



## Sen. Thomas Ada

Chairman

Committee on Transportation, Infrastructure, Lands,  
Border Protection, Veterans' Affairs and Procurement  
*I Mina'Trentai Tres Na Liheslaturan Guåhan* • 33<sup>rd</sup> Guam Legislature

DEC 23 2016

**The Honorable Judith T. Won Pat, Ed.D.**

Speaker

*I Mina'Trentai Tres Na Liheslaturan Guåhan*

155 Hesler Place

Hagåtña, Guam 96910

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

*Rory J. Respicio*

**RE: Committee Report on Bill No. 162-33 (COR), as substituted**

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 162-33 (COR), as substituted, "AN ACT TO *AMEND* ARTICLES 3, 9, AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, § 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO *AMEND* §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(A) AND (B) OF ARTICLE 9; AND *AMEND* §§ 5703, 5705, 5706(B), 5707(A) AND 5708, AND *ADD* A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW."

Committee votes are as follows:

4 TO DO PASS  
\_\_\_\_ TO NOT PASS  
2 TO REPORT OUT ONLY  
\_\_\_\_ TO ABSTAIN  
\_\_\_\_ TO PLACE IN INACTIVE FILE

*Si Yu'os ma'åse',*

*Thomas C. Ada*

Thomas C. Ada

2016 DEC 26 PM 5:14



**Sen. Thomas Ada**

**Chairman**

Committee on Transportation, Infrastructure, Lands,  
Border Protection, Veterans' Affairs and Procurement

*I Mina'Trentai Tres Na Libeslaturan Guåhan • 33<sup>rd</sup> Guam Legislature*

**COMMITTEE REPORT  
ON  
Bill No. 162-33 (COR)  
As Substituted**

**“ AN ACT TO *AMEND* ARTICLES 3, 9, AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, § 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO *AMEND* §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(A) AND (B) OF ARTICLE 9; AND *AMEND* §§ 5703, 5705, 5706(B), 5707(A) AND 5708, AND *ADD* A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.”**



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*I Mina Trentai Tres Na Libeslaturan Guåhan • 33<sup>rd</sup> Guam Legislature*

DEC 23 2016

### MEMORANDUM

To: **All Members**  
Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement

From: **Senator Thomas C. Ada**, Committee Chairperson 

Subject: **Committee Report on Bill No. 162-33 (COR), as substituted**

Transmitted herewith for your consideration is the Committee Report on Bill No. 162-33 (COR), as substituted, **“AN ACT TO AMEND ARTICLES 3, 9, AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, § 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO AMEND §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(A) AND (B) OF ARTICLE 9; AND AMEND §§ 5703, 5705, 5706(B), 5707(A) AND 5708, AND ADD A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.”**

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill No. 162-33 (COR), As Introduced
- Copy of Bill No. 162-33 (COR), As Substituted
- Public Hearing Sign-in Sheet
- Written testimony from:
- COR Referral of Bill No. 162-33 (COR)
- Copy of Fiscal Note Request
- Copy of Fiscal Note
- Notices of Public Hearing
- Public Hearing Agenda

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



# Sen. Thomas Ada

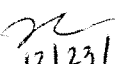
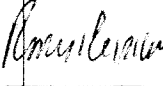
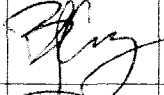
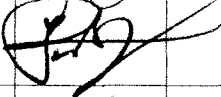


Chairman

Committee on Transportation, Infrastructure, Lands,  
Border Protection, Veterans' Affairs and Procurement

*I Mina Trentai Tres Na Libeslaturan Guahan • 33<sup>rd</sup> Guam Legislature*

## COMMITTEE VOTE SHEET

Bill No. 162-33 (COR), as substituted, "AN ACT TO *AMEND* ARTICLES 3, 9, AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, § 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO *AMEND* §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(A) AND (B) OF ARTICLE 9; AND *AMEND* §§ 5703, 5705, 5706(B), 5707(A) AND 5708, AND *ADD* A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW."

COMMITTEE MEMBERS	SIGNATURE AND DATE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
SENATOR THOMAS C. ADA Chairperson	 12/23/16	✓				
SENATOR RORY J. RESPICIO Vice Chairperson	 12-23-16	✓				
VICE SPEAKER BENJAMIN J.F. CRUZ Member		✓				
SENATOR FRANK B. AGUON, JR. Member	 12/23/16			✓		
SENATOR DENNIS RODRIGUEZ, JR. Member				✓ npr		
SENATOR NERISSA UNDERWOOD Member						
SENATOR FRANK BLAS, JR. Member						
SENATOR MARY TORRES Member		✓				
SENATOR JAMES V. ESPALDON Member						





## Sen. Thomas Ada

### Chairman

Committee on Transportation, Infrastructure, Lands,  
Border Protection, Veterans' Affairs and Procurement  
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## COMMITTEE REPORT DIGEST

### I. OVERVIEW

Bill No. 162-33 (COR) was introduced on August 14, 2015 by Senator T.C. Ada and was subsequently referred on August 14, 2015 by the Committee on Rules to the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement.

The Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement convened a public hearing on September 18, 2015 at 1:30 pm in / *Liheslaturan Guåhan's* Public Hearing Room to receive public testimony on Bill No. 162-33 (COR).

#### Public Notice Requirements

Public Hearing notices were disseminated via email to all senators and all main media broadcasting outlets on September 10, 2015 (5-Day Notice) and again on September 16, 2015 (48-Hour Notice).

#### Senators Present

Senator Thomas C. Ada	<i>Committee Chairperson</i>
Senator Dennis G. Rodriguez, Jr.	<i>Committee Member</i>
Vice Speaker Benjamin J.F. Cruz	<i>Committee Member</i>
Senator James V. Espaldon	<i>Committee Member</i>

The public hearing was Called-Back-to-Order at 1:33pm from this morning's recess.

### II. SUMMARY OF TESTIMONY AND DISCUSSION

**Chairperson Ada:** Stated that Bill No. 162-33 will amend Article 3, 9, and 12 and the testimonies received today will explain what the bill is about. He then calls upon those who have signed up to give testimony.

**John Thos. Brown, Attorney:** Mr. Brown read his written testimony in favor of Bill 162-33. (see attached written testimony). Mr. Brown provided testimony which gave a synopsis of the legislative attempts in the 32<sup>nd</sup> Legislature to bring reform to Articles 9 and 12 (Legal and contractual Remedies). His testimony is summarized as follows:

[**Bill 162-33**] combines the earlier reviews and discussion of Bill 224-32 (dealing with **Articles 9 & 12 of 5GCA**) and to that extent have previously been hashed out in two hearings, four roundtables and two vetoes.

- Following the second veto, consultations and discussion took place between representatives of the Governor's Office, the Guam Chamber of Commerce, the Sponsor of Bill 224-32 and 246-32, Senator Tom Ada, and with the Attorney General's office. The purpose and subject matter of these discussions was to try to accommodate differences concerning matters raised in the second veto. There were several **issues** but two primary ones: first, the language declaring the **time limits of the procurement code as jurisdictional versus subject to tolling and equitable estoppel**; second, the **demand for a protest bond**.
- Although case law would argue that **procurement time limits** are jurisdictional, the Administration's insistence that the time limits are jurisdictional, this position was accommodated, and **leaving it in the hands of the courts**.
- The demand for a **protest bond** by the Governor was **based on the notion of a proliferation of frivolous protests** and that a protest bond would alleviate that perceived problem. The **Public Auditor** and the private sector **opposed the idea**, first, because it punishes all protests, not just "frivolous" ones. Secondly, as the Public Auditor corroborated, the statistics do not support the premise: the **claim of frivolous protests is an "urban myth"**.
- **To find a common ground**, Governor's office suggested the protest bond could be imposed only if a protest was appealed to court; not at the administrative level. The private sector representatives agreed that a **bond might be applied on judicial appeal**, provided the court preliminarily determined that the judicial appeal appeared to be frivolous, to meet the Governor's specific fears. This bill implements that compromised position.
- Taking note of the Governor's objections in Bill 224-32 (dealing with Articles 9 & 12 of 5GCA), **Bill 20-33** (also dealing with Articles 9 & 12) was **introduced free of the objections raised in the Governor's veto message [of Bill 224-32]**.
- The **subsequent veto of Bill 20-33** was then **based, in part, on** an Assistant Attorney General's suggestion, in the roundtables, that the Superior Court should appoint a Hearing Officer to hear an appeal to OPA in the event of **Public Auditor recusal**. The AG's suggestion was adopted. **Bill 20-33** further **incorporated** the strong **desire** [of a number of legal Counsels] **that the judicial review process should be expedited as a Petition for Judicial Review**. The remaining issues were either dropped or accommodated.
- [**Bill 162-33 incorporates Bill 20-33 (Articles 9 and 12) less the objections raised in the Governor's veto message**. Bill 162-33 is a **work product of the efforts to find common ground on Articles 9 & 12** and is **as close to agreement as they are likely to ever get.**]

**Bill 162-33 also addresses issues related to Article 3 of 5 GCA (“Source Selection and Contract Formation”).**

- **The most important change is the re-introduction of the so-called “best value”, or “negotiated contract”, method of source selection in Section 5 of the bill. It is characterised as a “re-introduction” because it was originally adopted as the Competitive Sealed Proposal method in the seminal procurement law, PL 16-124, but was soon repealed in PL 18-44. It is suspected that it was because the award in this method is based, in large part on subjective rather than objective criteria, thus prone to evaluation error, favoritism and other abuse.)**
- **The benefit of the RFCP (Request for Competitive Proposal) method is that it accommodates procurement of large, complex projects. The RFCP as proposed sets the stage for a robust method of procurement to engage new models of public management and finance of major projects, including design and build, “design-build-operate-maintain” and “design-build- finance-operate-maintain”, and the many variations on the themes. JFK High School, for instance, would have benefited from use of this newer method of source selection.**
- **To avoid confusion, the “RFP” *Request For Proposal*, method is used for acquiring professional services.**
- **RFCP is a method of procurement whereby price is but one of several factors that may be weighed and considered in selecting the contract winner. This differs from the IFB because, assuming all bidders are responsive and responsible, the only real determinant of the winner is price – the lowest price. It differs from the RFP because the main RFP criteria is the ranking of the best qualification of the offerors, to be determined without any mention of price; only after the “best qualified” is determined is price (“fair and reasonable compensation”) even considered, almost as an after-thought (“OK, we want this person, but is the cost of this service ‘fair and reasonable’?”).**
- **Existing protest provisions are amended, in Section 26 of the bill, to allow the government, or another interested party, to obtain legal fees from a protestor if a protest is made “with predominant intent to delay ... the procurement process”.**
- **Among the many other changes to Article 3 in this bill are provisions to clarify the differences between a responsive bid and a responsible bidder, providing emphasis on life cycle costing (as already mentioned in regulations), limiting the use of sole source procurement and multi-term contracts, requiring more useful information in the Shareholder Disclosure Statement and clarifying the intent of the disclosure, and expanded measures assuring public access to the procurement record.**

**William J. Blair, Attorney** (oral and written testimony): Started by saying he did not participate in the development of prior procurement reform bills and did not participate in this bill. He supports the notion that reform is necessary and long overdue. Since the 18<sup>th</sup> Guam Legislature saw fit to remove the “Competitive Sealed Proposals” mode of procurement, the procurement officials of the Government of Guam are denied that valuable tool. He then said that he supports the notion that the method be restored to them with the safe guards that are implemented in the bill. In addition to recognition that it is subject to potential abuse.

He continued by saying that since the repeal of that mode of procurement there has been years of Government of Guam officials and agencies attempting to manufacture modes of procurement that are not authorized by law. These modes call into question what they do and the abuse being in professional services. He then said that it is similar to the analogy of putting an odd shaped peg into a square hole. This bill attempts to address some of those issues.

There are fundamental issues that are dealt with in the bills that the Governor had vetoed previously, dealing with the process of appeals and procedure issues that have arisen and all the confusion has resulted thereof. The courts are still struggling with the various holes in the law, this attempts to deal with and will facilitate a better system to deal with protests. Mr. Blair said this is an evolutionary process and commends Chairperson Ada for putting in the effort to try to address these needed reforms in the face of opposition. The opposition is unintelligible to him and why would people oppose fixing a broken system. He then said that we need to start somewhere, this is a place to start, and hopes that other Senators will again support this bill.

Mr. Blair went on to discuss the qualified or better qualifies procurement officials now growing because of prior legislation that mandates procurement training to officials. He is hopeful that officials that go through the course being taught by Attorney Brown, relish the training and information gained about how to become better at their jobs and better serving the people in Guam in the way that is expected of them. He goes on to say that the moral concern is an issue of having competent, honest, officials that know their jobs and know the limitations. From that they can hopefully enforce the laws and are being armed with what can and cannot be done, they will do their jobs in a better way. He ends by saying, we will avoid many of the things that have plagued the procurement system within the last few years, when the bill is implemented.

**Monty McDowell, Attorney:** Mr. McDowell reads his written testimony in favor of Bill 162-33. (see attached written testimony). His testimony is summarized as follows:

- “He appreciates the many things this Bill does to adopt principles and ideas of the federal system, such as the Best Value procurement method for competitive proposals, extending the stay to include contract performance, insistence on life cycle costing, planning and market research.”
- Getting procurement right is critically important for [businesses]. This Bill goes in the right direction...”

**Sandra Miller, Legal Counsel, Office of the Governor of Guam:** Starts by saying there is no question that Guam’s procurement law needs to be overhauled and updated. There is behind them 32 years of experience in every aspect of procurement and they have seen what works, what doesn’t and where the problems are. She goes on to say that in that respect there is great support for an overhaul for the procurement law. From the government’s perspective, she stated that the procurement process should be fair to the bidders, as well as the Government of Guam, who is the buyer. That it is the public’s money that is being spent and the public is the buyer. When procurement takes place the public’s money is being spent. She said it needs to

ensure competition is fair but that the territory and the people of Guam get the best value, that is the goal of the procurement law.

Ms. Miller continues with saying that they agree on this version of the bill more than they disagree. There have many improvements and that she has read the testimonies, to include GSA and has spoken to the Attorney General's Office and they will be submitting a testimony from the government's perspective. She then said with the complexity of the procurement process, the critical nature of the bill and the limited time, she respectfully requested that the stakeholders get together for a roundtable. For example, Bill 162 for the first time includes a security when filling a protest, which was requested by the Governor. She then mentioned it was a contentious issue but the way it is written in the bill would only require a security if the protest was deemed frivolous. Ms. Miller then asked who makes the determination that the protest is frivolous and if so, then why is the protest being entertained? She went on to say that it is little things like the example given that still need to be hashed out.

Ms. Miller continued by saying that she is interested in seeing the Attorney General's opinion, with the bridge contract. It is something that has come up within the last 15 years, mostly in the federal contracts. It works on the federal side and should work locally but may need to be flushed out a little more.

**Doris Flores Brooks**, *Public Auditor, Office of Public Accountability*: Mrs. Brooks reads her written testimony in favor of Bill 162-33 with amendments. (see attached written testimony)

**Anthony Camacho**, *Hearing Officer, Office of Public Accountability*: He started by saying his testimony is the nuts and bolts analysis and for trying to make a stronger bill with the needs of the 3 different constituents considered. He then stated that he has 20 suggested amendments, mostly grammatical but he will only go over the 5 most substantial.

- Line 16, page 14. This has to do with autonomous agencies, the decision maker tends to be the Chief Procurement Officer and he points out that the COP under the centralized regime and may have control of about 70% of the government. She is not in control of everything because there are autonomous agencies. He then mentions that the head of the purchasing agency should always be included in the language, if it is not in the jurisdiction of the COP.
- Line 17, page 17. This has to do with professional errors and omissions insurance for professional service contracts. Mr. Camacho then mentions that the language should be deleted as it will limit competition.
- Line 9, page 21. This has to do with bridge contracts, he suggests that the section is deleted because it would violate the policy of conducting planned procurement. Every contract will have a start and an end and every agency should know that information.
- Line 17, page 38. This concerns the 14 days for protestors to file a protest. He asks that this not be tolled during negotiation because in the end the consumer of the product is the people of Guam.
- Line 16, page 51. This allows for judicial review of the Public Auditors decision. If the committee desires the judicial review of an OPA decision, it needs to amend Title

7 of the GCA and create special proceedings for review of procurement protest decisions.

- Line 4, page 53. This concerns the time period for judicial review of the Public Auditors decision. He states this should be reduces to 30 days to ensure the procurement appeals process remains an expedited process.

Mr. Camacho then finished by saying the rest of his suggested amendments are as listed in his written testimony.

Chairperson Ada then opens the panel to the Senators for questions.

**Vice Speaker Cruz:** Stated they are acting like this is the first piece of legislation to try to amend the procurement statue. More to the comment made to the Governors Legal Counsel, he agrees that a roundtable should be held with the stakeholders. Legislation was passed that gave the Governor the power to convene the commission to rewrite the procurement statue. He then asked what happen to that commission?

**Ms. Miller:** She clarified if he is speaking of the policy office?

**Vice Speaker Cruz:** He further clarified that it is not the policy office but rather a special commission that the Governor put together within the last five years and appointed Judge Unpingco to head the commission. He said that it is not the policy office of three, he meant the commission that was to write. The commission had Ms. Brooks and a couple of other people, it was the advisory council.

**Ms. Miller:** She stated that she is not too familiar with the advisory council. She recalled that there were representatives from the AG's office, Attorney Brown and John Unpingco.

**Vice Speaker Cruz:** He went on to say that is was attempted to be a collaborative effort, which was given to the Governor's Office, so it would quietly be done outside and everyone would come to an agreement. He is trying to figure out why now it is being said to pull back the bill and do a collaborative effort, when that responsibility had been given to the Governor's Office five years ago.

**Chairperson Ada:** He stated that this public hearing starts the discussion of sitting down subsequently and going through the bill itself and come up with a more detailed discussion.

Chairperson Ada ends the public hearing for Bill No. 162-33 (COR).

### **Written Testimonies Received:**

**John Thos. Brown, Attorney**

(see attached written testimony)

Attorney Brown offers his testimony in favor of Bill No. 162-33 (COR).

**William J. Blair, Attorney**

(see attached written testimony)

Attorney Blair offer his testimony in favor of Bill No. 162-33 (COR).

**Monty McDowell, CEO/Principal Broker, Advance Management Inc.**

(see attached written testimony)

Mr. McDowell offers his testimony in favor of Bill No. 162-33 (COR).

**Claudia S. Acfalle, Chief Procurement Officer, General Services Agency**

(see attached written testimony)

Ms. Acfalle offers comments on Bill No. 162-33 (COR).

**Charles H. Ada II, Executive Manager, A.B. Won Pat International Airport**

(see attached written testimony)

Mr. Ada offers comments on Bill No. 162-33 (COR).

### **III. Findings and Recommendations**

The Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement finds that through seven roundtables the following changes have been recommended:

- Clarification on language in Competitive Sealed Bidding with public notice, award, construction bids in excess of available funds and multi-step bid.
- Adds Competitive Sealed Proposals as a new source selection method.
- Small purchase amount shall not exceed \$30,000 for supplies and services and no exceed \$100,000 for construction.
- Clarification on language in Sole Source Procurement which would require an analysis of government needs, market research and conclusion why no other source can satisfy the government needs.
- Limitations placed in Emergency Procurement.
- Amends Disclosure of Major Stakeholders to Disclosure of Ownership, Financial and Conflict of Interests.
- Adds Rights to Audit Records for the Public Auditor

The Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement, hereby reports out **Bill No. 162-33 (COR) as substituted**, with the recommendation to do pass.

***I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN***  
**2015 (FIRST) Regular Session**

Bill No. 162-33 (COR)

Introduced by:

T. C. Ada 

**AN ACT TO *AMEND* ARTICLES 3, 9, AND 12 of CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, § 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO AMEND §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(a) AND (b) OF ARTICLE 9; AND *AMEND* §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND *ADD* A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.**

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the Guam Procurement Code was enacted by P.L. 16-124 in December 1982. During these past three decades since the enactment of the Guam Procurement Law much has been learned through experience and from decisions resulting from protests that had been filed. A reform of Guam's Procurement Code would enable the incorporation of lessons learned from these experiences.

*I Liheslaturan Guåhan* further finds that alternative source selection methods should be made available in order to be able to obtain supplies and services that would be most responsive to the Government's needs

*I Liheslaturan Guåhan* finds that by reforming Guam's procurement code the



1 Government of Guam can more effectively accomplish the procurement of  
2 supplies and services, to improve the effectiveness of the government's  
3 procurement process by providing clarification that is consistent with making the  
4 process more expeditious. It would allow the Government to provide vital services  
5 in a timely and cost effective manner.

6  
7 **Section 2.** § 5201. Definitions. of Article 3 Chapter 5 of Title 5 Guam Code  
8 Annotated is hereby amended as follows:

9 **“§ 5201. Definitions.**

10 As used in this Chapter:

11 (a) Cost-Reimbursement Contract means a contract under which a  
12 contractor is reimbursed for costs which are allowable and allocable in  
13 accordance with the contract terms and the provisions of this Chapter, and a fee,  
14 if any.

15 (b) Established Catalogue Price means the price included in a catalogue,  
16 price list, schedule or other form that:

17 (1) is regularly maintained by a manufacturer or contractor;

18 (2) is either published or otherwise available for inspection by  
19 customers; and

20 (3) states prices at which sales are currently or were last made to a  
21 significant number of any category of buyers or buyers constituting the  
22 general buying public for the supplies or services involved.

23 (c) Invitation for Bids means all documents, whether attached or

1 incorporated by reference, utilized for soliciting bids.

2 (d) Purchase Description means the words used in a solicitation to  
3 describe the supplies, services or construction to be purchased, and includes  
4 specifications attached to, or made a part of, the solicitation.

5 (e) Requests for Proposals means all documents, whether attached or  
6 incorporated by reference, utilized for soliciting proposals- under either § 5212  
7 or § 5216. Unless the context indicates otherwise, the abbreviation RFP refers  
8 to the source selection method under § 5216 and Request for Competitive  
9 Sealed Proposal (RFCP) refers to the source selection method under § 5212.

10 (f) *Responsible Bidder* or ~~Officer~~ *Offeror* means a person who has the  
11 capability in all respects to perform fully the contract requirements, and the  
12 integrity and reliability which will assure good faith performance, as  
13 determined at any time before award.

14  
15 (g) *Responsive Bidder* means ~~a person who has submitted~~ a bid which  
16 conforms, at bid opening, in all material respects to the Invitation for Bids. A  
17 responsive bid is an offer by the bidder which unconditionally undertakes to  
18 provide the supply, service or construction the government intends to acquire as  
19 specified in the IFB, and only on contract terms and conditions as are materially  
20 consistent with those specified in the IFB."

21 (h) *Responsive* means conforming in all material respects to the purchase  
22 description and contract terms contained in the Invitation for Bids or Request  
23 for Proposal or Request for Quotes or other solicitation. A nonconforming bid  
24 is nonresponsive if it contains a material nonconforming term or condition that

1 is in any respect prejudicial to other bidders, that is, the effect of such  
2 nonconforming term or condition on price, quantity, quality, delivery, or  
3 contractual terms specified in the IFB is more than negligible.  
4

5 **Section 3.** § 5210 of Article 3 in Chapter 5, Title 5 Guam Code Annotated is  
6 hereby amended as follows:

7 **“§5210. Methods of Source Selection.**

8 (a) Unless otherwise authorized by law, all territorial Government of  
9 Guam procurement contracts shall be awarded by one of the methods of source  
10 selection specified in this Part. ~~competitive sealed bidding, pursuant to § 5211~~  
11 ~~of this Article, except for the procurement of professional services and except~~  
12 ~~as provided in:~~

13 (1) ~~Section 5212 of this Article; [see note below]~~

14 (2) ~~Section 5213 of this Article;~~

15 (3) ~~Section 5214 of this Article;~~

16 (4) ~~Section 5215 of this Article;~~

17 (5) ~~Section 5216 of this Article for services specified in § 5121 of this~~

18 Chapter; or

19 (6) ~~Section 5217 of this Article.~~

20 (b) ~~Nothing in this Section requiring competitive bidding shall prohibit~~  
21 ~~the development of specifications which require compatibility with existing~~  
22 ~~supplies, equipment or data processing systems. The competitive sealed~~  
23 ~~bidding method of source selection is the preferred and default method of~~  
24 ~~source selection, authorized for any solicitation for supplies, services or~~  
25 ~~construction. All other methods allowed by this Part shall only be used in the~~  
26 ~~circumstances or on the conditions specified.”~~

1  
2       **Section 4.**       § 5211 of Article 3 of Chapter 5, Title 5 of the Guam Code  
3 Annotated is hereby amended as follows:

4       **“§5211. Competitive Sealed Bidding.**

5               (a) Conditions for Use. Contracts shall be awarded by competitive sealed  
6 bidding except as otherwise provided in § 5210 of this ~~Part Article~~.

7               (b) Invitation for Bids. An Invitation for Bids shall be issued and shall  
8 include a purchase description, ~~a recitation of the Wage Determination most~~  
9 ~~recently issued by the U.S. Department of Labor,~~ and all contractual terms and  
10 conditions applicable to the procurement ~~including a demonstration of~~  
11 ~~compliance with §§ 5801 & 5802 of this Chapter, if applicable, and may~~  
12 ~~include other information or requests for information. The determination of~~  
13 ~~bidder responsibility is determined as specified in § 5230 of this Article and not~~  
14 ~~by information required by the Invitation for Bids.~~

15              (c) Public Notice. Adequate public notice of the Invitation for Bids shall  
16 be given ~~in a manner and in a reasonable time prior to the date set forth therein~~  
17 ~~for the opening of bids to foster effective competition, in accordance with~~  
18 ~~regulations promulgated by the Policy Office. Such notice may include~~  
19 ~~publication in a newspaper of general circulation a reasonable time prior to bid~~  
20 ~~opening. If a bid is given public notice which is within the time specified in the~~  
21 ~~Policy Office’s rules and regulations on the subject, it shall not be challenged~~  
22 ~~unless the bidder can show exceptional circumstances which would render the~~  
23 ~~rules and regulations inapplicable in the case of a particular bid being requested.~~

24              (d) Bid Opening. Bids shall be opened publicly in the presence of one or  
25 more witnesses at the time and place designated in the Invitation for Bids. The  
26 amount of each bid, and such other relevant information as may be specified by

1 regulation, together with the name of each bidder shall be recorded; the record  
2 and each bid shall be open to public inspection.

3 (e) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally  
4 accepted for evaluation without alteration or correction by either the bidder or  
5 the government, except as authorized in this Chapter or regulations promulgated  
6 by the Policy Office. Bids shall be evaluated based on the requirements set  
7 forth in the Invitation for Bids, which may include criteria to determine  
8 acceptability such as inspection, testing, quality, workmanship, delivery and  
9 suitability for a particular purpose, however in the case of equipment the  
10 requirements shall include factors that bear on the price bid shall include life  
11 cycle costs of the equipment, including acquisition, transportation, installation,  
12 operation, consumables, supplies, maintenance and disposal. Those criteria that  
13 will affect the bid price and be considered in evaluation for award shall be  
14 objectively measurable ~~such as discounts, transportation costs, and total or life~~  
15 ~~cycle costs~~. The Invitation for Bids shall set forth the evaluation criteria to be  
16 used. No criteria may be used in bid evaluation that are not set forth in the  
17 Invitation for Bids.

18 (f) Correction or Withdrawal of Bids; Cancellation of Awards.  
19 Correction or withdrawal of inadvertently erroneous bids before or after award,  
20 or cancellation of awards or contracts based on such bid mistakes, shall be  
21 permitted in accordance with regulations promulgated by the Policy Office.  
22 After bid opening, no changes in bid prices or other provisions of bids  
23 prejudicial to the interest of the ~~Territory~~ Government of Guam or fair  
24 competition shall be permitted, nor shall there be permitted any material change  
25 in or waiver of any specification, evaluation factor or contract term of the  
26 Invitation for Bids. Except as otherwise provided by regulation, all decisions to

1 permit the correction or withdrawal of bids, or to cancel or alter awards or  
2 contracts based on bid mistakes of the bidder, shall be supported by a written  
3 determination made by the Chief Procurement Officer, the Director of Public  
4 Works, or head of a purchasing agency, as appropriate.

5 (g) Award. The contract shall be awarded with reasonable promptness by  
6 written notice of award to the ~~lowest~~ responsible bidder whose bid is responsive  
7 ~~and is the lowest cost, meets the requirements and criteria set forth in the~~  
8 ~~Invitation for Bids and whose bid amount is sufficient to comply with Article~~  
9 ~~13 of this Chapter, if applicable.~~ Written notice of award, including the dollar  
10 amount of the awarded contract, shall simultaneously be given to all other  
11 bidders, and, in the case of a contract awarded in amount greater than One  
12 Hundred Thousand Dollars (\$100,000), a copy of the contract, provided that if  
13 the contract is posted to the agency website, notice of such posting, together  
14 with notice of the URL or other locations of the site, may be given in lieu of  
15 such copy. The notice of award shall specifically state that the bid of the  
16 awardee is unconditionally accepted.

17 (h) Construction Bids in excess of available funds. In the event all bids  
18 for a construction project exceed available funds as certified by the appropriate  
19 fiscal officer, and the low responsive and responsible bid does not exceed such  
20 funds by more than five percent (5%), notwithstanding the provisions of  
21 Subsections (f) and (g) of this Section, the Chief Procurement Officer, the  
22 Director of Public Works, or the head of a purchasing agency, is authorized, in  
23 situations where time or economic considerations preclude resolicitation of  
24 work of a reduced scope, to negotiate an adjustment of the bid price, including  
25 changes in the bid requirements, with the low responsive and responsible  
26 bidder, in order to bring the bid within the amount of available funds.

1           (hi) Multi-Step Sealed Bidding. When low price is desired to be a  
2     determining factor for award to the bidder of an acceptable product or service  
3     but it is considered ~~impractical to initially~~ preferable to evolve or test the  
4     adequacy of ~~prepare~~ a purchase description's market feasibility ~~to support an~~  
5     ~~award based on price~~, an Invitation for Bids may be issued and conducted in  
6     two phases, the first requesting the submission of unpriced technical offers,  
7     which may involve description of service qualifications and performance, in  
8     one or more rounds in which discussions may be conducted to supplement or  
9     amend technical offers or bid specifications or both, to be followed by ~~an~~  
10    ~~Invitation for Bids limited to~~ a second phase in which the unsealed price bids of  
11    those bidders whose offers have been or become qualified as acceptable under  
12    the criteria set forth in the first phase ~~solicitation~~ are requested and then opened  
13    as in a normal competitive sealed bid process. The Policy Office shall  
14    promulgate such regulations as may be efficacious to the use of this method of  
15    source selection under this Subsection."

16  
17    **Section 5.** The current § 5212 in Article 3 is hereby recodified as §5351 in  
18    Article 5, Chapter 5 of Title 5 of the Guam Code Annotated, and a new § 5212 is  
19    hereby added to Chapter 5, Title 5 of the Guam Code Annotated to read as follows:

20    **"§5212. Competitive Sealed Proposals.**

21           (a) Conditions for use. The competitive sealed proposal method of  
22    source selection is available to procure supplies, services or construction if  
23    price is not intended to be a determining factor for selection for award of a  
24    contract for supplies, services or construction, and may be used for certain  
25    project delivery methods as described in Article 5 of this Chapter. Under  
26    competitive sealed proposals, the quality of competing products may be

1 compared and trade-offs made between price and quality of the products offered  
2 as described in the Request for Competitive Proposals. It shall not be used  
3 when another method of source selection is required or as appropriate. Other  
4 conditions for use include the following and if any such condition cannot be  
5 met, the competitive sealed proposal method shall not be used:

6 (1) The Chief Procurement Officer, the Director of Public Works, or  
7 the head of a purchasing agency, as the case may be, must make a  
8 determination, in writing, that price is not intended to be the determining  
9 factor for award of contract in the solicitation, and that the use of the  
10 competitive sealed bidding method is not practicable or advantageous to the  
11 Government of Guam, such determination to be made part of the Request for  
12 Competitive Sealed Proposal.

13 (2) Prior to preparing any solicitation document, the purchasing  
14 agency shall consult with the using agency and prepare a written plan for the  
15 solicitation, which plan shall include the using agency's assessment of need,  
16 the budget allocated, funding source, and market research identifying  
17 potential sources, which shall be part of the procurement record.

18 (3) A specific weighting shall be applied to the price factor, which  
19 must not be more than fifty percent (50%) of all relevant factors. However,  
20 if price is intended to weigh more than 50% of all factors, the Multi-step  
21 Competitive Sealed Bid method or, in the case of professional services, the  
22 Request for Proposal method, as provided in this Part, shall be used. All  
23 other evaluation factors shall be as objectively defined by outcomes,  
24 functions or performance specifications desired, as is practicable to specify.

25 (4) All discussions with offerors authorized by this method shall be  
26 conducted in the presence of the head of procurement of the procuring



1 agency, whether that is the Chief Procurement Officer, the Director of Public  
2 Works or the head of the purchasing agency

3 (5) All evaluators must be impartial persons acting in the best interests  
4 of the government, with sufficient knowledge of the government's needs and  
5 experience to capably appreciate the nature of the product being procured  
6 and independently assess and apply the proposals submitted to the  
7 evaluation criteria.

8 (6) The Policy Office shall specify such other conditions and  
9 procedures as it deems appropriate by regulation.

10 (b) Request and notice for Competitive Sealed Proposals. Competitive  
11 sealed proposals shall be solicited by issuance of a written Request for  
12 Competitive Sealed Proposals ("RFCP"). Adequate public notice of the RFCP  
13 shall be given in sufficient time adequate to foster and allow the preparation of  
14 competitive responses prior to the submission date specified, in accordance with  
15 regulations promulgated by the Policy Office.

16 (c) Receipt of and Publicity Regarding Competitive Proposals.  
17 Competitive sealed proposals shall not be opened publicly, so as to avoid  
18 disclosure of contents to competing offerors during the process of negotiation.  
19 A Register of Competitive Proposals shall be prepared in accordance with  
20 regulations, which shall not be opened for public inspection until after contract  
21 award.

22 (d) Evaluation Factors. The RFCP shall state the relative importance of  
23 price and the factors and subfactors, if any, to be evaluated. Except for the  
24 price factor which must be specifically weighted, all other factors including  
25 price must be specifically weighted to provide all potential offerors sufficient  
26 guidance to consider and prepare their proposals and a more objectively

1 verifiable selection process, and to assure that potential offerors have sufficient  
2 information to consider and prepare a proposal.

3 (e) Discussion with Responsible Offerors and Revisions to Proposals. As  
4 provided under regulations and, to the extent consistent therewith, the RFCP ,  
5 discussions may be conducted with responsible offerors who submit proposals  
6 determined to be reasonably qualified for selection for award for the purpose of  
7 clarification to assure full understanding of, and responsiveness to, the  
8 solicitation requirements. Offerors shall each be accorded fair and equal  
9 treatment with respect to any opportunity for discussion and revision of  
10 proposals provided to any of them. Revisions and the subject of discussions  
11 may be subjected to uniform time and other limits reasonably specified by the  
12 procurement officer. Revisions of submissions may be permitted prior to final  
13 submissions and in response to a request for the best and final offer, but there  
14 shall be no revision allowed to a best and final offer nor after award.

15 (f) Award. The contract shall be awarded to the responsible offeror  
16 whose proposal conforms to the solicitation and is determined in writing to be  
17 the most advantageous to the Government of Guam, taking into consideration  
18 only price and the evaluation factors set forth in the RFCP. No other factors or  
19 criteria shall be used to affect the evaluation. The procurement officer must  
20 prepare a written determination setting forth the comparative facts and factors  
21 which form the basis on which the award is made which shall be part of the  
22 procurement record. Written notice of the award to the successful offeror shall  
23 be promptly given to all other offerors.

24 (g) Debriefings. The procurement officer is authorized and encouraged  
25 to provide debriefings that furnish the basis for the source selection decision  
26 and contract award.”

1  
2       **Section 6.** § 5214 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
3 hereby amended to read as follows:

4       **“§5214. Sole Source Procurement.**

5           A contract may be awarded for a supply, service, or construction item  
6 without competition when, under regulations promulgated by the Policy Office,  
7 the Chief Procurement Officer, the Director of Public Works, or the head of a  
8 purchasing agency, or a designee of either officer above the level of the  
9 Procurement Officer in advance determines in writing that there is only one  
10 source for the required supply, service or construction item. A sole source  
11 contract shall not be issued for a term greater than one (1) year, with four (4)  
12 successive annual options to renew, such option being exercisable by the  
13 government and only if there is, at the time to be exercised, no other available  
14 source. Prior to and as a condition of making such determination, the  
15 purchasing agency shall prepare a written a report which shall be prepared for  
16 the person making such determination and which shall detail an analysis of the  
17 minimal needs of the government upon which the contract is based, and the  
18 findings of a thorough market research and a conclusion that there is no other  
19 source which will satisfy the government need. The report must be signed by  
20 the person or persons conducting the analysis and market research, and shall be  
21 made part of the procurement record. The purchasing agency shall also make a  
22 written determination that the price of any sole source contract is fair and  
23 reasonable, which determination shall include relevant cost and pricing  
24 information and analysis for the sole source as well as comparable or alternative  
25 sources, supplies or services. In the event any such contract, or series of related  
26 contracts, is in excess of the amount of One Hundred Thousand Dollars

1 (\$100,000), the purchasing agency shall, within fourteen (14) days of making  
2 the contract, publish notice of the making of the contract, including the name of  
3 the purchasing agency, the contractor, the contract amount and its term, and the  
4 nature of the contract, in a newspaper of general circulation on Guam and by  
5 posting such notice on its website, which shall and not be taken down for one  
6 year.”

7  
8 **Section 7.** § 5215 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
9 hereby amended to read as follows:

10 **“§5215. Emergency Procurements.**

11 (a) Determination of Emergency. Notwithstanding any other provision of  
12 this Chapter, the Chief Procurement Officer, the Director of Public Works, the  
13 head of a purchasing agency, or a designee of either officer may make or  
14 authorize others to make emergency procurements when there exists an ~~threat to~~  
15 ~~public health, welfare, or safety under~~ emergency under such conditions and as  
16 defined in Section 5030(x) and regulations promulgated by the Policy Office;  
17 provided that an independent written determination of the basis for the  
18 emergency as thus defined is first made by such officer and is included in the  
19 contract file. ~~such emergency procurements shall be made with such~~  
20 ~~competition as is practicable under the circumstances, and further provided that~~  
21 ~~the procurement agent must solicit at least three (3) informal price quotations, if~~  
22 ~~time allows must give notice to all contractors from the qualified bid list who~~  
23 ~~have provided the needed supplies and services to the government within the~~  
24 ~~preceding twelve (12) months, and must award the procurement to the firm with~~  
25 ~~the best offer, as determined by evaluating cost and delivery time. No~~  
26 ~~emergency procurement or combination of emergency procurements may be~~

1 ~~made for an amount of goods or supplies greater than the amount of such goods~~  
2 ~~and supplies which is necessary to meet an emergency for the thirty (30) day~~  
3 ~~period immediately following the procurement. A written determination of the~~  
4 ~~basis for the emergency and for the selection of the particular contractor shall~~  
5 ~~be included in the contract file. The requirements for a written determination for~~  
6 ~~the emergency procurement shall be met if the procurements are being made on~~  
7 ~~the basis of the Governor's declaration, by Executive Order, of an emergency~~  
8 ~~situation by Executive Order if such Order states that emergency procurement~~  
9 ~~may be resorted to for the purposes of the Order justifying procurement under~~  
10 ~~this Section. Unless authorized by such an Executive Order declaring an~~  
11 ~~emergency, no emergency procurement may be made except on a certificate of~~  
12 ~~emergency made under penalty of perjury by the Chief Procurement Officer,~~  
13 ~~Director of Public Works or the head of a purchasing agency, as the case may~~  
14 ~~be, that an emergency condition exists justifying emergency procurement.~~  
15 Certified copies of the certificate shall be sent, prior to award and as a condition  
16 thereof, to the Governor, who shall approve such certificate, in writing, and to  
17 the Speaker of the Legislature. The certificate shall contain the following:

18 (ai) a statement of the facts giving rise to the emergency;

19 (bii) the factual basis of the determination that an emergency exists  
20 and that procurement is necessary; and

21 (eiii) a statement that emergency procurement is not being used  
22 solely for the purpose of avoidance of the provisions of this Chapter.

23 ~~In addition to any other requirement, the Governor must approve in~~  
24 ~~writing all authorizations for emergency procurement."~~

25 (b) Award and Limitations. Emergency procurements shall be made with  
26 such competition as is practicable under the circumstances, such as including

1 requests for quotations giving notice to all contractors from the potential  
2 contractor list as authorized in § 5231, who have provided the needed supplies  
3 and services to the government within the preceding twelve (12) months.  
4 Award shall be made to the responsible firm with the best offer, as determined  
5 by evaluating cost and delivery time as required under § 5010 of this Chapter.  
6 No emergency procurement may be made for any emergency, including  
7 recurring emergency conditions of substantially similar nature, in an amount of  
8 supplies or services greater than the amount of such supplies or services which  
9 may be is necessary to meet the emergency for a ninety (90) day period  
10 immediately following the procurement, and no other procurement shall be  
11 made of any such supply or service under authority of this Section; any contract  
12 given therefor shall be void. The ninety (90) day period may be extended or  
13 exceeded by a Declaration of Emergency authorized by Executive Order of the  
14 Governor only in the event of an emergency due to a natural disaster.

15 (c) Planning. When an emergency procurement is implemented, the  
16 Chief Procurement Officer or head of the purchasing agency conducting the  
17 emergency procurement *shall* immediately prepare to procure, by other  
18 procurement methods of source selection authorized by this Chapter, such  
19 supplies or services as may be required as a follow on from such emergency  
20 procurement.

21  
22 **Section 8.** § 5216 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
23 hereby amended to read as follows:

24 “§5216. **Competitive Selection Procedures for Services Specified in §5121 of**  
25 **this Chapter.**

26 (a) Conditions for Use. The professionally licensed services specified in §

1 5121(a) of this Chapter or as specified in Article 5 of this Chapter may ~~shall~~ be  
2 procured in accordance with this Section, except as authorized under §§ 5214 or  
3 5215 of this Chapter. ~~Services for architecture, engineering, construction, land~~  
4 ~~surveying, environmental assessment and other such services shall be procured~~  
5 ~~in accordance with Article 5 of this Chapter.~~

6 (b) Statement of Qualifications. Persons engaged in providing the types  
7 of services specified in § 5121(a) of this Chapter may submit statements of  
8 qualifications and expressions of interest, but not prices, in providing such types  
9 of services. The Procurement Officer may specify a uniform format for  
10 statements of qualifications. Persons may amend these statements at any time  
11 by filing a new statement. Statements shall be kept by the purchasing agency  
12 only for reference in the nature of a response to a request for information and  
13 not as a solicitation to or by the purchasing agency, and shall be purged one (1)  
14 year from receipt. Submitting a statement of qualification by any person does  
15 not entitle any such person to actual notice nor shall submission of proposals by  
16 offerors be limited to those persons who have submitted any such statement.

17 (c) Public Announcement and Form of Request for Proposals.  
18 Adequate public notice of the need for such services shall be given by the  
19 purchasing agency through a Request for Proposals ("RFP"). The Request  
20 for Proposals shall describe the services required, list the type of information  
21 and data required of each offeror, specify if errors and omissions insurance  
22 must be provided as specified in Subsection (f) and the amount of coverage  
23 required, and state the relative importance of particular qualifications.

24 (d) Discussions. The head of the purchasing agency or a designee of  
25 such officer may conduct discussions with any offeror who has submitted a  
26 proposal in response to an RFP, to determine such offeror's qualifications

1 and understanding of the evaluation factors and services sought for further  
2 consideration. Discussions shall not disclose any information derived from  
3 proposals submitted by other offerors. Price is not a factor to be discussed  
4 or considered until after the ranking of the offerors and the process of  
5 negotiation for compensation begins.

6 (e) Award. Award shall be made to the offeror determined in writing  
7 by the head of the purchasing agency or a designee of such officer to be best  
8 qualified based on the evaluation factors set forth in the Request for  
9 Proposals, and negotiation of compensation determined to be fair and  
10 reasonable. If compensation cannot be agreed upon with the best qualified  
11 offeror, the negotiations will be formally terminated with the selected  
12 offeror. If proposals were submitted by one or more other offerors  
13 determined to be qualified, negotiations may be conducted with such other  
14 offeror or offerors, in the order of their respective qualification ranking, and  
15 the contract may be awarded to the offeror then ranked as best qualified if  
16 the amount of compensation is determined to be fair and reasonable.

17 (f) Errors and Omissions Insurance. Regulations shall be promulgated  
18 that specify circumstances in which the Chief Procurement Officer or  
19 Director of Public Works shall require offerors of professional services to  
20 provide appropriate errors and omissions insurance, or equivalent, to  
21 adequately cover the particular services to be rendered under the contract  
22 awarded. Satisfactory evidence of such required insurance shall be produced  
23 prior to any award."

24 **Section 9.** § 5217 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
25 hereby amended to read as follows:

26 **"§5217. Procurement from Nonprofit Corporations.**



1 A contract may be awarded for a supply or service without competition  
2 when the prospective contractor is a responsible nonprofit Guam incorporated  
3 and based corporation with a current certificate of good standing from the  
4 Department of Revenue and Taxation employing ~~sheltered or handicapped~~  
5 ~~workers~~ persons with disabilities on Guam to provide the supply or service. As  
6 a condition of the award of the contract the contractor must certify that labor  
7 employed to manufacture the supply or perform the services on the project will  
8 be performed on Guam by ~~handicapped~~ persons with disabilities except that  
9 supervisory personnel do not have to be ~~handicapped~~ persons with disabilities.  
10 A contractor awarded a contract pursuant to this Section shall not be required to  
11 post any of the bonds required under ~~Article 5~~ of this Chapter.”

12 **Section 10.** §5219 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
13 hereby amended to read as follows:

14 **“§ 5219. Unsolicited Offers.**

15 (a) Defined. An unsolicited offer is any offer to provide supplies,  
16 services or construction other than one submitted in response to a solicitation.

17 (b) Processing of Unsolicited Offers. The Chief Procurement Officer, the  
18 Director of Public Works or the head of the Purchasing Agency shall consider  
19 ~~the any~~ unsolicited offer as provided in this Section. If an agency that receives  
20 an unsolicited offer is not authorized to solicit or enter into a contract for the  
21 supplies, services or construction offered, the head of such agency shall forward  
22 the offer to the Chief Procurement Officer, or the Director of Public Works ~~or~~  
23 ~~the head of a Purchasing Agency~~, who shall consider and evaluate the offer as  
24 provided in this Section.

25 (c) Conditions for Consideration. To be considered for evaluation, an

1       unsolicited offer:

2               (1) must be in writing and contain all the elements of contract law to  
3       establish a contract if accepted ;

4               (2) must be sufficiently detailed to allow a judgment to be made  
5       concerning the potential utility of the offer to Guam and to the government;

6               (3) must be unique or innovative to Guam's and the government's  
7       use; and

8               (4) may be subject to testing under terms and conditions specified by  
9       the government.

10              (d) Evaluation. The unsolicited offer shall be evaluated to determine it's  
11       utility to Guam and to the government, and whether it would be to Guam's and  
12       the government's advantage to procure such service.

13              (e) ~~Competitive Sealed Bidding~~ Competition Required. All unsolicited  
14       offers considered as being desirable shall be subjected to the most appropriate  
15       competitive method of source selection particularly specified in § 5210 of this  
16       Part ~~the Competitive Sealed Bidding process under § 5211. Notwithstanding~~  
17       ~~any other provision of law, sole source procurement shall not be permissible in~~  
18       ~~any procurement arising from an unsolicited offer.~~ The criteria set forth in the  
19       ~~Invitation for Bids~~ solicitation shall *not* require the inclusion of any  
20       confidential, proprietary or trade secret item, service or method which was  
21       proposed in the unsolicited offer, and the proprietary character of an unsolicited  
22       offer or the inclusion of a proprietary item in the unsolicited offer shall *not* be  
23       used to favor the offer or any other bid, nor be a determining factor in awarding

1 a bid. ~~Such Invitation for Bids shall not contain any reference to the financial~~  
2 ~~offer of the unsolicited offeror, but shall contain a sufficient technical~~  
3 ~~description to allow other parties to identify the technical concept of the offer,~~  
4 ~~and to prepare bids.”~~

5 **Section 11.** § 5220 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
6 hereby amended to read as follows:

7 **“§5220 Publication of IFB, ~~and~~ RFP, and RFCP Documents on the**  
8 **Agency’s Website.**

9 (a) Notwithstanding any other provision of this Chapter, Invitations for  
10 Bid (IFBs), ~~and~~ Requests for Proposals (RFPs), and Requests for Competitive  
11 Sealed Proposals (RFCPs) shall be posted on the procuring agency’s website.  
12 IFBs, ~~and~~ RFPs, and RFCPs procured through the General Services Agency  
13 (GSA) or the Department of Public Works (DPW) *shall* be posted, on the date  
14 of the ~~IFB/RFP~~ announcement of the solicitation, simultaneously on the  
15 procuring agency’s website and the websites of GSA ~~and~~ or DPW respectively.  
16 No fees *shall* be assessed to prospective bidders or other parties for  
17 accessing/downloading procurement documents from an agency’s website.  
18 Such documents *shall* remain on the respective agencies’ websites for a period  
19 of *not less than* one hundred eighty (180) days following the award of the Bid  
20 or Proposal.

21 (b) The procuring agency, and GSA ~~and~~ or DPW if applicable, shall  
22 provide notice in each ~~IFB/RFP~~ solicitation announcement ~~that recommends~~  
23 that prospective bidders/~~respondents~~ offerors shall be required to register  
24 contact information with the agency to ensure that they receive any notices  
25 regarding any changes or updates to the ~~IFB/RFP~~ solicitation, provided that  
26 such registration shall not be a matter of responsiveness or otherwise materially

1     ~~nonconforming to the solicitation~~ . The procuring agency, and GSA ~~and~~ or  
2     DPW shall not be liable for failure to provide notice to any party who did not  
3     register contact information.

4             (c) Nothing herein is intended to prevent the procuring agency, GSA, or  
5     DPW from making physical or digital media copies of procurement documents  
6     and assessing reasonable fees for such documents in a manner consistent with  
7     public law, administrative rules and regulations, and departmental policy that  
8     existed prior to the enactment of this Section.”

9     **Section 12.** A new § 5221 is hereby added to Article 3 of Chapter 5, Title 5,  
10  Guam Code Annotated to read as follows:

11     **“§ 5221. Procurement of Bridge Contracts.**

12             (a) Description of Bridge Contract. For purposes of this Section, a  
13     Bridge Contract is one written to avoid the disruption in the continued or  
14     recurring provision of supplies or rendition of services which are critical to  
15     governmental operations, between the end of one contract, the “existing”  
16     contract, and the beginning of the next, the “new” contract. The existing  
17     contract may be current, expired or terminated. The new contract is intended to  
18     continue the provision of the same or functional equivalent supply or service as  
19     was provided under the existing contract.

20             (b) Conditions of Use. A purchasing agency may award a Bridge  
21     Contract to the incumbent contractor to acquire continuing but temporary  
22     source of the supply or service described in the existing contract only in the  
23     following circumstances or upon the following conditions:

24                 (1) The Chief Procurement Officer must first make a written  
25             determination of the particularized critical need for such supply or service  
26             and the urgent and compelling facts and circumstances why no other option

1 is available and that the contract is immediately necessary and in the best  
2 interests of the government.

3 (2) The term shall be tailored to meet only the minimal needs in the  
4 facts and circumstances, and shall commence as soon as practicable upon  
5 termination or expiration of the existing contract, and terminate not later  
6 than the earlier of four (4) months from commencement of the bridge  
7 contract, or the commencement of a contract awarded by competitive sealed  
8 bid, competitive sealed proposal, request for proposal or sole source, in  
9 accordance with the provisions of this Part. Commencement is the date of a  
10 purchase order or contract executing the award.

11 (3) The amount of the bridge contract throughout its entire term is at  
12 least two hundred fifty thousand dollars (\$250,000.00).

13 (4) The Governor shall in writing approve the bridge contract and  
14 each extension thereof.

15 (5) The term of a bridge contract may be extended on a month to  
16 month basis up to a total term of nine (9) months, but each extension must  
17 be signed by the Chief Procurement Officer.

18 (6) An existing contract shall not have been the result of an  
19 emergency or bridge contract method of source selection.

20 (7) The incumbent is not required, is not obligated to accept the bridge  
21 contract. The price of supplies and services acquired by the bridge contract  
22 shall be the same or substantially the same as the existing contract.

23 (c) Effect on other matters. An existing contract may be extended upon  
24 the same price and terms for a period not exceeding thirty (30) days, solely for  
25 the purpose of providing time to award a bridge contract. Notwithstanding  
26 §5425 (g) of this Chapter there shall be no stay of award or performance of the

1 bridge contract but the remedies of §§ 5451 and 5452 shall be available in any  
2 such protest. The agency granting a bridge contract shall decide a protest of the  
3 contract or award within seven (7) days of receipt of the protest, and it shall be  
4 deemed rejected if not made within that time. On an appeal to the Public  
5 Auditor from a rejected protest of a bridge contract or award, the Public Auditor  
6 shall give precedence to and expedite review and decision of the protest.”

7 **Section 13.** § 5230 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
8 hereby amended to read as follows:

9 **“§5230. Responsibility of Bidders and Offerors.**

10 (a) Determination of Nonresponsibility. A written determination of  
11 nonresponsibility of any bidder or offeror shall be made and served on such  
12 bidder or offeror prior to award, and shall be determined in accordance with  
13 regulations promulgated by the Policy Office. A finding of nonresponsibility in  
14 any particular instance does not require a finding of nonresponsibility in any  
15 dissimilar solicitation. The unreasonable failure of a bidder or offeror to  
16 promptly supply information in connection with an inquiry with respect to  
17 responsibility may be grounds for a determination of nonresponsibility with  
18 respect to such bidder or offeror.

19 (b) Right of Nondisclosure. Trade secret or confidential proprietary  
20 information furnished and identified as such by a bidder or offeror in  
21 connection with an inquiry with respect to responsibility pursuant to this  
22 Section, and confirmed as such by the Chief Procurement Officer, Director or  
23 Public Works or head of the purchasing agency, shall not be disclosed outside  
24 of the General Services Agency, the Department of Public Works or the  
25 purchasing agency without prior written consent by the bidder or offeror, but  
26 may be disclosed to the Attorney General at any time.”

1       **Section 14.** § 5231 of Article 3 Chapter 5, Title 5 Guam Code Annotated is  
2 hereby amended to read as follows:

3       “**§5231. ~~Prequalification of Suppliers.~~ Potential Contractor Lists.**

4       Information and interest of ~~P~~prospective ~~suppliers~~ bidders or offerors may  
5 be sought by any purchasing agency ~~prequalified~~ for solicitation of particular  
6 types of supplies, services and construction for the purpose of providing a  
7 purchasing agency information regarding possible sources of supplies, services  
8 and construction and the potential field of competition, and to prepare and  
9 maintain lists of potential contractors. Distribution of solicitation documents  
10 and notices of ~~S~~solicitation may be sent to such identified ~~mailing lists of~~  
11 potential contractors. Inclusion of a potential contractor on any such list of  
12 potential contractors ~~shall include but shall not be limited to such prequalified~~  
13 ~~suppliers.~~ does not determine responsibility and of itself, nor shall any bidder or  
14 offeror be rejected for failure to be included, nor shall public notice be limited  
15 to those who have been included.”

16       **Section 15.** § 5232 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
17 hereby amended to read as follows:

18       “**§ 5232. Cost or Pricing Data.**

19       (a) Contractor Certification. A contractor shall, except as provided in  
20 Subsection (c) of this Section, submit cost or pricing data and shall certify that,  
21 to the best of its knowledge and belief, the cost or pricing data submitted was  
22 accurate, complete, and current as of a mutually determined specified date or at  
23 any time as may be required by Policy Office regulations and prior to the date  
24 of:

25               (1) The pricing of any contract awarded by competitive sealed

1 proposals (§ 5212) or pursuant to the sole source procurement authority (§  
2 5214), or by competitive selection of professional services, including  
3 architect, engineering and land surveying services, where the total contract  
4 price is expected to exceed an amount established by Policy Office  
5 regulations; or

6 (2) the pricing of any change order or contract modification which is  
7 expected to exceed an amount established by Policy Office regulations.

8 (b) Price Adjustment. Any contract, change order, or contract  
9 modification under which a certificate is required shall contain a provision that  
10 the price to the Government of Guam Territory, including profit or fee, shall be  
11 adjusted to exclude any significant sums by which the Government of Guam  
12 ~~Territory~~ finds that such price was inaccurate, incomplete or not current as of  
13 the date agreed upon between the parties. The price shall also be adjusted to  
14 reflect non-payment by the contractor of any taxes which would have been paid  
15 by him were it not for the exclusion provided by 11 GCA §26203(k)(4415)

16 (c) Cost or Pricing Data Not Required. The requirements of this Section  
17 are intended to provide objective evidence of fair and reasonable prices and  
18 costs and need not be applied to contracts priced in good faith:

19 (1) where the contract is based on adequate price competition;

20 (2) where the contract price is based on established catalogue prices or  
21 market prices;

22 (3) where contract prices are set by law or regulation; or



1 (4) where it is determined in writing in accordance with regulations  
2 promulgated by the Policy Office that the requirements of this Section may  
3 be waived, and the reasons for such waiver are stated in writing.

4 **Section 16.** § 5233 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
5 hereby amended to read as follows:

6 **“§5233. Disclosure of ~~Major Shareholders~~ Ownership, Financial and**  
7 **Conflict of Interests.**

8 (a) Purpose: The disclosures required by this section are intended to  
9 reveal information regarding the responsibility of a bidder, and can be obtained  
10 by an inquiry regarding responsibility.

11 (b) Definitions.

12 (1) As used herein, the term “person” shall include the definition  
13 found in Title 1, Chapter 7, Section 715, Guam Code Annotated, and in §  
14 5030(n) of this Chapter, and includes a natural person as well as every  
15 person of whatever form or composition (an “artificial person”) recognized  
16 under the laws of Guam other than a natural person.

17 (2) The ownership interests to be disclosed under this section include  
18 the interest of a sole proprietor, a partner limited or otherwise, a shareholder  
19 of every class (in which case the percentage ownership interest test shall be  
20 based on each class), a member of an association or company, limited or  
21 otherwise, and any person owning a beneficial legal interest in any trust or  
22 artificial person having the power to contract, hold title to property, sue or be  
23 sued, and any other capacity or status necessary to perform the prospective  
24 contract.

25 (c) Disclosure of Ownership: Every person who is a prospective  
26 contractor under any method of source selection authorized by this Chapter,

1 except for emergency procurement under Section 5215, shall submit a  
2 Disclosure Statement, executed as an affidavit under oath, disclosing the name  
3 of each person who has owned an ownership interest in the prospective  
4 contractor, greater than ten percent (10%), at any time during the twelve (12)  
5 month period immediately preceding the date of the solicitation (the "relevant  
6 disclosure period"). If a prospective contractor is an artificial person, the  
7 Disclosure Statement shall disclose the name of each person who has owned an  
8 ownership interest in such artificial person (a "second tier owner"), greater than  
9 twenty-five percent (25%), at any time during the relevant disclosure period. If  
10 any such second tier owner is also an artificial person, the Disclosure Statement  
11 shall disclose the name of each person who has owned an ownership interest in  
12 such second tier owner (a "third tier owner") of forty-nine percent (49%) or  
13 more during the relevant disclosure period. If the name of no natural person has  
14 been identified as an owner, or a second or third tier owner of the prospective  
15 contractor, the Disclosure Statement shall include the name and position of the  
16 natural person responsible for the performance of the prospective contract and  
17 the name of any natural person who has the power to remove and replace the  
18 responsible person or otherwise control the performance of the prospective  
19 contract during the proposed term of the contract.

20 (d) Disclosure of Financial Interest. A prospective contractor shall  
21 disclose any person who has received or is entitled to receive a commission,  
22 gratuity, contingent fee or other compensation to solicit or secure or assist in  
23 obtaining business related to the solicitation by means of a Disclosure  
24 Statement, executed as an affidavit under oath, disclosing such interest and shall  
25 also contain the amounts of any such commission, gratuity or other  
26 compensation.

1           (e) Disclosure of Conflict of Interest. A prospective contractor shall  
2       disclose any person who directly or indirectly participates in any solicitation if  
3       such person is an employee of the Government of Guam, or, if federal funds are  
4       used in payment of the contract, is an employee of the Government of the  
5       United States.

6           (f) Every disclosure of an ownership or financial interest required to be  
7       identified by this Section, shall name the person required to be disclosed, the  
8       street address of the residence or principle place of business, and, in the case of  
9       an artificial person, a Taxpayer Identification Number shall be provided. All  
10      information disclosed or meant to be disclosed under this Section is public  
11      procurement data and shall be kept as part of the public record of each  
12      procurement.

13      ~~As a condition of bidding, any partnership, sole proprietorship or corporation~~  
14      ~~doing business with the government of Guam shall submit an affidavit executed~~  
15      ~~under oath that lists the name and address of any person who has held more than~~  
16      ~~ten percent (10%) of the outstanding interest or shares in said partnership, sole~~  
17      ~~proprietorship or corporation at any time during the twelve (12) month period~~  
18      ~~immediately preceding the submission of a bid. The affidavit shall contain the~~  
19      ~~number of shares or the percentage of all assets of such partnership, sole~~  
20      ~~proprietorship or corporation which have held by each such person during the~~  
21      ~~twelve (12) month period. In addition, the affidavit shall contain the name and~~  
22      ~~address of any person who has received or is entitled to receive a commission,~~  
23      ~~gratuity or other compensation for procuring or assisting in obtaining business~~  
24      ~~related to the bid for the bidder and shall also contain the amounts of any such~~  
25      ~~commission, gratuity or other compensation. The affidavit shall be open and~~  
26      ~~available to the public for inspection and copying."~~

1  
2       **Section 17.** § 5235 of Article 3 of Chapter 5, Title 5 of the Guam Code  
3 Annotated is hereby amended to read as follows:

4       **“§5235. Types of Contracts.**

5       Subject to the limitations of this ~~Section~~ Chapter and regulations adopted by the  
6 Policy Office, any type of contract which will promote the best interest of the  
7 Government of Guam ~~Territory~~ may be used; provided that the use of cost-plus-a-  
8 percentage-of-cost contract is prohibited; and provided that an indefinite quantity  
9 contract shall not be used to acquire supplies by lease. A cost reimbursement  
10 contract may be used only when a determination is made in writing that such  
11 contract is likely to be less costly to the Government of Guam ~~Territory~~ than any  
12 other type or that it is impracticable to obtain the supplies, services or construction  
13 required except under such contract.”

14  
15       **Section 18.** § 5237 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
16 hereby amended to read as follows:

17       **“§5237. Multi-Year Contracts.**

18               (a) Specified Period. It is the policy of the Government of Guam to  
19 minimize the use of multi-year contracts, and to require that the terms of all  
20 contracts be for only such minimal term as is practicable. No contract shall be  
21 issued for an indefinite term nor shall it be renewable indefinitely, provided  
22 however, that a contract may be issued for supplies or services on a month to  
23 month basis provided the monthly price of the contract, when annualized, does  
24 not exceed the amount established by authority of § 5213 of this Chapter (Small  
25 Purchases). Unless otherwise provided by law, a contract for supplies or  
26 services may be entered into for any minimum period of time ~~deemed~~

1 determined to be in the best interests of the Government of Guam Territory  
2 provided the term of the contract and conditions of renewal or extension, if any,  
3 are included in the solicitation and funds are available for the first fiscal period  
4 at the time of contracting. Payment and performance obligations for succeeding  
5 fiscal periods shall be subject to the availability and appropriation of funds  
6 therefor.

7 (b) Presumption of five (5) year limit. To foster competition and  
8 maximize the purchasing value of public funds, it is presumed that it is not in  
9 the best interests of the Government of Guam Territory to make a contract,  
10 including a lease, for supplies or services for a total term, including renewals or  
11 extensions, in excess of five (5) years. A contract for supplies and services may  
12 be made for a term in excess of five (5) years (an "exceptional term") only with  
13 the written determination, made by the Chief Procurement Officer and  
14 incorporated in the solicitation documents, describing compelling  
15 circumstances and interests of the Government of Guam Territory which justify  
16 the necessity of the exceptional term. Every exceptional term contract shall be  
17 reviewed annually, beginning at the end of year five (5) of the contract, by the  
18 Chief Procurement Officer, or the head of the purchasing agency and shall  
19 contain a termination for convenience clause in the particular form as  
20 authorized under §5306(c)(4) and §5350(c)(4) of this Chapter.

21 (bc) Determination Prior to Use. Prior to the ~~utilization~~ issuance of a  
22 solicitation of a multi-year contract, it shall be determined in writing:

23 (1) that estimated requirements for the intended supplies and services  
24 cover the period of the contract and are reasonably firm and continuing; and

25 (2) that such a contract will serve the best interests of the Government  
26 of Guam Territory by encouraging effective competition or otherwise

1 promoting economies in Government of Guam territory procurement.

2 (ed) Cancellation Due to Unavailability of Funds in Succeeding Fiscal  
3 Periods. When funds are not appropriated or otherwise made available to  
4 support continuation of performance in a subsequent fiscal period, the contract  
5 shall be cancelled and, notwithstanding any provision of the contract to the  
6 contrary, the contractor shall only be reimbursed for the reasonable value of any  
7 non-recurring costs incurred but not amortized in the price of the supplies or  
8 services delivered under the contract. The cost of cancellation may be paid  
9 from any appropriations available for such purposes.”

10 **Section 19.** § 5240 of Chapter 5 Title 5 Guam Code Annotated is hereby  
11 amended to read as follows:

12 **“§5240. Right to Inspect Plant.**

13 The Government of Guam Territory may, at reasonable times, inspect ~~the every~~  
14 part of the plant or place of business of a contractor or any subcontractor which is  
15 related to the performance of any contract awarded or to be awarded by the  
16 Government of Guam Territory.”

17 **Section 20.** § 5245 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
18 hereby amended to read as follows:

19 **“§5245. Finality of Determinations.**

20 Except as otherwise provided Article 12 of this Chapter, the determinations  
21 required by §§ 5211(f), 5212(a), 5212(gf), 5214, 5215, 5216(e), 5230(a), 5232(c),  
22 5235, 5236 and 5237(bc) of this Chapter are final and conclusive unless they are  
23 clearly erroneous, arbitrary, capricious or contrary to law.”

24 **Section 21.** § 5248 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
25 hereby amended to read as follows:

26 **“§5248. Record of Procurement Actions Taken Under §§5214 and 5215 of**

1 **this Chapter.**

2 (a) Contents of Record. The Chief Procurement Officer, or the Director  
3 of Public Works or the head of the purchasing agency shall maintain a record  
4 listing of all contracts made under § 5214 (Sole Source Procurement) or § 5215  
5 (Emergency Procurement) of this Chapter for a minimum of five (5) years. The  
6 record shall contain:

- 7 (1) each contractor's name;  
8 (2) the amount and type of each contract; and  
9 (3) a listing of the supplies, services or construction procured under  
10 each contract.

11 (b) Submission to Legislature and Procurement Advisory Council. A  
12 copy of such record shall be submitted to the Legislature and to the Guam  
13 Procurement Advisory Council on an annual basis. The record shall be available  
14 for public inspection.”  
15

16 **Section 22.** § 5249 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
17 hereby amended to read as follows:

18 **“§ 5249. Record of Procurement Actions.**

19 Each procurement officer and contract officer shall collaborate to make and  
20 maintain a complete record of each procurement throughout the term of the  
21 contract. Records, either electronic or paper, that are sufficient to document  
22 decisions must be created and maintained. All records shall be made and kept in  
23 readable form capable of duplication by the public. The record shall include, but  
24 not be limited to, the following:

- 25 (a) the date, time, subject matter and names of participants at any meeting  
26 including government employees that is in any way related to a particular

1 procurement;

2 (b) a log of all communications between government employees and any  
3 member of the public, potential bidder, vendor or manufacturer which is in any  
4 way related to the procurement;

5 (c) sound or video recordings of all pre-bid conferences, negotiations  
6 arising from a any type of request for proposals, and discussions with vendors  
7 concerning small purchase procurement;

8 (d) brochures and submittals of potential vendors or service providers,  
9 manufacturers or contractors, and all drafts, signed and dated by the draftsman,  
10 and other papers or materials used in the development of specifications; and

11 (e) the requesting agency's determination of need and records of the  
12 planning phase of the procurement;

13 (f) all bids and proposals, unless withdrawn, and all contracts and  
14 purchase orders, provided only that no trade secret, proprietary information, or  
15 offer which is, pursuant to this Chapter or its regulations, required to be held  
16 confidential or not disclosed shall be redacted or kept apart and not available for  
17 public inspection.

18 (g) all records of contract administration, including contract disputes.”  
19

20 **Section 23.** § 5251 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is  
21 hereby amended to read as follows:

22 **“§5251. Public Record.**

23 The record required by § 5249 of this Chapter is a public record ~~and, subject to~~  
24 ~~rules promulgated by the Public Auditor, any.~~ All records shall be presumed  
25 public and the burden of establishing that a document or record is private shall be  
26 upon the agency or person claiming that the document on record should not be



disclosed or inspected. Any bidder, offeror or disinterested person may inspect and copy any portion of the record except only those parts of the record which are protected as confidential or trade secret by law or regulation.

This Chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.”

**Section 24.** § 5252 of Article 3 of Chapter 5, Title 5 Guam Code Annotated is hereby amended to read as follows:

**“§5252. Rules for Procurement Records.**

The ~~rules~~ regulations that may be promulgated pursuant to § ~~5254~~ 5102 of this Chapter shall:

(a) protect the integrity of the ~~bidding~~ solicitation process, including, but not limited to the independent cost analysis prepared under the direction of the purchasing agency;

(b) protect the confidentiality of trade secrets and proprietary commercial data;

(c) establish reasonable charges for copying papers;

(d) provide for transcription of sound recordings;

(e) require public access to the record at the earliest possible time; ~~and~~

(f) not require that the record be complete or that the procurement award be made before inspection and copying are permitted; and-

(g) clarify, as necessary, those records that are accessible under law during the pendency of a protest, appeal or judicial review.”

**Section 25.** A new §5254 is hereby added to Article 3 of Chapter 5, Title 5 Guam Code Annotated to read as follows:

1       **“§5254. Special Provisions Applicable to Source Selection.**

2           (a) Professional Services. It is the policy of the Government of Guam to  
3 publicly announce all requirements for the professional services of architects,  
4 engineers and land surveyors as specified in § 5216 of this Chapter on the basis  
5 of demonstrated competence and qualification of the services required, and at  
6 fair and reasonable prices, and such services shall be procured in accordance  
7 with the professional services method of source selection described in § 5216 as  
8 modified by the requirements of this Subsection.

9           (1) Notwithstanding any provision of law to the contrary, the Director  
10 of Public Works shall be responsible to conduct the procurement of such  
11 services.

12           (2) In any solicitation for architectural, engineering, or land surveying  
13 services reasonably expected to be priced above \$500,000, the Director of  
14 Public Works shall appoint the most appropriately qualified engineer in the  
15 Department to serve on the evaluation and selection team.

16           (b) Design-Build, Design-Build-Operate-Maintain, and Design-Build-  
17 Finance-Operate-Maintain Projects. All design-build, design-build-operate-  
18 maintain, and design-build-finance-operate-maintain projects shall be procured  
19 in accordance with the competitive sealed proposal method of source selection  
20 described in § 5212 of this Chapter as modified by the requirements of this  
21 Subsection.

22           (1) The RFCP for each such project:

23           (A) shall include design requirements. *Design requirements* means the  
24 written description of the infrastructure facility or service to be  
25 procured under this Article, including:

26           (a) required features, functions, characteristics, qualities, and

1 properties that are required by the [State];  
2 (b) the anticipated schedule, including start, duration, and  
3 completion;  
4 and  
5 (c) estimated budgets (as applicable to the specific procurement)  
6 for  
7 design, construction, operation and maintenance.  
8 The design requirements may, but need not, include drawings and  
9 other  
10 documents illustrating the scale and relationship of the features,  
11 functions,  
12 and characteristics of the project;  
13 (B) shall solicit proposal development documents; *Proposal*  
14 *development documents* means drawings and other design related  
15 documents that are sufficient to fix and describe the size and character of  
16 an infrastructure facility as to architectural, structural, mechanical and  
17 electrical systems, materials, and such other elements as may be  
18 appropriate to the applicable project delivery method;  
19 (C) may, when the Director of Public Works determines that the  
20 cost of preparing proposals is high in proportion to the size, estimated  
21 price and complexity of the procurement:  
22 (i) prequalify offerors by issuing a Request for Qualifications in  
23 the time and manner required of an RFCP, in advance of the RFCP,  
24 stating that all persons intending to offer a proposal for the project  
25 must first respond to the Request for Qualifications; and,  
26 (ii) select a short list of responsible offerors prior to any

1 discussions and evaluations of any proposals, provided that the  
2 number of proposals that will be short-listed is stated in the RFCP and  
3 prompt notice is given to all offerors, to such points of contact as are  
4 known as well as by public notice, as to which proposals have been  
5 short-listed; or,

6 (iii) pay stipends to unsuccessful offerors, provided that the  
7 amount of such stipends and the terms under which stipends will be  
8 paid are stated in the RFCP.

9 (D) shall state the relative importance of (i) demonstrated  
10 compliance with the design requirements, (ii) offeror qualifications, (iii)  
11 financial capability, (iv) project schedule, (v) price (if design-build) or  
12 life-cycle cost (if any other delivery method), and (vi) any other factors;  
13 and

14 (E) if the contract price is estimated to exceed \$10,000,000 or whenever the  
15 contract period of operations and maintenance is ten (10) years or longer, shall  
16 require each offeror to identify an Independent Peer Reviewer, whose competence  
17 and qualifications to provide such services shall be an additional evaluation factor  
18 in the award of contract, provided however, if the Director of Public Works  
19 determines that it is not in the best interest of the Department to contract with the  
20 Independent Peer Reviewer so designated, the Director shall contract with another  
21 Independent Peer

22 **Section 26.** § 5425 of Article 9 (Legal and Contractual Remedies), Chapter 5  
23 of Title 5, Guam Code Annotated, is *amended* to read as follows:

24 “§ 5425. ~~Authority to Resolve~~ Resolution of Protested Solicitations and  
25 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 purchasing  
5 agency. The protest *shall* be submitted in writing within fourteen (14) days after  
6 such aggrieved person knows or should know of the facts giving rise ~~thereto~~ to  
7 the protest.

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

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

6 (1) ~~state the reasons for the action taken;~~ the government's factual  
7 and legal reasons for the decision made to accept or reject, in whole or in  
8 part; and

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

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

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

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

7           (g) Disqualification of Public Auditor. If for any reason the Public  
8 Auditor determines that he must disqualify himself from hearing the appeal, the  
9 Public Auditor shall petition the Presiding Judge of the Superior Court to  
10 appoint a lawyer who is a member in good standing of the Guam Bar  
11 Association and competent in matters of procurement, as a Hearing Officer to  
12 hear and decide the matter. The Hearing Officer shall have all jurisdiction,  
13 power, authority, and duty of the Public Auditor necessary and appropriate to  
14 hear and decide the matter, including the power to contract and delegate to a  
15 hearing officer such power and authority and as is provided by regulation. The  
16 decision of the Hearing Officer shall be accorded all finality, authority, respect  
17 and entitlement as a decision of the Public Auditor. The Office of Public  
18 Accountability shall bear the fees and expenses of the Hearing Officer thus  
19 appointed, and provide the usual support for the hearing and determination of  
20 such matter as is provided to the Public Auditor, including the defense of any  
21 appeal of the Hearing Officer's decision.

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

25           (gh) Automatic Stay. In the event of a timely protest under Subsection  
26 (a) of this Section ~~or under Subsection (a) of § 5480 of this Chapter~~, the

1 ~~Territory~~ government of Guam *shall not* proceed further with the solicitation or  
2 ~~with the~~ award, or performance of the contract prior to the time allowed to  
3 appeal, or the final resolution of such protest, including a final entry of  
4 judgment, or the settlement of the protest evidenced by a writing signed by all  
5 interested parties, and any such further action is void, unless:

6 (1) the Chief Procurement Officer or the Director of Public Works,  
7 ~~after consultation with and~~ the written concurrence of the head of the using  
8 or purchasing agency and the Attorney General, or designated Deputy  
9 Attorney General, then makes a written determination that the award of the  
10 contract without delay is necessary to protect substantial interests of the  
11 ~~Territory~~ government of Guam; and

12 (2) absent a declaration of emergency procurement by *I*  
13 *Maga'lahañ Guåhan*, pursuant to § 5215, the protestant has been given *at*  
14 *least* two (2) days notice of the determination (exclusive of Guam holidays);  
15 and

16 (3) if the protest is pending before the Public Auditor or the court,  
17 the Public Auditor or the court has confirmed the validity of such  
18 determination, or if no such protest is pending, no protest to the Public  
19 Auditor of such determination is filed prior to expiration of the two (2) day  
20 period specified in Item (2) of this Subsection ~~(g)~~ (h) of this Section.;

21 (4) The two (2) days specified in Items (2) and (3) of this  
22 Subsection *shall* be determined as provided in 1 GCA § 1004.

23 (5) An immediate appeal of a decision of the Public Auditor to  
24 confirm or reject the determination of necessity and substantial interest may  
25 be taken to the Superior Court as provided in § 5480(a) of this Article  
26 without regard to the obligation to first fully exhaust administrative



1 remedies. Following judicial review of such decision, the matter shall be  
2 returned to the Public Auditor for final decision of the protest.

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

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

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

15 (3) The Public Auditor *shall* have the power to assess reasonable  
16 costs, including reasonable attorney fees incurred by the government,  
17 ~~including to include its autonomous agencies and public corporations, or by~~  
18 ~~any protestant or interested party, against a protestant upon its finding that~~  
19 ~~the any party, including the government, making a protest, motion, or~~  
20 ~~bringing any action was made~~ fraudulently, frivolously, or ~~solely to~~ with  
21 predominant intent to delay or disrupt the procurement process.

22 (i) Finality. A decision of the Public Auditor is final unless a person  
23 adversely affected by the decision commences an appeal in the Superior Court  
24 as provided by § 5707(a) of this Chapter, and in accordance with the waiver of  
25 sovereign immunity conferred by Subsection (a) of § 5480 of this Chapter."

1       **Section 27.** § 5426 of Article 9 (Legal and Contractual Remedies), Chapter 5  
2 of Title 5, Guam Code Annotated, is *amended* to read as follows:

3       **“§ 5426. Authority to Debar or Suspend.**

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

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

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

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

1           (3) conviction under federal antitrust statutes arising out of the  
2 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 Director  
5 of Public Works, or the head of a purchasing agency to be so serious as to  
6 justify debarment action:

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

10          (B) a recent record of failure to perform or of unsatisfactory  
11 performance in accordance with the terms of one (1) or more  
12 procurement contracts; *provided*, that failure to perform or unsatisfactory  
13 performance caused by acts beyond the control of the contractor *shall not*  
14 be considered to be a basis for debarment; or

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

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

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

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

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

- 5 (1) state the reasons for the ~~action taken~~ 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 administrative  
8 review as provided in this Chapter.

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

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

21 (f) Any member of the public, including the bidder, offeror or contractor,  
22 as well as any elected official or employee of the government, may petition the  
23 Chief Procurement Officer, the Director of Public Works, or the head of a  
24 purchasing agency to take action to debar or suspend pursuant to Subsection (a)  
25 of this Section. The petition *shall* state the facts that the complainant believes  
26 to be true that warrant a suspension or debarment pursuant to this § 5426.

1 Immediately upon the receipt of such a petition, the person petitioned shall  
2 cause ~~An an~~ investigation of each petition shall to be conducted. ~~promptly and~~  
3 ~~a written report should be made of findings of fact and action taken~~ If the  
4 petitioned officer finds insufficient facts to proceed with a debarment or  
5 suspension hearing, he shall state the reasons in a written decision within sixty  
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, then  
8 he shall hold a hearing as authorized in Subsection (a), and issue a decision as  
9 required in Subsection (c). If the petitioned officer does not issue the written  
10 decision required under Subsection (c) of this Section within sixty (60) days  
11 after written request by the petitioner for a final decision, then the petitioner  
12 may proceed with an appeal to the Public Auditor as if a the petition had been  
13 rejected.”  
14

15 **Section 28.** § 5427 of Article 9, Chapter 5 of Title 5, Guam Code Annotated, is  
16 *amended* to read as follows:

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

19 (a) Applicability. This Section applies to controversies between the  
20 Territory government of Guam and a contractor, and which arise under, or by  
21 virtue 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 breach  
24 of contract, mistake, misrepresentation, or other cause, for contract damages,  
25 modification, or rescission.

1 (b)Authority. The Chief Procurement Officer, the Director of Public  
2 Works, the head of a purchasing agency, or a designee of one of these officers,  
3 is authorized, prior to commencement of an action in a court concerning the  
4 controversy, to settle and resolve a controversy described in Subsection (a) of  
5 this Section. This authority *shall* be exercised in accordance with regulations  
6 promulgated by the Policy Office.

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

- 11 (1) state the reasons for the ~~action taken~~ decision made; and  
12 (2) inform the contractor of its rights to judicial or administrative  
13 review as provided in this Chapter.

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

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

24 (f) Failure to Render Timely Decision. If the Chief Procurement Officer,  
25 the Director of Public Works, the head of a purchasing agency, or the designee  
26 of one of these officers, does *not* issue the written decision required under

1 Subsection (c) of this Section within sixty (60) days after written request for a  
2 final decision, or within such longer period as may be agreed upon by the  
3 parties, then the contractor may proceed as if an adverse decision had been  
4 received. If no decision is issued and no action is taken by the contractor to  
5 request a final decision, within two (2) years from the date the contract  
6 controversy arose, any claim or action thereon shall be barred."

7  
8 **Section 29.** § 5450 of Article 9 Chapter 5 of Title 5, Guam Code Annotated, is  
9 *amended* to read as follows:

10 **"§ 5450. Applicability of this Part.**

11 The provisions of this Subarticle *only* apply where it is determined  
12 administratively, or upon administrative or judicial review, that a solicitation or  
13 award of a contract is in violation of law, and are in addition to any other  
14 remedy or relief allowed by law or equity."

15 **Section 30.** § 5452 of Article 9 Chapter 5 of Title 5, Guam Code  
16 Annotated, is *amended* to read as follows:

17 **"§ 5452. Remedies After an Award.**

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

20 (1)(a) if the person awarded the contract has *not* acted fraudulently or  
21 in bad faith:

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

1           ~~(B)~~(2)the contract may be terminated and the person awarded the  
2 contract *shall* be compensated for the actual expenses reasonably incurred  
3 under the contract, plus a reasonable profit, prior to the termination.

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

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

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

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

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

15  
16       **Section 31.** § 5480 of Subarticle D (Waiver of Sovereign Immunity;  
17 Limitations on Actions) of Article 9 (Legal and Contractual Remedies), Chapter 5  
18 of Title 5, Guam Code Annotated, is *amended* to read as follows:

19       **"§ 5480. Waiver of Sovereign Immunity by Grant of Jurisdiction in**  
20 **Connection with Contracts Controversies Arising Under Part A of this**  
21 **Article.**

22           (a) Solicitation and Award of Contracts. The Superior Court of  
23 Guam *shall* have jurisdiction over an action between the Territory government  
24 of Guam and a bidder, offeror, or contractor, either actual or prospective, to  
25 ~~determine whether a solicitation or award of a contract is in accordance with the~~  
26 ~~statutes, regulations, and terms and conditions of the solicitation~~ review any  
27 administrative decision or determination arising under § 5425 of this Chapter,



1 after appeal to the Public Auditor, to whether a solicitation or award of a  
2 contract is in accordance with the statutes, regulations, and the terms and  
3 conditions of the solicitation. The Superior Court *shall* have such jurisdiction  
4 in actions at law or in equity, and whether the actions are for monetary damages  
5 or other relief allowed under ~~§ 5425~~ this chapter; or for injunctive, declaratory,  
6 or other equitable relief, and whether the matter raised by the appeal is  
7 procedural or substantive in nature.

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

19 (c) ~~In addition to other relief and remedies, the Superior Court shall have~~  
20 ~~jurisdiction to grant injunctive relief in any action brought under Subsections~~  
21 ~~(a), or (b) or (c) of this Section.~~ Actions Under Contract or for Breach of  
22 Contract. The Superior Court *shall* have jurisdiction over an action between the  
23 government of Guam and a contractor, brought after review by the Public  
24 Auditor in accordance with § 5706 of this Chapter, for any cause of action  
25 which arises under, or by virtue of, the contract, whether the action is at law or  
26 equity, whether the action is on contract or for breach of contract, and whether

1 the action is for monetary damages or injunctive, declaratory or other equitable  
2 relief.

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

9 ~~(e) For purposes of this Section a “prospective” bidder, contractor or~~  
10 ~~offeror is one who will actually submit a bid, contract or otherwise offer his~~  
11 ~~services if, in the actions permitted by this Section, such person would prevail.~~  
12 Exhaustion of Administrative Remedies. No action shall be brought under any  
13 provision of this Section until all administrative remedies provided in this  
14 Chapter under Part A of Article 9, and Article 12, have been exhausted.

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

20 (1) Form. All appeals permitted by Subsection (a) of this Section  
21 shall be treated as special proceedings for expeditious review of the  
22 administrative decision below, and judgment entered for any remedy or  
23 relief allowed thereunder. The review shall be a special proceeding  
24 conducted, however captioned, in accordance with the procedures for a  
25 Petition for Judicial Review and otherwise as compatible with the provisions  
26 of this Subarticle A.

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

5           (3) Security. The purpose of the security required by this Section is  
6 only to deter frivolous protests or appeals, including appeals made or  
7 conducted with the substantial purpose to harass or delay, and shall not be  
8 required without a finding that the protest or appeal is or is likely to be found  
9 to be frivolous. The amount of security required shall be determined by the  
10 court in sum as it deems proper, for the payment of such costs and damages  
11 as may be incurred or suffered by any party who is found to have been  
12 injured by reason of the frivolous protest or appeal; provided, the sum of  
13 security shall not exceed an amount greater than ten percent (10%) of the  
14 appellant's bid or proposal.

15           (g) Expedited Review of Appeals Under § 5480(a). *Except* as to criminal  
16 cases and such other cases of compelling importance as determined by the  
17 Presiding Judge of the Superior Court, proceedings before the Superior Court,  
18 as authorized by Subsection (a) of this Section, and appeals therefrom, take  
19 precedence over all cases and *shall* be assigned for hearing and trial or for  
20 argument at the earliest practicable date and expedited in every way. The times  
21 for responsive pleadings and for hearings in these proceedings *shall* be set by  
22 the Judge of the Court with the object of securing a decision as to these matters  
23 at the earliest possible time.”  
24

1       **Section 32.** § 5481 of Subarticle D (Waiver of Sovereign Immunity;  
2 Limitations on Actions) of Article 9 (Legal and Contractual Remedies), Chapter 5  
3 of Title 5, Guam Code Annotated, is *amended* to read as follows:

4       **“§ 5481. Time Limitations on Actions.**

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

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

13              (c) Actions Under Contracts or for Breach of Contract. Any action  
14 commenced under § 5480(c) of this Chapter *shall* be commenced within twelve  
15 (12) months after the date of the ~~Procurement Appeals Board~~ Public Auditor's  
16 decision.

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

19  
20       **Section 33.** § 5485(a) of Subarticle E (Procurement Data) of Article 9 (Legal  
21 and Contractual Remedies), Chapter 5 of Title 5, Guam Code Annotated, is  
22 *amended* to read as follows:

23              “(a) On complaint by any member of the public, the Superior Court  
24 has jurisdiction to enjoin a governmental body from withholding procurement  
25 data and to order the production of any government data improperly withheld  
26 from the complainant. In such a case, the court *shall* determine the matter *de*

1        *novo*, and may examine the contents of such procurement data in camera to  
2        determine whether such records or any part thereof *shall* be withheld under any  
3        of the exceptions set forth in ~~6-GCA-§ 4202~~ this Chapter and, to the extent not  
4        inconsistent, Chapter 10 of Title 5, Guam Code Annotated; and the burden is on  
5        the agency to sustain its action.”

6  
7        **Section 34.** § 5485(b) of Subarticle E of Article 9 (Legal and Contractual  
8        Remedies), Chapter 5 of Title 5, Guam Code Annotated, is *amended* to read as  
9        follows:

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

15  
16        **Section 35.** § 5703 of Article 12 (Procurement Appeals), Chapter 5 of Title 5,  
17        Guam Code Annotated, is *amended* to read as follows:

18        **“§ 5703. Jurisdiction of the Public Auditor.**

19            The Public Auditor *shall* have the power to review and determine *de*  
20            *novo* any matter properly submitted to her or him. The Public Auditor *shall not*  
21            have jurisdiction over disputes having to do with money owed to or by the  
22            government of Guam, *except as authorized under §§ 5427 and 5706 of this*  
23            Chapter. Notwithstanding § 5245 of this Chapter, no prior determination shall  
24            be final or conclusive on the Public Auditor or upon any appeal from the Public  
25            Auditor. The Public Auditor *shall* have the power to compel attendance and  
26            testimony of, and production of documents by any employee of the government

1 of Guam, including any employee of any autonomous agency or public  
2 corporation. The Public Auditor may consider testimony and evidence  
3 submitted by any competing bidder, offeror or contractor of the protestant. The  
4 Public Auditor's jurisdiction *shall* be utilized to promote the integrity of the  
5 procurement process and the purposes of Title 5 GCA Chapter 5."

6  
7 **Section 36.** § 5705 of Article 12 (Procurement Appeals), Chapter 5 of 5, Guam  
8 Code Annotated, is *amended* to read as follows:

9 **"§ 5705. Suspension or Debarment Proceedings.**

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

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

18 (c) Decision. The Public Auditor *shall* decide whether, or the extent to  
19 which, the decision to debar or suspend, or reject a petition to do so, ~~debarment~~  
20 ~~or suspension~~ was in accordance with the statutes, regulations and the best  
21 interest of the government or any autonomous agency or public corporation,  
22 and was fair. The Public Auditor *shall* issue her or his decision within thirty  
23 (30) days of the completion of the hearing on the issue.

24 (d) Appeal. Any person receiving an adverse decision, including the  
25 Chief Procurement Officer, the Director of Public Works, or the head of a  
26 purchasing agency, a person suspended or debarred, or a rejected petitioner,

1 may appeal from a decision by the Public Auditor to the Superior Court of  
2 Guam under the waiver of sovereign immunity provided in § 5480(b) of this  
3 Chapter.”

4  
5 **Section 37.** § 5706(b) of Article 12 (Procurement Appeals), Chapter 5 of Title  
6 5, Guam Code Annotated, is *amended* to read as follows:

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

11  
12 **Section 38.** § 5707(a) of Article 12 (Procurement Appeals), Chapter 5 Title 5,  
13 Guam Code Annotated, is *amended* to read as follows:

14 “(a) Appeal. Any person receiving an adverse decision, including the  
15 contractor, ~~the~~ a governmental body, or a purchasing agency, ~~any autonomous~~  
16 ~~agency or public corporation, or both,~~ may appeal from a decision by the Public  
17 Auditor to the Superior Court of Guam, as provided in ~~Article D of Chapter~~ Article  
18 9 of this Chapter.”

19  
20 **Section 39.** § 5708 of Article 12 (Procurement Appeals), Chapter 5 of Title 5,  
21 Guam Code Annotated, is *amended* to read as follows:

22 **“§ 5708. Discontinuance of Contractor’s Appeal.**

23 It is the policy of this Act that procurement disputes be resolved  
24 expeditiously. Therefore, settlement agreements between the parties are  
25 encouraged, and appeals by a protestant or by the Chief Procurement Officer,  
26 the Director of Public Works, or the head of the purchasing agency, may be

1 settled by them, with or without prejudice, *except* to the extent that the Public  
2 Auditor determines that such a settlement would work an injustice on the  
3 integrity of the procurement system and an unconscionable prejudice on an  
4 intervening party. After notice of an appeal to the Public Auditor has been filed  
5 by the Chief Procurement Officer, the Director of Public Works, or the head of  
6 the purchasing agency, a contractor may *not* unilaterally discontinue such  
7 appeal without prejudice, except as authorized by the Public Auditor.”  
8

9 **Section 40.** A new § 5710 is hereby *added* to Article 12, Chapter 5, Title 5,  
10 Guam Code Annotated, to read as follows:

11 “§ 5710. Notwithstanding any other provision of Article 2 of this Chapter, the  
12 Public Auditor *shall* be authorized and responsible to promulgate regulations  
13 consistent with this Act, in accordance with the applicable provisions of the  
14 Administrative Adjudication Law, within one hundred eighty (180) days from the  
15 date of enactment of this Act, which regulations *shall* supersede any other  
16 regulations of any body specified in § 5131 of this Chapter.”

17 **Section 41. Severability.** *If* any provision of this law or its application to  
18 any person or circumstance is found to be invalid or contrary to law, such  
19 invalidity *shall not* affect other provisions or applications of this law which can be  
20 given effect without the invalid provisions or application, and to this end the  
21 provisions of this law are severable.

22 **Section 42. Effective Date.** This Act *shall* be effective one hundred eighty  
23 (180) days after enactment, but *shall not* apply to controversies that have been filed  
24 or administratively or judicially appealed prior to the date of enactment of this Act.



***I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN***  
**2015 (FIRST) Regular Session**

**Bill No. 162- 33 (COR)**

As substituted by the Sponsor.

Introduced by:

T. C. Ada

AN ACT TO *AMEND* ARTICLES 3, 9, AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO AMEND §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(a) AND (b) OF ARTICLE 9; AND *AMEND* §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND *ADD* A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the Guam Procurement Code was enacted by P.L. 16-124 in December 1982. During these past three decades since the enactment of the Guam Procurement Law much has been learned through experience and from decisions resulting from protests that had been filed. A reform of Guam's Procurement Code would enable the incorporation of lessons learned from these experiences.

1        *I Liheslaturan Guåhan* further finds that alternative source selection  
2 methods should be made available in order to be able to obtain supplies and  
3 services that would be most responsive to the Government’s needs.

4        *I Liheslaturan Guåhan* finds that the “Request For Competitive Proposal”  
5 (RFCP) is a method of procurement whereby price is but one of several factors that  
6 may be weighed and considered in selecting the contract winner. This differs from the  
7 IFB because, assuming all bidders are responsive and responsible, the only real  
8 determinant of the winner is price – the lowest price. It differs from the RFP because  
9 the main RFP criteria is the ranking of the best qualification of the offerors, to be  
10 determined without any mention of price; only after the “best qualified” is determined  
11 is price even considered, almost as an after-thought.

12        *I Liheslaturan Guåhan* finds that by reforming Guam’s procurement code  
13 the Government of Guam can more effectively accomplish the procurement of  
14 supplies and services. to improve the effectiveness of the government’s  
15 procurement process by providing clarification that is consistent with making the  
16 process more expeditious. It would allow the Government to provide vital services  
17 in a timely and cost effective manner.

18        **Section 2.** § 5201 of Article 3, Chapter 5 of Title 5, Guam Code  
19 Annotated, is hereby amended as follows:

20                **“§ 5201.     Definitions.**

21                As used in this Chapter:

22                (a)    *Cost-Reimbursement Contract* means a contract under  
23                which a contractor is reimbursed for costs which are allowable and  
24                allocable in accordance with the contract terms and the provisions of  
25                this Chapter, and a fee, if any.

1 (b) *Established Catalogue Price* means the price included in  
2 a catalogue, price list, schedule or other form that:

3 (1) is regularly maintained by a manufacturer or  
4 contractor;

5 (2) is either published or otherwise available for  
6 inspection by customers; and

7 (3) states prices at which sales are currently or were  
8 last made to a significant number of any category of buyers or  
9 buyers constituting the general buying public for the supplies or  
10 services involved.

11 (c) *Invitation for Bids* means all documents, whether  
12 attached or incorporated by reference, utilized for soliciting bids.

13 (d) *Purchase Description* means the words used in a  
14 solicitation to describe the supplies, services or construction to be  
15 purchased, and includes specifications attached to, or made a part of,  
16 the solicitation.

17 (e) *Requests for Proposals* means all documents, whether  
18 attached or incorporated by reference, utilized for soliciting proposals:  
19 under either § 5212 or § 5216. Unless the context indicates otherwise,  
20 the abbreviation RFP refers to the source selection method under §  
21 5216 and Request for Competitive Sealed Proposal (RFCP) refers to  
22 the source selection method under § 5212.

23 (f) *Responsible Bidder* or ~~Officer~~ Offeror means a person  
24 who has the capability in all respects to perform fully the contract  
25 requirements, and the integrity and reliability which will assure good  
26 faith performance.

1 (g) *Responsive Bidder* means ~~a person who has submitted a~~  
2 bid which conforms, at bid opening, in all material respects to the  
3 Invitation for Bids. A responsive bid is an offer by the bidder which  
4 unconditionally undertakes to provide the supply, service or  
5 construction the government intends to acquire as specified in the  
6 IFB, and only on contract terms and conditions as are materially  
7 consistent with those specified in the IFB.

8 (h) *Responsive* means conforming in all material respects to  
9 the purchase description and contract terms contained in the Invitation  
10 for Bids or Request for Proposal or Request for Quotes or other  
11 solicitation. A nonconforming bid is nonresponsive if it contains a  
12 material noncompliant term or condition that is in any respect  
13 prejudicial to other bidders, that is, the effect of such noncompliant  
14 term or condition on price, quantity, quality, delivery, or contractual  
15 terms specified in the IFB is more than negligible.”

16 **Section 3.** §5210 of Article 3, Chapter 5 of Title 5, Guam Code  
17 Annotated, is hereby amended as follows:

18 **“§5210. Methods of Source Selection.**

19 (a) Unless otherwise authorized by law, all territorial procurement  
20 contracts shall be awarded by one of the methods of source selection  
21 specified in this Part. ~~competitive sealed bidding, pursuant to § 5211 of this~~  
22 ~~Article, except for the procurement of professional services and except as~~  
23 ~~provided in:~~

24 (1) ~~—Section 5212 of this Article; [see note below]~~

25 (2) ~~—Section 5213 of this Article;~~

26 (3) ~~—Section 5214 of this Article;~~

1                   ~~(4) Section 5215 of this Article;~~

2                   ~~(5) Section 5216 of this Article for services specified in §~~  
3                   ~~5121 of this Chapter; or~~

4                   ~~(6) Section 5217 of this Article.~~

5                   ~~(b) Nothing in this Section requiring competitive bidding shall~~  
6                   ~~prohibit the development of specifications which require compatibility with~~  
7                   ~~existing supplies, equipment or data processing systems.”~~

8           **Section 4.** § 5211 of Article 3, Chapter 5 of Title 5, Guam Code  
9 Annotated, is hereby amended as follows:

10                   **“§5211. Competitive Sealed Bidding.**

11                   (a) Conditions for Use. Contracts shall be awarded by competitive  
12 sealed bidding except as otherwise provided in § 5210 of this Part Article.

13                   (b) Invitation for Bids. An Invitation for Bids shall be issued and  
14 shall include a purchase description, ~~a recitation of the Wage Determination~~  
15 ~~most recently issued by the U.S. Department of Labor~~, and all contractual  
16 terms and conditions applicable to the procurement ~~including a~~  
17 ~~demonstration of compliance with §§ 5801 & 5802 of this Chapter, if~~  
18 ~~applicable, and may include other information or requests for information.~~  
19 The determination of bidder responsibility is determined as specified in  
20 §5230 of this Article and not by information requested by the Invitation for  
21 Bids.

22                   (c) Public Notice. Adequate public notice of the Invitation for Bids  
23 shall be given in a manner and in a reasonable time prior to the date set forth  
24 therein for the opening of bids to foster effective competition, in accordance  
25 with regulations promulgated by the Policy Office. ~~Such notice may include~~  
26 ~~publication in a newspaper of general circulation a reasonable time prior to~~

1 ~~bid opening. If a bid is given public notice which is within the time specified~~  
2 ~~in the Policy Office's rules and regulations on the subject, it shall not be~~  
3 ~~challenged unless the bidder can show exceptional circumstances which~~  
4 ~~would render the rules and regulations inapplicable in the case of a particular~~  
5 ~~bid being requested.~~

6 (d) Bid Opening. Bids shall be opened publicly in the presence of  
7 one or more witnesses at the time and place designated in the Invitation for  
8 Bids. The amount of each bid, and such other relevant information as may be  
9 specified by regulation, together with the name of each bidder shall be  
10 recorded; the record and each bid shall be open to public inspection.

11 (e) Bid Acceptance and Bid Evaluation. Bids shall be  
12 unconditionally accepted for evaluation without alteration or correction by  
13 either the bidder or the government, except as authorized in this Chapter or  
14 regulations promulgated by the Policy Office. Bids shall be evaluated based  
15 on the requirements set forth in the Invitation for Bids, which may include  
16 criteria to determine acceptability such as inspection, testing, quality,  
17 workmanship, delivery and suitability for a particular purpose, however in  
18 the case of equipment the requirements shall include factors that bear on the  
19 bid price and shall include life cycle costs of the equipment, including  
20 acquisition, transportation, installation, operation, consumables, supplies,  
21 maintenance and disposal costs. Those criteria that will affect the bid price  
22 and be considered in evaluation for award shall be objectively measurable;  
23 ~~such as discounts, transportation costs, and total or life cycle costs~~. The  
24 Invitation for Bids shall set forth the evaluation criteria to be used. No  
25 criteria may be used in bid evaluation that are not set forth in the Invitation  
26 for Bids.

1 (f) Correction or Withdrawal of Bids; Cancellation of Awards.  
2 Correction or withdrawal of inadvertently erroneous bids before or after  
3 award, or cancellation of awards or contracts based on such bid mistakes,  
4 shall be permitted in accordance with regulations promulgated by the Policy  
5 Office. After bid opening, no changes in bid prices or other provisions of  
6 bids prejudicial to the interest of the Territory or fair competition shall be  
7 permitted, nor shall there be permitted any waiver of any material  
8 specification, evaluation factor or contract term of the Invitation for Bids.  
9 Except as otherwise provided by regulation, all decisions to permit the  
10 correction or withdrawal of bids, or to cancel or alter awards or contracts  
11 based on bid mistakes of the bidder, shall be supported by a written  
12 determination made by the Chief Procurement Officer, the Director of Public  
13 Works, or the head of the a purchasing agency issuing the solicitation, as  
14 appropriate.

15 (g) Award. The contract shall be awarded with reasonable  
16 promptness by written notice of award to the ~~lowest~~ responsible bidder  
17 whose bid is responsive and is the lowest cost. ~~meets the requirements and~~  
18 ~~criteria set forth in the Invitation for Bids and whose bid amount is sufficient~~  
19 ~~to comply with Article 13 of this Chapter, if applicable. In the event all bids~~  
20 ~~for a construction project exceed available funds as certified by the~~  
21 ~~appropriate fiscal officer, and the low responsive and responsible bid does~~  
22 ~~not exceed such funds by more than five percent (5%), the Chief~~  
23 ~~Procurement Officer, the Director of Public Works, or the head of a~~  
24 ~~purchasing agency, is authorized, in situations where time or economic~~  
25 ~~considerations preclude resolicitation of work of a reduced scope, to~~  
26 ~~negotiate an adjustment of the bid price, including changes in the bid~~

1 ~~requirements, with the low responsive and responsible bidder, in order to~~  
2 ~~bring the bid within the amount of available funds. Written notice of award,~~  
3 ~~including the dollar amount of the awarded contract, shall simultaneously be~~  
4 ~~given to all other bidders, and, in the case of a contract awarded in an~~  
5 ~~amount greater than or equal to One Hundred Thousand Dollars (\$100,000),~~  
6 ~~a copy of the contract shall be provided within two working days after~~  
7 ~~receipt of a written request. , provided that if the contract is posted to the~~  
8 ~~website of the agency issuing the solicitation, notice of such posting,~~  
9 ~~together with notice of the URL or other locations of the site, may be given~~  
10 ~~in lieu of such copy.~~ The notice of award shall specifically state that the bid  
11 of the awardee is unconditionally accepted and shall remain posted on the  
12 website of the agency issuing the solicitation, for a period of no less than one  
13 hundred and eighty (180) days or for the term of the contract whichever is  
14 greater.

15 (h) Construction Bids in excess of available funds. In the event all  
16 bids for a construction project exceed available funds as certified by the  
17 appropriate fiscal officer, and the low responsive and responsible bid does  
18 not exceed such funds by more than five percent (5%), notwithstanding the  
19 provisions of Subsections (f) and (g) of this Section, the Director of Public  
20 Works, or the head of the agency issuing the solicitation, is authorized, in  
21 situations where time or economic considerations preclude re-solicitation of  
22 work of a reduced scope, to negotiate an adjustment of the bid price,  
23 including changes in the bid requirements, with the low responsive and  
24 responsible bidder, in order to bring the bid within the amount of available  
25 funds.



1           (hi) Multi-Step Sealed Bidding. When low price is desired to be a  
2 determining factor for award to the bidder of an acceptable product or  
3 service but it is considered impractical to initially preferable to evolve or test  
4 the adequacy of prepare a purchase description's market feasibility to  
5 support an award based on price, an Invitation for Bids may be issued and  
6 conducted in two phases, the first requesting the submission of unpriced  
7 technical offers, which may involve description of service qualifications and  
8 performance, in one or more rounds in which discussions may be conducted  
9 to supplement or amend technical offers or bid specifications or both, to be  
10 followed by an Invitation for Bids limited to a second phase in which the  
11 unsealed price bids of those bidders whose offers have been or become  
12 qualified as acceptable under the criteria set forth in the first phase  
13 solicitation are requested and then opened as in a normal competitive sealed  
14 bid process. The Policy Office shall promulgate such regulations as may be  
15 efficacious to the use of this method of source selection under this  
16 Subsection."

17       **Section 5.** The current § 5212 of Article 3 is hereby recodified as §5351 in  
18 Article 5, Chapter 5 of Title 5, Guam Code Annotated, and a **new § 5212** is hereby  
19 added to Article 3, Chapter 5 of Title 5, Guam Code Annotated to read as follows:

20           **"§5212. Competitive Sealed Proposals.**

21           (a) Conditions for use. Under competitive sealed proposals, the  
22 quality of competing products may be compared and trade-offs made  
23 between price and quality of the products offered as described in the Request  
24 for Competitive Proposals (RFCP). It shall not be used when another method  
25 of source selection is required or as is appropriate. Other conditions for use

1 include the following and if any such condition cannot be met, the  
2 competitive sealed proposal method shall not be used:

3 (1) The Chief Procurement Officer, the Director of Public  
4 Works, or the head of the agency issuing the solicitation, as the case  
5 may be, must make a determination, in writing, that price is not  
6 intended to be the determining factor for award of contract in the  
7 solicitation, and that the use of the competitive sealed bidding method  
8 is not practicable or advantageous to the Government of Guam, such  
9 determination to be made part of the Request for Competitive Sealed  
10 Proposal.

11 (2) Prior to preparing any solicitation document, the agency  
12 issuing the solicitation shall consult with the using agency and prepare  
13 a written plan for the solicitation, which plan shall include the using  
14 agency's assessment of need, the budget allocated, funding source,  
15 and market research identifying potential sources, which shall be part  
16 of the procurement record.

17 (3) A specific weighting shall be applied to the price factor,  
18 which must not be more than fifty percent (50%) of all relevant  
19 factors. However, if price is intended to weigh more than 50% of all  
20 factors, the Multi-Step Competitive Sealed Bid method or, in the case  
21 of professional services, the Request for Proposal method, as provided  
22 in this Part, shall be used. All other evaluation factors shall be as  
23 objectively defined by outcomes, functions or performance  
24 specifications desired, as is practicable to specify.

1           (4) All discussions with offerors authorized by this method  
2 shall be conducted in the presence of the head of the agency issuing  
3 the solicitation, or his or her designee.

4           (5) All evaluators must be persons acting in the best interests  
5 of the government, with sufficient knowledge of the government's  
6 needs and experience to capably appreciate the nature of the product  
7 being procured and independently assess and apply the proposals  
8 submitted to the evaluation criteria. The Government may procure the  
9 services of an expert technical advisor to assist in the evaluation of  
10 proposals. Evaluators may be non-government or non-agency  
11 employees.

12           (6) The Policy Office shall specify such other conditions and  
13 procedures as it deems appropriate by regulation.

14           (b) Request and notice for Competitive Sealed Proposals.  
15 Competitive sealed proposals shall be solicited by issuance of a written  
16 Request for Competitive Sealed Proposals ("RFCP"). Adequate public  
17 notice of the RFCP shall be given in sufficient time adequate to foster and  
18 allow the preparation of competitive responses prior to the submission date  
19 specified, in accordance with regulations promulgated by the Policy Office.

20           (c) Receipt of and Publicity Regarding Competitive Sealed  
21 Proposals. Competitive sealed proposals shall not be opened publicly, so as  
22 to avoid disclosure of contents to competing offerors during the process of  
23 negotiation. A Register of Competitive Proposals shall be prepared in  
24 accordance with regulations, which shall not be opened for public inspection  
25 until after contract award.

1           (d) Evaluation Factors. The RFCP shall state the relative  
2 importance of price and the factors and subfactors, if any, to be evaluated.  
3 Except for the price factor which must be specifically weighted, all other  
4 factors including price must be specifically weighted to provide all potential  
5 offerors sufficient guidance to consider and prepare their proposals and a  
6 more objectively verifiable selection process, and to assure that potential  
7 offerors have sufficient information to consider and prepare a proposal.

8           (e) Discussion with Responsible Offerors and Revisions to  
9 Proposals. As provided under regulations and, to the extent consistent  
10 therewith, the RFCP, discussions may be conducted with responsible  
11 offerors who submit proposals determined to be reasonably qualified for  
12 selection for award for the purpose of clarification to assure full  
13 understanding of, and responsiveness to, the solicitation requirements.  
14 Offerors shall each be accorded fair and equal treatment with respect to any  
15 opportunity for discussion and revision of proposals provided to any of  
16 them. Revisions and the subject of discussions may be subjected to uniform  
17 time and other limits reasonably specified by the procurement officer.  
18 Revisions of submissions may be permitted prior to final submissions and in  
19 response to a request for the best and final offer, but there shall be no  
20 revision allowed to a best and final offer nor after award.

21           (f) Award. The contract shall be awarded to the responsible offeror  
22 whose proposal conforms to the solicitation and is determined in writing to  
23 be the most advantageous to the Government of Guam, taking into  
24 consideration only price and the evaluation factors set forth in the RFCP.  
25 No other factors or criteria shall be used to affect the evaluation. The  
26 procurement officer must prepare a written determination setting forth the

1 comparative facts and factors which form the basis on which the award is  
2 made which shall be part of the procurement record. Written notice of the  
3 award to the successful offeror shall be promptly given to all other offerors.

4 (g) Justification<sup>1</sup>. The head of the agency conducting the  
5 procurement or a designee shall prepare a memorandum setting forth the  
6 basis of award including:

7 (1) how the evaluation factors stated in the Request for  
8 Competitive Proposals (RFCP) were applied to determine the best  
9 qualified offerors; and

10 (2) the significant considerations relating to price and the other  
11 terms of the contract.

12 All memoranda shall be included in the contract file and be available for  
13 public inspection.”

14 **Section 6.** § 5213 of Article 3, Chapter 5 of Title 5, Guam Code  
15 Annotated, is hereby amended to read as follows:

16 **“§ 5213. Small Purchases.**

17 (a) Any procurement greater than \$1,000 but not exceeding  
18 \$30,000 for supplies or services and not exceeding less than \$100,000 for  
19 construction ~~the amount established by regulation~~ may be made in  
20 accordance with small purchase procedures promulgated by the Policy  
21 Office, provided, however, that procurement requirements shall not be  
22 artificially divided so as to constitute a small purchase under this Section.

23 (b) For making small purchases of less than \$1,000, price  
24 quotations may be obtained via telephone. The names of the business and  
25 authorized personnel submitting quotations to include the date and amount  
26 of each quotation shall be recorded and maintained as a public record.”

1       **Section 7.** § 5214 of Article 3, Chapter 5 of Title 5, Guam Code  
2 Annotated, is hereby amended to read as follows:

3               **“§5214.     Sole Source Procurement.**

4               (a)     A contract may be awarded for a supply, service, or  
5 construction item without competition when, under regulations promulgated  
6 by the Policy Office, the Chief Procurement Officer, the Director of Public  
7 Works, or the head of a purchasing the agency issuing the solicitation, or a  
8 designee of either officer above the level of the Procurement Officer in  
9 advance determines in writing that there is only one source for the required  
10 supply, service or construction item.

11              (b)     The agency issuing the solicitation shall publish on its website a  
12 Notice of Intent to award a Sole Source contract describing the nature of the  
13 contract, and the intended contract recipient, at least fourteen (14) days  
14 before award is made.

15              (c)     The agency issuing the solicitation shall post on its website the  
16 nature of all sole source contracts awarded and the respective recipients, and  
17 remain posted for no less than one hundred and eighty (180) days or the term  
18 of the contract, whichever is greater.

19              (d)     A sole source contract shall not be issued for a term greater than  
20 one (1) year, with up to four (4) successive annual options to renew, such  
21 option being exercisable by the government and only if there is, at the time  
22 to be exercised, no other available source. It shall be the responsibility of the  
23 agency issuing the solicitation, to issue requests for interest before the  
24 expiration of each term of the sole source contract. In the interest of  
25 sustaining the continuity and ensuring the success of multi-year federally

1 funded programs, these term limitations shall not be applicable to federally  
2 funded programs.

3 (e) Prior to and as a condition of making such determination, the  
4 agency issuing the solicitation, shall prepare a written a report which shall be  
5 prepared for the person making such determination and which shall detail an  
6 analysis of the minimal needs of the government upon which the contract is  
7 based, and the findings of a thorough market research and a conclusion that  
8 there is no other source which will satisfy the government need. The report  
9 must be signed by the person or persons conducting the analysis and market  
10 research, and shall be made part of the procurement record. The agency  
11 issuing the solicitation, shall also make a written determination that the price  
12 of any sole source contract is fair and reasonable, which determination shall  
13 include relevant cost and pricing information and analysis for the sole source  
14 as well as comparable or alternative sources, supplies or services.

15 (f) In the event any such contract, or series of related contracts, is  
16 in excess of the amount of One Hundred Thousand Dollars (\$100,000), the  
17 agency issuing the solicitation shall, within fourteen (14) days of making the  
18 contract, publish notice of the making of the contract, including the name of  
19 the agency issuing the solicitation, the contractor, the contract amount and  
20 its term, and the nature of the contract, in a newspaper of general circulation  
21 on Guam and by posting such notice on its website, which shall not be taken  
22 down for one year.”

23 **Section 8.** § 5215 of Article 3, Chapter 5 of Title 5, Guam Code  
24 Annotated, is hereby amended to read as follows:

25 “§5215. **Emergency Procurements.**

1           (a) Determination of Emergency. Notwithstanding any other  
2 provision of this Chapter, the Chief Procurement Officer, the Director of  
3 Public Works, the head of a ~~purchasing~~ the agency issuing the solicitation,  
4 or a designee of either officer may make or authorize others to make  
5 emergency procurements when there exists ~~an threat to public health,~~  
6 ~~welfare, or safety under~~ emergency under such conditions and as defined in  
7 Section 5030(x) and regulations promulgated by the Policy Office; provided  
8 that an independent written determination of the basis for the emergency as  
9 thus defined is first made by such officer and is included in the contract file.  
10 ~~such emergency procurements shall be made with such competition as is~~  
11 ~~practicable under the circumstances, and further provided that the~~  
12 ~~procurement agent must solicit at least three (3) informal price quotations, if~~  
13 ~~time allows must give notice to all contractors from the qualified bid list~~  
14 ~~who have provided the needed supplies and services to the government~~  
15 ~~within the preceding twelve (12) months, and must award the procurement~~  
16 ~~to the firm with the best offer, as determined by evaluating cost and delivery~~  
17 ~~time. No emergency procurement or combination of emergency~~  
18 ~~procurements may be made for an amount of goods or supplies greater than~~  
19 ~~the amount of such goods and supplies which is necessary to meet an~~  
20 ~~emergency for the thirty (30) day period immediately following the~~  
21 ~~procurement. A written determination of the basis for the emergency and for~~  
22 ~~the selection of the particular contractor shall be included in the contract file.~~  
23 The requirements for a written determination for the emergency procurement  
24 shall be met if the procurements are being made on the basis of the  
25 Governor's declaration, by Executive Order, of an emergency situation by  
26 ~~Executive Order if such Order states that emergency procurement may be~~



1 ~~resorted to for the purposes of the Order justifying procurement under this~~  
2 ~~Section.~~ Unless authorized by such an Executive Order ~~declaring an~~  
3 ~~emergency~~, no emergency procurement may be made except on a certificate  
4 of emergency made under penalty of perjury by the Chief Procurement  
5 Officer, Director of Public Works or the head of the ~~a purchasing agency~~  
6 issuing the solicitation, as the case may be, that an emergency condition  
7 exists justifying emergency procurement. Certified copies of the certificate  
8 shall be sent, prior to award and as a condition thereof, to the Governor, who  
9 shall approve such certificate, in writing, and to the Speaker of the  
10 Legislature. For autonomous agencies who have been granted or delegated  
11 authority to perform their own procurement function, approval of emergency  
12 certifications shall come from their respective Board of Directors. Certified  
13 copies of the Board approved certificate shall be sent, in writing, prior to  
14 award and as a condition thereof, to the Governor and to the Speaker of the  
15 Legislature. The certificate shall contain the following:

16 (ai) a statement of the facts giving rise to the  
17 emergency;

18 (bii) the factual basis of the determination that an  
19 emergency exists and that procurement is necessary; and

20 (eiii) a statement that emergency procurement is not being  
21 used solely for the purpose of avoidance of the provisions of this  
22 Chapter.

23 ~~In addition to any other requirement, the Governor must~~  
24 ~~approve in writing all authorizations for emergency procurement.”~~

25 (b) Award and Limitations. Emergency procurements shall be  
26 made with such competition as is practicable under the circumstances, such

1 as including requests for quotations giving notice to all contractors from the  
2 potential contractor list as authorized in § 5231, who have provided the  
3 needed supplies and services to the government within the preceding twelve  
4 (12) months. Award shall be made to the responsible firm with the best  
5 offer, as determined by evaluating cost and delivery time as required under §  
6 5010 of this Chapter. No emergency procurement may be made for any  
7 emergency, including recurring emergency conditions of substantially  
8 similar nature, in an amount of supplies or services greater than the amount  
9 of such supplies or services which may be necessary to meet the emergency  
10 for a ninety (90) day period immediately following the procurement, and no  
11 other procurement shall be made of any such supply or service under  
12 authority of this Section; any contract given therefor shall be void. The  
13 ninety (90) day period may be extended or exceeded by a Declaration of  
14 Emergency authorized by Executive Order of the Governor only in the event  
15 of an emergency due to a natural disaster. All awards under this section shall  
16 be posted on the website of the agency issuing the solicitation, on the date of  
17 the award and for the duration of the contract or a period of 180 days,  
18 whichever is greater.

19 (c) Planning. When an emergency procurement is implemented,  
20 the Chief Procurement Officer or head of the agency issuing the solicitation,  
21 conducting the emergency procurement shall immediately prepare to  
22 procure, by other procurement methods of source selection authorized by  
23 this Chapter, such supplies or services as may be required as a follow on  
24 from such emergency procurement.

25 **Section 9.** § 5216 of Article 3, Chapter 5 of Title 5, Guam Code

26 Annotated, is hereby amended to read as follows:

1           **“§5216. Competitive Selection Procedures for Services**  
2           **Specified in §5121 of this Chapter.**

3           (a) Conditions for Use. The professional professionally licensed  
4           services specified in § 5121(a) of this Chapter or as specified in Article 5 of  
5           this Chapter may ~~shall~~ be procured in accordance with this Section, except  
6           as authorized under §§ 5214 or 5215 of this Chapter. ~~Services for~~  
7           ~~architecture, engineering, construction, land surveying, environmental~~  
8           ~~assessment and other such services shall be procured in accordance with~~  
9           ~~Article 5 of this Chapter.~~

10          (b) Statement of Qualifications. Persons engaged in providing the  
11          types of services specified in § 5121(a) of this Chapter may submit  
12          statements of qualifications and expressions of interest, but not prices, in  
13          providing such types of services. The Procurement Officer may specify a  
14          uniform format for statements of qualifications. Persons may amend these  
15          statements at any time by filing a new statement. Statements shall be kept by  
16          the agency issuing the solicitation, only for reference in the nature of a  
17          response to a request for information and not as a solicitation to or by the  
18          agency issuing the solicitation, and shall be purged one (1) year from  
19          receipt. Submitting a statement of qualification by any person does not  
20          entitle any such person to actual notice nor shall submission of proposals by  
21          offerors be limited to those persons who have submitted any such statement.

22          (c) Public Announcement and Form of Request for Proposals.  
23          Adequate public notice of the need for such services shall be given by the  
24          purchasing agency issuing the solicitation through a Request for Proposals  
25          (“RFP”). The Request for Proposals shall describe the services required, list  
26          the type of information and data required of each offeror, specify if errors

1 and omissions insurance must be provided as specified in Subsection (f) and  
2 the amount of coverage required, and state the relative importance of  
3 particular qualifications.

4 (d) Discussions. The head of the ~~purchasing~~ agency issuing the  
5 solicitation or a designee of such officer may conduct discussions with any  
6 offeror who has submitted a proposal in response to an RFP, to determine  
7 such offeror's qualifications and understanding of the evaluation factors and  
8 services sought for further consideration. Discussions shall not disclose any  
9 information derived from proposals submitted by other offerors. Price is not  
10 a factor to be discussed or considered until after the ranking of the offerors  
11 and the process of negotiation for compensation begins.<sup>2</sup>

12 (e) Award. Award shall be made to the offeror determined in  
13 writing by the head of the ~~purchasing~~ agency issuing the solicitation or a  
14 designee of such officer to be best qualified based on the evaluation factors  
15 set forth in the Request for Proposals, and negotiation of compensation  
16 determined to be fair and reasonable. If compensation cannot be agreed upon  
17 with the best qualified offeror, the negotiations will be formally terminated  
18 with the selected offeror. If proposals were submitted by one or more other  
19 offerors determined to be qualified, negotiations may be conducted with  
20 such other offeror or offerors, in the order of their respective qualification  
21 ranking, and the contract may be awarded to the offeror then ranked as best  
22 qualified if the amount of compensation is determined to be fair and  
23 reasonable.

24 (f) Errors and Omissions Insurance. Regulations shall be  
25 promulgated that specify circumstances in which the Chief Procurement  
26 Officer or Director of Public Works shall require offerors of professional

1 services to provide appropriate errors and omissions insurance, or  
2 equivalent, to adequately cover the particular services to be rendered under  
3 the contract awarded. Satisfactory evidence of such required insurance shall  
4 be produced prior to any award.”

5 **Section 10.** § 5217 of Article 3, Chapter 5 of Title 5, Guam Code  
6 Annotated, is hereby amended to read as follows:

7 **“§5217. Procurement from Nonprofit Corporations.<sup>3</sup>**

8 (a) Award of Contract Without Competition. A contract may be  
9 awarded for a supply or service without competition when the prospective  
10 contractor is a responsible and responsive nonprofit corporation based and  
11 incorporated in Guam, possesses a current certificate of good standing from  
12 the Department of Revenue and Taxation and employing sheltered or  
13 handicapped workers persons with disabilities<sup>4</sup> on Guam to provide the  
14 supply or service. The nonprofit corporation shall obtain certification from  
15 the Department of Integrated Services for Individuals with Disabilities  
16 (DISID) that the organization currently employs persons with disabilities or  
17 will have the needed employees when notice to proceed is issued by the  
18 purchasing agency.<sup>5</sup>

19 (b) Conditions. No such contract shall be awarded unless all of the  
20 following conditions are first satisfied:

21 (1) ~~As a condition of the award of the contract~~ ¶The  
22 contractor must certify that labor employed to manufacture the supply  
23 or perform the services on the project will be performed on Guam by  
24 handicapped persons with disabilities, who are residents of Guam  
25 except that supervisory personnel do not have to be handicapped  
26 persons with disabilities.

1           (2)   The terms and conditions of the contract shall have been  
2           prepared pursuant to specifications prepared by the agency issuing the  
3           solicitation, in accordance with the requirements of Article 4 of this  
4           Chapter 5.

5           (3)   The nonprofit prospective contractor must have given  
6           written notice to the agency issuing the solicitation, in response to an  
7           issued IFB, RFP or RFCP, and prior to the time established for the  
8           submission of bids or proposals of such solicitation, declaring its  
9           intent to avail of the benefits of this Section, and shall satisfy the  
10          agency that the nonprofit prospective contractor is eligible for such an  
11          award, in which case the agency shall stay the procurement, or in its  
12          discretion cancel it, until it is finally determined to consider the  
13          nonprofit's bid or proposal. The agency shall determine such eligible  
14          status within fourteen (14) days of receipt of such notice.

15          (4)   No such contract shall be awarded unless the bid or  
16          proposal is responsive to the solicitation requirements and the  
17          prospective contractor is determined to be responsible to perform the  
18          contract pursuant to § 5230 of this Article.

19          (5)   A contractor awarded a contract pursuant to this Section  
20          shall not be required to post any of the bonds required under Article 5  
21          of this Chapter. The solicitation, evaluation and award of the contract  
22          shall otherwise be conducted as provided in this Chapter, including  
23          the provisions of Article 9, and in accordance with the relevant  
24          requirements of the method of source selection under which the  
25          solicitation was issued.

1           (c) In the event more than one nonprofit prospective contractor  
2 should notice intent to avail of the right to obtain a contract without  
3 competition as provided in Subsection (a) of this Section, the eligible  
4 prospective contractors shall compete amongst themselves for such contract,  
5 pursuant to the method of source selection identified in the solicitation.”

6       **Section 11.** § 5219 of Article 3, Chapter 5 of Title 5, Guam Code  
7 Annotated, is hereby amended to read as follows:

8           **“§ 5219.     Unsolicited Offers.**

9           (a) Defined. An unsolicited offer is any offer to provide supplies,  
10 services or construction other than one submitted in response to a  
11 solicitation.

12           (b) Processing of Unsolicited Offers. The Chief Procurement  
13 Officer, the Director of Public Works or the head of the Purchasing Agency,  
14 shall ~~may~~ consider ~~the~~ any unsolicited offer as provided in this Section. If an  
15 agency that receives an unsolicited offer is not authorized to solicit or enter  
16 into a contract for the supplies, services or construction offered, the head of  
17 such agency shall forward the offer to the Chief Procurement Officer, or the  
18 Director of Public Works ~~or the head of a Purchasing Agency~~, who shall  
19 consider and evaluate the offer as provided in this Section.

20           (c) Conditions for Consideration. To be considered for evaluation,  
21 an unsolicited offer:

22                   (1) must be in writing and contain all the elements of  
23 contract law to establish a contract if accepted;

24                   (2) must be sufficiently detailed to allow a judgment to be  
25 made concerning the potential utility of the offer to Guam and to the  
26 government;

1                   (3)     must be unique or innovative to Guam's and the  
2                   government's use; and

3                   (4)     may be subject to testing under terms and conditions  
4                   specified by the government.

5                   (d)     Evaluation. The unsolicited offer ~~shall~~ may be evaluated to  
6                   determine ~~it's~~ its utility to Guam and to the government, and whether it  
7                   would be to Guam's and the government's advantage to procure such  
8                   service.

9                   (e)     ~~Competitive Sealed Bidding~~ Competition Required. All  
10                  unsolicited offers considered as being desirable shall be subjected to the  
11                  most appropriate competitive method of source selection particularly  
12                  specified in § 5210 of this Part ~~the Competitive Sealed Bidding process~~  
13                  ~~under § 5211. Notwithstanding any other provision of law, sole source~~  
14                  ~~procurement shall not be permissible in any procurement arising from an~~  
15                  ~~unsolicited offer. The criteria set forth in the Invitation for Bids solicitation~~  
16                  shall *not* require the inclusion of any confidential, proprietary or trade secret  
17                  item, service or method which was proposed in the unsolicited offer, and the  
18                  proprietary character of an unsolicited offer or the inclusion of a proprietary  
19                  item in the unsolicited offer shall *not* be used to favor the offer or any other  
20                  bid, nor be a determining factor in awarding a bid. ~~Such Invitation for Bids~~  
21                  ~~shall not contain any reference to the financial offer of the unsolicited~~  
22                  ~~offeror, but shall contain a sufficient technical description to allow other~~  
23                  ~~parties to identify the technical concept of the offer, and to prepare bids."~~

24                  **Section 12.** § 5220 of Article 3, Chapter 5 of Title 5, Guam Code  
25                  Annotated, is hereby amended to read as follows:



1                   **“§5220 Electronic Publication and Notice of IFB, and RFP, and**  
2                   **RFCP Solicitation Documents and Awards Thereto on the Agency’s**  
3                   **Website.**

4                   (a)     In addition to any other provisions of this chapter,

5                         (1)     ~~Notwithstanding any other provision of this Chapter,~~  
6                         Invitations for Bid (IFBs), and Requests for Proposals (RFPs), and  
7                         Requests for Competitive Sealed Proposals (RFCPs), Requests for  
8                         Quotes (RFQs) and a Request for Information (RFI), individually and  
9                         collectively referred to in this Section as a “Solicitation Request”  
10                    shall:

11                         i.         ~~be posted on the procuring agency’s website of the~~  
12                         agency issuing the solicitation and the requesting agency. A  
13                         Solicitation Request IFBs, and RFPs procured or to be procured  
14                         through the General Services Agency (GSA), or the Department  
15                         of Public Works (DPW), or agency issuing the solicitation, who  
16                         have been granted or delegated authority to perform their own  
17                         procurement function, shall be posted, on the date of the  
18                         IFB/RFP public announcement of the solicitation,  
19                         simultaneously on the procuring agency’s website of the agency  
20                         issuing the solicitation and on the websites of GSA and or DPW  
21                         respectively; and,

22                         ii.        be electronically mailed from the agency issuing the  
23                         solicitation to the persons specified in Subsection (2) of this  
24                         Section, on the date of the public announcement of the  
25                         Solicitation Request. A Solicitation Request procured through  
26                         GSA or DPW shall be electronically mailed to such

1           organizations on such date by the agency issuing the solicitation,  
2           GSA or DPW, respectively.

3           (2)   To foster competition, GSA, DPW, and agencies who have  
4           been granted or delegated authority to perform their own procurement  
5           function shall prepare and maintain a current online public list of the  
6           electronically communicated contact information of persons, including  
7           organizations, desiring to receive notice of the solicitation  
8           announcements specified in Subsection (1) of this Section, and it shall  
9           be the responsibility of all procuring agencies, GSA, and DPW, to refer  
10          to that list to fulfill the obligations of Subsection (1)(ii) of this Section.  
11          Any person desiring to be included on such list, or to update or remove  
12          his or her name and contact information from the list, shall request  
13          inclusion or update of information on, or removal from the list by  
14          request to the Chief Procurement Officer, DPW Director, or head of the  
15          purchasing agency. The Chief Procurement Officer shall promulgate  
16          and publicly notice any internal operational procedures and  
17          requirements necessary or appropriate to effect this Subsection (2).

18          (3)   No fees shall be assessed to any person prospective  
19          bidders or other parties for accessing or downloading procurement  
20          documents from any agency's website nor for notice of solicitation  
21          announcements as allowed in Subsection (a)(1)(ii) of this Section.  
22          Documents required by this section to be posted. Such documents  
23          shall remain on the respective agencies' websites for a period of not  
24          less than one hundred eighty (180) days following the award of the  
25          Bid or Proposal. Awards shall be promptly posted and maintained for

1           a minimum of 180 days or for the duration of the contract, whichever  
2           is greater<sup>6</sup>.

3           (b) The ~~procuring~~ agency issuing the solicitation, and GSA and or  
4 DPW if applicable, shall provide notice in each IFB/RFP solicitation  
5 announcement ~~that recommends~~ that prospective bidders/~~respondents~~ or  
6 offerors register contact information with the agency to ensure that they  
7 receive any notices regarding any changes or updates to the IFB/RFP  
8 solicitation, provided that such registration shall not be a matter of  
9 responsiveness or otherwise materially nonconforming to the solicitation.  
10 The ~~procuring~~ agency issuing the solicitation, and GSA and or DPW shall  
11 not be liable for failure to provide notice to any party who did not register  
12 contact information.

13           (c) Nothing herein is intended to prevent the ~~procuring~~ agency  
14 issuing the solicitation, GSA, or DPW from making physical or digital  
15 media copies of procurement documents and assessing reasonable fees for  
16 such documents in a manner consistent with public law, administrative rules  
17 and regulations, and departmental policy that existed prior to the enactment  
18 of this Section.”

19       **Section 12.<sup>7</sup> INTENTIONALLY LEFT BLANK**

20       **Section 13.** § 5230 of Article 3, Chapter 5 of Title 5, Guam Code  
21 Annotated, is hereby amended to read as follows:

22           **“§5230.       Responsibility of Bidders and Offerors.**

23           (a) Determination of Nonresponsibility. A written determination  
24 of nonresponsibility of any bidder or offeror shall be made and given notice<sup>8</sup>  
25 on such bidder or offeror before an award can be made<sup>9</sup>, and shall be  
26 determined in accordance with regulations promulgated by the Policy

1 Office. A finding of nonresponsibility in any particular instance does not  
2 require a finding of nonresponsibility in any dissimilar other solicitation.  
3 The unreasonable failure of a bidder or offeror to promptly supply  
4 information in connection with an inquiry with respect to responsibility may  
5 be grounds for a determination of nonresponsibility with respect to such  
6 bidder or offeror.

7 (b) Right of Nondisclosure. Trade secret or confidential  
8 proprietary information furnished and identified as such by a bidder or  
9 offeror in connection with an inquiry with respect to responsibility pursuant  
10 to this Section, and confirmed as such by the Chief Procurement Officer,  
11 Director of Public Works or head of the agency issuing the solicitation, shall  
12 not be disclosed outside of the General Services Agency, the Department of  
13 Public Works ~~off the purchasing agency~~ issuing the solicitation without prior  
14 written consent by the bidder or offeror, but may be disclosed to the  
15 Attorney General at any time.”

16 **Section 14.** § 5231 of Article 3, Chapter 5 of Title 5, Guam Code  
17 Annotated is hereby amended to read as follows:

18 “§5231. ~~Prequalification of Suppliers.~~ Potential Contractor  
19 Lists.<sup>10</sup>

20 Information and interest of Pprospective suppliers bidders or offerors  
21 may be sought by any purchasing agency prequalified for solicitation of  
22 particular types of supplies, services and construction for the purpose of  
23 providing a purchasing agency information regarding possible sources of  
24 supplies, services and construction and the potential field of competition,  
25 and to prepare and maintain lists of potential contractors. Distribution of  
26 solicitation documents and notices of Ssolicitation may be sent to such

1 identified mailing lists of potential contractors. Inclusion of a potential  
2 contractor on any such list of potential contractors shall include but shall not  
3 be limited to such prequalified suppliers. does not determine responsibility  
4 in and of itself, nor shall any bidder or offeror be rejected for failure to be  
5 included, nor shall public notice be limited to those who have been  
6 included.”

7 **Section 15.** § 5232 of Article 3, Chapter 5 of Title 5, Guam Code  
8 Annotated, is hereby amended to read as follows:

9 **“§ 5232. Cost or Pricing Data.**

10 (a) Contractor Certification. A contractor shall, except as provided  
11 in Subsection (c) of this Section, submit cost or pricing data and shall certify  
12 that, to the best of its knowledge and belief, the cost or pricing data  
13 submitted was accurate, complete, and current as of a mutually determined  
14 specified date or at any time as may be required by Policy Office regulations  
15 and prior to the date of:

16 (1) The pricing of any contract awarded by competitive  
17 sealed proposals (§ 5212) or pursuant to the sole source procurement  
18 authority (§ 5214), or by competitive selection of professional  
19 services, including architect, engineering and land surveying services,  
20 where the total contract price is expected to exceed an amount  
21 established by Policy Office regulations; or

22 (2) the pricing of any change order or contract modification  
23 which is expected to exceed an amount established by Policy Office  
24 regulations.

25 (b) Price Adjustment. Any contract, change order, or contract  
26 modification under which a certificate is required shall contain a provision

1 that the price to the Territory, including profit or fee, shall be adjusted to  
2 exclude any significant sums by which the Territory finds that such price  
3 was increased because the contractor – furnished cost or pricing data was  
4 inaccurate, incomplete or not current as of the date agreed upon between the  
5 parties. The price shall also be adjusted to reflect non-payment by the  
6 contractor of any taxes which would have been paid by him were it not for  
7 the exclusion provided by 11 GCA §26203(k)(415) (Business Privilege  
8 Tax).

9 (c) Cost or Pricing Data Not Required. The requirements of this  
10 Section are intended to provide objective evidence of fair and reasonable  
11 prices and costs and need not be applied to contracts:<sup>11</sup>

12 (1) where the contract is based on adequate price  
13 competition;

14 (2) where the contract price is based on established catalogue  
15 prices or market prices;

16 (3) where contract prices are set by law or regulation; or

17 (4) where it is determined in writing in accordance with  
18 regulations promulgated by the Policy Office that the requirements of  
19 this Section may be waived, and the reasons for such waiver are stated  
20 in writing.”

21 **Section 16.** § 5233 of Article 3, Chapter 5 of Title 5, Guam Code  
22 Annotated, is hereby amended to read as follows:

23 “§5233. Disclosure of ~~Major—Shareholders~~ Ownership,  
24 Financial and Conflict of Interests.

1           (a) Purpose: The disclosures required by this section are intended  
2 to reveal information regarding the responsibility of a bidder, and can be  
3 obtained by an inquiry regarding responsibility.

4           (b) Definitions.

5               (1) As used herein, the term “person” shall include the  
6 definition found in Title 1, Chapter 7, Section 715, Guam Code  
7 Annotated, and in § 5030(n) of this Chapter, and includes a natural  
8 person as well as every person of whatever form or composition (an  
9 “artificial person”) recognized under the laws of Guam other than a  
10 natural person.

11               (2) The ownership interests to be disclosed under this section  
12 include the interest of a sole proprietor, a partner limited or otherwise,  
13 a shareholder of every class (in which case the percentage ownership  
14 interest test shall be based on each class), a member of an association  
15 or company, limited or otherwise, and any person owning a beneficial  
16 legal interest in any trust or artificial person having the power to  
17 contract, hold title to property, sue or be sued, and any other capacity  
18 or status necessary to perform the prospective contract.

19           (c) Disclosure of Ownership: As a condition of bidding,<sup>12</sup> Every  
20 person who is a prospective contractor under any method of source selection  
21 authorized by this Chapter, except for emergency procurement under Section  
22 5215, shall submit a Disclosure Statement, executed as an affidavit under  
23 oath, disclosing the name of each person who has owned an ownership  
24 interest in the prospective contractor, greater than ten percent (10%), at any  
25 time during the twelve (12) month period immediately preceding the date  
26 solicitation was issued the submission of a bid<sup>13</sup> (the “relevant disclosure

1 period”). If a prospective contractor is an artificial person, the Disclosure  
2 Statement shall disclose the name of each person who has owned an  
3 ownership interest in such artificial person (a “second tier owner”), greater  
4 than twenty-five percent (25%), at any time during the relevant disclosure  
5 period. If any such second tier owner is also an artificial person, the  
6 Disclosure Statement shall disclose the name of each person who has owned  
7 an ownership interest in such second tier owner (a “third tier owner”) of  
8 forty-nine percent (49%) or more during the relevant disclosure period. If  
9 the name of no natural person has been identified as an owner, or a second  
10 or third tier owner of the prospective contractor, the Disclosure Statement  
11 shall include the name and position of the natural person responsible for the  
12 performance of the prospective contract and the name of any natural person  
13 who has the power to remove and replace the responsible person or  
14 otherwise control the performance of the prospective contract during the  
15 proposed term of the contract.

16 (d) Disclosure of Financial Interest. A prospective contractor shall  
17 disclose any person who has received or is entitled to receive a commission,  
18 gratuity, contingent fee or other compensation to solicit or secure or assist in  
19 obtaining business related to the solicitation by means of a Disclosure  
20 Statement, executed as an affidavit under oath, disclosing such interest and  
21 shall also contain the amounts of any such commission, gratuity or other  
22 compensation.

23 (e) Disclosure of Conflict of Interest. A prospective contractor  
24 shall disclose any person who directly or indirectly participates in any  
25 solicitation if such person is an employee of the Government of Guam, or, if



1 federal funds are used in payment of the contract, is an employee of the  
2 Government of the United States.

3 (f) Every disclosure of an ownership or financial interest required  
4 to be identified by this Section, shall name the person required to be  
5 disclosed, the mailing address and street address<sup>14</sup> of the residence or  
6 principle place of business, and, in the case of an artificial person, a  
7 Taxpayer Identification Number shall be provided. All information disclosed  
8 or meant to be disclosed under this Section is public procurement data and  
9 shall be kept as part of the public record of each procurement.

10 ~~As a condition of bidding, any partnership, sole proprietorship or~~  
11 ~~corporation doing business with the government of Guam shall submit an~~  
12 ~~affidavit executed under oath that lists the name and address of any person~~  
13 ~~who has held more than ten percent (10%) of the outstanding interest or~~  
14 ~~shares in said partnership, sole proprietorship or corporation at any time~~  
15 ~~during the twelve (12) month period immediately preceding the submission~~  
16 ~~of a bid. The affidavit shall contain the number of shares or the percentage~~  
17 ~~of all assets of such partnership, sole proprietorship or corporation which~~  
18 ~~have held by each such person during the twelve (12) month period. In~~  
19 ~~addition, the affidavit shall contain the name and address of any person who~~  
20 ~~has received or is entitled to receive a commission, gratuity or other~~  
21 ~~compensation for procuring or assisting in obtaining business related to the~~  
22 ~~bid for the bidder and shall also contain the amounts of any such~~  
23 ~~commission, gratuity or other compensation. The affidavit shall be open and~~  
24 ~~available to the public for inspection and copying."~~

25 **Section 17.** § 5235 of Article 3, Chapter 5 of Title 5, Guam Code

26 Annotated, is hereby amended to read as follows:

1                   **“§5235.     Types of Contracts.**

2                   Subject to the limitations of this ~~Section~~ Chapter and regulations  
3                   adopted by the Policy Office, any type of contract which will promote the  
4                   best interest of the Territory may be used; provided that the use of cost-plus-  
5                   a-percentage-of-cost contract is prohibited; and provided that an indefinite  
6                   quantity contract shall not be used to acquire supplies by lease if the  
7                   acquisition would extend performance of the contract, beyond the term of  
8                   the contract.<sup>15</sup> A cost reimbursement contract may be used only when a  
9                   determination is made in writing that such contract is likely to be less costly  
10                  to the Territory than any other type or that it is impracticable to obtain the  
11                  supplies, services or construction required except under such contract.”

12               **Section 18.** § 5237 of Article 3, Chapter 5 of Title 5, Guam Code  
13               Annotated, is hereby amended to read as follows:

14                   **“§5237.     Multi-Year Contracts.**

15                  (a)   Specified Period. ~~It is the policy of the Government of Guam~~  
16                  ~~to minimize the use of multi-year contracts, and to require that the terms of~~  
17                  ~~all contracts be for only such minimal term as is practicable. No contract~~  
18                  shall be issued for an indefinite term nor shall it be renewable indefinitely,  
19                  provided however, that a contract may be issued for supplies or services on a  
20                  month to month basis provided the monthly price of the contract, when  
21                  annualized, does not exceed the amount established by authority of § 5213  
22                  of this Chapter (Small Purchases). Unless otherwise provided by law, a  
23                  contract for supplies or services may be entered into for any ~~minimum~~  
24                  period of time consistent with the section and deemed determined to be in  
25                  the best interests of the Territory provided the term of the contract and  
26                  conditions of renewal or extension, if any, are included in the solicitation

1 and funds are available for the first fiscal period at the time of contracting.  
2 Payment and performance obligations for succeeding fiscal periods shall be  
3 subject to the availability and appropriation of funds therefor.

4 (b) Presumption of five (5) year limit.<sup>16</sup> To foster competition and  
5 maximize the purchasing value of public funds, it is presumed that it is not  
6 in the best interests of the Government of Guam to make a contract,  
7 including a lease, for supplies or services for a total term, including renewals  
8 or extensions, in excess of five (5) years. A contract for supplies and  
9 services may be made for a term in excess of five (5) years (an “exceptional  
10 term”) only with the written determination, made by the Chief Procurement  
11 Officer, DPW Director, or the head of the agency issuing the solicitation<sup>17</sup>  
12 and incorporated in the solicitation documents, describing compelling  
13 circumstances and interests of the Government of Guam which justify the  
14 necessity of the exceptional term. Every exceptional term contract shall be  
15 reviewed annually, beginning at the end of year five (5) of the contract, by  
16 the Chief Procurement Officer, or the head of the agency issuing the  
17 solicitation and shall contain a termination for convenience clause in the  
18 particular form as authorized under §5306(c)(4) and §5350(c)(4) of this  
19 Chapter.

20 (bc) Determination Prior to Use. Prior to the utilization issuance of  
21 a solicitation of a multi-year contract, it shall be determined in writing:

22 (1) that estimated requirements for the intended supplies and  
23 services cover the period of the contract and are reasonably firm and  
24 continuing; and

1                   (2) that such a contract will serve the best interests of the  
2           Territory by encouraging effective competition or otherwise  
3           promoting economies in territory procurement.

4           (ed) Cancellation Due to Unavailability of Funds in Succeeding  
5           Fiscal Periods. When funds are not appropriated or otherwise made  
6           available to support continuation of performance in a subsequent fiscal  
7           period, the contract shall be cancelled and, notwithstanding any provision of  
8           the contract to the contrary, the contractor shall only be reimbursed for the  
9           reasonable value of any non-recurring costs incurred but not amortized in the  
10          price of the supplies or services delivered under the contract. The cost of  
11          cancellation may be paid from any appropriations available for such  
12          purposes.”

13          **Section 19.** § 5240 of Article 3, Chapter 5 of Title 5, Guam Code  
14          Annotated, is hereby amended to read as follows:

15                   **“§5240. Right to Inspect Plant.**

16           The Territory may, at reasonable times, inspect the every part of the  
17           plant or place of business of a contractor or any subcontractor which is  
18           related to the performance of any contract awarded or to be awarded by the  
19           Territory.”

20          **Section 20.** A new Subsection (c) is added to §5241 of Article 3, Chapter 5  
21          of Title 5, Guam Code Annotated, to read as follows:

22                   **“§ 5241. Right to Audit Records.”<sup>18</sup>**

23           (a) Audit of Cost or Pricing Data. The Territory may, at reasonable times  
24           and places, audit the books and records of any person who has submitted costs  
25           or pricing data pursuant to § 5232 of this Chapter to the extent that such books  
26           and records relate to such cost or pricing data. Any person who receives a

1 contract, change order, or contract modification for which cost or pricing data is  
2 required shall maintain such books and records that relate to such cost or  
3 pricing data for three (3) years from the date of final payment under the  
4 contract, unless a shorter period is otherwise authorized in writing.

5 (b) Contract Audit. The Territory shall be entitled to audit the books and  
6 records of a contractor or any subcontractor under any negotiated contract or  
7 subcontract other than a firm fixed price contract to the extent that such books  
8 and records relate to the performance of such contract or subcontract. Such  
9 books and records shall be maintained by the contractor for a minimum period  
10 of three (3) years from the date of final payment under the prime contract and  
11 by the subcontractor for a minimum period of three (3) years from the date of  
12 final payment under the subcontract, unless a ~~shorter~~ longer period is otherwise  
13 ~~authorized in writing~~ required by other law and regulations.

14 (c) The Public Auditor may conduct or cause to be conducted such other  
15 audits of the books and records of any person or entity that has procured a  
16 contract with the Government of Guam or any subcontractor of such person or  
17 entity. The scope of such audit or audits shall be limited to the cost, pricing,  
18 performance, and payment of such contract with the Government of Guam.

19 **Section 21.** § 5245 of Article 3, Chapter 5 of Title 5, Guam Code  
20 Annotated, is hereby amended to read as follows:

21 **“§5245. Finality of Determinations.**

22 Except as otherwise provided in Article 12 of this Chapter, The  
23 determinations required by §§ 5211(f), 5212(a), 5212(gf), 5214, 5215,  
24 5216(e), 5230(a), 5232(c), 5235, 5236 and 5237(bc) of this Chapter are final  
25 and conclusive unless they are clearly erroneous, arbitrary, capricious or  
26 contrary to law.”

1       **Section 22.** § 5248 of Article 3, Chapter 5 of Title 5, Guam Code  
2 Annotated, is hereby amended to read as follows:

3               **“§5248.       Record of Procurement Actions Taken Under §§5214**  
4 **and 5215 of this Chapter.**

5               (a)    Contents of Record. The Chief Procurement Officer, ~~or the~~  
6 Director of Public Works, or the head of the agency issuing the solicitation  
7 shall maintain a record listing of all contracts made under § 5214 (Sole  
8 Source Procurement) or § 5215 (Emergency Procurement) of this Chapter  
9 for a minimum of five (5) years and said record shall also be posted on the  
10 agency website for the same period of time.<sup>19</sup> The record shall contain:

11                       (1) each contractor’s name;

12                       (2) the amount and type of each contract; and

13                       (3) a listing of the supplies, services or construction procured  
14 under each contract.

15               (b)    Submission to Legislature and Procurement Advisory Council.  
16 A copy of such record shall be submitted to the Legislature and to the Guam  
17 Procurement Advisory Council on an annual basis. The record shall be  
18 available for public inspection.”

19       **Section 23.** § 5249 of Article 3, Chapter 5 of Title 5, Guam Code  
20 Annotated, is hereby amended to read as follows:

21               **“§ 5249.       Record of Procurement Actions.**

22               Each procurement officer and contract officer shall collaborate to  
23 make and maintain a complete record of each procurement throughout the  
24 term of the contract. Records, either electronic or paper, that are sufficient to  
25 document decisions must be created and maintained. All records shall be

1 made and kept in ~~machine-readable~~ a form capable of duplication by the  
2 public. <sup>20</sup> The record shall include, but not be limited to, the following:

3 (a) the date, time, subject matter and names of participants at  
4 any meeting including government employees that is in any way  
5 related to a particular procurement;

6 (b) a log of all communications between government  
7 employees and any member of the public, potential bidder, vendor or  
8 manufacturer which is in any way related to the procurement;

9 (c) sound or video recordings of all pre-bid conferences,<sup>21</sup>  
10 negotiations arising from a any type of request for proposals, and  
11 discussions with vendors concerning small purchase procurement;

12 (d) brochures and submittals of potential vendors or service  
13 providers, manufacturers or contractors, and all drafts, signed and  
14 dated by the draftsman, and other papers or materials used in the  
15 development of specifications; and

16 (e) the requesting agency's determination of need and  
17 records of the planning phase of the procurement;

18 (f) all bids and proposals, unless withdrawn or not allowed  
19 to be disclosed pursuant to law and regulations, and all contracts and  
20 purchase orders, provided only that no trade secret, proprietary  
21 information, or offer which is, pursuant to this Chapter or its  
22 regulations, required to be held confidential or not disclosed shall be  
23 redacted or kept apart and not available for public inspection. <sup>21</sup>

24 (g) all records of contract administration, including contract  
25 disputes. <sup>22</sup>

1                   (h) A summary of the basis of selection regardless of  
2                   solicitation method.<sup>23</sup>

3           **Section 24.** § 5251 of Article 3, Chapter 5 of Title 5, Guam Code  
4 Annotated, is hereby amended to read as follows:

5                   **“§5251. Public Record.**

6                   The record required by § 5249 of this Chapter is a public record ~~and,~~  
7                   ~~subject to rules promulgated by the Public Auditor, any.~~ All records shall be  
8                   presumed public and the burden of establishing that a document or record is  
9                   private shall be upon the agency or person claiming that the document on  
10                  record should not be disclosed or inspected. Any bidder, offeror or any<sup>24</sup>  
11                  person may inspect and copy any portion of the record except those parts of  
12                  the record that are non-disclosable pursuant to law or regulation.<sup>25</sup>

13                  This Chapter does not allow limitations on access to a public record  
14                  based upon the purpose for which the record is being requested, if the record  
15                  is otherwise subject to disclosure.”<sup>26</sup>

16           **Section 25.** § 5252 of Article 3, Chapter 5 of Title 5, Guam Code  
17 Annotated, is hereby amended to read as follows:

18                  **“§5252. Rules for Procurement Records.**

19                  The ~~rules~~ regulations that may be promulgated pursuant to § 5251-  
20                  5102 of this Chapter shall:

- 21                       (a) protect the integrity of the ~~bidding~~ solicitation process,  
22                       ~~including, but not limited to the independent cost analysis~~<sup>27</sup> prepared  
23                       under the direction of the agency issuing the solicitation;
- 24                       (b) protect the confidentiality of trade secrets and proprietary  
25                       commercial data;
- 26                       (c) establish reasonable charges for copying papers;



- 1 (d) provide for transcription of sound recordings;
- 2 (e) require public access to the record at the earliest possible
- 3 time; ~~and~~
- 4 (f) not require that the record be complete or that the
- 5 procurement award be made before inspection and copying are
- 6 permitted; and;
- 7 (g) clarify, as necessary, those records that are accessible
- 8 under law during the pendency of a protest, administrative appeal, or
- 9 appeals to the Courts of Guam.”<sup>28</sup>

10 **Section 26.** A new §5254 is hereby added to Article 3, Chapter 5 of Title 5,

11 Guam Code Annotated, to read as follows:

12 **“§5254. <sup>29</sup> Special Provisions Applicable to Source Selection.**

13 (a) Professional Services. It is the policy of the Government of

14 Guam to publicly announce all requirements for the professional services of

15 architects, engineers and land surveyors as specified in § 5216 of this

16 Chapter on the basis of demonstrated competence and qualification of the

17 services required, and at fair and reasonable prices, and such services shall

18 be procured in accordance with the professional services method of source

19 selection described in § 5216 as modified by the requirements of this

20 Subsection.

21 (1) Notwithstanding any provision of law to the contrary, the

22 Director of Public Works, or the heads of purchasing agencies which

23 employ or contract professional licensed architect, engineers, or land

24 surveyors<sup>30</sup> shall be responsible to conduct the procurement of such

25 services.

1           (2) In any solicitation for architectural, engineering, or land  
2           surveying services reasonably expected to be priced above \$500,000,  
3           the Director of Public Works, or the heads of purchasing agencies  
4           which employ professional architects, engineers, or land surveyors<sup>31</sup>  
5           shall appoint the most appropriately qualified person in the  
6           Department to serve on the evaluation and selection team.

7           (b) Design-Build, Design-Build-Operate-Maintain, and Design-  
8           Build-Finance-Operate-Maintain Projects. All design-build, design-build-  
9           operate-maintain, and design-build-finance-operate-maintain projects shall  
10          be procured in accordance with the competitive sealed proposal method of  
11          source selection described in § 5212 of this Chapter as modified by the  
12          requirements of this Subsection.

13           (1) The RFCP for each such project:

14           (A) shall include design requirements. *Design*  
15           *requirements* means the written description of the infrastructure  
16           facility or service to be procured under this Article, including:

17                   (a) required features, functions, characteristics,  
18                   qualities, and properties that are required by the [State];

19                   (b) the anticipated schedule, including start,  
20                   duration, and completion; and

21                   (c) estimated budgets (as applicable to the  
22                   specific procurement) for design, construction, operation  
23                   and maintenance.

24                   (d) the design requirements may, but need not,  
25                   include drawings and other documents illustrating the

1 scale and relationship of the features, functions, and  
2 characteristics of the project;

3 (B) shall solicit proposal development documents;

4 *Proposal development documents* means drawings and other  
5 design related documents that are sufficient to fix and describe  
6 the size and character of an infrastructure facility as to  
7 architectural, structural, mechanical and electrical systems,  
8 materials, and such other elements as may be appropriate to the  
9 applicable project delivery method;

10 (C) may, when the Director of Public Works  
11 determines that the cost of preparing proposals is high in  
12 proportion to the size, estimated price and complexity of the  
13 procurement:

14 (a) prequalify offerors by issuing a Request for  
15 Qualifications in the time and manner required of an  
16 RFCP, in advance of the RFCP, stating that all persons  
17 intending to offer a proposal for the project must first  
18 respond to the Request for Qualifications; and,

19 (b) select a short list of responsible offerors  
20 prior to any discussions and evaluations of any proposals,  
21 provided that the number of proposals that will be short-  
22 listed is stated in the RFCP and prompt notice is given to  
23 all offerors, to such points of contact as are known as  
24 well as by public notice, as to which proposals have been  
25 short-listed; or,

1 (c) pay stipends<sup>32</sup> to unsuccessful offerors, provided  
2 that the amount of such stipends and the terms under  
3 which stipends will be paid are stated in the RFCP.

4 (D) shall state the relative importance of (i) demonstrated  
5 compliance with the design requirements, (ii) offeror qualifications,  
6 (iii) financial capability, (iv) project schedule, (v) price (if design-  
7 build) or life-cycle cost (if any other delivery method), and (vi) any  
8 other factors; and

9 (E) if the contract price is estimated to exceed \$10,000,000  
10 or whenever the contract period of operations and maintenance is ten  
11 (10) years or longer, shall require each offeror to identify an  
12 Independent Peer Reviewer, whose competence and qualifications to  
13 provide such services shall be an additional evaluation factor in the  
14 award of contract, provided however, if, as appropriate, the Director  
15 of Public Works, the Chief Procurement Officer, or head of the  
16 agency issuing the solicitation, determines that it is not in the best  
17 interest of the Department to contract with the Independent Peer  
18 Reviewer so designated, the Director shall contract with another  
19 Independent Peer Reviewer.

20 END OF ARTICLE 3

21 **Section 27.** § 5425 of Article 9, Chapter 5 of Title 5, Guam Code  
22 Annotated, is *amended* to read as follows:

23 “§ 5425. ~~Authority to Resolve~~ Resolution of Protested  
24 Solicitations and Awards.

25 (a) Right to Protest. Any actual or prospective bidder, offeror, or  
26 contractor who may be aggrieved in connection with the method of source

1 selection, solicitation or award of a contract, may protest to the Chief  
2 Procurement Officer, the Director of Public Works, or the head of a  
3 ~~purchasing the agency issuing the solicitation~~. The protest *shall* be submitted  
4 in writing within fourteen (14) days after such aggrieved person knows or  
5 should know of the facts giving rise ~~thereto~~. to the protest.

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

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

6 (1) ~~state the reasons for the action~~ the government's factual  
7 and legal reasons for the decision made to accept or reject, in whole or  
8 in part; and

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

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

16 (e) Failure to Render Timely Decision. If the protestant *does not*  
17 receive a decision on the protest as required under Subsection (c) of this  
18 Section within forty-five (45) days from the date of the protest, the  
19 protestant may make a written request to the Office where the protest was  
20 made to render such a decision on the protest. If no decision as required  
21 under Subsection (c) of this Section is made and served upon the protestant  
22 within ten (10) days after receipt of such written request, or within such  
23 longer period as may be expressly agreed upon by the parties, in writing,  
24 then the protest shall be deemed rejected. On any appeal from the rejection,  
25 the appellant shall bear the burden of establishing that there was good and

1 sufficient reason to accept the protest based on evidence that was known to it  
2 or should have been known to it at the time the protest was rejected.

3 (e) (f) Appeal. A decision under Subsection (c) of this Section,  
4 including a decision there under regarding entitlement to costs as provided  
5 by Subsection (h) of this Section, may be appealed by the protestant, to the  
6 Public Auditor: (1) within fifteen (15) days after receipt by the protestant of  
7 the notice of decision to reject the protest; or (2) within fifteen (15) days  
8 after the date the protest is deemed rejected as provided in Subsection (e) of  
9 this Section.

10 (g) Disqualification of Public Auditor. The Public Auditor may  
11 recuse herself or himself at any time and notify all parties, or any party may  
12 raise the issue of disqualification and state the relevant fact prior to the  
13 hearing. The Public Auditor shall make a determination and notify all  
14 parties. In the event of disqualification or recusal of the Public Auditor, the  
15 Public Auditor shall designate the senior member of his or her audit staff to  
16 be the appointed Hearing Officer for procurement appeals to preside over the  
17 matter. If no member of the Public Auditor's staff of the appointed Hearing  
18 Officer is able to preside of the matter due to disqualification, then such  
19 matter may be taken to the Superior Court of Guam in accordance with 5  
20 G.C.A. §5480.

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

24 (gh) Automatic Stay. In the event of a timely protest under  
25 Subsection (a) of this Section ~~or under Subsection (a) of § 5480 of this~~  
26 ~~Chapter,~~ the Territory *shall not* proceed further with the solicitation or with

1 the award, or performance of the contract prior to the time allowed to appeal,  
2 or the final resolution of such protest, including a final entry of judgment, or  
3 the settlement of the protest evidenced by a writing signed by all interested  
4 parties, and any such further action is void, unless:

5 (1) the Chief Procurement Officer or the Director of Public  
6 Works, ~~after consultation with and~~ the written concurrence of the head  
7 of the using or purchasing agency and the Attorney General or  
8 designated Deputy Attorney General, then makes a written  
9 determination that the award of the contract without delay is necessary  
10 to protect substantial interests of the Territory; and

11 (2) absent a declaration of emergency procurement by *I*  
12 *Maga'lāhen Guåhan*, pursuant to § 5215, the protestant has been  
13 given *at least* two (2) days notice of the determination (exclusive of  
14 territorial holidays); and

15 (3) if the protest is pending before the Public Auditor or the  
16 court, the Public Auditor or the court has confirmed the validity of  
17 such determination, or if no such protest is pending, no protest to the  
18 Public Auditor of such determination is filed prior to expiration of the  
19 two (2) day period specified in Item (2) of this Subsection ~~(g)~~ (h) of  
20 this Section.;

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

23 (5) An immediate appeal of a decision of the Public Auditor  
24 to confirm or reject the determination of necessity and substantial  
25 interest may be taken to the Superior Court as provided in § 5480(a)  
26 of this Article without regard to the obligation to first fully exhaust



1        administrative remedies. Following judicial review of such decision,  
2        the matter shall be returned to the Public Auditor for final decision of  
3        the protest.

4        (h)-(i) Entitlement to Costs. In addition to any other relief or remedy  
5        granted under Subsections (c) or (e) of this Section, or under Subsection (a)  
6        of § 5480 of this Chapter, including the remedies provided by Subarticle B  
7        of Article 9 of this Chapter, when a protest is sustained, the protestant *shall*  
8        be entitled to the reasonable costs incurred in connection with the  
9        solicitation and protest, including bid preparation costs, excluding attorney's  
10       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 Subarticle 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 to include its autonomous agencies and public  
21                corporations, or by any protestant or interested party, against a  
22                ~~protestant upon its finding that the~~ any party, including the  
23                government, making a protest, motion, or bringing any action was  
24                ~~made~~ fraudulently, frivolously, or solely to with predominant intent to  
25                delay or disrupt the procurement process.

1           (j) Finality. A decision of the Public Auditor is final unless a  
2 person adversely affected by the decision commences an appeal in the  
3 Superior Court as provided by § 5707(a) of this Chapter, and in accordance  
4 with the waiver of sovereign immunity conferred by Subsection (a) of §  
5 5480 of this Chapter.”

6       **Section 28.** § 5426 of Article 9, Chapter 5 of Title 5, Guam Code  
7 Annotated, is *amended* to read as follows:

8           **“§ 5426. Authority to Debar or Suspend.**

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

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

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

1 (2) conviction under territorial or federal statutes of  
2 embezzlement, theft, forgery, bribery, falsification or destruction of  
3 records, receiving stolen property, or any other offense indicating a  
4 lack of business integrity or business honesty which currently,  
5 seriously and directly affects responsibility as a territorial contractor;

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

8 (4) violation of contract provisions, as set forth below, of a  
9 character which is regarded by the Chief Procurement Officer, the  
10 Director of Public Works, or the head of the ~~a-purchasing~~ agency  
11 issuing the solicitation, to be so serious as to justify debarment action:

12 (A) deliberate failure without good cause to perform in  
13 accordance with the specifications or within the time limit  
14 provided in the contract; or

15 (B) a recent record of failure to perform or of  
16 unsatisfactory performance in accordance with the terms of one  
17 (1) or more procurement contracts; *provided*, that failure to  
18 perform or unsatisfactory performance caused by acts beyond  
19 the control of the contractor *shall not* be considered to be a  
20 basis for debarment; or

21 (C) upon a finding of the Department of Labor, failure  
22 to pay employees engaged on the contract in violation of the  
23 Wage Determination law or contract conditions.

24 (5) any other cause the Chief Procurement Officer, the  
25 Director of Public Works, or the head of ~~a-purchasing~~ the agency  
26 issuing the solicitation, determines to be so serious and compelling as

1 to affect responsibility as a territorial contractor, including debarment  
2 by another governmental entity for any cause listed in regulations of  
3 the Policy Office;

4 (6) for violation of the ethical standards set forth in Article  
5 11 of this Chapter.

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

8 (c) Decision. The Chief Procurement Officer, the Director of  
9 Public Works, or the head of a ~~purchasing~~ the agency issuing the  
10 solicitation, *shall* issue a written decision to debar or suspend, or to reject  
11 any petition to do so brought under Subsection (f) of this Section. The  
12 decision *shall*:

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

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

17 (d) Notice of Decision. A copy of the decision under Subsection  
18 (c) of this Section *shall* be mailed electronically or otherwise furnished  
19 immediately to the debarred or suspended person, and any other party  
20 intervening or petitioning, and the head of all governmental bodies or  
21 purchasing agencies.

22 (e) Finality of Decision. A decision under Subsections (c) or (f) of  
23 this Section *shall* be final and conclusive, unless fraudulent, or an appeal is  
24 taken to the Public Auditor in accordance with § 5706 of this Chapter. Such  
25 a decision shall be automatically stayed during the pendency of any appeal,  
26 but any such appeal does not preclude nor require a determination of non-

1 responsibility in any solicitation in which the person charged may  
2 participate. The officer issuing such decision shall immediately notify all  
3 persons, governmental bodies, and purchasing agencies of the fact and effect  
4 of such appeal.

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

25 **Section 29.** § 5427 of Article 9, Chapter 5 of Title 5, Guam Code  
26 Annotated, is *amended* to read as follows:

1                   “§ 5427.     **Authority to Resolve Contract and Breach of**  
2     **Contract Controversies.**

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

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

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

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

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

25          (d)   Notice of Decision. A copy of the any decision under  
26   Subsection (c) of this Section *shall* be immediately served, mailed,

1 communicated by any electronic or telephonic means used in the ordinary  
2 course of business which makes an electronic record of the communication,  
3 or otherwise furnished immediately provided to the contractor, and any right  
4 of the contractor to appeal shall be tolled by any delay of such notice.

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

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

19 **Section 30.** § 5450 of Article 9, Chapter 5 of Title 5, Guam Code  
20 Annotated, is *amended* to read as follows:

21 **“§ 5450. Applicability of this Part.**

22 The provisions of this Subarticle only apply where it is determined  
23 administratively, or upon administrative or judicial review, that a solicitation  
24 or award of a contract is in violation of law, and are in addition to any other  
25 remedy or relief allowed by law or equity.”

1           **Section 31.** § 5452 of Article 9 Chapter 5 of Title 5, Guam Code  
2 Annotated, is *amended* to read as follows:

3           **“§ 5452.     Remedies After an Award.**

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

6                   ~~(1)~~(a) if the person awarded the contract has *not* acted  
7 fraudulently or in bad faith:

8                           ~~(A)~~(1)the contract may be ratified and affirmed, provided  
9 it is determined that doing so is in the best interests of the  
10 Territory; or

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

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

17                           ~~(A)~~~~2~~(1)       the contract may be declared null and void;  
18 or

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

22                   (b) In either case, the determination to ratify or affirm the contract  
23 shall be made without regard to the interests of the person awarded  
24 the contract.”



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

4       **Section 32.** § 5480 of Subarticle D of Article 9, Chapter 5 of Title 5, Guam  
5       Code Annotated, is *amended* to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

1 such costs and damages as may be incurred or suffered by any party who  
2 is found to have been injured by reason of the frivolous protest or appeal;  
3 provided, the sum of security shall not exceed an amount greater than ten  
4 percent (10%) of the appellant's bid or proposal.

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

14 **Section 33.** § 5481 of Subarticle D of Article 9, Chapter 5 of Title 5, Guam  
15 Code Annotated, is *amended* to read as follows:

16 **"§ 5481. Time Limitations on Actions.**

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

20 (b) Debarments and Suspensions for Cause. Any action under §  
21 5480(b) of this Chapter *shall* be commenced within six (6) months after  
22 receipt of the decision of the Policy Office under § 5651 of this Chapter,  
23 or the decision of the ~~Procurement Appeals Board~~ Public Auditor under §  
24 ~~5707~~ 5705 of this Chapter, whichever is applicable.

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

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

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

6 **Section 34.** § 5485(a) of Subarticle E of Article 9, Chapter 5 of Title 5, Guam  
7 Code Annotated, is *amended* to read as follows:

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

18 **Section 35.** § 5485(b) of Subarticle E of Article 9, Chapter 5 of Title 5, Guam  
19 Code Annotated, is *amended* to read as follows:

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

25 **Section 36.** § 5703 of Article 12, Chapter 5 of Title 5, Guam Code Annotated,  
26 is *amended* to read as follows:

1       **“§ 5703. Jurisdiction of the Public Auditor.**

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

16      **Section 37.** § 5705 of Article 12, Chapter 5 of 5, Guam Code Annotated, is  
17      *amended* to read as follows:

18      **“§ 5705. Suspension or Debarment Proceedings.**

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

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

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

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

13 **Section 38.** § 5706(b) of Article 12, Chapter 5 of Title 5, Guam Code  
14 Annotated, is *amended* to read as follows:

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

19 **Section 39.** § 5707(a) of Article 12, Chapter 5 Title 5, Guam Code Annotated,  
20 is *amended* to read as follows:

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

1       **Section 40.** § 5708 of Article 12, Chapter 5 of Title 5, Guam Code Annotated,  
2 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 agency issuing the  
8 solicitation, may be settled by them, with or without prejudice, *except to the*  
9 extent that the Public Auditor determines that such a settlement would work  
10 an injustice on the integrity of the procurement system and an  
11 unconscionable prejudice on an intervening party. After notice of an appeal  
12 to the Public Auditor has been filed by the Chief Procurement Officer, the  
13 Director of Public Works, or the head of the ~~purchasing~~ agency issuing the  
14 solicitation, a contractor may *not* unilaterally discontinue such appeal  
15 without prejudice, except as authorized by the Public Auditor.”

16       **Section 41.** A new § 5710 is hereby *added* to Article 12, Chapter 5 of Title 5,  
17 Guam Code Annotated, to read as follows:

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



1 Accountability (OPA) shall perform as the Policy Office until the Policy Office  
2 is established with its full complement of members.

3 **Section 42. Severability.** *If* any provision of this law or its application to any  
4 person or circumstance is found to be invalid or contrary to law, such invalidity  
5 *shall not* affect other provisions or applications of this law which can be given  
6 effect without the invalid provisions or application, and to this end the provisions  
7 of this law are severable.

8 **Section 43. Effective Date.** This Act *shall* be effective one hundred eighty  
9 (180) days after enactment, but *shall not* apply to controversies that have been filed  
10 or administratively or judicially appealed prior to the date of enactment of this Act.

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Public Hearing  
September 18, 2015  
1:30 p.m.

*I Liheslaturan Guåhan, Hagåtña*

**Bill No. 162-33 (COR) – T.C. Ada**

An act to *amend* articles 3, 9, and 12 of Chapter 5, Title 5 Guam Code Annotated by amending § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, and to add a new § 5212, § 5221, and 5254 relative to source selection and contract formation and to amend §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 and 5485(a) and (b) of article 9; and *amend* §§ 5703, 5705, 5706(b), 5707(a) and 5708, and *add* a new § 5710 relative to legal and contractual remedies in Guam Procurement Law.

[illegible]

Public Hearing  
September 18, 2015

1:30 p.m.

*I Liheslaturan Guåhan, Hagåtña*

**Bill No. 162-33 (COR) – T.C. Ada**

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[illegible]

**JOHN THOS. BROWN**  
ATTORNEY AT LAW \*

GENERAL COUNSEL  
JONES & GUERRERO CO. INC. (GUAM, USA)  
ITS DIVISIONS, SUBSIDIARIES AND AFFILIATES†  
J&G CORPORATE OFFICE, J&G COMMERCIAL PLAZA  
3RD FL., BLDG A, 188 EAST MARINE CORP DR., HAGĀTÑA, GUAM 96910

TELEPHONE: +1-671-477-7293  
FAX: +1-671-472-6153  
EMAIL: JNGOZ@OZEMAIL.COM.AU  
MOBILE/CELL PHONE: +1-671-483-5960  
POSTAL: GPO Box 7, HAGĀTÑA, GUAM 96932

September 2014

Senator Thomas C. Ada, Chair  
Committee on Transportation, Infrastructure, Lands, Border Protection,  
Veterans' Affair, and Procurement  
33rd Guam Legislature

By Email

RE: Bill No. 162-33, Procurement Reforms, Articles 3, 9 and 12

Dear Senator,

I support the referenced bill, and gladly admit to having had involvement with its development and evolution since its elements were first proposed in the 32nd Legislature. There, it was introduced in two bills: 224-32, dealing with Articles 9 and 12, and 246-32 dealing with Article 3.

The present bill combines the fruits of both prior bills, and to that extent, especially as to 224-32, have previously been hashed out in two hearings, four roundtables and two vetoes.

Following the second veto, consultations and discussion took place between representatives of the Governor's Office and the Guam Chamber of Commerce, and in discussions with the author, Senator Tom Ada. I also had a personal discussion with the Attorney General's office. The purpose and subject matter of these discussions was to try to accommodate differences concerning matters raised in the second veto. There were several issues but two primary ones: first, the language declaring the time limits of the procurement code are not jurisdictional but subject to tolling and equitable estoppel; second, the demand for a protest bond.

\* ADMITTED TO PRACTICE: CALIFORNIA, GUAM AND COMMONWEALTH OF NORTHERN MARIANA ISLANDS, USA [INACTIVE IN NSW, AUSTRALIA]\*

† MICRONESIAN BROKERS, INC. (GUAM AND CNMI)/TOWN HOUSE DEPARTMENT STORES, INC. (GUAM)/J&G DISTRIBUTORS/AQUARIUS BEACH TOWERS, (SAIPAN, CNMI)/LIVNO HOLDINGS PTY LTD (A.C.N. 003 585 331)/TOWNHOUSE, INC. (SAIPAN, CNMI)/ IBSS (GUAM AND SAIPAN)

Dealing with the first of these two main sticking points, the status of the time limits in procurement law, the view was taken that well-established case law in U.S. and Guam Supreme Courts, along with Guam Superior Court decisions, and language in the procurement law itself, clearly conclude that the procurement time limits are not jurisdictional; it was the intent of the original language to codify that expression of law.<sup>1</sup> Given the consistent expression and nature of the case law, the Executive Branch's adamant objection was accommodated by removing the disputed language, leaving it in the hands of the courts.

The demand for a protest bond by the Governor was based on his insistence that there is a significant problem of a proliferation of frivolous protests and that a protest bond would alleviate that perceived problem. The Public Auditor and the private sector opposed the idea, first, because it punishes *all* protests, not just "frivolous" ones. Secondly, as the Public Auditor corroborated, the statistics do not support the premise: the claim of frivolous protests is an "urban myth".

To find a common ground, representatives of the Governor's office suggested the protest bond could be imposed only if a protest was appealed to court; not at the administrative level. The private sector representatives agreed that a bond might be applied on judicial appeal, provided the court preliminarily determined that the judicial appeal appeared to be frivolous, to meet the Governor's specific fears. This bill implements that compromised position.

The remaining issues were either dropped or accommodated. The reasons expressed for the first veto had already been removed in Bill 20-33. The veto of Bill 20-33 was then based, in part, on an Assistant Attorney General's suggestion, in the roundtables, that the Superior Court should appoint a Hearing Officer to hear an appeal to OPA in the event of Public Auditor recusal. The AG's suggestion was adopted. This bill further incorporates the strong desire of others in the Attorney General's Office, privately expressed to me, as well as the view of counsel for GIAA, that the judicial review process should be expedited as a Petition for Judicial Review.

Although Bill 246-32 had a hearing and was ostensibly part of the roundtable discussion, it got upstaged by the debates over Bill 224-32. It never made it to the floor. The parts of this bill incorporated from Bill 224-32 are as close to agreement as they are likely to ever get. I urge everyone to accept the work product of the efforts to find common ground on Articles 9 and 12, and move

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<sup>1</sup> See Addendum to this testimony, attached for the record.

on to the remaining matters first raised in Bill 246-32.

The provisions of Bill 246-32, dealing with Article 3 (“Source Selection and Contract Formation”) are resuscitated by inclusion in this bill.

The most important change is the re-introduction of the so-called “best value”, or “negotiated contract”, method of source selection in Section 5 of the bill. It is characterised as a “re-introduction” because it was originally adopted as the *Competitive Sealed Proposal* method in the seminal procurement law, PL 16-124, but was soon repealed in PL 18-44. I have found no reason for its repeal. (But I suspect, because PL 18-44 beefed up scrutiny, accountability and integrity of the procurement process, it was because the award in this method is based, in large, part on subjective rather than objective criteria, thus prone to evaluation error, favoritism and other abuse.)

To avoid confusion with the “RFP” method for acquiring professional services, a distinction is made: *RFP* continues to apply the method for acquiring professional services, but the competitive sealed proposal method is referred to as a Request for Competitive Proposal (*RFCP*). There is a world of difference between the processes and nature of the two methods.

RFP method is intended for procurement of professional services, and it is often abused, illegally used, to acquire other services not, strictly speaking, “professional”. The RFCP method can, in most cases, be adapted for acquiring those other services and mitigate the illegal use of the RFP.

It has to be admitted that there is more moral hazard in this method than the traditional IFB method. But the competitive proposal process has practical, some urge *necessary*, benefits that are unavailable at present. The bill refers to this process as the “RFCP”.

The big benefit of the RFCP method is that accommodates procurement of large, complex projects. It follows the amendments to the best value method made in the ABA Model Procurement Code in the year 2000 specifically to facilitate large *Public Infrastructure Projects* (“PIP”). The RFCP as proposed sets the stage for a robust method of procurement to engage new models of public management and finance of major projects, including design *and* build, “design-build-operate-maintain” and “design-build-finance-operate-maintain”, and the many variations on the themes. JFK, for instance, would have benefited from use of this newer method of source selection.

So, what exactly is an RFCP? It is a method of procurement whereby *price* is

but one of several factors that may be weighed and considered in selecting the contract winner. This differs from the IFB because, assuming all bidders are responsive and responsible, the only real determinant of the winner is price – the lowest price. It differs from the RFP because the main RFP criteria is the ranking of the best qualification of the offerors, to be determined without any mention of price; only *after* the “best qualified” is determined is price (“fair and reasonable compensation”) even considered, almost as an after-thought (“OK, we want this person, but is the cost of this service ‘fair and reasonable?’”).

In the RFCP method, price is *one* factor, but not the determinative factor in choosing the preferred offeror; price and quality are weighed together, in what is described as a cost/benefit “trade-off” analysis. The winner may have a higher price service or product but a perceived “better” quality of service or product than another offeror.

To try to minimize the effect of subjective judgments, the RFCP method requires detailed record keeping in the selection process and consideration of all, and only all, of the factors specified in the solicitation. In order to focus the selection process on the matters specified, discussions are allowed with individual offerors to make sure they understand the specifications and to allow the government to do a little reality checking in its specifications to make sure that what they are asking for is commercially viable and economically reasonable. Generally (within the scope of the contract and field of competition), proposals and specifications can be modified during the negotiation process, allowing the parties to tailor, somewhat, the government’s needs to optimal market availabilities.

All of this requires that we have an independent, impartial and professionally trained procurement staff; the absence of that criteria in the early ‘80’s was likely at the heart of why Competitive Sealed Proposals were repealed. Progress on this front has begun, but there is a long way yet to go, and training needs to be constantly conducted to make sure new employees are properly instructed and older ones kept up to date and advanced in their knowledge and skills.

Pragmatically practical choices were also made by this bill in several other provisions of Article 3, to try to minimize the illegal disregard of the procurement law, whether done purposely, out of desperation, ignorance, or otherwise. Making the RFCP method available for the procurement of all services, not just professional ones, is one example. Provisions regarding emergency procurement is another.



Existing emergency procurement law limits the amount of *supplies* that can be procured in an emergency to an amount needed for one short 30 day period, yet says nothing about *services*. This bill allows supplies *and services* to be procured to meet an emergency for a 90 day period, and authorizes the Governor to extend that period but only in the event of a *natural* disaster. The bill invokes corrective planning action by requiring that the government prepare a *competitive* solicitation of necessary supplies and services *at the same time* the emergency procedure is implemented, to deal with the potential of any ongoing need after the initial 90 day period. (It also restructures what is at present a confusingly structured provision, to provide more clarity as to how the various elements of emergency procurement relate to each other.)

Another example of efforts in the bill to provide a pragmatic means of extracting the government from technically illegal procurements is the adoption of the “Bridge Contract” method of procurement in Section 12 of the bill. The notion of the Bridge Contract has emerged, in the last decade in particular, in federal practice, in a haphazard, ad hoc fashion.

It has been used most frequently as a noncompetitive selection, but its legal basis is ambiguous and inconsistent. The FAR does even contain the term “bridge contract”. Use of bridge contracts in various circumstances has been broadly tolerated in numerous administrative and judicial rulings notwithstanding the obvious moral hazard, though at times found to be used improperly.

The repeated use of a form of bridge contract at the federal level over a number of years, without regulatory guidance, shows the need both for the utility of the method as well as for standardized definitions and conditions of use. To this end, Congress has sought better information about when and how bridge contracts are being used to create legislative policy to limit its abuse<sup>2</sup>. It is not good policy to look the other way and allow unauthorized

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<sup>2</sup> In March 2014, the GAO issued a report, Noncompetitive Contracts Based on Urgency Need Additional Oversight. Bridge contracts were only part of the study. In the period under review, it said, “DOD, State, and USAID awarded 12 noncompetitive contracts when unexpected events threatened the agencies’ ability to continue program support. Referred to as bridge contracts, such awards are typically short term to avoid a lapse in program support while the award of a follow-on contract is being planned. The contract period for the 12 bridge awards in our sample averaged 11 months.... For the bridge contracts that we reviewed, the delay in awarding a competitive contract was due to unforeseen personnel changes, competitors filing bid protests, and changes in program requirements, among other things. For 10 of the 12 bridge contracts in our sample, agencies awarded the contract to a vendor that had previously performed the work.” See, Bridge contracts vs Planning principle.

procedures to be used ad hoc; it is better to define practical solutions and implement them uniformly.

The Bridge Contract contemplated in this bill has a specific application: to facilitate the uninterrupted flow of supplies or services which are *critical* to governmental operations, between the end of one contract, the “existing” contract, and the beginning of the next, the “new” contract. It falls within the most broadly accepted description: “A bridge contract is a short-term sole-source solution to obtain supplies or services to bridge the gap between the end of one contract and the award of a follow-on contract.”

The conditions required to award a Bridge Contract under this bill include:

- The *nature* and *price* of the supplies and services acquired by the bridge contract must be the same or substantially the same as in the existing contract.
- The term of the bridge contract is for a maximum of 4 months, extendable on a month to month basis up to a total term of 9 months.
- The existing contract must not have been the result of a prior emergency procurement or bridge contract.
- There is a determination of critical need; the bridge contract must be worth at least \$250,000 to mitigate its use for minor, easily obtained product.
- The Governor must approve the bridge contract and *each* monthly extension. This will hopefully get the attention needed to examine *why* this process is ongoing and correct any irregularities or failures causing the problem.

There are also the following matters, admittedly compounding moral hazard:

- The incumbent may be awarded the contract but is not obligated to accept it.
- The existing contract may be extended for a period of 30 days to allow time to procure the bridge contract.
- The award of a bridge contract may be protested but the automatic stay does not apply.
- However, the protest must be decided in an expedited time frame, with an expedited administrative appeal, and usual remedies are available, including termination or voiding of the contract.

Note that the existing protest provisions are amended, in Section 26 of the bill, to allow the government, or another interested party, to obtain legal fees from a protestor if a protest is made “with predominant intent to delay ... the procurement process”. This is intended, in part, to deter an incumbent

contractor from bringing a protest to create the need for a bridge contract.

It is obvious and acknowledged that bridge contracts create possibilities for abuse; but no less so than the actual abuses we have suffered over the years. Bridge contracts are proposed as a pragmatic method of source selection to alleviate the current illegal practices and to legally tide the government over for a brief period when it is caught (albeit often by its own mismanagement) between the rock of an expired contract and the hard spot of maintaining a flow of critical supplies and services while a follow-on solicitation is implemented.

It is expected that the attention given to bridge contracts will put a spotlight on those failures, which now usually occur in the dark, and will clearly mark the point where the government has gone over the line of tolerable disregard of the law; to hold it accountable for its failures.

And what if the bridge contract still does not fill the void? In the federal arena, the government *must* go without until the new solicitation is implemented; there is no authority, federally or locally, to spend government funds in violation of law. The experience of hardship by going without is a means of holding the government responsible. Current practice simply embraces illegal behavior, impugns the rule of law, impairs public confidence in procurement, and imposes no reprimand or rebuke.

Among the many other changes to Article 3 in this bill are provisions to clarify the differences between a responsive bid and a responsible bidder, providing emphasis on life cycle costing (as already mentioned in regulations), limiting the use of sole source procurement and multi-term contracts, requiring more useful information in the Shareholder Disclosure Statement and clarifying the intent of the disclosure, and expanded measures assuring public access to the procurement record.

I note that fundamental purposes and policies of our procurement law are “to simplify, clarify and modernize the law governing procurement by this Territory” and “to permit the continued development of procurement policies and practices” and “to provide for increased public confidence in the procedures followed in public procurement”. (5 GCA § 5001(b)(1), (2) and (3))

The measures in this bill are intended to pragmatically develop the law by maintaining its structural integrity as well as girding the integrity of the principles, purposes and policies of the law. These procurement reforms are not ends in themselves; indeed they implicitly envision further reforms. They

are part of a continuing development of the law over time, to meet changing conditions and to learn as we go on.

What sets this bill apart from the many procurement bills seen in the last few decades, since PL 16-124 and PL 18-44 really, is that it is an attempt to make comprehensive and integrated changes, rather than ad hoc and piece meal ones. It is not an easy task, but is a necessary one.

This bill will go a substantial way towards an overdue overhaul of Guam procurement.

Respectfully submitted

/s/

John Thos. Brown

ADDENDUM TO TESTIMONY OF JOHN THOS. BROWN RE BILL 162-33

Guam Procurement Time Limits: Jurisdictional *or* Subject to Equitable tolling/estoppel?  
(Case and Statutory Analysis In a Nutshell)

Case Law (Chronologically; bold, italic emphasis, citations omitted, etc)

- **Irwin (1990) U.S. Supreme Court** *Irwin v. Department of Veterans Affairs*, 498 US 89, 95-96  
Time requirements in lawsuits between private litigants are customarily subject to equitable tolling. "We therefore hold that **the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States.**"
- **Dongbu (2001) Guam Supreme Court** *GHURA v. Dongbu*, 2001 Guam 24  
"We adopt the doctrine of equitable tolling...." [¶ 1] "Safeguarding the claim ... [between the time of making a claim and resolution of it] prevents an insurer from stalling the processing of a claim in order to invoke a technical forfeiture of the policy's benefits." [¶ 12]
- **Young (2002) U.S. Supreme Court** *Young v. United States*, 535 US 43, 49  
"It is hornbook law that limitations periods are "customarily subject to 'equitable tolling'."
- **Kontrick (2004) U.S. Supreme Court** *Kontrick v. Ryan*, 540 US 443, 455- 456  
"[C]lassify[ing] time prescriptions, even rigid ones, under the heading 'subject matter jurisdiction'" can be confounding. [Citation omitted]. Clarity would be facilitated if courts and litigants used the label "jurisdictional" **not for claim-processing rules**, but only for prescriptions delineating the classes of cases (*subject-matter jurisdiction*) and the persons (*personal jurisdiction*) falling within a court's adjudicatory authority.  
[There is a] critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule. Characteristically, *a court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct; a claim-processing rule, on the other hand, even if unalterable on a party's application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point.*
- **Mobile v Lee (2004) Guam Supreme Court** *Mobile v. Lee*, 2004 Guam 24, ¶ 24  
"Guam has codified the doctrine of equitable estoppel in Title 6 GCA §5106(3)...."
- **Arbaugh (2006) U.S. Supreme Court** *Arbaugh v. Y & H Corp.*, 546 US 500, 510-511, 516  
This case concerns the distinction between two sometimes confused or conflated concepts: ... "subject-matter" jurisdiction over a controversy; and the essential ingredients of a ... claim for relief.  
"Jurisdiction," this Court has observed, "is a word of many, too many, meanings." But in recent decisions, we have clarified that time prescriptions, however emphatic, "are not properly typed 'jurisdictional.'"  
Judicial opinions, the Second Circuit incisively observed, "often obscure the issue by stating that the court is dismissing 'for lack of jurisdiction' when some threshold fact has not been established, without explicitly considering whether the dismissal should be for lack of subject matter jurisdiction or for failure to state a claim." We have described such unrefined dispositions as "drive-by jurisdictional rulings" that should be accorded "no precedential effect" on the question whether the federal court had authority to adjudicate the claim in suit.

But when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character. Applying that *readily administrable bright line* to this case, we hold that the [statutory requirement to state a claim] is an element of a plaintiff's claim for relief, not a jurisdictional issue.

- **Pacific Security Alarm (2006) Guam Superior Court, *Pacific Security Alarm v. DPW*, CV 0591-05, D&O, July 11, 2006, page 3 [A judicial appeal of a procurement protest.]**  
**The time for filing judicial review of final agency action is a limitations issue and not a jurisdictional issue.**
- **Bowles (2007) U.S. Supreme Court, *Bowles v. Russell*, 551 U.S. 205, 210**  
Although several of our recent decisions have undertaken to clarify the distinction between claims-processing rules and jurisdictional rules, none of them calls into question our **longstanding treatment** of statutory time limits for taking an appeal as jurisdictional.
- **Limtiaco (2007) Guam Supreme Court, *Limtiaco v. Guam Fire Department*, 2007 Guam 10 [¶ 56-57]**  
Limtiaco's failure to prove that he met the deadlines set forth in **the DOA Rules is irrelevant because the deadlines were tolled.** \*\*\* *The equities favor Limtiaco being allowed to go forward with his claim.* \*\*\* If we allowed this, the Government could concede an obligation but delay paying it until the Government "acquired a legitimate excuse not to pay," at which point, **if the statute of limitations had expired, the obligation would be excused. This argument cannot stand.**
- **TRC Environmental (2008) Guam Superior Court, *TRC Environmental v. OPA*, SP 160-07, D&O, Nov. 21, 2008, page 6, line 20-21. (Another judicial appeal of a procurement protest.)**  
**Limitations periods can be tolled on an equitable basis....**
- **Union Pacific (2009) U.S. Supreme Court, *Union Pacific V. Brotherhood of Locomotive Eng.*, 558 U.S. 67, 69**  
Not all mandatory "prescriptions, however emphatic, are . . . properly typed jurisdictional." *Subject-matter jurisdiction properly comprehended*, we emphasized, refers to a tribunal's "power to hear a case," a matter that "can never be forfeited or waived." *In contrast, a "claim-processing rule, . . . even if unalterable on a party's application," does not reduce the adjudicatory domain of a tribunal* and is ordinarily "forfeited if the party asserting the rule waits too long to raise the point".
- **Reed Elsevier (2010) U.S. Supreme Court, *Reed Elsevier, Inc. v. Muchnick*, 130 S. Ct. 1237, 1246-1248.**  
[This decision, authored by Justice Thomas who also wrote the *Bowles* decision, above, explains the **statutory "context"** which is to be considered *to rebut* the "rebuttable presumption of equitable tolling" established in *Irwin* and also described as a "readily administrable bright line" enunciated in *Arbaugh*.]  
First, and **most significantly, the registration requirement expressly allows courts to adjudicate infringement claims** involving unregistered works **in certain circumstances.** *It would be at least unusual to ascribe jurisdictional significance to a condition subject to these exceptions.*  
*Bowles* **did not hold** that any statutory condition devoid of an express jurisdictional label should be treated as jurisdictional simply because courts have long treated it as such. **Nor did it hold** that all statutory conditions imposing a time limit should be considered

*jurisdictional. "Rather, Bowles stands for the proposition that context, including this Court's interpretation of similar provisions in many years past, is relevant to whether a statute ranks a requirement as jurisdictional."*

- **Henderson (2011)** U.S. Supreme Court, *Henderson v. Shinseki*, 131 S. Ct. 1197, 1202-1203 *Branding a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system. Jurisdictional rules may ... result in the waste of judicial resources and may unfairly prejudice litigants.* For purposes of efficiency and fairness, **our legal system is replete with rules requiring that certain matters be raised at particular times.** Objections to subject-matter jurisdiction, however, may be raised at any time. *And if the trial court lacked jurisdiction, many months of work on the part of the attorneys and the court may be wasted.*  
**Because the consequences that attach to the jurisdictional label may be so drastic, we have tried in recent cases to bring some discipline to the use of this term.** *We have urged that a rule should not be referred to as jurisdictional unless it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction. Other rules, even if important and mandatory, we have said, should not be given the jurisdictional brand.*  
**Among the types of rules that should not be described as jurisdictional are what we have called "claim-processing rules."** *These are rules that seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times. Filing deadlines, such as the 120-day filing deadline at issue here, are quintessential claim-processing rules.*  
The question here, therefore, is whether Congress mandated that the 120-day deadline be "jurisdictional." *"In Arbaugh, we applied a "readily administrable bright line" rule for deciding such questions. Under Arbaugh, we look to see if there is any "clear" indication that Congress wanted the rule to be "jurisdictional."*  
Congress, of course, need not use magic words in order to speak clearly on this point. *"[C]ontext, including this Court's interpretation of similar provisions in many years past, is relevant."* When "a long line of this Court's decisions left undisturbed by Congress" has treated a similar requirement as "jurisdictional," we will *presume* that Congress intended to follow that course.  
*The Government reads Bowles to mean that all statutory deadlines for taking appeals in civil cases are jurisdictional.* We reject the major premise of this syllogism. **Bowles did not hold categorically that every deadline for seeking judicial review in civil litigation is jurisdictional.**
- **Sebelius (2013)** U.S. Supreme Court *Sebelius v. Auburn Regional Medical Center*, 133 S. Ct. 817, 824-825.  
To ward off profligate use of the term "jurisdiction," we have adopted a "readily administrable bright line" for determining whether to classify a statutory limitation as jurisdictional. We inquire whether Congress has "clearly state[d]" that the rule is jurisdictional; absent such a clear statement, we have cautioned, "courts should treat the restriction as nonjurisdictional in character." *We consider "context, including this Court's interpretations of similar provisions in many years past," as probative of whether Congress intended a particular provision to rank as jurisdictional.*  
**Key to our decision, we have repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, we have described them as "quintessential claim-processing rules."**

- **Hemlani (2015) Guam** Supreme Court, *Hemlani v. Hemlani*, 2015 Guam 16, ¶ 36-37  
*"We first address whether or not Kishore properly characterizes Guam's statutory licensing requirements as jurisdictional. However, while Guam law does require the possession of a business license to enforce or recover under a contract, this obligation is not properly described as a jurisdictional element."*

*"This court has previously held that, unless a statute explicitly identifies a requirement as jurisdictional, failure of a party to comply does not itself divest the court of subject matter jurisdiction. See also, Arbaugh. Neither one of the relevant statutory requirements indicates that it creates a jurisdictional element."*

*Further, because the Business License Law allows the court to stay a proceeding until a license is acquired, it cannot impose a limitation on subject matter jurisdiction, which requires dismissal outright. Thus, the licensing requirements do not implicate subject matter jurisdiction and should instead be evaluated as timely asserted affirmative defenses."*

- **Wong (2015) U.S.** Supreme Court, *United States v. Wong*, \_\_\_ U.S. \_\_\_ (2015)  
 This case involved a statutory tort claim against the United States which *"shall be forever barred"* unless it is presented to the "appropriate Federal agency within two years after such claim accrues" and then brought to federal court "within six months" after the agency acts on the claim.

*"In Irwin, we recognized that time bars in suits between private parties are presumptively subject to equitable tolling. A rebuttable presumption, of course, may be rebutted, so Irwin does not end the matter. The Government may therefore attempt to establish, through evidence relating to a particular statute of limitations, that Congress opted to forbid equitable tolling. Given [the] harsh consequences [of concluding a time limit is jurisdictional], the Government must clear a high bar to establish that a statute of limitations is jurisdictional."*

*And in applying that clear statement rule, we have made plain that most time bars are nonjurisdictional. Congress must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional and so prohibit a court from tolling it."*

**[The "forever barred" statute] is mundane statute-of-limitations language, saying only what every time bar, by definition, must: that after a certain time a claim is barred. The time limits in the FTCA are just time limits, nothing more.**

**Statutory context confirms that reading.** This Court has often explained that **Congress's separation of a filing deadline from a jurisdictional grant indicates that the time bar is not jurisdictional.** Whereas §2401(b) houses the FTCA's time limitations, a different section of Title 28 confers power on federal district courts to hear FTCA claims. **Nothing conditions the jurisdictional grant on the limitations periods, or otherwise links those separate provisions. Treating §2401(b)'s time bars as jurisdictional would thus disregard the structural divide built into the statute.**

### **Analysis of the "Context" of time requirements in the Procurement Act**

As seen above, in **Bowles**, Justice Thomas introduced the concept of "context" as a factor that is



“relevant” (*Bowles*) or “probative” (*Sebelius*) in the determination whether a statutory time requirement should be “ranked” (Justice Thomas) or “typed” (Justice Ginsburg) or “branded” (Justice Alito) or “tagged” (Justice Kagan) as jurisdictional, thus overcoming the “bright line” presumption that it “should” be treated as *nonjurisdictional*.<sup>1</sup>

Justice Thomas efficiently summarized **three key elements of “context”** in his analysis of the statute in issue in *Reed Elsevier*, page 1247:

“Section 411(a) imposes a precondition to filing a claim that is [1] *not clearly labeled jurisdictional*, [2] *is not located in a jurisdiction-granting provision*, and [3] *admits of congressionally authorized exceptions*. Section 411(a) thus imposes a type of pre-condition to suit that *supports nonjurisdictional treatment* under our precedents.”

Expression of some or all of these contextual features are also mentioned in *Wong* and *Hemlani*, as expressly mentioned above.

When the time limits of the procurement law are analyzed by these three elements, the same result is obtained: the procurement law time limits are *nonjurisdictional*, claims-processing rules.

- (1) *Clearly labeled jurisdictional*: Nothing in Article 9 Subarticle A (“Pre-litigation Resolution of Controversies”), nor in corresponding provisions of Article 12 (“Procurement Appeals”) ascribes any jurisdictional quality to the administrative time limits in those parts. Rather, they are “replete with rules requiring that certain matters be raised at particular times” (*Henderson*), including filing deadlines, which, “*are quintessential claim-processing rules*” (*id.*).
- (2) *Not located in a jurisdiction-granting provision*: Article 9 Subarticle D, § 5480 (“Waiver of Sovereign Immunity: Limitations of Actions”), **separately** and clearly provides “jurisdictional” treatment; e.g., § 5480(a): the Superior Court “shall have jurisdiction over an action between the Territory and a bidder, offer, or contractor, either actual or prospective....” The time limits for all administrative filings are separately located in Article 9 Subarticle A and Article 12. The claim-processing rules requiring that certain matters be raised at particular times are disassociated from the statements of subject matter and personal jurisdiction granted as a result of the waiver of sovereign immunity in Article 9 Subarticle D.
- (3) *Admits of congressionally authorized exception*: Article 9 Subarticle D, which grants appellate jurisdiction to the Superior Court from an administrative decision, contains an *express exception* to the absolute character of jurisdiction by tolling the filing time requirement in a certain circumstance, § 5481(d): “The limitations on actions provided by this Section *are tolled* during the pendency of any proceeding brought pursuant to § 5485 of this Chapter.

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<sup>1</sup> Context also includes consideration of the “exceptional” (*Sebelius*) quality and quantity of *the vintage* (the “long standing treatment” referred to in *Bowles*) of any claimed precedent. Quality refers to considerations whether Congress has had many clear opportunities to change a particular statutory requirement but not done so, as well as whether the precedent decision was merely a “drive-by jurisdictional ruling[]” that should be accorded “no precedential effect”. (*Reed Elsevier*, Concurring opinion of Justice Ginsburg, at page 1251)

Whether characterized by “the same rebuttable presumption of equitable tolling applicable to suits against private defendants [which] should also apply to suits against the United States” (*Irwin*), or by the presumption of the “readily administrable bright line” in the US Supreme Court’s decisions that “repeatedly held that filing deadlines ordinarily are not jurisdictional” (*Sebelius*), or by the various elements of “context” summarized in *Reed Elsevier*, the time limits in the Procurement Act are not jurisdictional: they are simply the quintessential claim-processing rules requiring that certain matters be raised at particular times.

TESTIMONY OF WILLIAM J. BLAIR

IN SUPPORT OF BILL NO. 162-33

September 18, 2015

Honorable Senator Thomas C. Ada

Chairperson

Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement

My name is William J. Blair. I am an attorney who has been admitted to the Guam Bar and been engaged in the active practice of law since 1978. I offer this testimony in my personal capacity in favor of the passage of Bill 162-33 relating to proposed amendments to the Guam Procurement Law, Chapter 5 of Title 5 of the Guam Code Annotated. I commend Senator Tom Ada for continuing his efforts to deal with obvious problems facing our government and the private sector in this area.

The Bill, which incorporates much from prior bills which were passed by the Legislature but vetoed by the Governor, would address long needed reforms to the Procurement Law. Experience has shown that there are substantial uncertainties relating the procedures related to procurement related matters and the remedies available to address problems arising out of the procurement process. These uncertainties have resulted in lengthy and costly litigation and delays in the resolution of procurement related disputes. Conflicting decisions of the Office of Public Accountability and the Guam courts further complicate the process and defeat one of the primary objectives of the Procurement Law, which is to foster confidence in the integrity of the procurement process. Without going into detail, I am confident that the reforms proposed by Bill 162-33 will go far to address many of the issues and problems that have plagued the OPA and the courts, as well as the parties to procurement-related disputes in recent years and vastly improve the processes whereby those disputes are handled and resolved. In this regard, it seems to me that Senator Ada has made every effort to address any legitimate concerns expressed by the Governor in his prior veto messages.

In addition to the needed procedural reforms the Bill addresses, it also would reintroduce competitive sealed proposals as a permitted mode of procurement. Long ago, the Guam Legislature amended the procurement law to disallow competitive sealed proposals. I have long believed that was a mistaken policy, though I understand the motivations that prompted that change at the time—the concern that this mode of procurement injected undesirable subjectivity into the procurement process that could be easily abused by corrupt or politically influenced public officials charged with making procurement related decisions. Certainly, at the time, there were examples of perceptions of such abuse.

The problem is that the use of competitive sealed proposals, if managed fairly and properly, is an extremely valuable, if not essential, procurement tool. Rather than dealing with the abuses of the system, the Legislature denied honest and competent government officials the means to procure needed goods and services in the most efficient and cost effective way possible. This Bill would give back that tool.

One result of the loss of that tool, was that the agencies of the Government of Guam sought to find a surrogate for the competitive sealed proposals mode of procurement. They often turned to and perverted the procedure meant to procure professional services, such as engineers, architects and attorneys, which was completely inappropriate, since price is not supposed to be a determinative factor in the selection process for such services, at least initially. For example, the Guam Mass Transit Authority once attempted to use that process to procure bus services, an effort which was eventually declared unlawful by the Guam Supreme Court. The Bill clarifies that this other mode of procurement, codified at 5 GCA 5216, is intended to be used for professionally licensed services only.

To be sure, the competitive sealed proposals mode of procurement is still subject to potential abuse, but the Bill provides some additional safeguards and the procedural improvements to the protest and appeal process will ameliorate possible abuse.

I am also informed that the previously enacted requirement that government officials charged with procurement responsibilities go through procurement training has resulted in a growing awareness of the limitations and responsibilities imposed on them by Guam law. John Brown, who is one of those who provides such training, has told me that the government officials who have gone through his classes have relished the training and the knowledge imparted to them by it. I am encouraged by that information and hopeful that this growing cadre of trained procurement officials will also ensure better compliance with the requirements of the procurement law.

One concern I have is the numerous references in the Bill to regulations that will need to be promulgated in the time before the amendments to the procurement law will take effect. It will require a substantial effort if such regulations are to be properly drafted and adopted through the Administrative Adjudication process. Administrative regulations will be necessary to flesh out the provisions of the enabling legislation. The Legislature will need to stay on top of that process and ensure that the Executive Branch carries out its delegated responsibilities in this area.

Thank you.



# ADVANCE MANAGEMENT, INC.

*"The Building Maintenance and Management Professionals"*

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September 18, 2015

Thomas C. Ada  
Senator, Assistant Majority Leader  
Committee on Procurement  
33<sup>rd</sup> Guam Legislature  
Ste. 207 Ada Plaza Ctr.  
Hagåtña, Guam 96910

RE: Testimony in favor of Bill 162-33 (COR)

Håfa Adai,

My name is Monty McDowell; I am a private sector business owner and have been conducting business in Guam since the inception of my company, Advance Management, Inc. some 25 years ago. Advance Management is a Chamoru Owned, Women Owned Small Business. I am the Chief Executive Officer and Principal Broker of that company, I am also an owner and President of Pacific Technical Service Guam, Inc. and recently opened a Service-Disabled Veteran-Owned Small Business named Guahan Facilities Maintenance, Inc.

These companies conduct business throughout Micronesia and from the west to the east coast of the mainland United States. Procurement processes in the city, county, state and Federal Governments we transact business is highly professional, quite ethical and in keeping with the highest standards of the Procurement Profession. Unfortunately that is not always the case when it comes to the Government of Guam Procurement Process. With the leadership of the 33<sup>rd</sup> Guam Legislature Committee Chair on Procurement, Senator Tom Ada and Guam Chamber of Commerce Procurement Advocate Attorney John Brown, the Guam Legislature is addressing Bill 162-33 that will greatly enhance Guam's procurement process.

I am in full support of Bill 162-33.

I have had many contracts with the Government of Guam over the years, and my share of protests. But in recent years I've earned more revenue from federal contracts and have become quite familiar with its processes.

I appreciate the many things this Bill does to adopt principles and ideas of the federal system, such as the Best Value procurement method for competitive proposals, adoption of rules for Bridge Contracts, extending the stay to include contract performance, insistence on life cycle costing, planning and market research. All of these improvements will require

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198 Adrian C. Sanchez St., Suite 3, Barrigada, Guam 96913-4456  
Phone: 671.649.6488 Fax: 671.646.3739 Email: [ami@amiguam.com](mailto:ami@amiguam.com)  
AMI is an SBA Certified 8(a), Women Owned, Small Disadvantaged, HUB Zone Business.



# ADVANCE MANAGEMENT, INC.

*"The Building Maintenance and Management Professionals"*

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a better-trained procurement staff, but if done properly makes for a more effective government contracting process.

I followed the development of this Bill in legislation introduced last year, and was disappointed in the vetoes of the provisions for reform of the protest system. I can live with the version in this Bill, but it would be better if the Governor had left it alone.

Getting procurement right is critically important for us. This Bill goes in the right directions. I will be watching its progress with close attention and interest.

Senseramente,

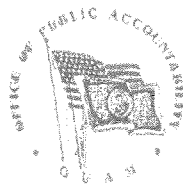
Monty McDowell  
CEO / Principal Broker

---

198 Adrian C. Sanchez St., Suite 3, Barrigada, Guam 96913-4456

Phone: 671.649.6488 Fax: 671.646.3739 Email: [ami@amiguam.com](mailto:ami@amiguam.com)

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OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CQFM  
Public Auditor

September 18, 2015

The Honorable Thomas C. Ada  
Senator and Chairman Committee on Transportation, Infrastructure, Lands, Border  
Protection, Veterans' Affairs, and Procurement  
33<sup>RD</sup> Guam Legislature  
155 Hesler St.  
Hagatna, Guam 96910

Re: Bill No. 162-33 An Act to Amend Articles...Relative to Legal and Contractual  
Remedies in Guam Procurement Law.

Dear Senator Ada and Committee Members:

The Office of Public Accountability (OPA) welcomes the continuing efforts of Chairman Ada's and the Committee Members to improve Guam's Procurement Laws. As I have suggested in previous testimonies on similar procurement bills, amending procurement laws and regulations should be a collaborative effort wherein all of Guam's procurement stakeholders, including representatives from the private and public sectors, provide input, negotiate, compromise, and express their agreement for a bill that would give our island a more efficient, transparent, and fair procurement system.

As OPA has reviewed the various procurement bills introduced in past legislatures, we have been in support of the bills with modifications and amendments. Bill 162 is no different. We are in support of Bill 162 with amendments. Attorney Anthony R. Camacho, OPA hearing officer, will also submit testimony on the bill with suggested amendments. In addition we have additional comments on the bill.

Throughout the bill, it makes reference to the Policy Office and the regulations promulgated by the Policy Office. For clarity, who is the Policy Office and does this Office have the staffing and expertise to promulgate rules and regulations for this bill?

Section 5. A new solicitation method has been introduced entitled Request for Competitive Sealed Proposals (RFCP) where price is an evaluating factor not to exceed 50% of all relevant factors. This is a solicitation method that in principle we

support and is needed. Here again the Policy Office shall specify such other conditions and procedures as deemed appropriate by regulation.

Section 6. Sole Source Procurement unfortunately is a method of solicitation that has been too often misused and abused. Adding a requirement that a public announcement must be made, at least on line, would help avoid such misuse.

Section 11. We applaud the new requirement to post solicitations on the procuring agency website and General Services Administration and/or the Department of Public Works website and to not charge a fee for the download. OPA has been practicing this procedure for many years. To assist us we have added the requirement on the website of providing name, title, company, and email information prior to being able to download. This is so we have the necessary contact information of anyone who downloads any bid. This has proven to be most helpful in our procurement review.

This information requirement is quite common on the Internet, where a research paper or other information is made available with the proviso that you provide information as to who is obtaining the paper.

Section 12. We are not in favor of Bridge Contracts. Bridge contracts tend to foster poor procurement planning. With proper advanced procurement planning there is no need for Bridge Contracts. While there maybe extenuating circumstances that may warrant a temporary extension, such extensions should be rare and the law should not give an escape valve.

Section 19. Just as there maybe reasonable times the Government may want to inspect a plant or business, so too there may be reasonable times the Government may want to and should have the "Right to Audit". However we have not researched the matter to give some suggested guidance as to when and how the "Right to Audit" clause should be invoked.

Section 26 (g). I am not in favor of the Presiding Judge of the Superior Court appointing the Hearing Officer in the instance of the disqualification of the Public Auditor. Recall from past procurement bills this matter has been discussed but with no final agreement or consensus reached. For your information this matter was resolved in 2009 through updated OPA regulations regarding Procurement Appeals. The regulations now state that the Public Auditor shall designate a member of his or her staff or the appointed Hearing Officer for procurement appeals to preside over the matter. The relevant documents are attached and are also posted on OPA's website [www.opaguam.org](http://www.opaguam.org).



The foregoing are some of the general amendments suggested to Bill 162-33. As mentioned previously OPA Hearing Officer Anthony Camacho will provide more detailed suggestions.

Thank you and Senseramente

A handwritten signature in cursive script, appearing to read 'Dorise Brooks', written in dark ink.

Doris Flores Brooks CPA, CGFM  
Public Auditor

Attachment: OPA Procurement Regulations Updated as of 2009

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**PROPOSED AMENDMENTS TO  
2 G.A.R., DIV. 4, CHAP. 12  
PROCUREMENT APPEALS TO THE PUBLIC AUDITOR**

**SECTION 1. 2 G.A.R., DIV. 4, CHAP. 12, §12110 is hereby amended to read:**

~~"(a) Within thirty (30) days of the hearing, the Hearing Officer shall prepare a written determination of findings and recommend a course of action and the Public Auditor shall issue a final written decision or take other appropriate action on each appeal submitted. Both the Hearing Office's determination and the Public Auditor's final decision shall recite the evidence relied upon, and shall be made part of the record. Within thirty (30) days of a hearing on an appeal or after the parties have formally waived a hearing, as provided for by 2 G.A.R., Div. 4, Chap. 12, § 12108(a), the Public Auditor shall issue a final written decision or take other appropriate action. The Public Auditor's final decision, which shall be made part of the record, shall recite the evidence relied upon which the decision is based.~~

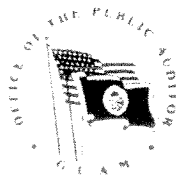
**SECTION 2. 2 G.A.R., Div. 4, Chap. 12, §12601 is hereby amended to read:**

**§12601. Disqualification of Public Auditor.**

~~"The Public Auditor may recuse herself or himself at any time and notify all parties, or any party may raise the issue of disqualification and state the relevant facts prior to the hearing. The Public Auditor shall make a determination and notify all parties. In the event of disqualification or recusal of the Public Auditor, a procurement appeal must be taken to the Superior Court of Guam in accordance with 5 G.C.A. §5480 the Public Auditor shall designate a member of his or her staff or the appointed Hearing Officer for procurement appeals to preside over the matter. If no member of the Public Auditor's staff or the appointed Hearing Officer is able to preside over the matter due to disqualification, then such matter may be taken to the Superior Court of Guam in accordance with 5 G.C.A. §5480.~~

1           **SECTION 3. 2 G.A.R., Div. 4, Chap. 12, §12104(c)(9) is hereby amended**  
2 **to read:**

3           (9) Any objection or motion addressed to the jurisdiction of the Public Auditor  
4 shall be promptly filed. ~~Objection to the Public Auditor hearing the Appeal shall be filed~~  
5 ~~within seven (7) days after the notice of Appeal is filed.~~ The Public Auditor shall have the  
6 right ~~at any time and on her or his own motion~~ to raise the issue of her or his jurisdiction  
7 ***sua sponte at any time*** ~~to proceed with an Appeal~~ and shall do so by an appropriate  
8 order.  
9



## OFFICE OF THE PUBLIC AUDITOR

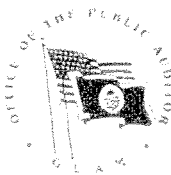
### STATEMENT OF ECONOMIC IMPACT

There are often high costs associated with either bringing or defending appeals of procurement actions before either the Office of the Public Auditor (OPA) or Superior Court. OPA procurement appeal hearings are often as litigious as any action in Superior Court, with pre-hearings, motions to decide, and depositions and formal hearings (trials) requiring issuance of subpoenas for appearance of witnesses, etc. The numbers of appeals filed are growing with each passing year as the OPA received four appeals in 2006, eleven in 2007 and twelve in 2008.

Over three years of accepting appeals, from 2006-2008, conflicts of interests in several appeals filed have occurred, resulting in the need for more than one hearing officer and the disqualification of the Public Auditor.

At present, the Procurement Appeals process does not permit any flexibility where the Public Auditor is disqualified or recused from participating in a procurement appeal, despite the fact that months of work may have gone into processing the procurement appeal to the point where the disqualification or recusal occurs. In the event the Public Auditor has a conflict or interest or is recused, other capable professionals within the Office of the Public Auditor should be allowed to participate in the formal hearing with the Hearing Officer and make the appropriate Decision on the issue raised.

These amendments would allow staff appointed by the Public Auditor to issue a Decision on appeal rather than automatically referring the case to Superior Court. Lengthy delays may occur if appeal matters are filed in Superior Court, further delaying the procurement action by the government agency.



OFFICE OF THE PUBLIC AUDITOR

**RECOMMENDATION**

---

**Date:** April 6, 2009

**To:** Doris Flores Brooks, Public Auditor

**From:** Anthony R. Camacho, Esq. Hearing Officer

**Subject:** **April 1, 2009 Hearing re testimony received for proposed rule changes to the procedures for procurement appeals**

---

Dear Ms. Brooks,

I have reviewed Mr. John Thos. Brown's letter dated March 26, 2009, regarding his comments on the proposed change to the rules of procedure for procurement appeals. His letter specifically addresses the argument that the OPA should not remove the current requirement for the Hearing Officer(s) to submit separate findings of fact and recommendations. Specifically, Brown justifies his argument by stating that it is useful to observe which Hearing Office makes which determinations. However, this may indicate a preference for specific Hearing Officers due to their prior findings. Retention of the Hearing Officers' findings for this purpose may result in "Hearing Officer Shopping" and may bring frivolous motions to recuse Hearing Officers from appeals based on their previous findings that may be adverse to a parties arguments in an appeal.

After due consideration of his argument, I do not recommend any changes to the proposed amendments be made.

Sincerely,

Anthony R. Camacho, Esq.  
Hearing Officer, Office of the Public Auditor

**JOHN THOS. BROWN**  
ATTORNEY AT LAW \*

GENERAL COUNSEL

Jones & Guerrero Co. Inc. (Guam, USA)  
Its divisions, subsidiaries and affiliates<sup>†</sup>

J&G Corporate Office  
545 Chalan Machaute, (Rte 8 @ Biang St.), Maite, Guam 96910

Telephone: +1-671-477-7293

Fax: +1-671-472-6153

email: jngo@ozemail.com.au

Mobile/Cell phone: +1-671-483-5960

POSTAL: GPO Box 7, Hagåtña, Guam 96932

26 March, 2009

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR

Mrs. Doris Flores Brooks  
Public Auditor, OPA

DATE: 3/26/09

TIME: 10:30 am

Hand Delivered

BY: Vince D

RE: Proposed Amendments to Procurement Appeals Regulations

Dear Mrs. Brooks,

Please accept this commentary on the proposed amendments.

In the main they are welcomed. Particularly as to §12104(c)(9) and §12601.

I believe there is value, however, in being able to continue to review the separate findings of the Hearing Officers, appreciating the apparent duplication in the work of you and your staff.

Those of us who watch and guess at the development of the body of decisional law find it very useful to observe which Hearing Officer makes which determinations. History has shown, as with the courts, and particularly the scrutiny of the Supreme Court decisions of the various justices, both on Guam and at the US Supreme Court level, that there is debate and fleshing out of argument and policy behind the scenes, and these are highly relevant to our better understanding of the development of the law.

Furthermore, even though there appears to be an almost uniform "rubber-stamping", a phrase I use respectfully here, of the Hearing Officers' findings, it is important for us, as observers, to undertake to try to divine the actual will of

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*

† Micronesian Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers. (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

the Public Auditor, who remains constant although the appeals are heard by various Hearing Officers.

I believe that the talents and knowledge of the Public Auditor bring to the hearing room tables a particularly valuable insight that the Hearing Officers, as lawyers, lack, and, again, I say that respectfully and in this case with personal perspective. For instance, I think, on strictly legal grounds, the result in the O&M Energy appeal (OPA-PA-08-004) could easily have gone the other way had it not been for your instinctive auditing sense that money, and not simply legal form, is important in these matters.


That said, I would continue to provide for some means of the Hearing Officers' findings to be separately publically available for review.

I must submit these comments only in writing as I am going to be off-island and out of office from tomorrow until April 10<sup>th</sup>. I wish I could attend the hearing on the 6<sup>th</sup> to hear other comments.

Along with these comments, I am presumptively including a paper which, at the moment, is still a work in progress though substantially complete (I want to include contract disputes and getting paid topics). It began as a simple talking points outline for me to make a presentation sponsored by the Chamber Small Business Committee, and has since taken on a life of its own. The seminar, given last week, was well attended and received, and I anticipate more attention will be paid to the subject along with the myriad of presentations on Federal government procurement. Perhaps this will kick-start some development along the lines contemplated in MPC §§ 2-502 and 2-503. I hope you find this review useful in some way. Critical feedback is welcomed.

Thank you for your consideration, and your valuable service to the community.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'John Thos. Brown', with a stylized, flowing script.

John Thos. Brown



OFFICE OF THE PUBLIC AUDITOR

<b>WRITTEN RECORD OF HEARING</b>	
<b>APRIL 6, 2009 – PUBLIC HEARING RE PROPOSED RULE CHANGES TO PROCUREMENT APPEAL RULES OF PROCEDURE</b>	
Hearing Officer	Anthony R. Camacho, Esq.
Time	1:00 PM
Place of Hearing	Office of the Public Auditor – Conference Room
Parties Present	Anthony R. Camacho, Esq. (Hearing Officer) and Theresa V. Gumataotao – OPA Auditor / Procurement Staff
Identification of Documents Presented at Hearing	March 26, 2009 – Written Testimony from John Thos. Brown, General Counsel for Jones and Guerrero
Parties Offering Testimony / Written Statements During Hearing	None
Summary of Hearing	<p><i>Should you wish to hear the audio of this Hearing you visit our website at <a href="http://www.guamopa.org">www.guamopa.org</a> and click on audio of April 1<sup>st</sup> Hearing re Proposed Amendments to the Rules of Procedure for Procurement Appeals.</i></p> <p>Hearing Officer: It is 1:00 PM on Monday April 6, 2009. I am Anthony R. Camacho, Esq. the Hearing Officer for the Office of the Public Auditor, with me today is Theresa Gumataotao, one of the staff members of the Office of the Public Auditor.</p> <p>The public hearing to the proposed Amendments for the Rules of Procedure for Procurement Appeals is hereby convened. No member of the public is present. We are going off the record to check the OPA lobby and the conference rooms on the fifth floor and the sixth floor of the DNA building in Hagatna Guam to ensure that no members of the public who intended to be present at this Hearing have mistaken the room at which this public Hearing is to be held.</p> <p>Can we go off the record for a short period.</p> <p>Hearing Officer: We are back on the record again and it is now 1:30 PM. After a check of the fifth and sixth floor conference rooms no members of the public who intended to participate in this public hearing could be found. Likewise, despite the 30 minute delay no members of the public have come to the OPA to be present here at this public hearing.</p>



The Hearing Officer does note that on March 26, 2009, the OPA received a letter from Mr. John Thos. Brown, Esq. who is the general counsel for Jones and Guerrero Co. Inc. Guam commenting on the proposed amendments to the procurement appeal regulations. I will now read his letter into the record at this time. It states:

*Dear Mrs. Brooks,*

*Please accept this commentary on the proposed amendments. In the main they are welcomed. Particularly as to §12104(c) (9) and §12601. I believe there is value, however in being able to continue to review the separate findings of Hearing Officers, appreciating the apparent duplication in the work of you and your staff. Those of us who watch and guess at the development of the body of decisional law find it very useful to observe which Hearing Officer makes which determinations. History has shown, as with the courts, and particularly the scrutiny of the Supreme Court decision of various justices, both on Guam and at the US Supreme Court level, that there is debate and fleshing out of argument and policy behind the scenes, and these are highly relevant to our better understanding of the development of law. Furthermore, even though there appears to be an almost uniform "rubber stamping," a phrase I use respectfully here, of the Hearing Officers' findings, it is important for us, as observers, to undertake and try to divine the actual will of the Public Auditor, who remains constant although the appeals are heard by various Hearing Officers.*

*I believe that the talents and knowledge that Public Auditor bring to the hearing room table a particularly valuable insight that the Hearing Officers, as lawyers, lack, and again, I say that respectfully and in this case with personal perspective. For instance, I think, on strictly legal grounds, the result in the O&M Energy appeal (OPA-PA-08-004) could easily have gone the other way had it not been for your instinctive auditing sense that money, and not simply legal form, is important in these matters. That said, I would continue to provide for some means of the Hearing Officers' findings to be separately publically available for review. I must submit these comments only in writing as I am going to be off-island and out of the office from tomorrow until April the 10<sup>th</sup>. I wish I could attend the hearing on the 6<sup>th</sup> to hear other comments. Along with these comments, I am presumptively including a paper which, at the moment, is still a work in progress though substantially complete (I want to include*

	<p><i>contract disputes and getting paid topics). It began as a simple talking points outline for me to make a presentation sponsored by the Chamber Small Business Committee, and has since taken a life of its own. The seminar, given last week, was well attended and received, and I anticipate more attention will be paid to the subject along with the myriad of presentations on Federal government procurement. Perhaps this will kick-start some development along the lines contemplated in MPC §§2-502 and 2-503. I hope you find this review useful in some way. Critical feedback is welcomed. Thank you for your consideration, and your valuable service to the community. Very truly yours. John Thos. Brown.</i></p> <p>This will conclude reading Mr. Thos. Brown's comments into the record. Pursuant to the Administrative Adjudication Act the OPA will give Mr. Brown's comments full consideration. There being no other public input, this public hearing is now concluded. We are going off the record at approximately 1:38 PM on April 6, 2009. Thank you.</p>
Audio Copy	Available on CD and online at OPA website <a href="http://www.guamopa.org">www.guamopa.org</a>
Fee(s)	\$15.00 per audio CD

investigation, according to the South Korean journalists, Euna Lee and Laura North's rocket launch.

policy.

# Pakistan militant group claims police attack, makes demands

**LAHORE, Pakistan (AP)** — The militant group that claimed responsibility for the assault on a police academy said Tuesday it will carry out more attacks unless Pakistani troops withdraw from tribal areas near the Afghan border and the U.S. stops drone attacks against militants in the country.

Omar Farooq, who said he is the spokesman for little-known Fedayeen al-Islam, also said the group carried out a similar ambush-style attack against the Sri Lankan cricket team earlier this month in Lahore — the same eastern city where a group of

gunmen stormed a police academy Monday and killed at least six trainee officers before being overpowered by Pakistani commandos.

The group previously said it was behind the deadly September bombing of the Marriott hotel in Islamabad that killed 54 people.

Such attacks pose a major test for the weak, year-old civilian administration of Pakistani President Asif Ali Zardari that has been gripped with political turmoil in recent weeks.

Some of the gunmen who attacked the academy Monday wore police uniforms, and the



A Pakistani police officer arrests one of the alleged gunmen at the compound of a police training school on the outskirts of Lahore, Pakistan, Monday, March 30.

the dangerous links among various militant groups operating in the country.

"We will carry out more attacks in the future if the government doesn't pull troops out of the tribal areas, if the Americans don't stop drone attacks and if the Pakistani government doesn't release Maulana Abdul Aziz," Farooq told The Associated Press by phone.

Aziz was the chief cleric at Islamabad's Red Mosque, which was the site of a pitched battle between militants and security forces in 2007. Aziz was arrested during the security operation to retake the mosque as he tried to flee wearing a burqa, the all-encompassing woman's veil.

Aziz has links to the Pakistan Taliban, which has stepped up attacks inside the country from its bases near the border with Afghanistan. The Pakistani government has launched several operations against militants in the border region.

The Pakistan Taliban has links with al-Qaida and Afghan Taliban militants based in the same area who have launched cross border attacks against U.S. and NATO forces in Afghanistan.

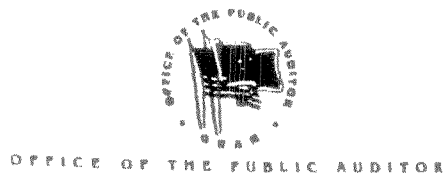
group managed to hold off security forces for about eight hours, seizing hostages and throwing grenades.

Four suspected militants were arrested, while at least three blew themselves up during the battle, said Rao Ifikhar, a top government official in Punjab province. He said three other bodies were still unidentified, two of them wearing police uniforms.

Interior Ministry chief Rehm-

an Malik said one of the arrested men was an Afghan, and that investigators believe the attack may have its roots along Pakistan's border with Afghanistan, where Taliban militants have hideouts. But Malik also pointed fingers at a Punjab-based Sunni extremist group and refused to rule out an Indian role.

Farooq, the Fedayeen al-Islam spokesman, is also a member of the Pakistan Taliban, illustrating



## SECOND PUBLIC NOTICE

The Office of the Public Auditor, in accordance with the Guam Procurement Law (5 G.C.A. §5701) and the Administrative Adjudication Law (5 G.C.A. Chapter 9) will hold a public hearing to receive comments on three proposed Amendments to the Rules of Procedure for Procurement Appeals. The public hearing will be held on Monday, April 6, 2009, at 1:00 p.m. at the Office of the Public Auditor located on the 4<sup>th</sup> floor of the DNA Bldg., Suite 401, in Hagatna.

The public is invited to submit written or oral testimony at the hearing or may submit electronic testimony via the OPA website at [admin@guamopa.org](mailto:admin@guamopa.org) on or before the date of hearing.

Copies of the proposed Amendments to the Rules for Procurement Appeals may be picked up or examined at the Office of the Public Auditor or may be viewed on our website at [www.guamopa.org](http://www.guamopa.org).

//s// Doris Flores Brooks, CPA, CGFM  
Public Auditor

## PUBLICATION NOTICE

In accordance with the provisions of Guam Code Annotated, Title XI, Chapter III, Section 3315, notice is hereby given that:

**CHOON HWA KIM**

**dba: NEW EDEN MARKET**

has applied for a Class: 5 General Off Sale Alcoholic Beverage License said premises being marked as Lot: 5099-7-1 #3301 Finegayan St. Harmon

Managers Variety 4/1/2009 Wednesday

Apply in person.  
With Police/Court Clearance.  
**Satok Co., Ltd.**  
Tumon Sands Plaza Ste. 342

Prices Start at  
**14.00**  
Rent - A - Car  
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IN THE SUPERIOR COURT  
OF GUAM

DAVID M. ISHIMARU  
DOB: 10-31-1937  
Plaintiff,

vs.

YOUNG-HEE KIM  
DOB: 06-01-1961  
Defendant.

DOMESTIC CASE NO.  
DM0072-09

**SUMMONS**

TO: The above-named  
Defendant, **YOUNG-HEE KIM**

YOU ARE HEREBY  
summoned and required to  
serve upon Jennifer C.  
Davis, Esq., Plaintiff's  
attorney, whose address is  
139 Cushing Way, Tumon  
Guam 96913, an answer to  
the Complaint for Divorce  
which is herewith served  
upon you, within thirty (30)  
days after service of this  
Summons upon you,  
exclusive of the day of  
service. If you fail to do so,  
judgment by default will be  
taken against you for the  
relief demanded in the  
Complaint for Divorce.  
Dated at Hagåtña, Guam,  
this 6th day of February,  
2009.

RICHARD B. MARTINEZ,  
Clerk of Court  
By: Benny O. Cruz

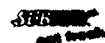
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**OFFICE OF THE PUBLIC AUDITOR**  
**PUBLIC NOTICE**

The Office of the Public Auditor, in accordance with  
Guam Procurement Law (5 G.C.A. §5701) and the  
Administrative Adjudication Law (5 G.C.A. Chapter 9)  
will hold a public hearing to receive comments on three  
proposed **Amendments to the Rules of Procedure for  
Procurement Appeals**. The public hearing will be held  
on Monday, April 6, 2009, at 1:00 p.m. at the Office  
of the Public Auditor located on the 4th floor of the  
DNA Bldg., Suite 401, in Hagatna.

The public is invited to submit written or oral  
testimony at the hearing or may submit electronic  
testimony via the OPA website at [admin@guamopa.org](mailto:admin@guamopa.org)  
on or before the date of hearing.

Copies of the proposed Amendments to the Rules for  
Procurement Appeals may be picked up or examined at  
the Office of the Public Auditor or may be viewed on  
our website at [www.guamopa.org](http://www.guamopa.org).

Doris Flores Brooks, CPA, CGFM  
Public Auditor



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Administration and Finance  
Consolidated Procurement Office

**REQUEST FOR PROPOSAL (RFP)**  
**UOG RFP No. P17-09**

The University of Guam is soliciting proposals for:

**Immigration Legal Services**

Copies of Instruction and Information package may be obtained from

Procurement Office  
UOG Administration Building  
Mangilao, Guam.  
Tel: 735-2925  
Fax: 734-3118

A copy of the RFP Package is available from 9:00am - 4:00pm Monday thru Friday  
You can request a PDF file of the RFP package at [yborja@ugam.uog.edu](mailto:yborja@ugam.uog.edu) or  
[ciriarte@ugam.uog.edu](mailto:ciriarte@ugam.uog.edu)

A non-refundable fee \$25.00 is required.

**Deadline for Submission of RFP Proposal is on Wednesday, April 15, 2009, at  
4:00 p.m. at the UOG Procurement Office.**

/s/ Dr. Robert A. Underwood  
President

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**LAW OFFICE OF ANTHONY R. CAMACHO, ESQ.**

Suite 808, 8<sup>th</sup> Floor GCIC Building  
414 West Soledad Ave., Hagatna, Guam, 96910  
Telephone: (671) 477-8051, FAX: (671) 477-5312  
E-Mail: arcesq@hotmail.com

**VIA-HAND-DELIVERY**

The Honorable Thomas C. Ada  
Senator and Chairman for the Committee on  
Transportation, Infrastructure, Lands, Border Protection,  
Veteran's Affairs, and Procurement  
33<sup>rd</sup> Guam Legislature  
155 Hesler Place  
Hagåtña, Guam, 96910

September 18, 2015

**RE: Written Testimony of Anthony R. Camacho, Esq., supporting the passage of  
Bill No. 162-33 (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 support the passage of Bill No. 162-33 (COR) with amendments. The foregoing are the substantial amendments that I recommend be made prior to the passage of the bill:

1. Line 15, page 5. The requirement for the public notice of an Invitation for bid (IFB) to be circulated in a newspaper of general circulation on Guam should be preserved as the baseline of public notice for an IFB. The current draft of the bill eliminates this base line without establishing any new one.

2. Line 9, page 7. The requirement that the contract for the IFB solicitation shall be awarded to a bidders whose bid meets the requirements and criteria set forth in the IFB should be preserved. Removal of this requirement may result in an award to a bidder whose bid cost is lowest but whose bid failed to comply with all the requirements and criteria set forth in the IFB.

3. Line 9, page 7. Mere posting of the notice of award on the purchasing agency's website should not be deemed acceptable notice of award to the other bidders. Actual notice of the agency's intent to award should be sent by the purchasing agency to the bidders and the bill should be amended to require said notice to state the requirements the successful bidder must comply with to finalize the award and that no award shall be final until the expiration of 14 days after the issuance of the notice of intent to award. Such notice would give the other bidders their full 14 days to protest the intended award of the contract to the successful bidder.

4. Line 4, page 8. The term "market" should be deleted from the bill so that this

paragraph would clearly state that the purpose of phase 1 of a multi-step IFB is to test the feasibility of a purchasing agency's purchase description for a product or service.

5. Line 3, page 9. The phrase "or as appropriate, " should be deleted because it is too vague and ambiguous.

6. Line 25, page 9. This section of Competitive Sealed Proposals (CSP) should be amended to allow the Chief Procurement Officer, the Director of the Department of Public Works, or the head of a purchasing agency to designate a procurement officer or such other person to conduct the discussions with the offerors submitting proposals in a CSP solicitation.

7. Line 24, page 11. This section regarding debriefings should be deleted in its entirety because the term "debriefings" is vague and ambiguous and this paragraph is unnecessary.

8. Line 16, page 14. This section must exempt autonomous agencies, independent agencies, and non-governmental bodies (as defined by Guam's Procurement Law) from the requirement that the Governor of Guam must approve their determinations that emergency procurement is justified for a particular solicitation.

9. Line 17, page 17. The requirement for professional errors and omissions insurance for all professional service contracts should be deleted as this will limit competition to the few large professional firms on Guam.

10. Line 23, page 18. This line should be amended by removing the deletion of "head of a purchasing agency." The deletion proposed by the bill would require the directors or head of autonomous agencies, public corporations, or non-governmental bodies (as defined by Guam's Procurement Law and Regulations) to submit all unsolicited offers to the Chief Procurement Officer for the Director of Public Works who generally have no procurement jurisdiction over such entities.

11. Line 9, page 21. Section 12 of the bill should be deleted in its entirety. The bridge contracts proposed by this section violate the policy of conducting planned procurement. This policy is necessary to ensure the integrity of the procurement process because agencies must keep track of when their contracts end and re-solicit necessary services in time for the new contract to take effect just after the old contract ends. Section 12 and its creation of bridge contracts will effectively end planned procurement because agencies will likely resort to re-soliciting after an existing contract expires. Further, existing contractors could prolong their contracts by filing frivolous protests which would effectively extend their expired contracts by years if they appeal procurement protest decisions into the court system.

12. Line 13, page 30. The phrase: "or the Director of the Department of Public Works, or the head of purchasing agency" should be included after the phrase "Chief Procurement Officer to ensure that the Director of Public Works and the heads of

autonomous agencies, public corporations, and non-governmental bodies (as defined by Guam Procurement Law and Regulations) can make independent determinations to solicit for contracts with contract terms exceeding the five (5) year term limit.

13. Line 22, page 31. The final determination cited by this section is actually found in 5 G.C.A. §5237(b) and the phrase: “5237(c)” should be amended to read: “5237(b).” This would continue the Guam Procurement Law’s current requirement that an agency decision to use a multi-year contract is a final decision unless clearly erroneous, arbitrary, capricious, or contrary to law.

14. Line 17, page 38. The fourteen (14) day period for a protestor to file a protest should not be tolled during a period when the agency, potential protestor and other interested parties are negotiating.

15. Line 15, page 39. Subsection (e) should be amended to make the expiration of the forty-five (45) day period in which the agency has to issue a decision on the protest the date that the protest is deemed automatically denied by the agency, and the protestor will automatically have fifteen (15) days from that date to file its appeal to the OPA. This will ensure that the current procurement protest and appeal procedure remains an expedited process.

16. Line 9, page 40. Subsection (g) should be amended to require that if the Public Auditor is disqualified to hear a procurement appeal, then the Public Auditor must appoint a member of her staff to hear the appeal in her place and stead.

17. Line 4, page 48. The sentence beginning with: “If no decision is issued and no action taken by the contractor...” Should be deleted in its entirety because it does not extend the contractor’s right for appeal after the automatic denial period and may tie up obtaining a new contractor to replace a defaulted contractor for two (2) years.

18. Line 13, page 48. The phrase: “and are in addition to any other remedy or relief allowed by law or equity.” Should be deleted because the existing statutory language already provides good and sound administrative relief for solicitations or awards that are found to violate law.

19. Line 16, page 51. The bill’s language permitting a judicial review of a Public Auditor decision for a procurement appeal can be heard as a special proceeding, but not without additional statutory amendment of Title 7 of the Guam Code Annotated adding this type of judicial review. Currently the only special proceedings that may be applicable are *Writs of Mandamus*, *Writs of Review*. However, *mandamus* relief is not proper because the Public Auditor’s decision is not a ministerial act that the Court can order her to do. Further, Guam’s existing *Writ of Review* is limited to determining whether the government official had the jurisdiction to act. Hence, neither special proceeding is appropriate which effectively nullifies allowing the parties to proceed with judicial review as a special proceeding.

Eddie Baza Calvo  
Governor



## GENERAL SERVICES AGENCY

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Department of Administration

Ray Tenorio  
Lieutenant Governor

Anthony C. Blaz  
Director

148 Route 1 Marine Corps Drive, Piti, Guam 96915  
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

September 11, 2015

### Memorandum

Honorable Thomas Ada  
Senator, 33<sup>rd</sup> Guam Legislature  
Chairperson on Committee on  
Transportation, Infrastructure, Lands,  
Boarder Protection, Veterans Affairs and  
Procurement  
Ada's Plaza Center, Suite 207  
173 Aspinall Avenue  
Hagatna, Guam 96910

11:10 AM  
10:10 AM  
RECEIVED by the  
Office of Senator  
Thomas C. Ada

Re: Comments on Bill 162-33

I am in receipt of bill '62-33 "An Act to Amend Articles 3,9and 12 of Chapter 5, Title 5 Guam Code Annotated by Amending Sections 5201, 5210, 5211, 5314, 5216, 5216, 5217, 5219, 5220, 5230, 5231,5232, 5233,5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252 and to a new section 5212,5221, and 5254 relative to source and contract formation and to amend Sections 5425, 5426, 5427, 5450, 5452, 5480,5481 and 5485(a) and (b) of Article9, and Amend Sections 5703, 5705, 5706(b) 5707(a), and 5708 and add a new 5710 Relative to Legal and Contractual Remedies in Guam Procurement Law."

We have the following comments::

The government does sole source procurement. (Section 5214). Now,, the General Services Agency puts out a yearly notice to all indicating whether these services are available in the market. If no response is provided, then we continue with the contract. The proposed bill would limit the time frame for the government to all for sole source procurement, and ultimately cost the government more money and time to acquire the needed services. As such, this section should be deleted.

In the definition section, (e) this bill wishes to discuss the use of Competitive Sealed Proposal. Competitive Sealed Proposal was repealed in Public Law 18-8 due to concerns about the fairness of its application. However, the bill attempts to provide for a new reintroduced competitive sealed proposal No government agency as far I am aware, is requesting for it.

In the Emergency Procurement section 5215, The bill attempts to add more restrictions on its use. This is not in the government's best interest as emergency are "emergencies"



in nature and having another layer of requirements does not bode well for getting the emergency needs out.

In the Unsolicited Offers section 5219, the bill attempts to restrict the use of unsolicited offers even more.

In section 5220, the bill is attempting for the General Services Agency to be responsible for the announcements of all IFB, RFP, Requests for Competitive Seal Proposals at the same time with the procuring agency, as well as having it put on the using agencies' website. This is requiring that GSA patrol all procurement actions of all of the government, even though we may not have jurisdiction over it. So the question that comes up is if there is a protest, does the protest begin when any government entity receives it, since it was posted on their website, even though we are not responsible for it?

This bill adds in a new section called "Bridge Contract in Section 5221. This is not a necessary item.

In Section 5237, it attempts to restrict the use of a multi-year contract by the government. What happens if there is no other company that is capable?

In section 5425, it requires that before settlement, all interested parties must be a part of any settlement, even if they did not file a companion protest. This is an additional delay for the government.

In subsection (e) they indicate that protests must be resolved within forty-five days of receipt. There are occasions where more than 45 days are necessary.

In Section 5426(f) it allows for a complaint filed by the public to be immediately investigated. Additional staff needs to be added for this purpose.

In Section 5427(f)(1) allowing the contractor to wait two (2) years to file an appeal is excessive. The government should not be required to wait this long.

In Section 5480(f)(3), it states that a security requested is only to stop frivolous protests or appeals. That is not accurate. Security is also required to protect the government's interests, and is used as an example to judge the seriousness of the protestor, rather than just delay a project. This passage would have the effect of limiting the government's interest.

In Section 5710, it allows the Public Auditor to promulgate regulations. This is wrong, the promulgation of what is needed should come from the agencies handling procurement.

In Section 5425(e) "Failure to Render Timely Decision, a new subsection (1) be added to read: Should a government agency or department needs more time to address the protest, an additional twenty-one (21) days will be granted. Such an extension shall be sent to the protestor "

In Section 5425(f), Appeal, The last sentence of this section should be deleted and replace with the following: "If for any reason the Public Auditor is determined to be disqualified to hear such an appeal, the assigned legal officer from the OPA that hears the case, may hear the case."

The last phrase in Section 5425(g)(1)"...or the Governor then issues a Declaration of Emergency Procurement as authorized by Section 5215 of this Chapter, and..." does not make sense. The declaration of Emergency by the Governor is for a thirty (30) day supply of goods or service. The use of the emergency is not intended to be for the final disposition of the contract, but for a temporary basis of getting the supplies or equipment. We believe that this phrase should be deleted.

In Section 5425((g)(3), the proposed addition should be deleted. The Public Auditor should not have the authority to override the Governor in determining whether an emergency is necessary for the procurement, since the procurement is for a temporary matter. The contract in question is subject to the Public Auditor's determination, not a temporary one questioning the substantial interest.

In Section 5426(f), the proposed language requires that the government must immediately investigate a petition for a debarment or suspension filed and if no answer is provided in sixty (6) days, that it may go forward to the Office of Public Accountability. This is another unfunded mandate placed upon the government and should the legislature require this, it should provide the funding for requiring an immediate action.

Section 5452(c) should stop after"...awarded the contract." The rest of the sentence is unnecessary.

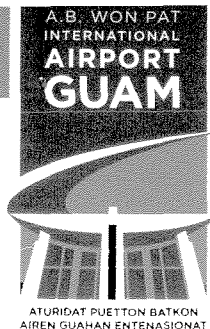
We again resubmit these concerns for consideration with the additional comment that we believe that a "PERFORMANCE BOND" should be included in the procurement rules and regulations for supplies, services and equipment. The role of the Performance bond differs from that of a Bid Bond and the requirement that a Bid Bond act as a Performance Bond is not acceptable to the sureties which provide these items. But for government's interest, a Performance Bond provides assurances that the winning bidder provides what he was awarded.

This proposed bill is a consolidation of bills 246 and 224 from the 32<sup>nd</sup> legislature. The above stated suggestions were previously made.

Thank you for the opportunity to comment on this bill.

A handwritten signature in dark ink, appearing to read "Claudia S. ACFALLE". The signature is stylized with a large initial "C" and a long, sweeping underline.

CLAUDIA S. ACFALLE  
Chief Procurement Officer



September 25, 2015

Honorable Thomas C. Ada  
Senator  
**I Mina' Trentai Tres Na Liheslaturan Guåhan**  
Committee on Transportation, Infrastructure,  
Lands, Border Protection, Veterans' Affairs and Procurement  
Ste. 207 Ada Plaza Ctr.  
173 Aspinall Ave.  
Hagåtña, Guam 96910

**RE: BILL NO. 162-33**

Hafa Adai Senator Ada:

I am writing to provide you with the Antonio B. Won Pat International Airport Authority, Guam's ("GIAA") comments to the amendments to the Guam Procurement Law proposed in Bill 162-33.

- § 5214 – This section, relating to the sole source procurement method, requires that the purchasing agency publish notice of the making of a sole source contract in excess of \$100,000. GIAA requests that agencies be permitted to post such contracts on their website rather than publish a notice. The revised language is as follows:

“In the event any such contract, or series of related contracts, is in excess of the amount of One Hundred Thousand Dollars (\$100,000), the purchasing agency shall, within fourteen (14) days of making the contract publish notice or post notice on its website of the making of the contract, including the name of the purchasing agency, the contractor...”

- § 5425(b) – This section is amended to require that interested parties, as defined in that subsection, are given notice and opportunity to participate in any settlement or resolution of the protest. GIAA requests that this language be stricken as impeding settlement efforts as it would require the involvement of parties that did not participate in the protest/appeal or did not file a protest.
- § 5425(g) – This section provides that the Presiding Judge shall appoint a Guam-licensed attorney “competent in matters of procurement” to act as the hearing officer in the event of the Public Auditor’s disqualification. Allowing the Presiding Judge to appoint a hearing officer distinct from the Public Auditor replaces the neutral, administrative review authority of the Public Auditor, an elected official, with a private attorney whose partiality may be questioned because of prior experience with representing government agencies or private entities in procurement matters. Further, removing the Public

Auditor's oversight may result in inconsistent precedent on procurement administrative decisions. We recommend deleting this provision. The current law allowing the appeal to proceed to the Superior Court upon disqualification of the Public Auditor should remain, modified only to describe the nature of the review by the Superior Court in the unusual circumstance of disqualification of the Public Auditor.

- § 5425(h) and § 5480(f)(2) and (3) – Subsections 5480(f)(2) and (3) address the posting of a bond to continue the automatic stay during an appeal to the Superior Court. GIAA believes that the bond requirement should be included in the section relating to the automatic stay. GIAA suggests that subsections 5480(f)(2) and (3) be stricken in their entirety and § 5425(h) be revised as follows:

“(h) In the event of a timely protest under Subsection (a) of this Section, and the posting of bond or such other security by the protestor in the manner required by GRCP Rule 65(c), the government of Guam or governmental body shall not proceed further with the solicitation, or award, or performance of the contract prior to the time allowed to appeal, or the final resolution of such protest or the settlement of the protest evidenced by a writing ~~signed by all interested parties,~~ and any such further action is void, unless:

(1) The Chief Procurement Officer, ~~or the Director of Public Works, or the head of the purchasing agency,~~ with written concurrence of ~~the head of the using or purchasing agency and~~ the Attorney General or designated Special Assistant or Deputy Attorney General, then makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the government of Guam; and....”

The first change to subsection (h) was made to require the posting of bond or security in accordance with GRCP Rule 65(c) in order for the stay to take effect. Requiring the bond or security assures that the agency has protection for not being able to carry on its business during the protest process, which could go on for many months. It should not be burdensome for a protestor to post bond or other security, since bidders are required to post bonds as security for their bids.

The change to add “or governmental body” was done to address the situation where the solicitation is issued by an autonomous agency or public corporation. The deletion of the language requiring all interested parties to sign a settlement was done to eliminate the requirement that all interested parties participate in settlement discussions. (See discussion on § 5425(b), above.)

The change to Subsection (1) was made to allow the head of the purchasing agency to make the determination of substantial interest and to recognize the appointment of Special Assistant Attorney Generals under § 5150 of the Guam Procurement Law.

With regard to the deletion of subsections 5480(f)(2) and (3), such deletion was suggested because making the posting of a bond conditional on “a finding that the protest or appeal is or is likely to be frivolous” does not make sense. If there is a finding that the protest or appeal “is or is likely to be frivolous” the protest or appeal should be dismissed and a bond unnecessary.

- § 5427, § 5480(c), § 5481(c) – These sections give the Public Auditor and Superior Court jurisdiction to hear breach of contract controversies between the agency and a contractor. It is not clear how these sections will interact with the requirements of the Government Claims Act.
- A number of provisions in Bill 162-33 refer to the Chief Procurement Officer or the Director of Public Works making certain determinations or written findings or handling certain types of procurements.<sup>1</sup> GIAA would like to clarify that such actions can still be carried out by agency heads, particularly heads of autonomous agencies, through a delegation from the Chief Procurement Officer or Director of Public Works, as the case may be. If that is not the case, that GIAA requests that the language of Bill 162-33 be amended to allow such actions to be carried out by autonomous agency heads. For example:

“§ 5254(a)(1). Notwithstanding any provision of law to the contrary, the Director of Public Works or head of an autonomous agency shall be responsible to conduct procurement of such services [architects, engineers, land surveyors].”

GIAA respectfully requests that the Legislature consider the changes suggested above as it considers Bill 162-33. In addition, because of the numerous substantive changes to the Procurement Law proposed in Bill 162-33, GIAA requests that it be notified of any roundtable meetings to discuss this proposed legislation. Thank you.

*Senseremente,*



CHARLES H. ADA II  
Executive Manager

---

<sup>1</sup> See e.g., § 5254(a)(1) (“Notwithstanding any provision of law to the contrary, the Director of Public Works shall be responsible to conduct the procurement of [architects, engineers and land surveyors]”; § 5221(b)(1) (“The Chief Procurement Officer must first make a written determination of the particularized need for such supply or service...”))



## COMMITTEE ON RULES

*I Mina'trentai Tres na Liheslaturan Guåhan* • The 33rd Guam Legislature

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CHAIRPERSON  
MAJORITY LEADER

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

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Member

Senator  
Nerissa Bretania Underwood  
Member

V. Anthony Ada  
MINORITY LEADER

Mary C. Torres  
MINORITY MEMBER

August 17, 2015

### VIA E-MAIL

[jocy.calvo@bbmr.guam.gov](mailto:jocy.calvo@bbmr.guam.gov)

Jose S. Calvo  
Director  
Bureau of Budget & Management Research  
P.O. Box 2950  
Hagåtña, Guam 96910

### RE: Request for Fiscal Notes – Bill Nos. 161-33(COR) and 162-33(COR)

*Hafa Adai* Mr. Calvo:

Transmitted herewith is a listing of *I Mina'trentai Tres Na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

*Si Yu'os ma'åse'* for your attention to this matter.

Very Truly Yours,

**Senator Rory J. Respicio**  
*Chairperson of the Committee on Rules*

Attachment (1)

Cc: Clerk of the Legislature

Bill Nos.	Sponsor	Title
<b>161-33</b> <b>(COR)</b>	Brant T. McCreadie	AN ACT TO <i>REPEAL</i> AND <i>REENACT</i> § 1026 OF CHAPTER 10, TITLE 1, GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING THE GUAM LIBERATION FISHING EVENTS.
<b>162-33</b> <b>(COR)</b>	T. C. Ada	AN ACT TO <i>AMEND</i> ARTICLES 3, 9, AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING§ 5201, 5210, 5211,5214, 5215, 5216, 5217, 5219, 5220,5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW § 5212, § 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO AMEND §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(A) AND (B) OF ARTICLE 9; AND AMEND §§ 5703, 5705, 5706(B), 5707(A) AND 5708, AND ADD A NEW § 5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.





## COMMITTEE ON RULES

*I Mina'trentai Tres na Liheslaturan Guåhan* • The 33rd Guam Legislature  
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E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator

Rory J. Respicio

CHAIRPERSON

MAJORITY LEADER

Senator

Thomas C. Ada

VICE CHAIRPERSON

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Speaker

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Senator

Michael E.Q. San Nicolas

Member

Senator

Nerissa Bretania Underwood

Member

V. Anthony Ada

MINORITY LEADER

Mary C. Torres

MINORITY MEMBER

September 23, 2015

### Memorandum

To:

Rennae Meno

Clerk of the Legislature

From:

Senator Rory J. Respicio

Majority Leader & Rules Chair

Subject:

Fiscal Notes

*Hafa Adai!*

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

### FISCAL NOTES:

Bill No. 162-33(COR)

Bill No. 163-33(LS)

Bill No. 164-33(LS)

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'!*

2015 SEP 23 09:16:54

**Bureau of Budget & Management Research  
Fiscal Note of Bill No. 162-33 (COR)**

AN ACT TO AMEND ARTICLES 3, 9, AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED BY AMENDING §5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, AND TO ADD A NEW §5212, 5221, AND 5254 RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION AND TO AMEND § 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(a) AND (b) OF ARTICLE 9; AND AMEND §5703, 5705, 5706(b), 5707(a) AND 5708, AND ADD A NEW §5710 RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.

**Department/Agency Appropriation Information**

Dept./Agency Affected: Department of Administration	Dept./Agency Head: Anthony C. Blaz, Director
Department's General Fund (GF) appropriation(s) to date:	37,174,594
Department's Other Fund (Specify) appropriation(s) to date: Indirect Cost Fund, Tourist Attraction Fund, Guam Highway Fund, Streetlight Fund, Unappropriated Fund balance of the Guam Highway Fund	9,926,652
Total Department/Agency Appropriation(s) to date:	\$47,101,246

**Fund Source Information of Proposed Appropriation**

	General Fund:	(Specify Special Fund):	Total:
FY 2014 Unreserved Fund Balance		\$0	\$0
FY 2015 Adopted Revenues	\$0	\$0	\$0
FY 2015 Appro. (P.L. 32-181 thru 33-63)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

**Estimated Fiscal Impact of Bill**

	One Full Fiscal Year	For Remainder of FY 2015 (if applicable)	FY 2016	FY 2017	FY 2018	FY 2019
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

1. Does the bill contain "revenue generating" provisions? / / Yes /X/ No  
If Yes, see attachment
2. Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A / / Yes / / No  
If no, what is the additional amount required? \$ / / N/A
3. Does the Bill establish a new program/agency? / / Yes /X/ No  
If yes, will the program duplicate existing programs/agencies? / / N/A / / Yes /X/ No  
Is there a federal mandate to establish the program/agency? / / Yes /X/ No
4. Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
5. 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: Virginia Maygona Date: 9/18/15 Director: Jose S. Calvo  
Virginia Maygona, BMA II Jose S. Calvo, Director **SEP 21 2015**

**Footnotes:**

- 1/ See attached comment.

### **Comments on Bill No. 162-33 (COR)**

In its current form, Bill No. 162-33 does not contain any revenue-generating or appropriation provisions. Relative to any potential fiscal impact, the Bureau is unable to make a determination as to a fiscal impact upon implementation at this time without additional information as to the number of changes proposed in this bill. However, it should be noted that, per information received from the General Services Agency (GSA) of the Department of Administration (DOA), some of the proposed amendments would result in increased costs of the Government of Guam. In a memorandum from GSA to the Director of DOA dated August 27, 2015, it is indicated that amendments to §5214 of Article 3, Chapter 5 of 5 GCA, relative to Sole Source Procurement would “ultimately cost the government more money and time to acquire needed services.”



## COMMITTEE ON RULES

*I Mina'trentai Tres na Liheslaturan Guåhan* • The 33rd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)

E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Legislative Secretary  
Tina Rose Muna Barnes  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
Nerissa Bretania Underwood  
Member

V. Anthony Ada  
MINORITY LEADER

Mary C. Torres  
MINORITY MEMBER

August 14, 2015

### MEMORANDUM

**To:** **Rennae Meno**  
*Clerk of the Legislature*

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

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

**Subject:** **Referral of Bill No. 162-33(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 162-33(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres Na Liheslaturan Guåhan*.

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

*Si Yu'os Ma'åse!*

Attachment



Senator Tom Ada

## 1st Notice of Public Hearing: Friday, September 18, 2015 at 9:00 a.m. and 1:30 p.m.

Charlene Flores &lt;flores@senatorada.org&gt;

Thu, Sep 10, 2015 at 1:44 PM

To: Media <media@senatorada.org>, phnotice@guamlegislature.org, Jennifer Crisostomo <jennifer@carsplusguam.com>, vshelly@nissanguam.com, joeyc@carsplusguam.com, David Leddy <dleddy@guamchamber.com.gu>, alfred.leonguerrero@gmail.com, john.camacho@revtax.guam.gov, Maria Flores <maria.flores@revtax.guam.gov>, pedro.leonguerrero@cqa.guam.gov, raffaele.sgambelluri@cqa.guam.gov, chief@gpd.guam.gov, jbrown@portguam.com, Glenn LG <glenn.leonguerrero@dpw.guam.gov>, felix.benavente@dpw.guam.gov, Robert Hofmann <guammayor@gmail.com>, rudy iriarte <rudyiriarte@gmail.com>, Jessie Gogue <ocp.mayor@gmail.com>, adasmortuary@gmail.com, michael.borja@land.guam.gov, joey.calvo@bbmr.guam.gov, anthony.blaz@doa.guam.gov, "Ray C. Borja" <ray@guam-peals.org>, "John Thos. Brown" <jngo@ozemail.com.au>, claudia.acfalle@gsa.guam.gov, robert.kono@gsa.guam.gov, law@guamag.org, Mark Miller <miller@guamwaterworks.org>, staylor@guamwaterworks.net, jbenavente@gpagwa.com, chuck.ada@guamairport.net, larry.lizama@gmha.org, jonfernandez@gdoe.net, Michael Duenas <mjduenas@ghura.org>, ndenight@visitguam.org, john.rios@investguam.com, Mary Okada <mary.okada@guamcc.edu>, raunderwood@uguam.uog.edu, dfbrooks@guamopa.org, admin@guamopa.org, james.gillan@dphss.guam.gov, danilo.barrido@dphss.guam.gov

September 10, 2015

### MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **1<sup>st</sup> Notice of Public Hearing: Friday, September 18, 2015 at 9:00 a.m. and 1:30 p.m.**

Please be advised that the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affair, and Procurement will be conducting a public hearing on **Friday, September 18, 2015 at 9:00 a.m. and 1:30 p.m.** This meeting will take place in the public hearing room of *I Liheslaturan Guåhan*. The agenda is as follows:

#### 9:00 am

#### Bill No. 132-33 (COR) – V. Anthony Ada

An act to amend §7134 of chapter 7 of 16 GCA relative to transporting new vehicles from a port entry to dealers' lots.

**Bill No. 134-33 (COR) – V. Anthony Ada / T.R. Muña Barnes**

An act to rezone lot no. 3257-4-2, in the municipality of *Sinajana*, from Agricultural zone (A) to Commercial zone (C).

**Bill No. 164-33 (LS) – T.C. Ada**

An act to create a Chamorro Land Trust survey fund from the sales of Government of Guam lands such as bull cart trails and land remnants and to add a new subsection (k) to §75112 of chapter 75, title 21, Guam Code Annotated.

**Bill No. 163-33 (LS) – M.F.Q. San Nicolas**

An act to amend §§ 75108 (b) and (g) both of chapter 75, title 21 of the Guam code annotated, relative to the establishment of a time frame for payment of the Chamorro Land Trust Commission lease terms and the permanent waiving of property tax exemptions for surveyed land tracts for applicants.

**1:30 pm**

**Bill No. 162-33 (COR) – T.C. Ada**

An act to *amend* articles 3, 9, and 12 of Chapter 5, Title 5 Guam Code Annotated by amending § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, and to add a new § 5212, § 5221, and 5254 relative to source selection and contract formation and to amend §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 and 5485(a) and (b) of article 9; and *amend* §§ 5703, 5705, 5706(b), 5707(a) and 5708, and *add* a new § 5710 relative to legal and contractual remedies in Guam Procurement Law.

**Bill No. 145-33 (COR) – D.G. Rodriguez, Jr.**

An act authorize the women, infants, and children's programs and the Bureau of Economic Security, Department of Public Health and Social Services to utilize joinder and mutual use procurements by repealing and reenacting § 5126 of Chapter 5, Title 5, Guam Code Annotated.

**NOTE: The Public Hearing for Bill No. 147-33 (COR) has been rescheduled to Thursday, September 24, 2015 at 9:00 a.m.**

Testimony on **Bill No. 132-33 (COR), Bill No. 134-33 (COR), Bill No. 164-33 (LS), Bill No. 163-33 (LS), Bill No. 162-33 (COR) and Bill No. 145-33 (COR)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña,

Guam 96932, via email to flores@senatorada.org, or via facsimile to (671) 473-3303 until **Friday, September 25, 2015 at 5:00pm**. Individuals requiring special accommodations, auxiliary aids, or services should submit their request to Charlene Flores at 473-3301. Please feel free to contact my office should you have any questions or concerns.

--  
Charlene Flores  
Policy Analyst  
Office of Senator Thomas C. Ada  
*I Mina'trentai Tres na Liheslaturan Guåhan* - 33rd Guam Legislature  
671-473-3301



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## Sen. Thomas Ada

Chairman

Committee on Transportation, Infrastructure, Lands,  
Border Protection, Veterans' Affairs and Procurement  
*I Mina'Trentai Tres Na Libeslaturan Guåhan • 33<sup>rd</sup> Guam Legislature*

September 10, 2015

### MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson* 

Subject: **1<sup>st</sup> Notice of Public Hearing: September 18, 2015 at 9:00 a.m. and 1:30 p.m.**

Please be advised that the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs, and Procurement will be conducting a public hearing on **Friday, September 18, 2015 at 9:00 a.m. and 1:30 p.m.** This meeting will take place in the public hearing room of *I Libeslaturan Guåhan*. The agenda is as follows:

#### **9:00 am**

##### **Bill No. 132-33 (COR) – V. Anthony Ada**

An act to amend §7134 of chapter 7 of 16 GCA relative to transporting new vehicles from a port entry to dealers' lots.

##### **Bill No. 134-33 (COR) – V. Anthony Ada / T.R. Muña Barnes**

An act to rezone lot no. 3257-4-2, in the municipality of *Sinajana*, from Agricultural zone (A) to Commercial zone (C).

##### **Bill No. 164-33 (LS) – T.C. Ada**

An act to create a Chamorro Land Trust survey fund from the sales of Government of Guam lands such as bull cart trails and land remnants and to add a new subsection (k) to §75112 of chapter 75, title 21, Guam Code Annotated.

##### **Bill No. 163-33 (LS) – M.F.Q. San Nicolas**

An act to amend §§ 75108 (b) and (g) both of chapter 75, title 21 of the Guam code annotated, relative to the establishment of a time frame for payment of the Chamorro Land Trust Commission lease terms and the permanent waiving of property tax exemptions for surveyed land tracts for applicants.



1:30 pm

**Bill No. 162-33 (COR) – T.C. Ada**

An act to *amend* articles 3, 9, and 12 of Chapter 5, Title 5 Guam Code Annotated by amending § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, and to add a new § 5212, § 5221, and 5254 relative to source selection and contract formation and to amend §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 and 5485(a) and (b) of article 9; and *amend* §§ 5703, 5705, 5706(b), 5707(a) and 5708, and *add* a new § 5710 relative to legal and contractual remedies in Guam Procurement Law.

**Bill No. 145-33 (COR) – D.G. Rodriguez, Jr.**

An act authorize the women, infants, and children's programs and the Bureau of Economic Security, Department of Public Health and Social Services to utilize joinder and mutual use procurements by repealing and reenacting § 5126 of Chapter 5, Title 5, Guam Code Annotated.

**NOTE: The Public Hearing for Bill No. 147-33 (COR) has been rescheduled to September 24, 2015 at 9:00 a.m.**

Testimony on **Bill No. 132-33 (COR), Bill No. 134-33 (COR), Bill No. 164-33 (LS), Bill No. 163-33 (LS), Bill No. 162-33 (COR) and Bill No. 145-33 (COR)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to [flores@senatorada.org](mailto:flores@senatorada.org), or via facsimile to (671) 473-3303 until **Friday, September 25, 2015 at 5:00pm**. Individuals requiring special accommodations, auxiliary aids, or services should submit their request to Charlene Flores at 473-3301. Please feel free to contact my office should you have any questions or concerns.



Senator Tom Ada

## 2nd Notice of Public Hearing: Friday, September 18, 2015 at 9:00 a.m. and 1:30 p.m.

Charlene Flores <flores@senatorada.org>

Wed, Sep 16, 2015 at 8:02 AM

To: Media <media@senatorada.org>, phnotice@guamlegislature.org, Jennifer Crisostomo <jennifer@carsplusguam.com>, vshelly@nissanguam.com, joeyc@carsplusguam.com, David Leddy <dledddy@guamchamber.com.gu>, alfred.leonguerrero@gmail.com, john.camacho@revtax.guam.gov, Maria Flores <maria.flores@revtax.guam.gov>, pedro.leonguerrero@cqa.guam.gov, raffaele.sgambelluri@cqa.guam.gov, chief@gpd.guam.gov, jbrown@portguam.com, Glenn LG <glenn.leonguerrero@dpw.guam.gov>, felix.benavente@dpw.guam.gov, Robert Hofmann <guammayor@gmail.com>, rudy iriarte <rudyiriarte@gmail.com>, Jessy Gogue <ocp.mayor@gmail.com>, adasmortuary@gmail.com, michael.borja@land.guam.gov, joey.calvo@bbmr.guam.gov, anthony.blaz@doa.guam.gov, "Ray C. Borja" <ray@guam-peals.org>, "John Thos. Brown" <jngo@ozemail.com.au>, claudia.acfalle@gsa.guam.gov, robert.kono@gsa.guam.gov, law@guamag.org, Mark Miller <miller@guamwaterworks.org>, staylor@guamwaterworks.net, jbenavente@gpagwa.com, chuck.ada@guamairport.net, larry.lizama@gmha.org, jonfernandez@gdoe.net, Michael Duenas <mjduenas@ghura.org>, ndenight@visitguam.org, john.rios@investguam.com, Mary Okada <mary.okada@guamcc.edu>, raunderwood@uguam.uog.edu, dfbrooks@guamopa.org, admin@guamopa.org, james.gillan@dphss.guam.gov, danilo.barrido@dphss.guam.gov

September 16, 2015

### MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **2<sup>nd</sup> Notice of Public Hearing: Friday, September 18, 2015 at 9:00 a.m. and 1:30 p.m.**

Please be advised that the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affair, and Procurement will be conducting a public hearing on **Friday, September 18, 2015 at 9:00 a.m. and 1:30 p.m.** This meeting will take place in the public hearing room of *I Liheslaturan Guåhan*. The agenda is as follows:

**9:00 am**

**Bill No. 132-33 (COR) – V. Anthony Ada**

An act to amend §7134 of chapter 7 of 16 GCA relative to transporting new vehicles from a port entry to dealers' lots.

**Bill No. 134-33 (COR) – V. Anthony Ada / T.R. Muña Barnes**

An act to rezone Lot No. 3257-4-2, in the municipality of *Sinajana*, from Agricultural zone (A) to Commercial zone (C).

**Bill No. 164-33 (LS) – T.C. Ada**

An act to create a Chamorro Land Trust survey fund from the sales of Government of Guam lands such as bull cart trails and land remnants and to add a new subsection (k) to §75112 of Chapter 75, Title 21, Guam Code Annotated.

**Bill No. 163-33 (LS) – M.F.Q. San Nicolas**

An act to amend §§ 75108 (b) and (g) both of chapter 75, title 21 of the Guam Code Annotated, relative to the establishment of a time frame for payment of the Chamorro Land Trust Commission lease terms and the permanent waiving of property tax exemptions for surveyed land tracts for applicants.

**1:30 pm**

**Bill No. 162-33 (COR) – T.C. Ada**

An act to *amend* articles 3, 9, and 12 of Chapter 5, Title 5 Guam Code Annotated by amending § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, and to add a new § 5212, § 5221, and 5254 relative to source selection and contract formation and to amend §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 and 5485(a) and (b) of article 9; and *amend* §§ 5703, 5705, 5706(b), 5707(a) and 5708, and *add* a new § 5710 relative to legal and contractual remedies in Guam Procurement Law.

**Bill No. 145-33 (COR) – D.G. Rodriguez, Jr.**

An act authorize the women, infants, and children's programs and the Bureau of Economic Security, Department of Public Health and Social Services to utilize joinder and mutual use procurements by repealing and reenacting § 5126 of Chapter 5, Title 5, Guam Code Annotated.

Testimony on **Bill No. 132-33 (COR)**, **Bill No. 134-33 (COR)**, **Bill No. 164-33 (LS)**, **Bill No. 163-33 (LS)**, **Bill No. 162-33 (COR)** and **Bill No. 145-33 (COR)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to [flores@senatorada.org](mailto:flores@senatorada.org), or via facsimile to (671) 473-3303 until **Friday, September 25, 2015 at 5:00pm**. Individuals requiring special accommodations, auxiliary aids, or services should submit their request to Charlene Flores at 473-3301. Please feel free to contact my office should you have any questions or concerns.

--  
Charlene Flores  
Policy Analyst  
Office of Senator Thomas C. Ada  
*I Mina'trentai Tres na Liheslaturan Guåhan* - 33rd Guam Legislature  
671-473-3301



**2nd PH Notice.pdf**

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**Sen. Thomas Ada**  
**Chairman**

Committee on Transportation, Infrastructure, Lands,  
Border Protection, Veterans' Affairs and Procurement  
*I Mina Trentai Tres Na Liheslaturan Guåhan • 33<sup>rd</sup> Guam Legislature*

September 16, 2015

MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson* 

Subject: **2<sup>nd</sup> Notice of Public Hearing: September 18, 2015 at 9:00 a.m. and 1:30 p.m.**

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Testimony on **Bill No. 132-33 (COR), Bill No. 134-33 (COR), Bill No. 164-33 (LS), Bill No. 163-33 (LS), Bill No. 162-33 (COR) and Bill No. 145-33 (COR)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to [flores@senatorada.org](mailto:flores@senatorada.org), or via facsimile to (671) 473-3303 until **Friday, September 25, 2015 at 5:00pm**. Individuals requiring special accommodations, auxiliary aids, or services should submit their request to Charlene Flores at 473-3301. Please feel free to contact my office should you have any questions or concerns.

Public Hearing Notice Listserv  
*phnotice@guamlegislature.org (Media, All Senators, and Staff)*

Updated: October 27, 2016

30thguamyouthcongress@gmail.com	committee@frankaguonjr.com	jason@kuam.com
action@weareguahan.com	communications@frankaguonjr.com	jason@senatormorrison.com
admin@bbmr.guam.gov	communications@guam.gov	jborja@senatorada.org
admin2@guamrealtors.com	cor@guamlegislature.org	jean@tinamunabarnes.com
admin@frankaguonjr.com	coy@senatorada.org	jennifer.lj.dulla@gmail.com
admin@guamrealtors.com	cridgell@guamcourts.org	joan@kuam.com
admin@weareguahan.com	cyrus@senatorada.org	joe@todugum.com
aguon4guam@gmail.com	danireyes@senatorbjcruz.com	joesa@guamlegislature.org
agusto.aflague@gmail.com	dcristost@guam.gannett.com	john.calvo@noaa.gov
ahernandez@guamlegislature.org	debbieretuyan@judiwonpat.com	john@postguam.com
alan@tinamunabarnes.com	desori623@hotmail.com	johnluces@todugum.com
alerta.jermaine@gmail.com	divider_j_jimenez@hotmail.com	johntaoconnor@gmail.com
aline4families@gmail.com	dledy@guamchamber.com.gu	jon.calvo@mail.house.gov
am800guam@gmail.com	dmgeorge@guampdn.com	jontalk@gmail.com
amandalee.shelton@mail.house.gov	duenasenator@gmail.com	jmanuel@gmail.com
amcborja@gmail.com	ed@tonyada.com	jstedtaotao@gmail.com
anitaataligmani@gmail.com	edelynn1130@hotmail.com	jtenorio@guamcourts.org
ann@todugum.com	editor@postguam.com	julian.c.janssen@gmail.com
ataligba@gmail.com	editor@saipantribune.com	juliette@senatorada.org
assist_editor@glimpsesofiguam.com	edpocague@judiwonpat.com	kai@spbgum.com
av@guamlegislature.org	elena.garcia@senatorbjcruz.com	kcharfauros74@gmail.com
avillaverde@guamlegislature.org	emanaloto@guamlegislature.org	kcn.kelly@gmail.com
avon.guam@gmail.com	emqcho@gmail.com	keepinginformed.671@gmail.com
baza.matthew@gmail.com	eo@guamrealtors.com	kelly.toves@mail.house.gov
bdydasco@senatorada.org	etajalle@guamlegislature.org	kennylg@guamlegislature.org
bernice@tinamunabarnes.com	ewinston1@yahoo.com	kenq@kuam.com
berthaduenas@guamlegislature.org	fbtorres@judiwonpat.com	khmg@hbcguam.net
bmkelman@guampdn.com	fes22744@gmail.com	koreannews@guam.net
brantforguam@gmail.com	flores@senatorada.org	koreatv@kuentos.guam.net
bruce.lloyd.media@gmail.com	frank.blasjr@gmail.com	kstokish@gmail.com
bshringi@moylans.net	frank@judiwonpat.com	kstonews@ite.net
caquino@tinamunabarnes.com	gerry@postguam.com	kurtzman.guamlegis@gmail.com
carlaborja.73@yahoo.com	gerrypartido@gmail.com	kyle_brian@live.com
carlo.branch@gmail.com	gktv23@hotmail.com	law@guamag.org
carlo.branch@senatorbjcruz.com	guadalupeignacio@gmail.com	legislativecounsel@guamlegislature.org
carlsanchez@judiwonpat.com	guam.avon@gmail.com	leling@judiwonpat.com
carlsonc@pstripes.osd.mil	guam@pstripes.osd.mil	life@guampdn.com
ccastro@guamchamber.com.gu	guamnativesun@yahoo.com	ljalcairo@gmail.com
ccharfauros@guamag.org	hana@guam-shinbun.com	llmatthews@guampdn.com
cgogue@guampdsc.net	hermina.certeza@senatorbjcruz.com	louise@tonyada.com
cheerfulcatunao@yahoo.com	hill.bruce@abc.net.au	m.salaila@yahoo.com
christine.quinata@takecareasia.com	hottips@kuam.com	managingeditor@glimpsesofiguam.com
chucktanner@todugum.com	ihernandez@guamlegislature.org	mabuhaynews@yahoo.com
cipo@guamlegislature.org	info@chinesetimesguam.com	mahoquinene@guam.net
clerks@guamlegislature.org	james.servino@guamlegislature.org	malainse@gmail.com
cmduenas@guamlegislature.org	rlimtiaco@guampdn.com	maria.pangelinan@gec.guam.gov

Public Hearing Notice Listserv  
*phnotice@guamlegislature.org (Media, All Senators, and Staff)*

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martavictoriapalmertree@gmail.com	roryforguam@gmail.com
marycamachotorres@gmail.com	rowena@senatormorrison.com
maryfejeran@gmail.com	sabrina@kuam.com
marym@guamlegislature.org	sarah.elmore@senatorbjcruz.com
matthew.santos@senatorbjcruz.com	senator@senatorbjcruz.com
mcarlson@guamlegislature.org	senator@tinamunabarnes.com
mcpherson.kathryn@abc.net.au	senatorbrantmccreadie@gmail.com
mcruz@hitradio100.com	senatordrodriguez@gmail.com
media@frankaguonjr.com	senatorsannicolas@gmail.com
menchu@toduguam.com	senatortonyada@guamlegislature.org
millie@tinamunabarnes.com	senatorunderwood@guamlegislature.org
mindy@kuam.com	senjvespaldon@gmail.com
mis@guamlegislature.org	sgtarms@guamlegislature.org
mlwheeler2000@yahoo.com	sitarose2@yahoo.com
mohernande@guampdn.com	sixquintanilla@gmail.com
monty.mcdowell@amiguam.com	slimtiaco@guampdn.com
mspeps4873@gmail.com	smendiola@guamlegislature.org
mwatanabe@guampdn.com	sonedera-salas@guamlegislature.org
natasha@toduguam.com	speaker@judiwonpat.com
nb.underwood@yahoo.com	staff@frankaguonjr.com
news@guampdn.com	stephaniemendiola@gmail.com
news@spbguam.com	tasigirl@gmail.com
nick@kuam.com	tcastro@guam.net
norman.aguilar@guamcc.edu	tcruznelson@gmail.com
office@senatorada.org	team5andahalfstar@gmail.com
officeassistant@frankaguonjr.com	telo.taitague@visitguam.org
oliviampalacios@gmail.com	thebigshow@k57.com
onlyonguam@acubedink.com	tina.alicto@yahoo.com
orleen@senatorbjcruz.com	tina@tinamunabarnes.com
orsini.rikki@gmail.com	tjtaitano@cs.com
oyaol.ngirairikl@gmail.com	tom@senatorada.org
pacificjournalist@gmail.com	tommy@senatormorrison.com
parroyo@k57.com	tony@senatorada.org
pdkprg@gmail.com	tony@tonyada.com
pete@tonyada.com	tritten@pstripes.osd.mil
peter@senatorada.org	tterlaje@guam.net
phill@spbguam.com	vparriola1@gmail.com
procurement@guamlegislature.org	vpaulino@guamlegislature.org
policy@frankaguonjr.com	xiosormd@gmail.com
publisher@glimpsesofiguam.com	xiosormd@yahoo.com
rennae@guamlegislature.org	ylee2@guam.gannett.com
responsibleguam@gmail.com	
rfteeahan@yahoo.com	
rsalas@senatorada.org	
ricknauta@hitradio100.com	
rolly@ktkb.com	





## **Sen. Thomas Ada**

**Chairman**

Committee on Transportation, Infrastructure, Lands,  
Border Protection, Veterans' Affairs and Procurement

*I Mina Trentai Tres Na Liheslaturan Guåhan • 33<sup>rd</sup> Guam Legislature*

### **AGENDA**

#### **PUBLIC HEARING**

**Friday, September 18, 2015**

**Public Hearing Room, *I Liheslaturan Guåhan***

**1:30pm**

#### **Bill No. 162-33 (COR) – T.C. Ada**

An act to amend Articles 3, 9, and 12 of Chapter 5, Title 5 Guam Code Annotated by amending § 5201, 5210, 5211, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5245, 5248, 5249, 5251, 5252, and to add a new § 5212, § 5221, and 5254 relative to source selection and contract formation to amend §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 and 5485(a) and (b) of Article 9; and amend §§ 5703, 5705, 5706(b), 5707(a) and 5708, and add a new § 5710 relative to legal and contractual remedies in Guam Procurement Law.

#### **Bill No. 145-33 (COR) – D.G. Rodriguez, Jr.**

An act to authorize the women, infants, and children's programs and the Bureau of Economic Security, Department of Public Health and Social Services to utilize joinder and mutual use procurements by repealing and reenacting § 5126 of Chapter 5, Title 5, Guam Code Annotated.

[http://www.postguam.com/news/local/govguam-bridge-contracts-scrutinized/article\\_f83180d8-10a9-54d7-99ef-a6c584e14f24.html](http://www.postguam.com/news/local/govguam-bridge-contracts-scrutinized/article_f83180d8-10a9-54d7-99ef-a6c584e14f24.html)

## GovGuam bridge contracts scrutinized

BY JASMINE STOLE | POST NEWS STAFF Oct 26, 2015

Bridge contracts, awarded to vendors to avoid disruption of supplies or services, was one of the many points that was probed further as stakeholders continued to go over Bill 162-33, an act proposing to change Guam's procurement laws.

Sen. Tom Ada, oversight chairman of the committee on procurement, held a roundtable hearing yesterday, a continuation of discussions on his proposed legislation.

Public Auditor Doris Flores Brooks said yesterday that her office opposes bridge contracts.

"We are not in favor of bridge contracts," Brooks said. "Bridge contracts can cause poor procurement planning. With proper procurement planning there is no need for bridge contracts. While there may be extenuating circumstances that may warrant a temporary extension, such extensions should be rare and the law should not give an escape."

A bridge contract is a contract written to avoid disruption of services or supplies between the end of a contract and the award of a new one. Bill 162 proposes to allow bridge contracts to the existing contractor as a temporary source of supply under several conditions, but the existing contractor is not obligated to accept the bridge contract.

### ***GAO report***

Attorney John Brown, a procurement reform advocate, spoke of a recent report from the U.S. Government Accountability Office which he said proposed that the federal government needs to define bridge contracts so they can be tracked.

He said the GAO report acknowledges that bridge contracts are used extensively in the federal government but that those contracts need to be defined. He said yesterday that Bill 162 is doing what the GAO report suggested for the federal government in its Section 12 by defining bridge contracts.

"This defines what a bridge contract is and puts limitations on their use," Brown said. "And it tracks them."

Jessica Toft, a representative of the Office of the Attorney General's solicitor's division, said the concept of a bridge contract can be beneficial for the government. However, a provision in the bill does not place any limitation on the bridge contract itself.

"I can envision a situation where the government has a contract that's expiring with a lucrative contract on the line and it did not have to do procurement correctly so the incumbent (vendor) has the government on the ropes," Toft said. "It's currently providing a necessary service, it's got a nice contract ... what prevents that incumbent from asking for more money in the bridge contract?"

Toft said the bill states that while negotiations of a bridge contract are ongoing, the expiring contract gets an extension of 30 days but what the bridge contract itself would look like "is really up in the air."

Toft suggested some sort of limit on the bridge contract because it favors the vendors more so than the government. "There should be a limitation that the bridge contract itself cannot ... especially for price ... cannot exceed the price of the original contract."

Ada said another section of the bill dictates that the price of services should be "substantially the same" which Toft argued is a phrase that could allow for some latitude in interpretation.

Ada said the points brought up by Toft and other aspects of the bill as bookmarked will be looked at later and deeper discussions about those points will be tabled for another time.

Bill 162 aims to reform the 30-year-old Guam procurement laws to help purchase supplies and services and would be most responsive for the island in a timely and cost effective manner. Bridge contracts, sole source procurements, emergency procurement and several other key aspects of procurement are proposed to change in the legislation.

Ada, Brooks, Brown, Toft, attorney Anthony Camacho, governor's legal counsel Sandra Miller, Department of Public Works Director Glenn Leon Guerrero and Deputy General Manager Al Duenas of the Port Authority of Guam participated in yesterday's roundtable at the legislature's public hearing room.

[http://www.postguam.com/opinion/editorial/procurement-reform-needed/article\\_71515d9f-4573-5772-9c55-5f72e0a9d9f0.html](http://www.postguam.com/opinion/editorial/procurement-reform-needed/article_71515d9f-4573-5772-9c55-5f72e0a9d9f0.html)

## Procurement reform needed

POST NEWS STAFF Oct 27, 2015

It is fitting that the Guam Legislature's oversight hearing on the Guam Department of Education on Monday morning was followed in the afternoon by a roundtable discussion on a bill to reform the Guam's procurement code.

The morning hearing reflected the frustratingly slow pace at which the government is expected to remedy the hazardous and unsanitary conditions at the island's public schools, and the lack of progress in the procurement of school security systems – although the appropriation was enacted into law two and a half years ago. GDOE officials also indicated the only progress with the acquisition of solar power systems for the schools was for the schools leased by GDOE, which are not subject to the government procurement quagmire.

It is understood that the purpose of the government procurement process is to curtail graft and other forms of corruption, so that the public's money is spent in keeping with the will of the taxpayers as opposed to illicitly lining private pockets. But the rules and procedures designed to ensure money is spent without favoritism, and that the taxpayers get what they are paying for – and that due process is provided when the rules appear to have been violated – often become cumbersome, with the government able to complete needed transactions at a snail's pace.

We support the intent of the 57-page procurement reform bill as stated in the introduction, "By reforming Guam's procurement code, the government of Guam can more effectively accomplish the procurement of supplies and services ... It would allow the government to provide vital services in a timely and cost effective manner."

We also commend Sen. Tom Ada for taking on the issue which, despite its impact on the delivery government services, most find quite mundane. While successful procurement reform will be more beneficial to the public

than most of the nearly 200 other pieces of legislation introduced since January, it is unlikely to spark much political support.

As the island's education officials drag initiatives to benefit Guam's public schools through the government's procurement morass, students are passing through the school system at a rate that is unaffected by political inertia, except in effectiveness – that is, a year from now they will have been promoted to the next grade whether their schools have been made more conducive to learning or not.

We are hopeful that Bill 162 is successful in its intended purpose, and that it translates into a more effective government.