

*I Mina'Trentai Dos Na Liheslaturan Received*  
**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
<b>224-32 (COR)</b>	T. C. Ada R. J. Respicio B. J.F. Cruz	AN ACT TO AMEND §5425, §5426, §5427, §5450, §5452, §5480, §5481 AND §§5485 (a) and (b) OF ARTICLE 9, AND §5703, §5705, §5706(b), §5707(a), §5708 OF ARTICLE 12, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO CLARIFYING LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.	11/15/13 4:49 p.m.	11/18/13	Committee on General Governmental Operations and Cultural Affairs	12/13/13 2:00 p.m. 03/06/14 2p.m. RoundTable 4/29/14 2 p.m. RoundTable 7/16/14 9a.m. 11/19/14 9 A.M.	1/27/14 10:52 a.m. as Substituted 12/11/14 3:44 p.m. Revised Report 12/12/14 1:47 p.m. Supplemental	<b>Fiscal Note Requested 11/25/13, Fiscal Note Waiver Received 12/26/13</b>
	<b>DATE PASSED</b>	<b>TITLE</b>	<b>TRANSMITTED</b>		<b>DUE DATE</b>	DATE SIGNED BY I MAGA'LAHEN GUAHAN	<b>PUBLIC LAW NO.</b>	<b>NOTES</b>
	12/17/2014	AN ACT TO AMEND ARTICLES 9 AND 12 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AMENDING LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.	12/21/14	6:35 p.m.	01/01/15			As substituted by the Author; and further substituted by the Committee on Rules; and further substituted and amended on the Floor.



FILE COPY

***I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN***  
THIRTY-SECOND GUAM LEGISLATURE  
155 Hesler Place, Hagåtña, Guam 96910

December 21, 2014

The Honorable Edward J.B. Calvo  
*I Maga'láhen Guåhan*  
*Ufisinan I Maga'láhi*  
*Hagåtña, Guam 96910*

*Case 40, Jesse J*  
*12/21/14*  
*6:35 pm*

Dear *Maga'láhi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 224-32 (COR); 293-32 (COR); 306-32 (COR); 332-32 (LS); 344-32 (COR); 345-32 (COR); 376-32 (COR); 381-32 (COR); 391-32 (LS); 399-32 (COR); 400-32 (COR); 402-32 (COR); 405-32 (COR); 406-32 (COR); 412-32 (COR); 413-32 (LS); 416-32 (COR); 418-32 (COR); 419-32 (COR); 420-32 (COR); 421-32 (COR); 422-32 (COR); 423-32 (COR); 424-32 (LS); 425-32 (LS); 426-32 (COR); 427-32 (COR); 428-32 (COR); 429-32 (COR); 430-32 (COR); and 434-32 (COR), which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on December 17 and 19, 2014.

Sincerely,

TINA ROSE MUÑA BARNES  
Legislative Secretary

Enclosure (31)

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
**2014 (SECOND) Regular Session**


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

This is to certify that **Substitute Bill No. 224-32 (COR), "AN ACT TO AMEND ARTICLES 9 AND 12 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AMENDING LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW,"** was on the 17<sup>th</sup> day of December, 2014, 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 21 day of Dec.,  
2014, at  
6:35 o'clock 9.M.

  
**Assistant Staff Officer**  
***Maga'lahi's Office***

APPROVED:

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**EDWARD J.B. CALVO**  
***I Maga'lahen Guåhan***

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
**2013 (FIRST) Regular Session**

**Bill No. 224-32 (COR)**

As substituted by the Author; and  
further substituted by the Committee on Rules; and  
further substituted and amended on the Floor.

Introduced by:

T. C. Ada  
R. J. Respicio  
B. J.F. Cruz  
V. Anthony Ada  
FRANK B. AGUON, JR.  
Chris M. Dueñas  
Michael T. Limtiaco  
Brant T. McCreddie  
Tommy Morrison  
T. R. Muña Barnes  
Dennis G. Rodriguez, Jr.  
Michael F. Q. San Nicolas  
Aline A. Yamashita, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO AMEND ARTICLES 9 AND 12 OF  
CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED,  
RELATIVE TO AMENDING LEGAL AND  
CONTRACTUAL REMEDIES IN GUAM  
PROCUREMENT LAW.**

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

2           **Section 1.** § 5425 of Subarticle A of Article 9 (Legal and Contractual  
3 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
4 follows:

5                   “§ 5425.     **Resolution of Protested Solicitations and Awards.**

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

9 (1) A person “may be aggrieved,” as provided in Subsection  
10 (a), if:

11 (A) there are facts sufficient to raise a reasonable  
12 apprehension that the method of source selection, the  
13 solicitation, or the award of a contract may be contrary to  
14 law or regulation; and

15 (B) there is a reasonable likelihood, based on  
16 information available at the time of protest during the pre-  
17 submission or pre-opening period, that such person would have  
18 been in a competitive position to be awarded the contract; or

19 (C) notwithstanding such person’s competitive  
20 position, the protest of such person raises issues significant to  
21 the procurement system or its integrity.

22 (2) The time limits specified for the resolution of disputes  
23 arising under this Section, including any administrative and judicial  
24 review provided in this Article 9, are *not* intended to be jurisdictional,  
25 but *shall* be subject to equitable estoppel.

26 (3) *Interested party* means a person who is an actual or  
27 prospective bidder, offeror, or contractor who is aggrieved in

1 connection with the solicitation or the award of a contract, or by the  
2 protest or resolution of it.

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

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

24 (1) the Government's factual and legal reasons for the  
25 decision made to accept or reject, in whole or in part; and

26 (2) that the decision to reject is a final decision and that the  
27 protestant has the right to administrative and judicial review.

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

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

18 (f) Appeal. A decision under Subsection (c) of this Section,  
19 including a decision there-under regarding entitlement to costs as provided  
20 by Subsection (h) of this Section, may be appealed by the protestant to the  
21 Public Auditor within fifteen (15) days after receipt by the protestant of the  
22 notice of decision to reject the protest, or within fifteen (15) days after the  
23 date the protest is deemed rejected, as provided in Subsection (e) of this  
24 Section. If for any reason the Public Auditor determines that he must  
25 disqualify himself from hearing the appeal, the matter shall be removed to  
26 the Superior Court which shall hear and determine the matter *de novo*.  
27 pursuant to §5480 (a).

1 (g) Automatic Stay. In the event of a timely protest under  
2 Subsection (a) of this Section, the government *shall not* proceed further with  
3 the solicitation, award, or performance of the contract prior to the time  
4 allowed to appeal, or the final resolution of such protest, including a final  
5 entry of judgment, or the settlement of the protest evidenced by a writing  
6 signed by all interested parties, and any such further action is void, *unless*:

7 (1) the Chief Procurement Officer or the Director of Public  
8 Works, with written concurrence of the head of the using or  
9 purchasing agency and the Attorney General, or designated Deputy  
10 Attorney General, then makes a written determination that the award  
11 of the contract without delay is necessary to protect substantial  
12 interests of the government of Guam, or *I Maga'lahi* (the Governor)  
13 issues a Declaration of Emergency Procurement as authorized by §  
14 5215 of this Chapter; and

15 (2) the protestant has been given at least two (2) days written  
16 notice (exclusive of Guam holidays) of the determination of necessity  
17 and substantial interest or Declaration of Emergency by *I Maga'lahi*  
18 (the Governor); and

19 (3) in any pending appeal of the protest before the Public  
20 Auditor or the Court, or in any such appeal filed within two (2) days  
21 after the notice specified in Subsection (2), challenging the validity of  
22 the Declaration or determination, the Public Auditor or the Court, as  
23 the case may be, has confirmed the validity of such determination of  
24 necessity and substantial interest or Declaration of Emergency  
25 Procurement as authorized by § 5215 of this Chapter in an expedited  
26 hearing held to determine whether to confirm any such determination



1 or Declaration. Said expedited hearing *shall* be noticed to all parties  
2 who have submitted bids or proposals.

3 (4) The two (2) days specified in Subsection (3) *shall* be  
4 determined as provided in Title 1 GCA § 1004.

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

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

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

18 (3) The Public Auditor *shall* have the power to assess  
19 reasonable costs including reasonable attorney fees incurred by the  
20 government, including its autonomous agencies and public  
21 corporations, or any protestant or interested party against any party,  
22 including the government, making a protest, motion or bringing any  
23 action fraudulently, frivolously or with predominant intent to delay or  
24 disrupt the procurement process.

25 (i) Finality. A decision of the Public Auditor is final unless a  
26 person adversely affected by the decision commences an appeal in the  
27 Superior Court as provided by §5707(a) of this Chapter and in accordance

1 with the waiver of sovereign immunity conferred by Subsection (a) of §5480  
2 of this Chapter.”

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

6 **“§ 5426. Authority to Debar or Suspend.**

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

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

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

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

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

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

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

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

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

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

24           (6) for violation of the ethical standards set forth in Article  
25 11 of this Chapter;

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

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

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

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

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

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

23 (f) Any member of the public, including the bidder, offeror or  
24 contractor, as well as any elected official or employee of the government,  
25 may petition the Chief Procurement Officer, the Director of Public Works,  
26 or the head of a purchasing agency, to take action to debar or suspend  
27 pursuant to Subsection (a) of this Section. The petition shall state the facts

1 that the complainant believes to be true that warrant a suspension or  
2 debarment pursuant to this §5426. Immediately upon the receipt of such a  
3 petition, the person petitioned *shall* cause an investigation to be conducted.  
4 If the petitioned officer finds insufficient facts to proceed with a debarment  
5 or suspension hearing, he shall state the reasons in a written decision within  
6 60 days of receipt of the petition. If the person petitioned determines that  
7 sufficient facts may exist to debar or suspend the individual or company,  
8 then he shall hold a hearing as authorized in Subsection (a), and issue a  
9 decision as required in Subsection (c). If the petitioned officer *does not* issue  
10 the written decision required under Subsection (c) of this Section within  
11 sixty (60) days after written request by the petitioner for a final decision,  
12 then the petitioner may proceed with an appeal to the Public Auditor as if the  
13 petition had been rejected.”

14 **Section 3.** § 5427 of Subarticle A of Article 9 (Legal and Contractual  
15 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
16 follows:

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

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

26 (b) Authority. The Chief Procurement Officer, the Director of  
27 Public Works, the head of a purchasing agency, or a designee of one of these

1 officers, is authorized, prior to commencement of an action in a court  
2 concerning the controversy, to settle and resolve a controversy described in  
3 Subsection (a) of this Section. This authority *shall* be exercised in  
4 accordance with regulations promulgated by the Policy Office.

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

9 (1) state the reasons for the decision made; and

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

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

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

22 (f) Failure to Render Timely Decision. If the Chief Procurement  
23 Officer, the Director of Public Works, the head of a purchasing agency, or  
24 the designee of one of these officers, *does not* issue the written decision  
25 required under Subsection (c) of this Section within sixty (60) days after  
26 written request for a final decision, or within such longer period as may be  
27 agreed upon by the parties, then the contractor may proceed as if an adverse

1 decision had been received. If no decision is issued and no action is taken by  
2 the contractor to request a final decision, within two (2) years from the date  
3 the contract controversy arose, any claim or action thereon shall be barred.”

4 **Section 4.** § 5450 of Subarticle B of Article 9 (Legal and Contractual  
5 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
6 follows:

7 **“§ 5450. Applicability of this Part.**

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

12 **Section 5.** § 5452 of Subarticle B of Article 9 (Legal and Contractual  
13 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
14 follows:

15 **“§ 5452. Remedies After an Award.**

16 If after an award it is determined that a solicitation or award of a  
17 contract is in violation of law, then:

18 (a) if the person awarded the contract has *not* acted  
19 fraudulently or in bad faith:

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

23 (2) the contract may be terminated and the person  
24 awarded the contract *shall* be compensated for the actual  
25 expenses reasonably incurred under the contract, plus a  
26 reasonable profit, prior to the termination;

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

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

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

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

11 **Section 6.** § 5480 of Subarticle D of Article 9 (Legal and Contractual  
12 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
13 follows:

14 **“§ 5480. Waiver of Sovereign Immunity by Grant of**  
15 **Jurisdiction in Connection with Controversies Arising Under this**  
16 **Article.**

17 (a) Solicitation and Award of Contracts. The Superior Court of  
18 Guam shall have jurisdiction over an action between the government of  
19 Guam and a bidder, offeror, or contractor, either actual or prospective, to  
20 review any administrative decision or determination arising under §5425 of  
21 this Chapter, after appeal to the Public Auditor or to determine de novo in  
22 the event of disqualification of the Public Auditor whether a solicitation or  
23 award of a contract is in accordance with the statutes, regulations, and the  
24 terms and conditions of the solicitation. The Superior Court shall have such  
25 jurisdiction in actions at law or in equity, and whether the actions are for  
26 monetary relief allowed under §5425 or for injunctive, declaratory, or other  
27 equitable relief, and whether the matter is procedural or substantive in



1 nature.

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

14 (c) Actions Under Contract or for Breach of Contract. The  
15 Superior Court *shall* have jurisdiction over an action between the  
16 government of Guam and a contractor, brought after review of the Public  
17 Auditor in accordance with § 5706 of this Chapter, for any cause of action  
18 which arises under, or by virtue of, the contract, whether the action is at law  
19 or equity, whether the action is on contract or for breach of contract, and  
20 whether the action is for monetary damages or injunctive, declaratory or  
21 other equitable relief.

22 (d) Limited Finality for Administrative Determinations. In any  
23 judicial action under this Section, factual or legal determinations by  
24 employees, agents or other persons appointed by the government of Guam  
25 shall have no finality and shall not be conclusive, notwithstanding any  
26 contract provision, or regulation, except to the extent provided in § 5245 and  
27 in Article 12 of this Chapter. The Superior Court of Guam shall have

1 jurisdiction to determine de novo any factual or legal issue in the event of  
2 disqualification of the Public Auditor.

3 (e) Exhaustion of Administrative Remedies. No action shall be  
4 brought under any provision of this Section until all administrative remedies  
5 provided in this Chapter under Article 9 and Article 12 have been exhausted.

6 (f) Form of Review Under § 5480(a). All appeals permitted by  
7 Subsection (a) of this Section *shall* be treated as special proceedings for  
8 expeditious review of the administrative decision below unless good cause is  
9 shown that it should proceed as a civil action.

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

19 **Section 7.** § 5481 of Subarticle D of Article 9 (Legal and Contractual  
20 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
21 follows:

22 **“§ 5481. Time Limitations on Actions.**

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

26 (b) Debarments and Suspensions for Cause. Any action under §  
27 5480(b) of this Chapter *shall* be commenced within six (6) months after

1 receipt of the decision of the Policy Office under § 5651 of this Chapter, or  
2 the decision of the Public Auditor under § 5705 of this Chapter, whichever is  
3 applicable.

4 (c) Actions Under Contracts or for Breach of Contract. Any action  
5 commenced under § 5480(c) of this Chapter *shall* be commenced within  
6 twelve (12) months after the date of the Public Auditor’s decision.

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

10 **Section 8.** § 5485(a) of Subarticle E of Article 9 (Legal and Contractual  
11 Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
12 follows:

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

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

25 “(b) Notwithstanding any other provision of law, the government or  
26 a governmental body *shall* serve an answer or otherwise plead to any  
27 complaint made under this Section within thirty (30) days after service of the

1 pleading in which such complaint is made, unless the court otherwise  
2 directs, for good cause shown.”

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

5 **“§ 5703. Jurisdiction of the Public Auditor.**

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

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

22 **“§ 5705. Suspension or Debarment Proceedings.**

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

25 (b) Time Limitation on Filing an Appeal. The person receiving an  
26 adverse decision under Subsection (c) or (f) of § 5426 of this Chapter,  
27 including a person suspended or debarred or a rejected petitioner, *shall* file

1 an appeal with the Public Auditor within thirty (30) days from the date of  
2 the receipt of a decision or the date a petition is deemed rejected.

3 (c) Decision. The Public Auditor *shall* decide whether, or the  
4 extent to which, the decision to debar or suspend, or reject a petition to do  
5 so, was in accordance with the statutes, regulations and the best interest of  
6 the government or any autonomous agency or public corporation, and was  
7 fair. The Public Auditor *shall* issue her or his decision within thirty (30)  
8 days of the completion of the hearing on the issue.

9 (d) Appeal. Any person receiving an adverse decision, including  
10 the Chief Procurement Officer, the Director of Public Works, or the head of  
11 a purchasing agency, a person suspended or debarred, or a rejected  
12 petitioner, may appeal from a decision by the Public Auditor to the Superior  
13 Court of Guam under the waiver of sovereign immunity provided in §  
14 5480(b) of this Chapter.”

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

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

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

23 “(a) Appeal. Any person receiving an adverse decision, including  
24 the contractor, a governmental body, or purchasing agency may appeal  
25 from a decision by the Public Auditor to the Superior Court of Guam as  
26 provided in Article 9 of this Chapter.”

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

3           “**§ 5708.     Discontinuance of Contractor’s Appeal.**

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

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

18           “**§ 5710.**     Notwithstanding any other provision of Article 2 of this  
19 Chapter, the Public Auditor *shall* be authorized and responsible to  
20 promulgate regulations consistent with this Act in accordance with the  
21 applicable provisions of the Administrative Adjudication Law, which  
22 regulations *shall* supersede any other regulations of any body specified in §  
23 5131 of this Chapter.”

24           **Section 16. Severability.** *If* any provision of this law or its application to  
25 any person or circumstance is found to be invalid or contrary to law, such  
26 invalidity *shall not* affect other provisions or applications of this law which can be

1 given effect without the invalid provisions or application, and to this end the  
2 provisions of this law are severable.

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

# LEGISLATIVE SESSION

## I MINA'TRENTAI DOS NA LIHESLATURAN

### 2014 (SECOND) Regular Session

### Voting Sheet

**Bill No. 224-32 (COR)**

Speaker Antonio R. Unipingco Legislative Session Hall

As substituted by the Authorand as further substituted by  
COR and further substituted on the Floor; and amended on  
the Floor.

December 17, 2014

<u>NAME</u>	<u>Yea</u>	<u>Nay</u>	<u>Not Voting/ Abstained</u>	<u>Out During Roll Call</u>	<u>Absent</u>
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ	✓				
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

TOTAL

14

Yea

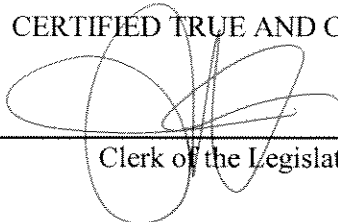
Nay

Not Voting/  
Abstained

Out During  
Roll Call

Absent

CERTIFIED TRUE AND CORRECT:



Clerk of the Legislature

I = Pass