and render the
2 approved travel authorization null and void and any expenditure shall be completely and totally
3 the responsibility of the traveler and any expenditure the government of Guam incurred shall be
4 reimbursed by the respective traveler. The traveler shall not be reimbursed in any manner
5 whatsoever for any of these expenditures. Anyone authorizing such reimbursement shall be
6 guilty of fraud and shall be prosecuted to the fullest extent of the law.

7 **Section Twelve. Local Procurement.** Title 5 G.C.A., Division 1, Chapter 5, Part A, §
8 5008 is amended to read:

9 **“§ 5008. Policy In Favor of Local Procurement.** Procurement of supplies and services
10 shall be made, from among businesses licensed to do business on Guam and that maintain an
11 office or other facility on Guam, but only after compliance with Title 1 G.C.A., Chapter 7, § 715,
12 Item 16, whenever a business that is willing to be a contractor is:

13 a) a licensed bonafide manufacturing business that adds at least twenty-five percent of the
14 value of an item, not to include administrative overhead, using workers who are U. S. Citizens or
15 lawfully admitted permanent residents or nationals of the United States, or persons who are
16 lawfully admitted to the United State to work, based on their former citizenship in the Trust
17 Territory of the Pacific Islands; or

18 (b) a business that regularly carries an inventory for regular immediate sale of at least
19 fifty percent (50%) of the items of supplies to be procured; or

20 (c) a business that has a bonafide retail or wholesale business location that regularly
21 carries an inventory on Guam of a value of at least one half of the value of the bid or One
22 Hundred Fifty Thousand Dollars (\$150,000) which ever is less, of supplies and items of a similar
23 nature to those being sought; or

24 (d) A service business actually in business, doing a substantial portion of its business on
25 Guam, and hiring at least 95% U. S. Citizens, lawfully admitted permanent residents or nationals
26 of the United States, or persons who are lawfully admitted to the United States to work, based on
27 their citizenship in any of the nations previously comprising the Trust Territory of the Pacific
28 Islands. Procurement of supplies and services from off Guam may not be made ~~if until there is~~
29 proper posting and noticing in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16 to the
30 effect that no business for such supplies or services may be found on Guam or that ~~if~~ the total
31 cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five

1 percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when
2 procured from a business licensed to do business on Guam that maintains an office or other
3 facility on Guam and that is one of the above-designated businesses entitled to preference.”

4 **Section Thirteen. Horticulture Products.** Subsection (a) of Title 5 G.C.A., Division 1,
5 Chapter 5, § 5008.1 is amended to read:

6 “(a) Notwithstanding any other provision of law, ~~in any~~ no procurement of horticultural
7 products utilizing public funds shall be made until there is proper posting and noticing in
8 accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16 to the effect that no less than seventy-
9 five percent (75%) of the products to be procured shall be are native to Guam or grown-in-
10 Guam, *except* for horticultural products that are on the endangered specie list, *unless* they are
11 domestically cultivated and shall be made from among businesses authorized to transact business
12 in Guam. ‘*Horticultural products,*’ as used in this Section, includes:

- 13 (1) plants;
- 14 (2) trees;
- 15 (3) flowers;
- 16 (4) shrubs;
- 17 (5) grass; *and*
- 18 (6) seeds.”

19 **Section Fourteen. Agriculture.** Subsection (b) of Title 5 G.C.A., Division 1, Chapter 5,
20 § 5008.1 is amended to read:

21 “(b) The Department of Agriculture shall, in cooperation with the College of Agriculture
22 and Life Sciences of the University of Guam:

- 23 (1) determine, establish and maintain a list of species of native
24 horticultural products and post and notice the list in accordance with Title
25 1 G.C.A., Chapter 7, § 715, Item 17;
- 26 (2) determine conditions that constitute ‘*grown-in-Guam*’ and post and
27 notice the conditions in accordance with Title 1 G.C.A., Chapter 7, § 715,
28 Item 17; and
- 29 (3) establish and regularly update a list of qualified local landscapers, farmers and
30 other related businesses authorized to transact business on Guam, and to assist
31 those qualified businesses in establishment of availability and other related

1 logistics to facilitate acquisition of horticultural products that are native to Guam,
2 or grown-in-Guam, by all agencies and instrumentalities of Guam and other
3 entities expending public funds, and post and notice the list in accordance with
4 Title 1 G.C.A., Chapter 7, § 715, Item 17.”

5 **Section Fifteen. Planned Procurement.** § 5010 of Title 5 G.C.A., Division 1, Chapter 5
6 is amended to read:

7 **“§ 5010. Policy in Favor of Planned Procurement.** All procurements of supplies and
8 services shall, where possible, be made sufficiently in advance of need for delivery or
9 performance to promote maximum competition and good management of resources, and the
10 details of such procurements shall be posted and noticed in accordance with Title 1 G.C.A.,
11 Chapter 7, § 715, Item 16. Publication of bids and requests for proposals shall not be
12 manipulated so as to place potential bidders at unnecessary competitive disadvantage. Except in
13 emergency situations, lower price bids are generally preferable to shorten delivery or
14 performance bids. Delivery time may be considered as a factor in making an award to a
15 responsive bidder only if his average delivery time bid is at least ten percent (10%) shorter than
16 the average delivery time of a lower price responsive bidder and if the price offered by the bidder
17 offering the faster delivery or performance does not exceed one hundred five percent (105%) of
18 the lower price bidder.”

19 **Section Sixteen. Procurement Office Appointees.** A new subsection (d) of Title 5
20 G.C.A., Division 1, Chapter 5, § 5101 is added to read:

21 “(d) Details relating to appointments to the Procurement Policy Office pursuant to
22 subsection (b) hereof shall be posted and noticed in accordance with Title 1 G.C.A., Chapter 7, §
23 715, Item 16.”

24 **Section Seventeen. Duties of Policy Office.** § 5102 of Title 5 G.C.A., Division 1,
25 Chapter 5, Part A is amended to read:

26 **“§ 5102. Authority and Duties of the Policy Office.** Except as otherwise provided in
27 this Chapter, the Policy Office shall have the authority and responsibility to promulgate
28 regulations, consistent with this Chapter, governing the procurement, management, control and
29 disposal of any and all supplies, services and construction to be procured by the Territory. Such
30 regulations shall not be effective until proper posting and noticing is done in accordance with
31 Title 1 G.C.A., Chapter 7, § 715, Item 17. The Policy Office shall consider and decide matters of

1 policy within the provision of this Chapter including those referred to it by the Chief
2 Procurement Officer or the Director of Public Works. The Policy Office shall have the power its
3 regulations and the requirements of this Chapter, but shall not exercise authority over the award
4 or administration of any particular contract, or over any dispute, claim, or litigation pertaining
5 thereto, except that the Chief Procurement Officer and the Director of Public Works shall
6 exercise such authority in accordance with the provisions of this Chapter.”

7 **Section Eighteen.** § 5111 of Title 5 G.C.A., Division 1, Chapter 5, Part B is amended to
8 read:

9 “§ 5111. **Qualifications of the Chief Procurement Officer.** The Director of
10 Administration shall establish minimum qualifications for the position of Chief Procurement
11 Officer and shall post and notice said qualifications in accordance with Title 1 G.C.A., Chapter
12 7, § 715, Item 17.”

13 **Section Nineteen. Operational Procedures.** Subsection (b) of Title 5 G.C.A., Division
14 1, Chapter 5, § 5113 is amended to read:

15 “(b) Power to Adopt Operational Procedures. Consistent with the provisions of this
16 Chapter, the Chief Procurement Officer and the Director of Public Works may adopt operational
17 procedures governing the internal functions of their procurement operations and shall post and
18 notice those operations in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 17.”

19 **Section Twenty.** Subsection (iii) of Title 5 G.C.A., Division 1, Chapter 5, § 5113(c)(1)
20 is amended to read:

21 “(iii) establish and maintain programs for the inspection, testing and acceptance of
22 supplies and services, and post and notice the details of the programs in accordance with Title 1
23 G.C.A., Chapter 7, § 715, Item 17.”

24 **Section Twenty-One. Revolving Fund.** § 5115 of Title 5 G.C.A., Division 1, Chapter 5,
25 Part B is amended to read:

26 “§ 5115. **Revolving Fund.** The Inventory Revolving Fund is created and shall be
27 maintained separate and apart from other government funds. The Chief Procurement Officer
28 shall be the certifying officer of the Inventory Revolving Fund. The Fund shall be used for the
29 purchase and replenishment of items to be carried in the supplies inventory to be maintained in
30 the warehouse operated by the General Services Agency. The Fund shall be reimbursed by
31 governmental agencies obtaining supplies from the General Services Agency. The transactions

1 of the Fund shall be posted and noticed on a quarterly basis in accordance with Title 1 G.C.A.,
2 Chapter 7, § 715, Item 16.”

3 **Section Twenty-Two. Authority to Contract.** § 5121 of Title 5 G.C.A., Division 1,
4 Chapter 5, Part C is amended to read:

5 **“§ 5121. Authority to Contract for Certain Services and Approval of Contracts.**

6 (a) General Authority. For the purpose of procuring the services of accountants,
7 physicians, lawyers, dentists, licensed nurses, other licensed health professionals and other
8 professionals, any governmental body of Guam may act as a purchasing agency and contract on
9 its own behalf for such, services, *subject to* this Chapter and regulations promulgated by the
10 Policy Office, but this Subsection shall *not* authorize the procuring of such services where any
11 given governmental body is otherwise prohibited from procuring such services. Details of such
12 contracts shall be posted and noticed in accordance with Title 1 G.C.A., § 715, Item 16 before
13 execution thereof.

14 (b) Approval of Contracts for Legal Services. ~~No Contracts~~ for the services of legal
15 counsel in the Executive Branch shall not be executed ~~without the approval of~~ until the contract
16 is approved by the Attorney General and the contract is posted and noticed in accordance with
17 Title 1 G.C.A., Chapter 7, § 715, Item 16. Nothing in this Section or Chapter shall preclude the
18 Attorney General or his designee from participating in negotiations for any contract upon the
19 request of the government officer or agency primarily responsible for such negotiations.

20 (c) Approval of Contracts Generally. The Chief Procurement Officer, or his designee, or
21 a procurement officer of an agency authorized to procure the services or supplies in question, as
22 stated in the Rules promulgated by the Policy Office, shall execute all contracts for the
23 government of Guam. The Chief Procurement Officer may approve standard form contracts or
24 purchase orders, which shall be posted and noticed in accordance with Title 1 G.C.A., Chapter 7,
25 § 715, Item 16 and once such approval of the standard form is given, contracts or purchase
26 orders made on such form may be executed without the further approval of the Chief
27 Procurement Officer unless he has reserved such power of approval pursuant to the applicable
28 rules promulgated by the Policy Office.

29 (d) Approval of Contracts by Department of Revenue and Taxation. Notwithstanding any
30 other provision of law, the Director of the Department of Revenue and Taxation or his designee
31 shall have exclusive authority to approve and execute all contracts for the procurement of

1 supplies, license plates, safety decals, tax forms, tax booklets, and printing services for the
2 department and shall post and notice such contracts in accordance with Title 1 G.C.A., Chapter
3 7, § 715, Item 16 before execution thereof.”

4 **Section Twenty-Three. Procurement from United States.** § 5122 of Title 5 G.C.A.,
5 Division 1, Chapter 5 is amended to read:

6 “§ 5122. U.S. Government. The General Services Agency shall not procure supplies
7 from the United States ~~when~~ until it is determined and then posted and noticed in accordance
8 with Title 1 G.C.A., Chapter 7, § 715, Item 16 that the cost to the General Services Agency is
9 less by ten percent (10%) than from other contractors.”

10 **Section Twenty-Four. Motor Vehicles.** To amend § 5123 of Title 5 G.C.A., Chapter 5
11 to read:

12 **“§ 5123. Motor Vehicles.**

13 (a) The General Services Agency shall purchase or lease all motor vehicles required for all
14 government agencies as a fleet at least once every three (3) years and shall post and notice the
15 purchase or lease in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16. No governmental
16 agency may purchase a motor vehicle not a part of the fleet ~~without the~~ until written
17 authorization from ~~of~~ the Chief Procurement Officer is received and the authorization is posted
18 and notice in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16. This Section shall not
19 be interpreted to permit the lease of non-standardized fleet vehicles. The Chief Procurement
20 Officer shall authorize nonfleet purchase or lease only if:

21 (1) the type of vehicle is not required by other governmental agencies; or

22 (2) the vehicle is in replacement of a fleet vehicle which is no longer in service and the
23 governmental agency cannot function without a replacement until the next fleet purchase.

24 (b) Public transportation buses, vans and non-rail vehicles, which are purchased or leased with
25 government funds for fixed route or demand response systems, must be made readily accessible
26 to and usable by individuals with disabilities and comply with the acquisition and service
27 requirements of 49 C.F.R. Part 37 (Subpart D, F and G) and Part 38 (Subpart B of the Americans
28 with Disabilities Act (>ADA’) Accessibility Specifications for Transportation Vehicles).
29 Evidence of compliance shall be posted and noticed in accordance with Title 1 G.C.A., Chapter
30 7, § 715, Item 16.

1 (c) The Chief Procurement Officer shall determine, when procuring the vehicle fleet, whether a
2 contract for maintenance should be included in the contract for purchase. He shall also
3 determine, by requesting for proposals, whether it would be less costly to contract for fleet
4 maintenance with private businesses and if less costly, using either separate contracts for
5 purchase and maintenance or a combined contract for purchase and maintenance from one
6 source, he shall so contract for the maintenance of the fleet. In any maintenance contract, there
7 shall be inserted provisions requiring that the maintain maintenance be performed within a
8 certain period of time or liquidated damages assessed against the contractor. All maintenance
9 contracts shall be posted and noticed in accordance with Title 1 G.C.A., Chapter 7, § 715, Item
10 16 before execution thereof.

11 (d) At the end of the useful life of the vehicle fleet, the Chief Procurement Officer shall dispose
12 of such vehicles as he determines to be of no further use to the government by public auction to
13 the highest bidder, and shall post and notice the award to the highest bidder in accordance with
14 Title 1 G.C.A., Chapter 7, § 715, Item 16. The funds so realized shall be deposited in the General
15 Fund.”

16 **Section Twenty-Five. Exemptions.** § 5124 of Title 5 G.C.A., Division 1, Chapter 5 is
17 amended to read:

18 “§ 5124. Exemptions. Unless otherwise ordered by regulation of the Policy Office, with
19 approval of the Governor, the following supplies, and services need not be procured through the
20 General Services Agency or the Department of Public Works, but shall nevertheless be procured
21 by the appropriate Purchasing Agency, subject to the posting and noticing of such procurement
22 in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16 and further subject to the
23 requirements of this Chapter and the regulations promulgated by the Policy Office:

- 24 (a) works of art for museum and public display;
- 25 (b) published books, books or other regular publications published by any government
26 agency, maps, periodicals and technical pamphlets; and
- 27 (c) architect, engineer and land surveying services as defined in § 5301 of this Chapter.
- 28 (d) investment agent services and actuary services for the Guam Retirement Fund.”

29 **Section Twenty-Six. Regulations.** Subsection (a) of Title 5 G.C.A., Division 1, Chapter
30 5, § 5130 is amended to read:

1 “(a) Regulations. Regulations shall be promulgated by the Policy Office in accordance
2 with the applicable provisions of the Administrative Adjudication Law and such regulations shall
3 be posted and noticed in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 17.”

4 **Section Twenty-Seven. Verification and Purchase of Surplus Items.** Subsection (a) of
5 Title 5 G.C.A., Division 1, Chapter 5, § 5130 is amended to read:

6 “(d). Verification and Purchase of Surplus Items. The Policy Office shall establish as
7 part of its regulations that using agencies, including autonomous agencies, obtain written
8 verification from the General Services Agency (“GSA”), Guam State Agency for Surplus
9 Property, whether items they intend to purchase are available. Written verification shall validate
10 the availability or non-availability of items requested, and shall be provided in a form to be
11 identified or established by the Policy Office. Upon verification by GSA that items are
12 procurable, the using agency may determine whether or not to purchase the items. If GSA has
13 not verified the availability of a particular item within ten (10) working days, the using agency
14 may proceed with the purchase. The written verification shall be posted and noticed in
15 accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16.”

16 **Section Twenty-Eight. Collection of Data Concerning Public Procurement.** § 5140 of
17 Title 5 G.C.A., Division 1, Chapter 5 is amended to read:

18 **“§ 5140. Collection of Data Concerning Public Procurement.**

19 The Chief Procurement Officer shall cooperate with the Bureau of Budget and Management
20 Research and the Territorial Auditor, or any successor agency, in the preparation of statistical
21 data concerning the procurement, usage and disposition of all supplies and services, and employ
22 such trained personnel as may be necessary to carry out this function. All Using Agencies shall
23 furnish such reports as the Chief Procurement Officer may require concerning usage, needs and
24 stocks on hand, and the Chief Procurement Officer shall have authority to prescribe forms to be
25 used by the Using Agencies in requisitioning, ordering and reporting of supplies and services.
26 All reports containing procurement data, usage, and disposition shall be posted and noticed in
27 accordance with Title 1 G.C.A., Chapter 7, § 715, Item 17.”

28 **Section Twenty-Nine. Duties: Attorney General.** § 5150 of Title 5 G.C.A., Chapter 5
29 is amended to read:

30 **“§ 5150. Duties of the Attorney General.**

1 The Attorney General, the Deputy Attorney General or such Assistant Attorneys General as the
2 Attorney General may designate, shall serve as legal counsel and provide necessary legal
3 services to the Policy Officer and the General Services Agency. The Attorney General shall, in
4 addition, when he approves contracts, determine not only the correctness of their form, but their
5 legality. In making such a determination of legality, he may require any or all agencies involved
6 in the contract to supply him with evidence that the required procedures precedent to executing
7 the contract were carried out. He may prescribe the forms and format required to be followed by
8 the agencies in aiding him in his determination of legality. All documents related to the
9 contracts in question shall be posted on the official website of the General Services Agency or
10 the website of any other appropriate agency and noticed in accordance with Title 1 G.C.A.,
11 Chapter 7, § 715, Item 16.”

12 **Section Thirty. Invitation for Bids.** Subsection (b) of Title 5 G.C.A., Division 1,
13 Chapter 5, § 5211 is amended to read:

14 “(b) Invitation for Bids. An Invitation for Bids shall be issued and shall include a
15 purchase description, and all contractual terms and conditions applicable to the procurement, and
16 shall be posted and noticed in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16 before
17 issuance thereof.”

18 **Section Thirty-One. Public Notice.** Subsection (c) of Title 5 G.C.A., Division 1,
19 Chapter 5, § 5211 to read:

20 “(c) Public Notice. Adequate public notice of the Invitation for Bids shall be given a reasonable
21 time prior to the date set forth therein for the opening of bids, in accordance with regulations
22 promulgated by the Policy Office. Such notice may include publication in a newspaper of
23 general circulation a reasonable time prior to bid opening, and shall be posted and noticed in
24 accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16. If a bid is given public notice which
25 is within the time specified in the Policy Office’s rules and regulations on the subject, it shall not
26 be challenged unless the bidder can show exceptional circumstances which would render the
27 rules and regulations inapplicable in the case of a particular bid being requested.”

28 **Section Thirty-Two. Bid Opening.** Subsection (d) of Title 5 G.C.A., Division 1,
29 Chapter 5, § 5211 to read:

30 “(d) Bid Opening. Bids shall be opened publicly in the presence of one or more
31 witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and

1 such other relevant information as may be specified by regulation, together with the name of
2 each bidder shall be recorded; the record and each bid shall be open to public inspection and
3 shall be posted and notice in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16.”

4 **Section Thirty-Three. Bids & Awards.** Subsection (f) of Title 5 G.C.A., Division 1,
5 Chapter 5, § 5211 to read:

6 “(f) Correction or Withdrawal of Bids; Cancellation of Awards.
7 Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of
8 awards or contracts based on such bid mistakes, shall be permitted in accordance with
9 regulations promulgated by the Policy Office. After bid opening, no changes in bid prices or
10 other provisions of bids prejudicial to the interest of the Territory or fair competition shall be
11 permitted. Except as otherwise provided by regulation, all decisions to permit the correction or
12 withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by
13 a written determination made by the Chief Procurement Officer, the Director of Public Works or
14 head of a purchasing agency, and such written determination shall be posted and noticed in
15 accordance with Title 1 G.C.A., Chapter 7, § 715, Item 16.”

16 **Section Thirty-Four. Awarding of Contracts.** Subsection (g) of Title 5 G.C.A.,
17 Division 1, Chapter 5, § 5211 is amended to read:

18 “(g) Award. The contract shall be awarded with reasonable promptness by written notice
19 to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the
20 Invitation for Bids. In the event all bids for a construction project exceed available funds as
21 certified by the appropriate fiscal officer, and the low responsive and responsible bid does not
22 exceed such funds by more than five percent (5%), the Chief Procurement Officer, the Director
23 of Public Works, or the head of a purchasing agency, is authorized in situations where time or
24 economic considerations preclude resolicitation of work of a reduced scope to negotiate an
25 adjustment of the bid price, including changes in the bid requirements, with the low responsive
26 and responsible bidder, in order to bring the bid within the amount of available funds. All
27 contracts awarded and any adjustments to bids shall be posted and noticed in accordance with
28 Title 1 G.C.A., Chapter 7, § 715, Item 16.

29 **Section Thirty-Five. Sealed Bidding.** Subsection (h) of Title 5 G.C.A., Division 1,
30 Chapter 5, § 5211 to read:

1 “(h) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a
2 purchase description to support an award based on price, an Invitation for Bids may be issued
3 requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to
4 those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
5 Invitations to bid shall be posted and noticed in accordance with Title 1 G.C.A., Chapter 7, §
6 715, Item 16.”

7 **Section Thirty-Six. Bid Security.** Subsection (a) of Title 5 G.C.A., Division 1, Chapter
8 5, § 5212 is amended to read:

9 “(a) Requirement for Bid Security. Bid security shall be required for all competitive
10 sealed bidding for the procurement of supplies or services when the total price is estimated by
11 the Chief Procurement Officer to exceed Twenty-Five Thousand Dollars (\$25,000.00). Bid
12 security shall be a bond provided by a surety company authorized to do business in Guam, or the
13 equivalent in cash, or otherwise supplied in a form satisfactory to the government of Guam.
14 Nothing herein prevents the requirement of such bonds on the procurement of supplies or
15 services totaling fewer than Twenty-Five Thousand Dollars (\$25,000.00) when a written
16 determination and justification for such requirement is included as an integral part of the
17 Invitation for Bid solicitation package. Information relating to bid security and written
18 determinations as required by this Section shall be posted and noticed in accordance with Title 1
19 G.C.A., Chapter 7, § 715, Item 16.”

20 **Section Thirty-Seven. Action against Bid Security.** Subsection (d) of Title 5 G.C.A.,
21 Division 1, Chapter 5, § 5212 is amended to read:

22 “(d) Action against Bid Security. In the event that a successful bidder fails to complete
23 delivery of supplies or services as required in the contract between such contractor and the
24 government of Guam, the government of Guam may proceed to procure such supplies or services
25 from the next lowest bidder who is able to deliver such supplies or services, and shall post and
26 notice information relating to the next lowest bidder in accordance with Title 1 G.C.A., Chapter
27 7, § 715, Item 16. The government of Guam may retain so much of the bid security as may be
28 required to compensate the government for damages arising from contractors failure to complete
29 delivery of such supplies or services, and the government of Guam may also bring an action in
30 the Superior Court of Guam against the contractor for direct damages, if any, beyond the amount
31 of the bid security posted except that no action against bid security maybe taken in such

1 circumstances where supplies or services are terminated due to the government of Guam's
2 failure to pay for such services or supplies on a timely basis."

3 **Section Thirty-Eight. Bond Forms.** Subsection (h) of Title 5 G.C.A., Division 1,
4 Chapter 5, § 5212 is amended to read:

5 "(h) Bond Forms. The Policy Office shall promulgate by regulation the form of the bond
6 or other bid security required by this Section together with any additional regulations necessary
7 for the administration of this Section. Such form and additional regulations shall be posted and
8 noticed in accordance with Title 1 G.C.A., Chapter 7, § 715, Item 17. Any person may request
9 and obtain from the Government of Guam a certified copy of a bond upon payment of the cost of
10 reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie
11 evidence of the contents, execution and delivery of the original."

12 **Section Thirty-Nine. Note to Compiler.** Subsections of Title 5 GCA, Division 1,
13 Chapter 5, § 5030 shall be relettered consistently with the provisions of this act.