


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

2011 JAN 24 PM 4:32 EPN

Bill No 48-316(DR)

Introduced by:

J. T. Won Pat, Ed.D. 

**AN ACT TO ADD § 5213A, 5220, AND 5425A TO TITLE 5
GUAM CODE ANNOTATED RELATIVE TO
PROVIDING TEMPORARY EXPEDITED
PROCUREMENT PROCEDURES TO ASSIST WITH
THE DISBURSEMENT OF STIMULUS FUNDS UNDER
THE "2009 AMERICAN RECOVERY AND REINVEST
ACT".**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds
3 that the government of Guam has been granted closed to \$240 million in federal
4 stimulus funding under the historic 2009 American Recovery and Reinvestment
5 Act (ARRA), U. S. Public Law 111-5, which provides states with funding for
6 infrastructure projects to create jobs in the near term and to lay the foundation for
7 long term economic growth. Many of ARRA's provisions include stringent "use it
8 or lose it" deadlines that require states to use the federal stimulus funds quickly or
9 the funding will be reallocated to other states. It is reported that an approximate
10 balance of \$150 million plus in federal stimulus funding including about over \$80
11 million for the Department of Education remains to be obligated and or expended
12 on or before September 30, 2011.

13 *I Liheslaturan Guahan* finds that, in order to mobilize economic recovery

1 and so as not to lose federal stimulus funds, many states passed laws in 2009
2 specifically intended to reap the maximum benefits of ARRA, including methods
3 to comply with its deadlines. Among those many states are Colorado and Hawaii,
4 both of which have procurement laws patterned after the American Bar
5 Association's Model Procurement Law, like Guam, and both of which made
6 changes to their procurement law specifically to accommodate the quick use of
7 ARRA funds. Colorado added a new section to its procurement law to permit a
8 waiver of one or more provisions of their procurement code to the extent the
9 waiver was necessary to expedite the use of ARRA funds if strict adherence to the
10 code would substantially impede the state's ability to expend the moneys in a
11 manner or within the time required by ARRA. Hawaii streamlined the
12 procurement process and protest process for ARRA funded procurements, and
13 raised the threshold for all small purchases, regardless of source of funds, to sunset
14 in 2012.

15 *I Liheslaturan Guahan* finds that many of the deadlines for Guam to use its
16 ARRA funds are now fast approaching, and the government of Guam has not yet
17 been able to encumber or expend much of it. *I Liheslaturan Guahan* intends for
18 the government of Guam to maximize the ARRA funds, and finds that in order to
19 facilitate compliance with the deadlines and other ARRA requirements, the
20 government of Guam needs temporary relief from the Guam Procurement Law in
21 the form of expedited procurement procedures including protest procedures,
22 similar to those taken by the states of Colorado and Hawaii in 2009. It is not the
23 intent of *I Liheslaturan Guahan* to provide permanent exemptions or permanent
24 relief to the Guam Procurement Law, and this Act shall be applied only to expedite
25 the expenditure of federal stimulus funds authorized by ARRA, or to expend the
26 matching state funds, if any, required to access the federal stimulus funds.

27 *I Liheslaturan Guahan* finds that ARRA has specific accountability and

1 transparency provisions to prevent fraud, waste, and abuse, to ensure against poor
2 contracting or grant management, and to ensure the use of competitive procedures.
3 ARRA provides the federal government with expansive investigatory and auditing
4 powers to monitor, oversee, and ensure that the ARRA funds are used for their
5 intended purposes. Therefore, *I Liheslaturan Guahan* intends this Act to provide a
6 proper balance between the expedited procurement procedures and the necessary
7 accountability and transparency requirements.

8 **Section 2.** A new §5213A is added to Title 5 of the Guam Code Annotated
9 to read:

10 **§5213A. Small Purchase Limits for Procurement Funded with**
11 **2009 American Recovery and Reinvestment Act Moneys.**

12 Notwithstanding any rule created pursuant to §5213 setting threshold
13 amounts for small purchases, whenever an acquisition is funded, in whole or
14 in part, by the 2009 American Recovery and Reinvestment Act, the
15 threshold limits to use the small purchases procedure shall be increased to
16 the following limits instead:

17 (a) For the acquisition of goods and services, the acquisition
18 may not exceed \$100,000; and

19 (b) For the acquisition of construction, the acquisition may
20 not exceed \$250,000.

21 All other procedures for small purchases as established by this
22 Chapter or by applicable rules shall be followed. This section is repealed
23 effective September 30, 2012, unless the federal grantor agency authorizes
24 an extension of time for the obligation or expenditure of ARRA funds, in
25 which case this section shall be repealed at the end of the extension period.

26 **Section 3.** A new § 5220 is added to Title 5 of the Guam Code Annotated
27 to read:

1 **§ 5220. Waiver of Procurement Code Requirements for**
2 **Acquisitions Funded with 2009 American Recovery and Reinvestment**
3 **Act Moneys.** Notwithstanding any other provision of this Chapter and any
4 rules promulgated therefore, if funding for a procurement, whether in whole
5 or in part, includes moneys received pursuant to the 2009 American
6 Recovery and Reinvestment Act (ARRA) or any amendments thereto, the
7 Chief Procurement Officer, the Director of Public Works, or the head of a
8 purchasing agency may request in writing a waiver of one or more
9 provisions of this Chapter to the extent the waiver is necessary to expedite
10 the use of the ARRA moneys in a transparent and accountable manner
11 consistent with the goals and purposes of ARRA or to the extent strict
12 adherence to this Chapter would substantially impede the ability of the
13 government to expend the moneys in the manner or within the time required
14 by ARRA or any other applicable federal law. A waiver shall be granted
15 upon the written approval of the Governor and the Public Auditor, or their
16 designees, confirming that the requested waiver meets the criteria set forth in
17 this section. A written determination of the basis for and the scope of the
18 waiver, including but not limited to the specific code provision being waived
19 and the alternative selection process to be used, shall be signed by the
20 requesting party, and the Governor and the Public Auditor, or their
21 respective designees if applicable, and shall be included in the contract file,
22 and made publicly available by posting on the Governor's or Public
23 Auditor's web site. Determinations made pursuant to this section are not
24 subject to protest. This section is repealed effective September 30, 2012,
25 unless the federal grantor agency authorizes an extension of time for the
26 obligation or expenditure of ARRA funds, in which case this section shall be
27 repealed at the end of the extension period.

1 **Section 4.** A new §5425A is added to Title 5 of the Guam Code Annotated
2 to read:

3 **§5425A. Protest Procedure for Procurement Funded with 2009**
4 **American Recovery and Reinvestment Act Moneys.** (a) Notwithstanding
5 any other provision of this Chapter and any rules promulgated therefore, if
6 an actual or prospective vendor, contractor, or service provider is aggrieved
7 by an award of a contract funded, in whole or in part, by the 2009 American
8 Recovery and Reinvestment Act (ARRA), the procedure for protest outlined
9 in this section shall apply, and shall be the exclusive means available to
10 resolve the concerns of persons aggrieved in connection with awards or
11 solicitations involving ARRA funds, in whole or in part. The protest shall
12 be submitted to the Public Auditor who may settle and resolve a protest by
13 one or more of the following means:

- 14 (1) amending or canceling the solicitation;
- 15 (2) terminating the contract that was awarded;
- 16 (3) declaring the contract null and void from the time of its award;
- 17 or
- 18 (4) affirming the contract award decision.

19 If the protest is not resolved by mutual agreement, the Public Auditor
20 shall issue a decision in writing within no more than ten working days of
21 receipt of the protest. The decision shall state the reasons for the action
22 taken. A copy of the written decision shall be mailed or otherwise furnished
23 to the vendor, contractor, or service provider who initiated the protest, the
24 person awarded the contract, and to all other non-selected bidders or
25 offerors.

26 (b) For purposes of section, the determination of facts and decision
27 by

1 the Public Auditor for the resolution of protests of ARRA funded
2 procurements shall be final and conclusive with no right of appeal or judicial
3 review. The fact that a protest has been filed pursuant to this section shall
4 not stay the procurement process or award of any contract funded by ARRA
5 moneys, whether in whole or in part, unless so ordered by the Public
6 Auditor. A request for reconsideration shall also not stay the award of any
7 contract funded by ARRA moneys, whether in whole or in part, unless so
8 ordered by the Public Auditor.

9 (c) This section is applicable retroactively to any procurement
10 involving ARRA funds, provided the procurement had begun but had not yet
11 been completed at the time this section became effective, and provided no
12 protest had yet been filed. A protest pursuant to this section shall be
13 submitted in writing within fourteen (14) days after such aggrieved person
14 knows or should have known of the facts giving rise thereto, provided no
15 protest may be filed more than thirty (30) days after notice of award is given
16 to a bidder or offeror.

17 (d) This section is repealed effective September 30, 2012, unless
18 the federal grantor agency authorizes an extension of time for the obligation
19 or expenditure of ARRA funds, in which case this section shall be repealed
20 at the end of the extension period.

21 **Section 5.** Rules may be promulgated, if necessary, consistent with this
22 Act pursuant to the procedures in the Administrative Adjudication Law for
23 establishing emergency rules through executive order.