



Sen. Thomas Ada
Chairman

Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and Procurement
I Mina'trentai Tres Na Liheslaturan Guåhan • 33rd Guam Legislature

February 13, 2015

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Tres Na Liheslaturan Guåhan
155 Hester Place
Hagåtña, Guam 96910

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

2015 FEB 13 PM 2:29

RE: Committee Report on Bill No. 20-33 (COR)

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 20-33 (COR), "An act to amend Article 9 and 12 of Chapter 5, Title 5 Guam Code Annotated relative to legal and contractual remedies in Guam Procurement Law, as introduced by the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement."

Committee votes are as follows:

- 2 TO DO PASS
- _____ TO NOT PASS
- 3 TO REPORT OUT ONLY
- _____ TO ABSTAIN
- _____ TO PLACE IN INACTIVE FILE

Si Yu'os ma'åse',

Thomas C. Ada



Sen. Thomas Ada

Chairman

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

I Mina Trentai Tres Na Liheslaturan Guahan • 33rd Guam Legislature

COMMITTEE REPORT ON

Bill No. 20-33 (COR)

**An act to amend Article 9 and 12 of
Chapter 5, Title 5 Guam Code Annotated
relative to legal and contractual remedies
in Guam Procurement Law,
as introduced by the Committee on
Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and
Procurement.”**



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

I Mina Trentai Tres Na Libeslaturan Guahan • 33rd Guam Legislature

13
February 2, 2015

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. 20-33 (COR)**

Transmitted herewith for your consideration is the Committee Report on Bill No. 20-33 (COR), "An act to amend Article 9 and 12 of Chapter 5, Title 5 Guam Code Annotated 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. 20-33 (COR), As Introduced,
- Public Hearing Sign-in Sheet
- Written testimonies from: J. Unpingco, J.T. Brown, GIAA, GSA, OPA, and Guam Chamber of Commerce.
- COR Referral of Bill No. 20-33 (COR)
- 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 • 33rd Guam Legislature

COMMITTEE VOTE SHEET

Bill No. 20-33 (COR), "An act to amend Article 9 and 12 of Chapter 5, Title 5 Guam Code Annotated relative to legal and contractual remedies in Guam Procurement Law,"

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
SENATOR THOMAS C. ADA Chairperson		✓				
SENATOR RORY J. RESPICIO Vice Chairperson				 2-12-15		
VICE SPEAKER BENJAMIN J.F. CRUZ Member		✓				
SENATOR FRANK B. AGUON, JR. Member	 2/10/15			✓		
SENATOR DENNIS RODRIQUEZ, JR. Member						
SENATOR NERISSA UNDERWOOD Member				 2-12-15		
SENATOR FRANK BLAS, JR. Member						
SENATOR MARY TORRES Member						



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COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill 20-33 (COR) was introduced on January 9, 2015 by Senator Thomas C. Ada and was subsequently referred on January 12, 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 January 29, 2015 at 2:00 pm in *I Liheslatura's* Public Hearing Room to receive public testimony on Bill 20-33 (COR).

Public Notice Requirements

Public Hearing notices were disseminated via email to all senators and all main media broadcasting outlets on January 22, 2015 (5-Day Notice) and again on January 27, 2014 (48-Hour Notice).

Senators Present

Senator Thomas C. Ada,	<i>Committee Chairperson</i>
Senator Frank B. Aguon, Jr.	<i>Committee Member</i>
Vice Speaker Benjamin J.F. Cruz	<i>Committee Member</i>
Senator V. Anthony Ada	<i>Legislative Member</i>

The public hearing was Called-to-Order at 2:00pm.

II. SUMMARY OF TESTIMONY AND DISCUSSION

Chairperson Ada: stated the purpose of the hearing was to receive testimony on Bill 20-33. *An act to amend Article 9 and 12 of Chapter 5, Title 5 Guam Code Annotated relative to legal and contractual remedies in Guam Procurement Law.* He gave a brief introduction of Bill 20-33, stating that Bill 20-33 is an amended version of Bill 224-32; Bill 224-32 was introduced in November 15, 2013, and unanimously passed by the 32nd Legislature on December 17, 2014 but vetoed by the Governor on December 31, 2014.

Bill 20-33 addresses the Governor's objections that were communicated in his veto message. The Governor's objections with Bill 224-32 are twofold:

1. A new provision §5425(a)(1)(C) in Bill 224-32, which states that *"notwithstanding a person's competitive position, the person may raise a protest if the issue is significant to the procurement system or its integrity."* **Bill 20-33 removes §5425(a)(1)(C) which was found objectionable by the Governor.**

2. A new provision §5425(g)(2)-(3) in Bill 224-32, which “permits a protestor to stay a procurement pending a hearing before the Public Auditor or the Superior Court, even under circumstances where the Governor has issued a Declaration of Emergency Procurement or when the Attorney General has determined that an award without delay is necessary to protect the substantial interests of the Government.” **Bill 20-33 removes the language in §5425(g)(2)-(3) which was found objectionable by the Governor.**

Except for the removal of language found to be objectionable by the Governor that caused his veto of Bill 224-32, Bill 20-33 is a mirror of Bill 224-32, a bill which was vetted in two (2) Public Hearings and four (4) Round Table Discussions over a period of thirteen (13) months.

Chairperson Ada continues by calling forward those who signed up to testify .

John Unpingco, *Administrator Guam Veterans' Affairs Office and Chairman Procurement Policy Office* (Oral and Written Testimony)

John Unpingco: Mr. Unpingco thanks Chairperson Ada and other Senators present, for the opportunity to testify on Bill 20-33 (COR) and proceeded to read his written testimony. Mr. Unpingco raised seven issues he had with Bill 20-33. The Committee reviewed the concerns and has provided its position on all seven concerns. Notwithstanding, the concerns raised by Mr. Unpingco did not cause the Committee to make any further amendments to Bill 20-33. (*see attached written testimony from Mr. Unpingco, and the Committee's review thereof*).

Chairperson Ada: calls upon the Public Auditor, Doris Flores Brooks to testify.

Doris Flores Brooks, *Public Auditor, Office of the Public Auditor* (Oral and Written Testimony)

Doris Flores Brooks: Ms. Brooks states her surprise regarding the veto of Bill 224-32 by the Governor, however states that attorney Camacho has reviewed most of the concerns raised and that the Bill 20-33 has addressed the Governor's concerns. Although now hearing Mr. Unpingco's testimony, she takes umbrage to certain aspects of his testimony. Where he states that she is trying to control power, which she states is far from the case. She gives an example, the section about promulgating the rules and regulations, she says this was something that has been said throughout and it is only specific to this bill. In general the OPA is in support of the bill and states that a lot of work has been done.

Ms. Brooks continues by saying a lot of work has been done because of the procurement advisory commission, which had fallen to the wayside. She states that the commission is no longer meeting anymore, and maybe it is no longer needed anymore. She says that when this came along, it became an avenue to address certain aspects of this. Ms. Brooks says overall, that her office has no objections to the bill but turns over the floor to Attorney Anthony Camacho, the OPA Hearing Officer, who she says has been instrumental in providing and

preparing the testimony with the bill in regards to the procurement, which makes him the most familiar and the person Ms. Brooks says she relies on when it comes to these areas.

Anthony Camacho, *Hearing Officer, Office of the Public Auditor*
(Oral Testimony)

Anthony Camacho: Attorney Camacho says the OPA supports the passage of Bill 20-33, after reviewing the Governor's main concerns with Bill 224-32. The main two concerns, (1) opening the door for people that are not engaged in the solicitation process to file protest and (2) on the review of declaration of emergency, which would trigger emergency procurement. Attorney Camacho says that those concerns from the Governor have been removed from Bill 20-33.

He states that the Public Auditor is opposed to the Governor's suggestion of a protest bond, which a protestor would have to put up and that would have a chilling effect on the protesting process. Each and every protest that an agency decides gets appealed to the Public Auditor and gets reviewed by the Superior Court of Guam, the body of law concerning procurement gets solidified, clarified and that it is a good process and that is a healthy process.

Attorney Camacho asks that because the concerns raised by the Governor's veto messages have been allayed, the legislature should pass Bill 20-33. He continues that some of the concerns raised by Mr. Unpingco, are perhaps valid in some respects, however the bill is a compromise. There is a lot in the bill that the OPA didn't agree with but it is understood that these were important things to get the private sector, for example satisfied with the bill or the legislature satisfied. And again with the veto, he says that we are trying to get the executive branch satisfied.

Attorney Camacho says all the provisions cited concerning the OPA and the court reviewing such a declaration to proceed despite a protest, is existing law. He says that it gives the protestor a chance to have a hearing, if the case is just before the agency, then the protestor has 2-days to file some action before the OPA. He continues that all the OPA does at that level is determine the validity of the decision by the agency to proceed with the procurement to protect the substantial interest of the territory. But he says this gives the protestor the ability to have a hearing on the decision by the agency. Likewise, if the protest is pending the OPA, the government proceeds with the procurement despite protest or appeal.

Attorney Camacho says again, the protestor has the opportunity while the decision is pending from the OPA, to have the OPA determine whether or not the government has followed the procedure to proceed with the procurement despite the protest.

He states to lift the automatic stay, the Governor and the Superior Court has that same power pursuant to statutes. Bill 20-33 doesn't give the OPA anymore power than it had before, it just recognizes the existing right of a protestor to oppose or object to the move by the government to set aside the automatic stay.

He states finally in terms of the OPA and its timeline, the large number of appeals in dealing with procurement are decided in 90 days or so, when filed with the OPA. Attorney Camacho says that it is record breaking considering before the procurement appeals board, procurement appeals went straight to court and that would take 6 months to a year to get a decision. It takes longer now with the Superior Courts decision that a civil action has to be filed, it would only take 3-6 months when the appellants can file a mandate, then the court would decide faster. Attorney Camacho says now with the civil case, it tracks the regular civil case and takes about a year to get a decision. But at the OPA level, decisions are out in about 3 months, so it is a fast procedure. He says although it is not set in the law, clearly in the OPA regulations it does set forth the requirement that no later than 30-days after the hearing on the appeal, the OPA has to render a decision.

Doris Flores Brooks: Ms. Brooks says that the plan was to give her a slight break on the timeline because not all of the decisions but certainly most take between 30 to 33-days and she wanted to make it a little more liberal. She says that they keep numbers and statistics to show that the goal is to decide an appeal from beginning to end within 90-days. There are a few that go longer, one is currently going longer because all parties are having a conflict with scheduling.

Ms. Brooks says that is the desire and that has been the goal and the practice and those are in the rules and regulations, she states even though it is not in the law, they have decided to do that timeline. Those were at the time when Therese Terlaje was legal council, she was the one who drafted those and it was sent to the legislature, through the administrative adjudication act.

Ms. Brooks says that one modification has been made since then, looking again at the rules and regulations she wanted to give a little more timeframe because there was a handful that were not within the 30-days but certainly that continues to be the goal to do the process expeditiously. She states that most of their clients have been satisfied with the timeframe. However, she says even though it is not in law, they have put it in their regulations.

John Unpingco: He says that the Auditor states the new §5710 is added to article 12 and this deprives the procurement policy office of promulgating regulations. He continues by saying that the Auditor says that it is specific to Bill 20-33, if it is specific to this bill then why isn't it stated in the bill? With the procurement policy board, the reason why they have not met was the commitment from the members.

They were suppose to meet for 2-hours each Friday to discuss by section the procurement law. He states that he went for one Friday and no one had showed up and another time there was still no one. The commitment was lacking not because he didn't want to, it was the members that foresook the policy board.

Mr. Unpingco goes on to say that the OPA references a protest bond and that it was not stated in the bill but the protest bond doesn't have a chilling effect. If you put a monetary amount above which they have to put a protest bond then that will suffice. He states in one of his

earlier testimonies before the board, he had suggested if the procurement is \$250,000 or more than it should require a protest bond because at that stage or that amount of money, the contractors only care about showing that they are right. If putting up a protest bond at \$250,000 is the limit in which you put up the bond, it is rather innocuous because most of the larger protest is where the worry is. The protest bond, Mr. Unpingco says would remedy that situation.

He then states that the statistics by the Auditor is questionable, who is putting the statistics together and what is exempted from the count. He continues that for instance anyone can know that if you go before the court you have a certain amount of time in which to plead your case but there are exceptions to that, so that amount of time is not counted. He states that the OPA citing that they are within 45-day range, that is bogus because there might be exceptions that we don't know about. Mr. Unpingco says in addition the fact that all parties are off-island it doesn't mean anything because in the OPA hearing they should have some kind of discipline and it should be enforced. This is not to say that this is not enforced but it certainly goes to show that there is a leniency and that they have to tighten their ship.

Mr. Unpingco continues with the right of the protestor to oppose the government. He says that we are giving them that right but we are bending over backwards because in this statute the Public Auditor can assess bid cost. He continues that in the federal sector bid cost are the problem of the parties, there is not such thing as assessing bid cost. To him that will encourage more protest to be filed.

Chairperson Ada opens the panel for Senators to speak.

Vice-Speaker Cruz: He addresses a question to Mr. Unpingco, you mention in section 15 that this deprives what group?

John Unpingco: He responded the policy office.

Vice-Speaker Cruz: He again asks Mr. Unpingco, when was the policy office created?

John Unpingco: He responded that was created beginning of last year. (?)

Vice-Speaker Cruz: He states that the statutes have been there since before Mr. Unpingco joined the office and has it met since the Governor formed it?

John Unpingco: Mr. Unpingco says that there is very little history. He says his understanding is that there was a policy office and it was not continued, it met briefly for about 3 or 4 months then it was not continued.

Vice-Speaker Cruz: Vice-Speaker Cruz says that he is not concerned about the history. He says that he is concerned about the recent past since Mr. Unpingco has assumed responsibility for the policy office. He then asks Mr. Unpingco has it met since you announced it?

John Unpingco: He responded with a no.

Doris Flores Brooks: She states that she wants to offer a compromise, the only reason there is a concern and it didn't matter who did the regulations, whether it be the AG or the policy office, she has no problem the concern is just that the regulations be addressed and by a body that can do it.

Vice-Speaker Cruz: He states that he wants it on the record that, he as the former chair of procurement gave the responsibility to the Governor's Office, to re-write the procurement statute and they waited for a full term. He continues that another term came on and Chairperson Ada attended a class and became interested in it. It has taken so long just to say, you don't want them to write it but you can't get the policy board with Benita, as chair, to meet and you can't get the board that you were to oversee to meet, every Friday to do something. Vice-Speaker says it has to go somewhere and it is not going back to the Governor's Office.

John Unpingco: Mr. Unpingco states that the problem here is the lack of administrative support of the bodies that he had talked about.

Vice-Speaker Cruz: Vice-Speaker responded by saying that he understands but he doesn't have control over that. He goes on to say that he cannot tell anyone over at the administration, it would be really over stepping for him to insist that director do it and that's the Governor's responsibility and that should be it.

John Unpingco: Mr. Unpingco says that this is another example of an unfunded mandate. He continues by saying Senator if I may disagree, when you write the statute, expecting action to come out of a body, an administrative body at that, you have to have an appropriation with it. Depending on the good graces on such and such an office, it does not work.

Vice-Speaker Cruz: He says when the administration wants to do something they will do it and they find a way to do it. We gave them this responsibility and they didn't do it and he continues that he is really concerned because they keep moving the target on this one. When the Governor sent down the original Bill 224-33 and it was vetoed, there were 2 objections. Vice-Speaker says now you are coming back with about 14, he wants something in writing. He asks Chairperson Ada if we can get something in writing, over the Governor's signature that this is what he wants in the bill, so that it can be addressed. Because you (Chairperson Ada) did an excellent job of amending the 2 provisions, that were of concern in the veto message and he has been trying to address procurement for 10 years and every time someone moves the target.

Chairperson Ada: He says that he would just like to say, in regards to section 15 (of the bill), that was a point that was raised during the discussions last year and the fact that the law was being amended is not going to be in sync with the rules and regulations. He continues by saying what has been done is that a set of rules and regulations have already been drafted to synchronize with the changes that are being made to the law. However, he says that the rules and regulations has to go through the administrative adjudication act, so everyone is going to have a chance, to include the procurement policy board, to take a look at what has been

drafted and what is being proposed. Then it will make its way down here, in the 180-days, so then we can implement the amended law, with respect to chapters 9 and 12. He stated that it had nothing to do with who was going to get power.

He says it was someone stepping up at the round table and saying they will do it. So that is what we have here and a set of rules and regulations that will be ready to go, to begin the administrative adjudication process. He goes on to say that Mr. Unpingco gave his testimony, pointing out all the concerns that you have raised and asks if he is going to provide written testimony? Chairperson Ada then asks if he is providing the testimony as the administrator of the Veterans' Office or in his capacity with the procurement policy board?

John Unpingco: He responded by saying just one, Administrator of the Veterans' Office.

Chairperson Ada: with respect to the point raised about the protest bond, which was not in this bill and was not apart of the previous Bill 224-32, He says that was raised in the Governors veto message that it should be considered. He goes on to say that if is going to be considered that is should be introduced as a stand-alone bill, whoever wants to introduce it can do so, because he is not in support of putting in a protest bond provision. If there is a senator who is willing to introduce a protest bond bill, he thinks it should be a stand-alone bill. He wants to see Bill 20-33 move forward and get the changes implemented.

III. Findings and Recommendations

The Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement finds that testimony presented at the hearing on Bill 20-33 focused on points which had already been extensively discussed and considered by the Committee during the vetting of Bill 224-32. Any new points raised were reviewed by the Committee; however, the points raised did not cause the Committee to make any further amendments to Bill 20-33.

After considering the testimonies given at the hearing, The Committee hereby reports out Bill 20-33 (COR), as Introduced by the Committee, with the recommendation by **two (2) Committee members To Do Pass and three (3) Committee members to Report Out Only.**

Written Testimonies Received:

John Thos. Brown, Attorney

(see attached Written Testimony)

Mr. Brown was testifies in support of Bill 20-33.

Guam Chamber of Commerce

(see attached written testimony)

Guam Chamber testifies in support of Bill 20-33

Claudia S. Aefalle, Chief Procurement Officer, General Services Agency

(Written Testimony)

Although GSA participated in the public hearings and the roundtable discussions, GSA raises concerns with four points.

1. The issue of "Equitable Estoppel" versus "Jurisdictional" time limits was much discussed. The Committee maintains the position that an Equitable Estoppel time limit should be the time standard,
2. Suggestions that §5425(a??)(1)(A) and (B) should be deleted as a matter of stylistic form. The Committee disagrees; language in Bill 20-33 remains as introduced.
3. Clarification of the proper "office" for submittal of a protest, the Director's or procurement office? Committee takes the position that either office will be a proper office to submit protest to; Bill 20-33 remains as introduced.

Mr. Chuck Ada, Executive Director, GIAA.

(see attached written testimony and Committee review of GIAA testimony)

Mr. Chuck Ada/GIAA raises five concerns:

1. §5425(a)(2) – Proposed "Time Limits" provision.
2. §5425(f) – Appeals.
3. §5425(g) – Automatic Stay.
4. §5425(i) – Entitlements to Costs.
5. §5480 – Waiver of Sovereign Immunity.

The Committee review the concerns raised in the written testimony. These issues were much discussed during the two public hearings and four roundtable discussions. The Committee maintains its position as articulated in Bill 20-33.

Committee Review of Unpingco Testimony

Mr. Unpingco took issue with the following provisions of Bill 20-33:

- **Section 1, § 5425(a)(1)(B). Resolution of Protested Solicitations.** Unpingco's concern was with the term "competitive position". *[The Author's intent is that if the protest lodged successfully causes all higher ranked bidders to be eliminated thus enabling an award to the protestor, then the protestor is in a "competitive position".]*
- **Section 1, § 5425(a)(3). Resolution of Protested Solicitations.** Unpingco's concern was with the term "Interested Party". *[Unpingco contended that "interested Parties" should be limited to the "Protestor" and "Protestee". Committee disagrees; take the recent case of the procurement of twelve school buses. GSA awarded the bid to Morrico, but Triple J protested. The AGO entered into a settlement with Triple J in order to move forward with the procurement, but without input from Morrico. The settlement was that Triple J would be awarded X-number of buses and the balance was to be awarded to Morrico. Morrico objected, and then filed a protest. Procured stay still in effect pending resolution.]*
- **Section 1, § 5425(g)(3). Resolution of Protested Solicitations.** Unpingco contends "Public Auditor cannot confirm validity of the Governor's determination in an emergency procurement because OPA is not a separate but co-equal branch of government..." *[Committee disagrees. This provision is existing law that has been in place for years and has never been challenged. Furthermore, the Governor's authority to declare an emergency is not what is being validated. Instead, what is being validated is if the "emergency" is as prescribed in 5GCA Ch 5 § 5030(x) - "Emergency means a condition posing an imminent threat to public health, welfare, or safety which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection".]*
- **Section 2, § 5426. Authority to Debar or Suspend.** Unpingco contends terms should be for longer periods. *[This contention was never raised during the two public hears and four round table discussions. Committee takes no position on this point.]*
- **Section 2, § 5426(e). Authority to Debar or Suspend.** Unpingco contends that when an adverse decision is made in one case, "it shall have the effect of requiring a determination of non-responsibility in any solicitation in which the protestor is participating. *[Committee disagrees; however, it does not preclude a determination of non-responsibility. In other words, non-responsibility in other solicitations is not precluded.]*
- **Section 3, § 5426. Authority to Resolve Contract and Breach of Contract Controversies.** Unpingco contends a time limit should be imposed on how long the OPA takes to reach a decision. *[Committee disagrees. The OPA hearings are adversarial proceedings; hence OPA has no control over a lot of the maneuverings*

that can occur. Notwithstanding, OPA rules & regulations has a self imposed time limit of 30-days if possible.]

- **Section 14, § 5708. Discontinuance of Contractor's Appeal.** Unpingco disputes the new language that parties can unilaterally discontinue an appeal. *[Committee disagrees. Once the process is started, it should be taken to its full completion. This is a policy call].*

End of Review

Committee Review of GIAA/Chuck Ada Testimony


Mr. Chuck Ada/GIAA raises five concerns:

1. **§5425(a)(2) – Proposed “Time Limits” provision.** The issue of “Equitable Estoppel” versus “Jurisdictional” time limits was much discussed under Bill 224-32. The Committee maintains the position that an Equitable Estoppel time limit should be the time standard; Bill 20-33 remains as introduced.
2. **§5425(f) – Appeals.** Suggests that only the agencies have the technical knowledge to make a determination, and that Court’s role is simply to determine that established processes were followed. Prior to the OPA becoming a part of the Administrative review process, all these appeals went to the Superior Court, contrary to GIAA’s assertion that “*Superior Court necessarily lacks any meaningful experience or technical knowledge*”. Hence, the Court has experience in these matters. The Committee maintains that when an appeal is filed with the Court, the Court should have the ability to review the cases *de novo*. Committee maintains the position that Bill 20-33 should remain as introduced.
3. **§5425(g) – Automatic Stay.** GIAA suggests that when a bidder files a protest, a protest bond should be required. This matter received much discussion when Bill 224-32 was being vetted. Committee maintains the position that a Protest Bond should not be a requirement for filing a protest. If the protest is frivolous, OPA can make that determination and is authorized to impose appropriate penalties. Additionally, GIAA suggests that “heads of purchasing agencies, i.e. autonomous agencies, should be authorized to make a determination of emergency in order to lift a procurement stay. The Committee intended that at this point, that decision should be left to the two officials (other than the Governor) who are the designated chief procurement officials for the Government of Guam to make the determination. Committee maintains position that Bill 20-33 should remain as introduced.
4. **§5425(i) – Entitlements to Costs.** GIAA confuses between “entitlement to fees” versus “authority to award fees”. Committee maintains position that Bill 20-33 should remain as introduced.
5. **§5480 – Waiver of Sovereign Immunity.** The Government’s Sovereign Immunity is already waived under the Claims Act and in the Procurement Act. Nothing new here. Committee maintains the position that Bill 20-33 should remain as introduced.

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

Bill No. 20-33 (COR)

Introduced by:

T. C. Ada 

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

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

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

6

7 **~~§5425. Authority to Resolve~~ Resolution of Protested Solicitations**
8 **and Awards.**

9

10 (a) Right to Protest. Any actual or prospective bidder, offeror,
11 or contractor who may be aggrieved in connection with the method
12 of source selection, solicitation or award of a contract, may protest to
13 the Chief Procurement Officer, the Director of Public Works or the
14 head of a purchasing agency. The protest *shall* be submitted in
15 writing within fourteen (14) days after such aggrieved person knows
16 or should know of the facts giving rise ~~thereto.~~ to the protest. A
17 protest made to the office which issued a solicitation shall be deemed

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1 properly submitted.

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

4 (A) there are facts sufficient to raise a reasonable
5 apprehension that the method of source selection, the
6 solicitation, or the award of a contract may be contrary to law
7 or regulation; and

8 (B) there is a reasonable likelihood, based on
9 information available at the time of protest during the pre-
10 submission or pre-opening period, that such person would
11 have been in a competitive position to be awarded the
12 contract.

13
14 (2) The time limits specified for the resolution of disputes
15 arising under this Section, including any administrative and
16 judicial review provided in this Article 9, are *not* intended to be
17 jurisdictional, but *shall* be subject to equitable estoppel.

18 (3) *Interested party* means a person who is an actual or
19 prospective bidder, offeror, or contractor who is aggrieved in
20 connection with the solicitation or the award of a contract, or by
21 the protest or resolution of it.

22
23 (b) Authority to Resolve Protests. Notwithstanding any other
24 provisions of law, [T]the Chief Procurement Officer, the Director of
25 Public Works, the head of a purchasing agency, or a designee of one
26 of these officers shall have the authority, prior to the commencement
27 of an appeal to the Public Auditor or an action in court concerning

1 the controversy, to settle and resolve a protest of an aggrieved bidder,
2 offeror, or contractor, actual or prospective, concerning the
3 solicitation or award of a contract. This authority *shall* be exercised
4 in accordance with regulations promulgated by the Policy Office,
5 which shall assure that interested parties are given notice of and
6 opportunity to participate in any such settlement or resolution.
7 Regulations shall establish an objective means by which any time
8 limit established by this Article for the taking of any action,
9 administrative or judicial, shall be identified and tolled during any
10 period in which the parties are in good faith engaged to resolve and
11 settle any dispute arising under this Article, provided that the
12 objective means includes, at minimum, a written agreement of the
13 interested parties.

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

19 (1) state the Government's factual and legal reasons for the
20 action-taken decision made to accept or reject, in whole or in part;
21 and

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

25 (d) Notice of Decision. A copy of the decision under Subsection
26

1 (c) of this Section *shall* be mailed electronically or otherwise
2 furnished immediately to the protestant and any other prospective or
3 interested party intervening actually known to the government.

4
5 (e) Failure to Render Timely Decision. If the protestant *does*
6 *not* receive a decision on the protest as required under Subsection
7 (c) of this Section within forty-five (45) days from the date of the
8 protest, the protestant may make a written request to the office
9 wherein the protest was made to render such a decision on the
10 protest. If no decision as required under Subsection (c) of this
11 Section is made and served upon the protestant within ten (10) days
12 after receipt of such written request, or within such longer period as
13 may be expressly and in writing agreed upon by the parties, then the
14 protest *shall* be deemed rejected. On any appeal from the rejection,
15 the appellant *shall* bear the burden of establishing that there was
16 good and sufficient reason to accept the protest based on evidence
17 that was known to it or should have been known to it at the time the
18 protest was rejected.

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

1 which shall hear and determine the matter *de novo* pursuant to
2 §5480(a).

3
4 ~~(f) Finality. A decision of the Public Auditor is final unless a~~
5 ~~person adversely affected by the decision commences an action in the~~
6 ~~Superior Court in accordance with Subsection (a) of §5480 of this~~
7 ~~Chapter.~~

8
9 (g) Automatic Stay. In the event of a timely protest under
10 Subsection (a) of this Section ~~or under Subsection (a) of § 5480 of~~
11 ~~this Chapter,~~ the Territory government of Guam shall not proceed
12 further with the solicitation, or with the award, or performance of the
13 contract prior to the time allowed to appeal, or the final resolution of
14 such protest, including a final entry of judgment, or the settlement of
15 the protest evidenced by a writing signed by all interested parties, and
16 any such further action is void, unless:

17 (1) The Chief Procurement Officer or the Director of Public
18 Works, ~~after consultation with and~~ written concurrence of the head
19 of the using or purchasing agency and the Attorney General or
20 designated Deputy Attorney General, then makes a written
21 determination that the award of the contract without delay is
22 necessary to protect substantial interests of the ~~Territory~~
23 government of Guam; and

24 (2) Absent a declaration of emergency procurement by the
25 Governor, pursuant to §5215, the protestant has been given at least
26 two (2) days notice (exclusive of territorial holidays); and

27

1 (3) If the protest is pending before the Public Auditor or the
2 Court, the Public Auditor or Court has confirmed the validity of
3 such determination, or if no such protest is pending, no protest to
4 the Public Auditor of such determination is filed prior to expiration
5 of the two (2) day period specified in Item (2) of Subsection (g) of
6 this Section;

7 (4) The two (2) days specified in Item (2) and (3) of this
8 Section shall be determined as provided in 1 GCA § 1004.

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

17
18 (1) the protestant should have been awarded the contract under
19 the solicitation but was not; or

20
21 (2) there is a reasonable likelihood that the protestant may
22 have been awarded the contract but for the breach of any ethical
23 obligation imposed by Subarticle B of Article 11 of this Chapter or
24 the willful or reckless violation of any applicable procurement law
25 or regulation.

26
27 (3) The Public Auditor *shall* have the power to assess
28 reasonable costs including reasonable attorney fees incurred by the
29 government, including its autonomous agencies and public

1 corporations, or any protestant or interested party against a
2 ~~protestant upon its finding that the~~ any party, including the
3 government, making a the protest, motion or bringing any action
4 ~~was made~~ fraudulently, frivolously or ~~solely~~ with predominant
5 intent to delay or disrupt the procurement process.

6
7 (i) Finality. A decision of the Public Auditor is final unless a
8 person adversely affected by the decision commences an appeal in
9 the Superior Court as provided by §5707(a) of this Chapter and in
10 accordance with the waiver of sovereign immunity conferred by
11 Subsection (a) of §5480 of this Chapter.

12
13 **Section 2. §5426 of Subarticle A (Pre-Litigation Resolution of**
14 **Controversies) of Article 9 (Legal and Contractual Remedies),**
15 **Chapter 5 of Title 5, Guam Code Annotated, is amended to read as**
16 **follows:**

17
18 **§ 5426. Authority to Debar or Suspend.**

19 (a) Authority. After reasonable notice to the person involved and
20 reasonable opportunity for that person to be heard, the Chief
21 Procurement Officer, the Director of Public Works or the head of a
22 purchasing agency, after consultation with the using agency and the
23 Attorney General, *shall* have authority to debar a person for cause, or
24 to suspend a person for probable cause, from consideration for award
25 of contracts. The debarment *shall not* be for a period of more than
26 two (2) years. ~~The same officer, after consultation with the using~~
27 ~~agency and the Attorney General, shall have authority to suspend a~~
28 ~~person from consideration for award of contracts if there is probable~~
29 ~~cause for debarment.~~ The suspension *shall not* be for a period
30 exceeding three (3) months. The authority to debar or suspend *shall*

1 be exercised in accordance with regulations promulgated by the
2 Policy Office.

3
4 (b) Causes for Debarment or Suspension. The causes for
5 debarment or suspension include the following:

6
7 (1) conviction for commission of a criminal offense as an
8 incident to obtaining or attempting to obtain a private contract or
9 subcontract, or in the performance of such contract or subcontract;

10
11 (2) conviction under territorial or federal statutes of
12 embezzlement, theft, forgery, bribery, falsification or destruction
13 of records, receiving stolen property, or any other offense
14 indicating a lack of business integrity or business honesty which
15 currently, seriously and directly affects responsibility as a
16 territorial contractor;

17
18 (3) conviction under federal antitrust statutes arising out of
19 the submission of bids or proposals;

20
21 (4) violation of contract provisions, as set forth below, of a
22 character which is regarded by the Chief Procurement Officer, the
23 Director of Public Works or the head of a purchasing agency to be
24 so serious as to justify debarment action:

25
26 (A) deliberate failure without good cause to perform in
27 accordance with the specifications or within the time limit
28 provided in the contract; or

29
30 (B) a recent record of failure to perform or of unsatisfactory
31 performance in accordance with the terms of one or more

1 procurement contracts, provided, that failure to perform or
2 unsatisfactory performance caused by acts beyond the control
3 of the contractor *shall not* be considered to be a basis for
4 debarment; or

5
6 (C) upon a finding of the Department of Labor, failure to
7 pay employees engaged on the contract in violation of Wage
8 Determination law or contract conditions.

9
10 (5) any other cause the Chief Procurement Officer, the
11 Director of Public Works or the head of a purchasing agency
12 determines to be so serious and compelling as to affect
13 responsibility as a territorial contractor, including debarment by
14 another governmental entity for any cause listed in regulations of
15 the Policy Office;

16
17 (6) for violation of the ethical standards set forth in Article
18 11 of this Chapter.

19
20 (7) filing a frivolous or fraudulent petition, protest or appeal
21 under § 5425(e), § 5426(~~f~~)(e) or of § 5427(e) of this Chapter.

22
23 (c) Decision. The Chief Procurement Officer, the Director of
24 Public Works or the head of a purchasing agency *shall* issue a written
25 decision to debar or suspend or to reject any petition to do so brought
26 under Subsection (f) of this Section. The decision *shall*:

27
28 (1) state the reasons for the ~~action taken~~ decision made; and

29
30 (2) inform the debarred or suspended person involved, or any
31 person whose petition is rejected, of its rights to judicial or

1 administrative review as provided in this Chapter.

2
3 (d) Notice of Decision. A copy of the decision under Subsection
4 (c) of this Section *shall* be mailed or otherwise furnished
5 immediately to the debarred or suspended person and any other party
6 intervening or petitioning, and the head of all governmental bodies or
7 purchasing agencies.

8
9 (e) Finality of Decision. A decision under Subsections (c) or (f)
10 of this Section *shall* be final and conclusive, unless fraudulent, or an
11 appeal is taken to the Public Auditor in accordance with § 5706 of
12 this Chapter. Such a decision shall be automatically stayed during
13 the pendency of any appeal, but any such appeal does not preclude
14 nor require a determination of non-responsibility in any solicitation
15 in which the person charged may participate. The officer issuing
16 such decision shall immediately notify all persons, governmental
17 bodies and purchasing agencies of the fact and effect of such appeal.

18
19 (f) Any member of the public, including bidder, offeror or
20 contractor as well as any elected official or employee of the
21 government, may petition the Chief Procurement Officer, the
22 Director of Public Works or the head of a purchasing agency to take
23 action to debar or suspend pursuant to Subsection (a) of this Section.
24 The petition shall state the facts that the complainant believes to be
25 true that warrant a suspension or debarment pursuant to this §5426.
26 Immediately upon the receipt of such a petition, the person petitioned
27 shall cause ~~An an~~ investigation of each petition shall to be conducted,
28 If the petitioned officer finds insufficient facts to proceed with a
29 debarment or suspension hearing, he shall state the reasons in a

1 written decision within 60 days of receipt of the petition. If the
2 person petitioned determines that sufficient facts may exist to debar
3 or suspend the individual or company, then he shall hold a hearing as
4 authorized in Subsection (a) promptly and a written report should be
5 made of findings of fact and action taken and issue a decision as
6 required in Subsection (c). If the petitioned officer *does not* issue the
7 written decision required under Subsection (c) of this Section within
8 sixty (60) days after written request by the petitioner for a final
9 decision, then the petitioner may proceed with an appeal to the
10 Public Auditor as if a the petition had been rejected.

11
12 **Section 3. §5427 of Subarticle A (Pre-Litigation Resolution of**
13 **Controversies) of Article 9 (Legal and Contractual Remedies),**
14 **Chapter 5 of Title 5, Guam Code Annotated, is amended to read as**
15 **follows:**
16

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

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

27
28 (b) Authority. The Chief Procurement Officer, the Director of
29 Public Works, the head of a purchasing agency, or a designee of one
30 of these officers is authorized, prior to commencement of an action in
31 a court concerning the controversy, to settle and resolve a

1 controversy described in Subsection (a) of this Section. This
2 authority *shall* be exercised in accordance with regulations
3 promulgated by the Policy Office.

4
5 (c) Decision. If such a controversy is *not* resolved by mutual
6 agreement, the Chief Procurement Officer, the Director of Public
7 Works, the head of a purchasing agency, or the designee of one of
8 these officers *shall* promptly issue a decision in writing. The decision
9 *shall*:

10
11 (1) state the reasons for the ~~action taken~~ decision made; and

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

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

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

27
28 (f) Failure to Render Timely Decision. If the Chief
29 Procurement Officer, the Director of Public Works, the head of a
30 purchasing agency, or the designee of one of these officers does not

1 issue the written decision required under Subsection (c) of this
2 Section within sixty (60) days after written request for a final
3 decision, or within such longer period as may be agreed upon by the
4 parties, then the contractor may proceed as if an adverse decision had
5 been received. If no decision is issued and no action is taken by the
6 contractor to request a final decision, within two (2) years from the
7 date the contract controversy arose, any claim or action thereon shall
8 be barred.
9

10 **Section 4. §5450 of Subarticle B (Solicitations or Awards in Violation**
11 **of Law) of Article 9 (Legal and Contractual Remedies), Chapter 5 of**
12 **Title 5, Guam Code Annotated, is amended as follows:**
13

14 **§ 5450. Applicability of this Part.**

15 The provisions of this Subarticle Part only apply where it is
16 determined administratively, or upon administrative or judicial
17 review, that a solicitation or award of a contract is in violation of law,
18 and are in addition to any other remedy or relief allowed by law or
19 equity.
20

21 **Section 5. §5452 of Subarticle B (Solicitations or Awards in Violation**
22 **of Law) of Article 9 (Legal and Contractual Remedies), Chapter 5**
23 **of Title 5, Guam Code Annotated is amended to read as follows:**
24

25 **§ 5452. Remedies After an Award.**

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

28
29 (1)(a) if the person awarded the contract has *not* acted
30 fraudulently or in bad faith:

31
32 (A)(L) the contract may be ratified and affirmed, provided it

1 is determined that doing so is in the best interests of the Territory;
2 or

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

8
9 ~~(2)(b)~~ if the person awarded the contract has acted fraudulently or
10 in bad faith:

11
12 ~~(A)(1)~~ the contract may be declared null and void; or

13
14 ~~(B)(2)~~ the contract may be ratified and affirmed if such
15 action is in the best interests of the Territory, without prejudice to
16 the Territory's rights to such damages as may be appropriate.

17
18 ~~(c) In either case, the determination to ratify or affirm the~~
19 ~~contract shall be made without regard to the interests of the person~~
20 ~~awarded the contractor.~~

21
22 ~~(b) This Section shall be read as being in addition to and not in~~
23 ~~conflict with, or repealing 4 GCA § 4137 (Prohibitions on the~~
24 ~~Activities of Government Employees).~~

25
26 **Section 6. §5480 of Subarticle D (Waiver of Sovereign Immunity;**
27 **Limitations on Actions) of Article 9 (Legal and Contractual**
28 **Remedies), Chapter 5 of Title 5, Guam Code Annotated, is**
29 **amended to read as follows:**

30
31 **§ 5480. Waiver of Sovereign Immunity by Grant of Jurisdiction**
32 **in Connection with Contracts Controversies Arising Under Part A**
33 **of this Article.**

34
35 (a) Solicitation and Award of Contracts. The Superior Court of

1 Guam shall have jurisdiction over an action between the Territory
2 government of Guam and a bidder, offeror, or contractor, either
3 actual or prospective, to ~~determine whether a solicitation or award of~~
4 ~~a contract is in accordance with the statutes, regulations, and terms~~
5 ~~and conditions of the solicitation~~ review any administrative decision
6 or determination arising under §5425 of this Chapter, after appeal to
7 the Public Auditor or to determine de novo in the event of
8 disqualification of the Public Auditor whether a solicitation or award
9 of a contract is in accordance with the statutes, regulations, and the
10 terms and conditions of the solicitation. The Superior Court shall
11 have such jurisdiction in actions at law or in equity, and whether the
12 actions are for monetary ~~damages~~ relief allowed under §5425 or for
13 injunctive, declaratory, or other equitable relief, and whether the
14 matter is procedural or substantive in nature.

15
16 (b) Debarment or Suspension. The Superior Court shall have
17 jurisdiction over an action between the Territory and a person who is
18 subject to a suspension or debarment proceeding, to review any
19 decision of the Public Auditor brought pursuant to § 5705 of this
20 Chapter to determine whether concerning the debarment or
21 suspension or rejection of a petition to debar or suspend, is in
22 accordance with ~~the statutes~~ §5426 and §5705 of this Chapter and
23 relevant statutes and regulations or to determine de novo in the event
24 of disqualification of the Public Auditor whether a debarment or
25 suspension is in accordance with § 5426 and § 5705 of this Chapter
26 and relevant statutes and regulations. The Superior Court shall have
27 such jurisdiction, in actions at law or in equity, and whether the

1 actions are for injunctive, declaratory, or other equitable relief.

2
3 (c) ~~In addition to other relief and remedies, the Superior Court~~
4 ~~shall have jurisdiction to grant injunctive relief in any action brought~~
5 ~~under Subsections (a), or (b) or (c) of this Section. Actions Under~~
6 ~~Contract or for Breach of Contract. The Superior Court shall have~~
7 ~~jurisdiction over an action between the government of Guam Territory~~
8 ~~and a contractor, brought after review of the Public Auditor in~~
9 ~~accordance with § 5706 of this Chapter or brought de novo in the~~
10 ~~event of disqualification of the Public Auditor, for any cause of~~
11 ~~action which arises under, or by virtue of, the contract, whether the~~
12 ~~action is at law or equity, whether the action is on contract or for~~
13 ~~breach of contract, and whether the action is for monetary damages~~
14 ~~or injunctive, declaratory or other equitable relief.~~

15
16 (d) Limited Finality for Administrative Determinations. In any
17 judicial action under this Section, factual or legal determinations by
18 employees, agents or other persons appointed by the Territory
19 government of Guam shall have no finality and shall not be
20 conclusive, notwithstanding any contract provision, or regulation,
21 except to the extent provided in §§ ~~5245, 5705 and 5706~~ and in
22 Article 12 of this Chapter. The Superior Court of Guam shall have
23 jurisdiction to determine de novo any factual or legal issue in the
24 event of disqualification of the Public Auditor.

25
26 (e) ~~For purposes of this Section a “prospective” bidder,~~
27 ~~contractor or offeror is one who will actually submit a bid, contract~~
28 ~~or otherwise offer his services if, in the actions permitted by this~~
29 ~~Section, such person would prevail. Exhaustion of Administrative~~

1 Remedies. No action shall be brought under any provision of this
2 Section until all administrative remedies provided in this Chapter
3 under Part A of Article 9 and Article 12 have been exhausted.
4

5 ~~(f) All actions permitted by this Article shall be conducted as~~
6 ~~provided in the Government Claims Act. Form of Review Under~~
7 ~~§5480(a). All appeals permitted by Subsection (a) of this Section~~
8 ~~shall be treated as special proceedings for expeditious review of the~~
9 ~~administrative decision below unless good cause is shown that it~~
10 ~~should proceed as a civil action.~~
11

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

23 **Section 7. §5481 of Subarticle D (Waiver of Sovereign Immunity;**
24 **Limitations on Actions) of Article 9 (Legal and Contractual**
25 **Remedies), Chapter 5 of Title 5, Guam Code Annotated, is**
26 **amended to read as follows:**
27

28 **“§ 5481. Time Limitations on Actions.**

29
30 (a) Protested Solicitations and Awards. Any action under

1 §5480(a) of this Chapter *shall* be initiated within fourteen (14) days
2 after receipt of a final administrative decision.

3
4 (b) Debarments and Suspensions for Cause. Any action under §
5 5480(b) of this Chapter *shall* be commenced within six (6) months
6 after receipt of the decision of the Policy Office under § 5651 of this
7 Chapter, or the decision of the ~~Procurement Appeals Board~~ Public
8 Auditor under § ~~5707~~ 5705 of this Chapter, whichever is applicable.

9
10 (c) Actions Under Contracts or for Breach of Contract. Any
11 action commenced under §5480(c) of this Chapter *shall* be
12 commenced within twelve (12) months after the date of the
13 ~~Procurement Appeals Board~~ Public Auditor's decision.

14
15 (d) The limitations on actions provided by this Section are tolled
16 during the pendency of any proceeding brought pursuant to § 5485 of
17 this Chapter.”

18
19 **Section 8. §5485(a) of Subarticle E (Procurement Data) of Article 9**
20 **(Legal and Contractual Remedies), Chapter 5 Title 5, Guam Code**
21 **Annotated, is amended to read as follows:**
22

23 “(a) On complaint by any member of the public, the Superior
24 Court has jurisdiction to enjoin a governmental body from
25 withholding procurement data and to order the production of any
26 government data improperly withheld from the complainant. In such
27 a case, the court *shall* determine the matter *de novo*, and may
28 examine the contents of such procurement data in camera to
29 determine whether such records or any part thereof shall be withheld
30 under any of the exceptions set forth in ~~6-GCA-§ 4202~~ this Chapter

1 and, to the extent not inconsistent, Title 5, Chapter 10, Guam Code
2 Annotated and the burden is on the agency to sustain its action.”

3
4 **Section 9. §5485(b) of Subarticle E of Article 9 (Legal and**
5 **Contractual Remedies), Chapter 5 of Title 5, Guam Code**
6 **Annotated, is amended to read as follows:**
7

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

13
14 **Section 10. §5703 of Article 12 (Procurement Appeals), Chapter 5**
15 **of Title 5 Guam Code Annotated is amended to read as follows:**
16

17 **“§ 5703. Jurisdiction of the Public Auditor.**

18 The Public Auditor *shall* have the power to review and
19 determine *de novo* any matter properly submitted to her or him. The
20 Public Auditor *shall not* have jurisdiction over disputes having to do
21 with money owed to or by the government of Guam except as
22 authorized under §§ 5427 and 5706 of this Chapter. Notwithstanding
23 § 5245 of this Chapter, no prior determination shall be final or
24 conclusive on the Public Auditor or upon any appeal from the Public
25 Auditor. The Public Auditor *shall* have the power to compel
26 attendance and testimony of, and production of documents by any
27 employee of the government of Guam, including any employee of any
28 autonomous agency or public corporation. The Public Auditor may
29 consider testimony and evidence submitted by any competing bidder,
30 offeror or contractor of the protestant. The Public Auditor’s
31 jurisdiction *shall* be utilized to promote the integrity of the

1 procurement process and the purposes of 5 GCA Chapter 5.”

2
3 **Section 11. §5705 of Article 12 (Procurement Appeals), Chapter 5**
4 **of Title 5 Guam Code Annotated is amended to read as follows:**

5
6 **“§ 5705. Suspension or Debarment Proceedings.**

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

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

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

23 (d) Appeal. Any person receiving an adverse decision, including
24 the Chief Procurement Officer, the Director of Public Works or the
25 head of a purchasing agency, a person suspended or debarred, or a
26 rejected petitioner, may appeal from a decision by the Public Auditor
27 to the Superior Court of Guam under the waiver of sovereign
28 immunity provided in § 5480(b) of this Chapter.

1 **Section 12. §5706(b) of Article 12 (Procurement Appeals), Chapter**
2 **5 of Title 5, Guam Code Annotated, is *amended* to read as follows:**
3

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

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

13 “(a). Appeal. Any person receiving an adverse decision,
14 including the contractor, the a governmental body or purchasing
15 agency any autonomous agency or public corporation, or both, may
16 appeal from a decision by the Public Auditor to the Superior Court
17 of Guam as provided in ~~Article D of Chapter~~ Article 9 of this
18 Chapter.”
19

20 **Section 14. §5708 of Article 12 (Procurement Appeals), Chapter 5**
21 **of Title 5, Guam Code Annotated, is *amended* to read as follows:**
22

23 “§ 5708. Discontinuance of Contractor’s Appeal.

24 It is the policy of this Act that procurement disputes be resolved
25 expeditiously, therefore, settlement agreements between the parties
26 are encouraged, and appeals by a protestant or by the Chief
27 Procurement Officer, the Director of Public Works or the head of the
28 Purchasing Agency may be settled by them, with or without prejudice,
29 except to the extent that the Public Auditor determines that such a
30 settlement would work an injustice on the integrity of the procurement
31 system and an unconscionable prejudice on an intervening party.

After notice of an appeal to the Public Auditor has been filed by the

1 Chief Procurement Officer, the Director of Public Works or the head
2 of the Purchasing Agency, a contractor may *not* unilaterally
3 discontinue such appeal without prejudice, except as authorized by the
4 Public Auditor.”

5
6 **Section 15. A new §5710 is hereby *added* to Article 12, Chapter**
7 **5, Title 5 Guam Code Annotated to read as follows:**

8 “Notwithstanding any other provision of Article 2 of this Chapter
9 the Public Auditor shall be authorized and responsible to promulgate
10 regulations consistent with this act in accordance with the applicable
11 provisions of the Administrative Adjudication Law, within 180 days
12 from the date of enactment of this Act, which regulations shall
13 supersede any other regulations of any body specified in §5131 of this
14 Chapter.”

15
16 **Section 16. Severability.** *If* any provision of this law or its
17 application to any person or circumstance is found to be invalid or
18 contrary to law, such invalidity *shall not* affect other provisions or
19 applications of this law which can be given effect without the invalid
20 provisions or application, and to this end the provisions of this law are
21 severable.

22
23 **Section 17. Effective Date.** This Act *shall* be effective one
24 hundred eighty (180) days after enactment, but *shall not* apply to
25 controversies that have been filed or administratively or judicially
26 appealed prior to the date of enactment of this Act.
27

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

Public Hearing

January 29, 2015

2:00 pm

I Liheslaturan Guåhan, Hagåtña

Bill 20-33 (COR) T.C. Ada

An act to amend articles 9 and 12 of chapter 5, title 5 Guam code annotated relative to legal and contractual remedies in Guam procurement law.

NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
JOHN UNPUNGO DFB ROCKS	VA OPTA	✓	✓	✓	✓	267-8505

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

Public Hearing

January 29, 2015

2:00 pm

I Lihestauran Guahan, Hagåtña

Bill 20-33 (COR) T.C. Ada

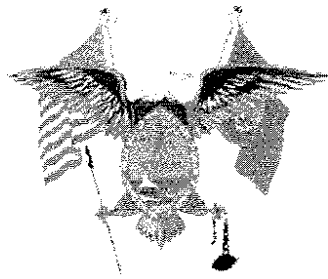
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NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
<i>A. Mack II</i>	<i>OPA</i>			<input checked="" type="checkbox"/>		<i>472-2152</i>

Eddie B. Calvo
Governor

Ray Tenorio
Lieutenant Governor

John S. Unpingco
Administrator



OFFICE OF VETERANS AFFAIRS
Office of the Governor
P.O. Box 2950
Hagatna, Guam 969232
Tel: (671) 475-8392
Fax: (671) 475-8392

TESTIMONY ON BILL 20-33

**By
JOHN S. UNPINGCO**

WE THANK YOU FOR THE PRIVILEGE OF TESTIFYING TODAY. WE HAVE REVIEWED BILL 20-33 AND OFFER THE FOLLOWING COMMENTS:

- a) SECTION 5425 (a) (1) (B) – WE HAVE DIFFICULTY WITH THE LANGUAGE IN LINE 4 WHICH STATES THAT “A PERSON WOULD HAVE BEEN IN A COMPETITIVE POSITION TO BE AWARDED THE CONTRACT”. DOES COMPETITIVE POSITION MEAN THAT THE PERSON IS NEXT IN LINE TO BE AWARDED THE CONTRACT IF HIS PROTEST SUCCEEDS OR DOES IT MEAN THAT HE WOULD BE IN A COMPETITIVE POSITION BUT WOULD NOT GET THE CONTRACT EVEN IF THE PROTEST SUCCEEDED? THE LATTER IS OBJECTIONABLE TO US AS THE PROTEST PROCEDURE IS THEN JUST A SPORTING EXERCISE TO DELAY THE CONTRACT. IF THE PERSON STANDS TO BE AWARDED THE CONTRACT BUT THERE ARE SEVERAL AHEAD OF HIM BUT HIS PROTEST WOULD ELIMINATE THE PEOPLE AHEAD OF HIM AND HE STANDS TO GET THE CONTRACT, THEN THIS WOULD BE ALRIGHT WITH US.
- b) SECTION 5425 (a) (3) – THIS DEFINITION OF AN INTERESTED PARTY IS TROUBLESOME AND SHOULD BE ELIMINATED. THE ONLY TIME AN INTERESTED PARTY IS INVOLVED IS IN THE SETTLEMENT OR ATTEMPTED SETTLEMENT OF THE PROTEST. SO THAT WE ARE CLEAR ON THIS POINT RECOMMEND THAT LINE 5’S REFERENCE TO INTERESTED PARTIES BE DELETED AND INSTEAD SPELL OUT THAT THESE INTERESTED PARTIES ARE THE PROTESTOR AND PROTESTEE. THEY ARE

THE TWO PARTIES THAT SHOULD RIGHTFULLY BE INVOLVED IN SETTING THE DISPUTE. ALL OTHER PARTIES HAVE NO BUSINESS BEING A PART OF SETTLEMENT DISCUSSIONS. THE SAME COMMENT APPLIES TO THE USE OF THE TERM "INTERESTED PARTIES" IN LINE 13.

- c) SECTION 5425 (g) (3) – "IF THE PROTEST IS PENDING BEFORE THE PUBLIC AUDITOR OR COURT HAS CONFIRMED THE VALIDITY OF SUCH DETERMINATION...". THE PUBLIC AUDITOR CANNOT CONFIRM THE VALIDITY OF THE GOVERNOR'S DETERMINATION IN AN EMERGENCY PROCUREMENT BECAUSE THE OFFICE OF PUBLIC AUDITOR IS NOT A SEPARATE BUT CO-EQUAL BRANCH OF GOVERNMENT TO THE GOVERNOR. HOW CAN A LESSER GOVERNMENT AGENCY CHECK THE WORK OF A GREATER GOVERNMENT AGENCY?

- d) SUBSECTION 5426 – IF THESE ARE TO BE TRULY PUNITIVE IN NATURE, THEN A DEBARMENT SHOULD BE FOR FIVE YEARS AND A SUSPENSION SHOULD BE AT LEAST TWO YEARS. HAVING THEM FOR PERIODS LESS THAN THIS IS A JOKE AS PROCUREMENTS FOR CERTAIN ITEMS OFTEN HAPPEN BUT ONCE EVERY TWO YEARS.

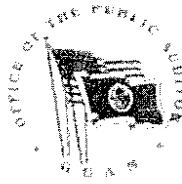
- e) SECTION 5426 (e) – AFTER THE LAST SENTENCE RECOMMEND ADDING "AN ADVERSE DECISION TO THE PROTEST SHALL HAVE THE EFFECT OF REQUIRING A DETERMINATION OF NON-RESPONSIBILITY IN ANY SOLICITATION IN WHICH THE PROTESTOR IS PARTICIPATING. THIS IS THE LOGICAL OUTCOME OF FAILURE.

- f) SECTION 2427 – NO TIME LIMIT IS SET FOR THE DECISION OF THE PUBLIC AUDITOR IN ALL DISPUTES PRESENTED TO HIM FOR RESOLUTION. ALL OTHER ADMINISTRATIVE BODIES ARE GIVEN TIME LIMITS WITHIN WHICH TO RENDER A DECISION AND IN SOME CASES IF THEY DON'T, THEIR INACTION CAN BE TAKEN AS AN ADVERSE ACTION TO THE PROTESTOR. FAIR IS FAIR, SO WHY DOES THE PUBLIC AUDITOR NOT HAVE A TIME PERIOD WITHIN WHICH TO DECIDE A DISPUTE?

AMONG PRACTICING LAWYERS IT IS WELL KNOWN THAT THEY SELDOM ARE TIMELY IN THEIR DECISIONS. GIVE THE OFFICE OF PUBLIC AUDITOR A DEADLINE TO RENDER A DECISION AND IF DECISION IS NOT RENDERED THEN THE DECISION IS DEEMED A NEGATIVE DECISION BY THE PROTESTOR. IT IS ONLY FAIR THAT THEY DO THIS. THEY ARE, AN ADMINISTRATIVE BODY. HOW ABOUT GIVING OFFICE OF THE PUBLIC AUDITOR FORTY-FIVE DAYS IN WHICH TO RENDER A DECISION?

- g) SECTION 14. SECTION 5708 OF ARTICLE 12 – A “CONTRACTOR MAY NOT UNILATERALLY DISCONTINUE SUCH AN APPEAL WITHOUT PREJUDICE, EXCEPT AS AUTHORIZED BY THE PUBLIC AUDITOR”. CAN THE OFFICE OF PUBLIC AUDITOR FORCE A LITIGANT TO CONTINUE HIS LAWSUIT? I THINK NOT BECAUSE THE LITIGANT HAS HIS OWN REASONS FOR NOT MAINTAINING HIS OWN LAWSUIT WHICH MIGHT NOT BE KNOWN TO THE OFFICE OF PUBLIC AUDITOR, E.G., THAT HE HAS NO CASE OR THAT HE HAS A LOSING CASE IN THE END, OR THAT THERE MAY BE OTHER REASONS. THE PUBLIC AUDITOR CANNOT DECIDE FOR A LITIGANT.
- h) SECTION 15. A NEW SECTION 5710 IS ADDED TO ARTICLE 12. THIS PROVISION ESSENTIALLY RENDERS NULL AND VOID THE DUTIES OF THE POLICY OFFICE IN PROMULGATING REGULATIONS GOVERNING THE PROCUREMENT, MANAGEMENT, CONTROL AND DISPOSAL OF ANY AND ALL SUPPLIES, SERVICES AND CONSTRUCTION. DO WE WANT TO ENTRUST THE OFFICE OF PUBLIC AUDITOR WITH SUCH POWER? MUST THE OFFICE OF PUBLIC AUDITOR HAVE SUCH POWER TO BE ABLE TO PERFORM ITS DUTIES UNDER THIS STATUTE? IT WOULD APPEAR THAT THE OFFICE OF PUBLIC AUDITOR WANTS TOTAL POWER IN THE AREA OF PROCUREMENT. THERE WILL BE NO CHECKS AND BALANCES ON ITS POWER TO ADJUDICATE PROCUREMENT MATTERS. THIS IS TROUBLE.

THIS, THUS, CONCLUDES MY TESTIMONY. THANK YOU FOR YOUR PATIENCE IN SITTING THROUGH THIS TESTIMONY.



OFFICE OF THE PUBLIC AUDITOR
Doris Flores Brooks, CPA, CGFM
Public Auditor

January 29, 2015

Honorable Thomas Ada
Senator and Chairman Committee on Transportation, Infrastructure, Lands, Border
Protection, Veterans Affairs and Procurement
33rd Guam Legislature
155 Hesler Place
Hagåtña, Guam, 96910

RE: Testimony in Support of the passage of Bill No. 20-33 (COR)

Hafa Adai Senator Ada and Committee Members:

The Office of Public Accountability (OPA) supported the final draft version of Bill 20-33's predecessor, Bill 224-32. Bill 224-32 was a fair compromise between the public and private stakeholders and was the result of a herculean effort to implement much needed changes to Guam's Procurement Laws. Unfortunately, Bill 224-32 was vetoed by the Governor in December, 2014 in the waning days of the 32nd Guam Legislature. The OPA thanks the 33rd Guam Legislature and in particular Senator Ada for continuing the struggle to update, modernize, and streamline Guam's Procurement Laws with Bill 20-33.

The Governor's veto of Bill 224-32 indicates that greater collaboration between the public and private stakeholders and the Governor's Office is necessary to achieve a draft bill that can be approved by the Executive and Legislative Branches of the Government of Guam. In an effort to move this collaboration forward, the OPA has reviewed the current draft of Bill 20-33 to determine whether it satisfies the concerns that resulted in the veto of Bill 224-32. This review has revealed the following points:

1. Bill 224-32's amendment to 5 G.C.A. §5425(a) which the Governor's Office believed to allow persons who were not bidders or offerors to file protests if their protest raised significant issues concerning the procurement system or its integrity was omitted in Bill 20-33. The current language of Bill 20-33's amendments to 5 G.C.A. §5425(a) would limit the right to protest to actual or prospective bidders, offerors, or contractors which mirrors the existing categories of persons who may file procurement protests.

2. Bill 224-32's amendment to 5 G.C.A. §5425(g) which the Governor's Office believed to encroach upon its executive authority to declare an emergency that would justify using the emergency procurement method of solicitation because the amendment would give the Public Auditor or the Guam Courts the authority to determine whether such declaration was valid and confirm it was omitted in Bill 20-33. The current language of Bill 20-33's amendments to 5 G.C.A. §5425(g) merely continues the existing

duty of the Public Auditor and Guam Courts to determine the validity of the determination, and hold a very expedited hearing if a protestor objects to a Declaration of Emergency justifying the lifting of the automatic stay and proceeding with the award or solicitation to resolve the emergency.

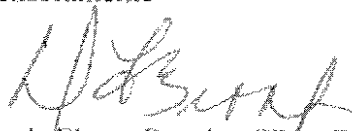
The language of Bill 20-33's amendments to 5 G.C.A. §5425(g)(1) can be improved by allowing the Staff Attorney, in house counsel, or an agency's private retained attorney, if the agency is allowed any of these, to make a written concurrence in lieu of the Guam Attorney General, that award of a contract without delay is necessary to protect a substantial government interest. This will retain the autonomy and independence of the agencies that are authorized to retain their own counsel separate and apart from Guam's Attorney General.

3. Bill 20-33 does not contain a protest bond as recommended by the Governor's Office. In prior round tables, the OPA has strongly opposed such a bond because it is unnecessary and would have a chilling effect on protests. Such a bond is based on the mistaken belief that most protests that are filed are frivolous or made with malevolent intent. However, the OPA's experience in reviewing appeals concerning the agency's procurement protest decisions does not support this belief. In fact, the appeals the OPA have decided show that most protests do in fact raise meritorious issues.

In the majority of the procurement appeals denied by the OPA (those in which the OPA agrees with the Government of Guam's Procurement Protest Decision) were made due to competition and whether the winning bidder met the specifications. Competitors watch fellow competitors like a hawk. Accordingly the Government of Guam has benefited from the price competition. In these cases, the administrative review process gave these protestors a better understanding of Guam's Procurement Laws and Regulations, and the impartial review fulfilled their desire to ensure that they were not being unfairly treated by the Government of Guam. Thus, each and every protest and administrative review of the Government of Guam's protest decisions strengthens the integrity and public understanding of the procurement process. Requiring a protest bond would threaten these positive consequences because many in the private sector would have financial difficulty posting such a bond and the protests filed would be limited to the larger companies that could afford to post such a bond.

The Public Auditor believes that Bill 20-33 adequately addresses the concerns raised by the Governor's Office veto of Bill 224-33 and supports its passage.

Senseramente



Doris Flores Brooks, CPA, CGFM
Public Auditor

JOHN THOS. BROWN
ATTORNEY AT LAW *

GENERAL COUNSEL

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Hon. Senator Thomas C. Ada,
Sponsor and Chair, Committee on Transportation, Infrastructure, Lands, Border
Protection, Veterans' Affairs and Procurement

RE: Bill 20-33, An Act to Amend Articles 9 and 12 of Chapter 5, etc.

Dear Senator Ada,

Please accept this letter as written testimony in support of the referenced Bill, as I will be off-island and unable to attend the public hearing of the Bill tentatively scheduled for a public hearing on January 28, 2015.

After hearing and numerous roundtables on the precursor Bill, 224-32, I was delighted that all the kinks appeared to be ironed out when Bill 224 was unanimously passed by the 32nd Guam Legislature. I was present and participating for most of the entire process, and fully appreciate the many changes and compromises that marked the maturation of the original bill.

It appeared that all the kinks were not ironed out, however, when two additional objections were raised by the Governor in his veto message. While I may not agree with his analysis, I appreciate the desire to bring finality to the process, and his particularized objections aid the process. Removal of the objectionable elements in this Bill 20-33 will hopefully now allow this Bill to again be passed and then become law.

It is important to get on with the process of trying to expedite the review of procurement protests, and this Bill makes significant strides toward that goal.

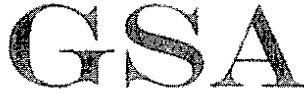
Respectfully submitted,

John Thos. Brown

* 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)/Jvno Holdings PTY LTD (A.C.N. 008 585 331)/Townhouse, Inc. (Saipan, CNMI)/IBSS (Guam and Saipan)

Eddie Baza Calvo
Governor



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(Ahensian Setbision Hinirat)
Department of Administration

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Ray Tenorio
Lieutenant Governor

Benita A. Mangiona
Director

John A.B. Pangelinar
Acting Deputy Director

January 28, 2015

Memorandum

Honorable Thomas Ada
Senator, 33rd 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

Re: Comments on Bill 20-33

Dear Senator Ada:

We are in receipt of the latest addition of Bill 224-33, which is now Bill 20-33 "An Act to Amend Articles 9 and 12 of Chapter 5, Title 5, Guam Code Annotated relative to Legal and Contractual Remedies in Guam Procurement Law". After further review and forethought, we have the following comments:

In section 5425 the last sentence " A protest made to the office which issued a solicitation shall be deemed properly submitted". Please clarify "office" Is the Director's office sufficient? Or is it the intent to limit to the procurement office which issued the bid?

Section 5425(1)(A) is very broad and should be deleted.

Section 5425(1)(B) makes no sense. Upon a protest, no action is currently allowed. Therefore this section should be deleted as being duplicate.

Section 5425(2) indicates that the time limits are...subject to equitable estoppel. This section is unclear. Please define "equitable estoppel".

Section 5425(b) states that prior to the commencement of an appeal to the Public Auditor". This is a limiting item in that settlements do occur all the time during an appeal to the OPA. This section seems to disallow for settlement and should be stricken.

Further along in section 5425(b), it attempts to assure all parties "are given notice of and opportunity to participate in any such settlement or resolution." This forces the government to settle with all parties even though the other parties may not have grounds to either protest or appeal a case. As such, this section should be deleted.

For Section 5425(d), the following should be added at the end: "Electronic shall be deemed served if the government copy shows confirmation of being sent to the electronic address."

Is it the intent of Section 5427(a) that contract damages mean "monetary?" If not, it should be specifically stated. And if it intended to be included, then how does this section work with the government claims act?

Section 5452(c) should be deleted. The determination to ratify or affirm is made in the best interest of the government, so this section does add anything.

Thank you for allowing us to comment on bill 20-33.


CLAUDIA S. ACFALLE
Chief Procurement Officer

February 6, 2015

VIA EMAIL office@senatorada.org

Honorable Thomas C. Ada
Assistant Majority Leader
MINA' TRENTAI TRES NA LIHESLATURANGUAHAN
Committee on Public Safety, Infrastructure & Maritime Transportation
Ste. 207, Ada Plaza Ctr., 173 Aspinall Ave.
Hagåtña, Guam 96910

RE: BILL NO. 20-33 (COR)

Hafa Adai Senator Ada:

I am writing to provide you with the comments of the Antonio B. Won Pat International Airport Authority, Guam ("GIAA") on the amendments to the Guam Procurement Law proposed in Bill 20-33 (COR) ("Bill 20"). The proposed changes contained in Bill 20 are substantially similar to the now-vetoed Bill 224-32.

It is undeniable that some revisions to the Guam Procurement Law are necessary. However, the changes proposed in Bill 20 do not adequately address the problems of the law. Rather, the changes heavily tilt the balance in favor of would-be protestors at the expense of the government and the public. While the Procurement Law should give protestors an opportunity to obtain recourse from a grievance, it should also allow the government to obtain needed goods and services in an efficient and expedient manner.

For these reasons, GIAA reiterates its concerns as follows:

1. Section 5425(a)(2) - Proposed "Time Limits" Provision

Like the vetoed Bill 224, Bill 20 proposes to add a Section 5425(a)(2) with the following language:

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

(Emphasis in original). That the time limits specified "are not intended to be jurisdictional" but "shall be subject to equitable estoppel" create uncertainty that will result in lengthy and unnecessary procurement protests and appeals. Time limitations should be jurisdictional; if a protest is filed after fourteen (14) days, it is untimely and should be barred because the government does not have jurisdiction to entertain it.

The proposed language would allow bidders and proposers an opportunity to submit a variety of excuses for any late protests or appeals. A determination as to whether to apply the principle of equitable estoppel is a fact-intensive process and will differ on a case-by-case basis. It may also differ at the administrative and judicial levels resulting in a lack of certainty in the law. How will an agency know when the time period for a protest or an appeal has run? Like a statute of limitations or the deadline to submit a government claim, such a determination at the agency level is essential for the agency to move forward on a solicitation or award of a contract because the automatic stay is triggered by the filing of a “timely protest” and, as proposed in Bill 20, remains in place until the time to appeal has run.

Further, the proposed language not only encourages late protests without consequence, but hinders the government’s operations. Maintaining the current protest and appeal deadlines encourages bidders and proposers to closely and expeditiously review the procurement process to determine if a basis for protest or appeal exists; the proposed revision does not. Keeping to the current protest and appeal deadlines also provides an objective means to determine whether the time to protest or appeal has run allowing agencies to move forward with the business of the agency without the uncertainty of a late protest or appeal; the proposed revision does not. GIAA once again requests that the language proposed as Section 5425(a)(2) be stricken in its entirety.

2. Section 5425(f) – Appeals

Under the current appeal procedures, a protestor may appeal an adverse decision to the Public Auditor within fifteen (15) days after receipt by the protestor of the notice of decision denying the protest. The current Procurement Regulations provide that if the Public Auditor disqualifies herself from hearing an appeal, the appeal is taken directly to the Superior Court of Guam. 2 GAR Div. 4 § 12601. Bill 20 adds the following sentence to 5 GCA § 5425(f) consistent with 2 GAR Div. 4 § 12601:

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

While the proposed language specifies a standard of review for the trial court to apply to direct appeals from agency decisions upon the Public Auditor’s recusal or disqualification, adopting a *de novo* standard of review is inconsistent with principles established by the United States Supreme Court and acknowledged by the Guam Supreme Court. The standards of review courts

should use to review agency decisions should be as follow: the “substantial evidence” standard for an agency’s factual determinations and ultimate protest decisions, as articulated in the Guam Supreme Court case, *GMHA v. Civ. Serv. Comm. (Chaco)* 2014 Guam 27 ¶ 15, and the “deferential” standard for an agency’s reasonable interpretation and application of any ambiguous Procurement Law statutes and regulations, as articulated in the United States Supreme Court case, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The Guam Supreme Court in *Chaco* adopted the substantial evidence standard from federal law in cases involving judicial review on an administrative record. *Chaco*, 2014 Guam 27 ¶ 15. (citing *Dickinson v. Zurko*, 527 U.S. 150, 164 (1999)). It has further affirmed the substantial evidence standard for Guam cases. *Guam Waterworks Auth. v. Civil Service Commission (Mesngon)* 2014 Guam 35 ¶ 9 (“This is because a reviewing body ‘may not substitute its views for those of the [agency], but instead must accept the [agency’s] findings unless they are contrary to law, irrational, or unsupported by substantial evidence.’” Citing *Fagan v. Dell’Isola*, 2006 Guam 11 ¶ 11 (alterations in original) (quoting *Alcala v. Dir., Office of Workers Comp. Programs*, 141 F.3d 942, 944 (9th Cir. 1998)).

Adopting the “substantial evidence” standard is appropriate for several reasons. First, the Superior Court is not the Public Auditor; it would be inappropriate to cherry-pick the Public Auditor’s standard of review in a vacuum without possessing the technical expertise of the Public Auditor or while disregarding the procedural limitations on the Public Auditor. Second, while the Procurement Law does not require the Public Auditor to afford an agency any deference with respect to procurement protest decisions, adopting a deferential standard of review is “most conformable” to the Court’s limited role under the Procurement Law. The Procurement Law is designed to minimize judicial involvement in procurement matters and to insure that procurement disputes are resolved quickly and efficiently, primarily administratively. *Bradley*, 483 F.2d at 415 (discussing the relationship between the exhaustion requirement and the limited role of courts on administrative review); *see also Data Mgmt. Res., LLC v. Office of Pub. Accountability*, 2013 Guam 27, ¶ 57. Putting the Superior Court in the role of reviewing the administrative record *de novo* on the rare occasion that the Public Auditor is disqualified is inconsistent with the legislative scheme, particularly since the Superior Court necessarily lacks any meaningful experience or technical knowledge relevant to resolving procurement disputes. *Cf. Carlson v. Perez*, 2007 Guam 6, ¶ 70 (holding that exhaustion of administrative remedies is required “because agencies have the specialized personnel, experience and expertise to unearth relevant evidence and provide a record which a court may review”); *see id.*, ¶ 68 fn. 25 (Superior Court required to give deference to agency’s findings, citing *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 845 (1986) [“An agency’s expertise is superior to that of a court when a dispute centers on . . . regulation[s] . . . [which] the agency is charged with enforcing.”]; *see also Safari Aviation Inc. v. Garvey*, 300 F.3d 1144, 1150 (9th Cir. 2002).)

3. Section 5425(g) – Automatic Stay

Under existing law, in order to trigger an automatic stay, two factors must be satisfied: (1) a protest is timely submitted, i.e. within fourteen (14) days after the protestor knows or should know of the facts giving rise thereto, and (2) the protest was submitted prior to award of the contract, 5 GCA § 5425(g) (“In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest...); *Guam Imaging Consultants, Inc. v. Guam Memorial Hospital Auth.*, 2004 Guam 15 ¶ 23 (“Further, the automatic stay provisions found in ... the Guam Procurement Law require that a protest in the context of a GMHA procurement of services be both factually timely and be pursued before the award has been made in order to trigger the automatic stay.”).

The proposed automatic stay provision reads:

(g) ~~In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory government of Guam shall not proceed further with the solicitation, or with the award, or performance of the contract prior to the time allowed to appeal, or the final resolution of such protest, including a final entry of judgment, 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, ~~after consultation with and~~ written concurrence of the head of the using or purchasing agency and the Attorney General or designated Deputy Attorney General, ~~then~~ makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the ~~Territory government of Guam~~; and

(2) Absent a declaration of emergency procurement by the Government, pursuant to §5215, the protestant has been given at least two (2) days notice (exclusive of territorial holidays); and

(3) If the protest is pending before the Public Auditor or the Court, the Public Auditor or Court has confirmed the validity of such determination, or if no such protest is pending, no protest to the Public Auditor of such determination is filed prior to expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section;

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

Although only slightly different from an earlier proposed version of Bill 224-32, the proposed changes to the automatic stay still would require the government to stay a procurement at any stage of the process without exception.

The proposed revisions to the automatic stay provision taken together with the proposed revisions to Section 5425(a)(2) that allow the application of equitable estoppel to extend the time to protest and appeal, give license to a protestor or otherwise "aggrieved" party, to stop performance of a government contract for any reason, whether merited or not, without consequence. Even a party with little or no interest in the contract could file a late frivolous protest, thereby forcing the government to stay performance of a contract, often jeopardizing federal grant funds, inhibiting an agency from performing its duties, and preventing it from obtaining essential services or goods.

Again, GLAA recommends the following changes with regard to the automatic stay, which would discourage frivolous protests and appeals:

(g) 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 upon such terms as is approved by the Public Auditor or Court, as the case may be, the government of Guam or governmental body shall not proceed further with the solicitation, award, or performance of the contract prior to the time allowed to appeal, or the final resolution of such protest, including a final entry of judgment, 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 with ~~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;

(2) Absent a declaration of emergency procurement by the Government, pursuant to §5215, the protestant has been given at least two (2) days' written notice (exclusive of territorial holidays); and

(3) If the protest is pending before the Public Auditor or the Court, the Public Auditor or Court has confirmed the validity of such determination, or if no such protest is pending, no protest to the Public Auditor of such determination is filed prior to expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section;

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

The first change was made to require the posting of bond or security approved by the Public Auditor or Court in order for a stay to be effective. The requirement for the posting of bond is consistent with civil practice where a stay pending appeal is only effective if a supersedeas bond is posted and approved by the Court. Requiring the bond or security assures that the agency has protection for not being able to carry on its business during the appeal 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 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

4. Section 5425(i) – Entitlement to Costs

Under the existing Section 5425(h), only the government may seek costs, including attorney’s fees, incurred against a protestor “upon its finding that the protest was made fraudulently, frivolously or solely to disrupt the procurement process.” 5 GCA § 5425(h). Like the vetoed Bill 224, the proposed changes to Section 5425(h) in Bill 20 would allow a protestor and interested parties to seek reasonable costs, including attorney’s fees, as follows:

(3) The Public Auditor shall have the power to assess reasonable costs including reasonable attorney fees incurred by the government, including its autonomous agencies and public corporations, or any protestor or interested party against any party, including the government, making a protest, motion fraudulently, frivolously or with predominant intent to delay or disrupt the procurement process.

GLAA has previously raised that this section raises two major problems: 1) the government’s waiver of sovereign immunity is implicated in a manner that is harmful to the government; and 2) the provisions are inconsistent as to the allowance of attorney’s fees in favor of the protestor.

1) Sovereign Immunity Implications

The Government of Guam may only be sued by its own consent. Currently, the Government of Guam only agrees to be sued for claims based on existing contracts, torts, land takings, and review of procurement under 5 GCA § 5480. The Government of Guam has *never before* consented to be sued for attorney’s fees based on a private party’s mere expectation of a contract. See Organic Act Section 3, the Government Claims Act, and current 5 GCA §§ 5425(h) and 5480. The proposed revisions to the procurement laws,

under proposed Section 5425(h)(3), p. 8, lines 4–12, attempt to give protestors the right to collect private attorney’s fees from the Government of Guam.

2) **Protestor's Right to Attorney's Fees**

Next, even if the Legislature considers this change, the proposed provision is drafted so that it contradicts itself. The first part of the proposed Section 5425(h) states: “(h) Entitlement to Costs....when a protest is sustained, the protestant shall be entitled to the reasonable costs incurred in connection with the solicitation and protest, including bid preparation costs, **excluding attorney’s fees,**” However, the third portion of the proposed Section 5425(h) states: “(3) The Public Auditor shall have the power to assess reasonable costs **including reasonable attorney fees incurred by** the government, including its autonomous agencies and public corporations, or **any protestor** or interested party **against any party, including the government,** making a protest, motion or bringing any action....” These two provisions squarely contradict each other. The first portion states that a protestor is not entitled to attorney’s fees, and the later portion states that a protestor is entitled to attorney’s fees. If the bill were to pass with this provision, any court attempting to interpret this provision would most likely strike it for inconsistency. This provision is the portion of the law that allows the Government to collect attorney’s fees against frivolous protestors, and which discourages needless protests and litigation. Therefore, this provision must be clear and correct in order to be applied. The proposed revisions would cause confusion and would remove the current built-in disincentive against frivolous protests. More importantly, because of its inherent contradiction in terms, it would most likely be found void. A clear and unambiguous version of this provision must exist in order to prevent meritless protests and litigation, and thus, the bill should be re-drafted in order to effectively accomplish the objectives of the Legislature.

5. **Section 5480 – Waiver of Sovereign Immunity**

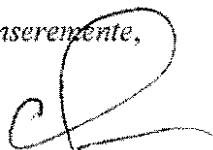
Although the proposed revisions correctly state what the Supreme Court of Guam has already established, that is, that a protestor must exhaust its administrative remedies before seeking relief in the Superior Court, Bill 20 proposes that the Superior Court’s standard of review upon the Public Auditor’s recusal or disqualification is *de novo*. As mentioned above, the *de novo* standard of review is inconsistent with principles established by the United States Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) and the Guam Supreme Court in *GMHA v. Civ. Serv. Comm. (Chaco)* 2014 Guam 27. For the reasons stated above, the “substantial evidence” standard should be adopted for an agency’s factual determinations and ultimate protest decisions, as articulated in the Guam Supreme Court case, *GMHA v. Civ. Serv. Comm. (Chaco)* 2014 Guam 27 ¶ 15. The “deferential” standard should be adopted for an agency’s reasonable interpretation and application of any ambiguous Procurement

Honorable Thomas C. Ada
February 6, 2015
Page 8 of 8

Law statutes and regulations, as articulated in the United States Supreme Court case, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

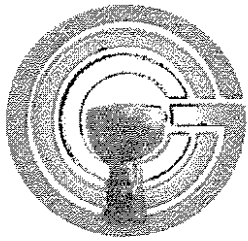
GIAA respectfully requests that the Legislature consider the changes suggested above as it considers Bill 20-33.

Senseramente,



CHARLES H. ADA II
Executive Manager





GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS



February 9, 2015

THE HONORABLE THOMAS C. ADA
Senator and Chair, Committee on Transportation, Infrastructure,
Lands, Border Protection, Veterans Affairs and Procurement
I Mina' Trentai Tres Liheslaturan Guahan
Suite 301, 155 Hesler Street
Hagåtña, Guam 96910

RE: Bill No. 20-33 (COR) -An act to amend articles 9 and 12 of chapter 5, title 5 Guam code annotated relative to legal and contractual remedies in Guam procurement law.

Dear Mr. Chairman,

On behalf of the Guam Chamber of Commerce and Membership, thank you for the opportunity to present our comments on Bill No. 20-33 (COR). This legislation seeks to make amendments relating to legal and contractual remedies in Guam procurement law.


The Guam Chamber of Commerce supports Bill 20-33, just as we did with Bill 224-32, which was unanimously passed by the 32nd Guam Legislature, and vetoed by the Governor last month. While the original legislation addressed the many concerns the business community shared with legal and contractual remedies related to Guam's Procurement Laws, this revised version still addresses key factors.

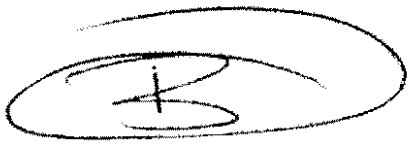
While we recognize the Governor's concerns in his veto message, we do hope that individual legislation can be reconsidered in the near future that would address the two revisions in this legislation that are contrary to Bill 224-32, which include; 1) *The ability for non-aggrieved persons to file a protest*, and 2) *Protests on emergency procurement made by the Governor*. We are certain that these issues can still be discussed while working with the concerns of both the legislative and executive branches. Likewise, with these noted amendments, we do feel that this legislation should be able to favorably move more effectively within the 33rd Guam Legislature, and hopefully signed into law by the Governor.

We understand that the third item that was recommended in the Governor's veto message was the incorporation of a protest bond. As indicated in our testimony last year, the Guam Chamber of Commerce opposes such a bond. Conditioning protest, or the automatic stay on a bond is unfair to all those who protest for valid reasons. The process should not further complicate a protestor's only effective relief. To add to this, a protest bond does not necessarily reduce the number of so-called frivolous protests, as presumed. We appreciate that this recommendation was not included in this legislation.

In closing, the Guam Chamber of Commerce supports Bill 20-33(COR). Thank you for the opportunity to submit testimony.

Senseramente,


DAVID LEDDY
President


BOBBY SHRINGI
Chair, Legislative Review Committee



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

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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

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Legislative Secretary

Tina Rose Muna Barnes

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Frank Blas Aguon, Jr.

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Senator

Michael F.Q. San Nicolas

Member

Senator

Nerissa Bretania Underwood

Member

V. Anthony Ada

MINORITY LEADER

Mary C. Torres

MINORITY MEMBER

Certification of Waiver of Fiscal Note Requirement

This is to certify that the Committee on Rules submitted to the Bureau of Budget and Management Research (BBMR) a request for a fiscal note, or applicable waiver, on **Bill No. 20-33 (COR) – T. C. Ada, "AN ACT TO AMEND ARTICLES 9 AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW,"**— on January 12, 2015. COR hereby certifies that BBMR confirmed receipt of this request January 12, 2015 at 4:34 P.M.

COR further certifies that a response to this request was not received. **Therefore, pursuant to 2 GCA §9105, the requirement for a fiscal note, or waiver thereof, on Bill 20-33 (COR) to be included in the committee report on said bill, is hereby waived.**

Certified by:

Senator Rory J. Respicio

Chairperson, Committee on Rules

February 13, 2015

Date



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

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Senator

Nerissa Bretania Underwood
Member

V. Anthony Ada
MINORITY LEADER

Mary C. Torres
MINORITY MEMBER

January 12, 2014

VIA E-MAIL

anthony.blaz@bbmr.guam.gov

Anthony C. Blaz

Director

Bureau of Budget & Management Research

P.O. Box 2950

Hagåtña, Guam 96910

RE: Request for Fiscal Notes– Bill Nos. 19-33(COR) and 20-33(COR)

Hafa Adai Mr. Blaz:

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 Thomas C. Ada

Acting Chairperson of the Committee on Rules

Attachment (1)

Cc: Clerk of the Legislature

Bill No.	Sponsor	Title
19-33 (COR)	T. R. Muña Barnes	AN ACT TO AMEND §852(c) OF CHAPTER 8, ARTICLE 2 OF TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO ARTS IN BUILDINGS AND FACILITIES.
20-33 (COR)	T. C. Ada	AN ACT TO AMEND ARTICLES 9 AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.



COMMITTEE ON RULES

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
MINORITY MEMBER

January 12, 2015

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Thomas C. Ada** 
Acting Chairperson of the Committee on Rules

Subject: **Referral of Bill No. 20-33(COR)**

As the Acting Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 20-33(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

1 Mina'Trentai Tres Nu Liheslaturan Received

Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
20-33 (COR)	T. C. Ada	AN ACT TO AMEND ARTICLES 9 AND 12 OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.	01/09/15 4:16 p.m.	01/12/14	Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement			



Office of
Senator Tom Ada

Charlene Flores <flores@senatorada.org>

1st Notice of Public Hearing and Information Briefing: February 12, 2015 at 9:00 a.m. and 2:00 p.m.

2 messages

Charlene Flores <flores@senatorada.org>

Thu, Feb 5, 2015 at 8:39 AM

To: Media <media@senatorada.org>, phnotice@guamlegislature.org, phmaterials@guamlegislature.org

February 5, 2015

MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **1st Notice of Public Hearing and Information Briefing: February 12, 2015 at 9:00 a.m. and 2:00 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 **Thursday, February 12, 2015 at 9:00 a.m.** This meeting will take place in the public hearing room of *I Liheslaturan Guahan*. The agenda is as follows:

9:00 a.m. - 10:00 a.m.

The Executive Appointment of Mr. Glenn Leon Guerrero to serve as the Director of Department of Public Works.

10:00 a.m. - 11:00 a.m.

The Executive Appointment of Ms. Katherine C. Sgro to serve as member of the A.B. Won Pat International Airport Authority Board of Directors.

2:00 p.m.

The Department of Land Management Information Briefing.

Testimony on the Executive Appointment of Mr. Glenn Leon Guerrero and Ms. Katherine C. Sgro 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 office@senatorada.org, or via facsimile to (671) 473-3303 until **Friday, February 20, 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 Libeslaturan Guåban - 33rd Guam Legislature

671-473-3301


 **1st PH Notice.pdf**
350K

Charlene Flores <flores@senatorada.org>

Thu, Feb 5, 2015 at 3:02 PM

To: Eric Palacios <eric.palacios@epa.guam.gov>, Conchita San Nicolas Taitano <conchita.taitano@epa.guam.gov>, vincent.pereira@epa.guam.gov, michael.omallan@epa.guam.gov, don.quinata@epa.guam.gov, william.austin@fe.navy.mil, jbenavente@gpagwa.com, mcamacho@gpagwa.com, gbotha@gpagwa.com, rwiegand@gpagwa.com, David Leddy <dleddy@guamchamber.com.gu>, ccastro@guamchamber.com.gu, rdelgado@guamchamber.com.gu, info@ghra.org, bill.ada@ipehq.com, catherine.leonguerrero@exxonmobil.com, ddean@sppcorp.com, jbrown@portguam.com, frangelinan@portguam.com, thomas@guamwaterworks.org, annborja@guamwaterworks.org, staylor@guamwaterworks.net, heidi@guamwaterworks.org, joseph.verga@gmha.org, glenn.leonguerrero@dpw.guam.gov, eleanor.borja@dpw.guam.gov, jessie.palican@dpw.guam.gov, maria.flores@revtax.guam.gov, john.camacho@revtax.guam.gov, Simon Sanchez <gdcmgr@ite.net>, lsablan@gpagwa.com, jtduenas@hotmail.com, jeffcharjohnson@hotmail.com, horeckylaw@teleguam.net, horecky@ite.net, ndynvn@yahoo.com, Lou Palomo <lpalomo@guampuc.com>, Marie Villanueva <marie@guam-peals.org>, Tammy Bamba <tammy.bamba@grta.guam.gov>, rick.agustin@grta.guam.gov, teresa.topasna@land.guam.gov, Ronnie Santos <ronnie.santos@clb.guam.gov>, michael.borja@land.guam.gov, david.camacho@land.guam.gov, dmdir@land.guam.gov, dfbrooks@guamopa.org, jngo@ozemail.com.au, raunderwood@uguam.uog.edu, jpeter@uguam.uog.edu, lmtoves@uguam.uog.edu, raymond.blas@dpr.guam.gov, pedro.leonguerrero@cqa.guam.gov, raffaele.sgambelluri@cqa.guam.gov, briana.roberto@cqa.guam.gov, benny.m.paulino@us.army.mil, johnny.lizama@ang.af.mil, john.unpingco@gvao.guam.gov, chuck.ada@guamairport.net, peterroy@guamairport.net, rosieb@guamairport.net, Chace Anderson <candersonbb@gmail.com>, Alicia Fejeran <avfejeran@gmail.com>, csr@guamcell.net, Clayton Duvall <clayton4gppc@hotmail.com>, Chris Felix <felix@guam.net>, rjdguzman@hotmail.com, mail@cmlaw.us, claudia.acfalle@gsa.guam.gov, superintendent@gdoe.net, racruz@grtf.com, djtydingco@gta.net, jkriegel@docomopacific.com, jlai@docomopacific.com, Richard Yu <richard.yu@choicephonellc.com>, Rene Lao <rene.lao@choicephonellc.com>, john.compton@itechq.net

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 **1st 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 Guahan • 33rd Guam Legislature

January 22, 2015

MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson* 

Subject: **1st Notice of Public Hearing: January 29, 2015 – 9:00am and 2:00pm**

Please be advised that the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement will be conducting a public hearing on **Thursday, January 29, 2015 at 9:00am and 2:00pm**. This meeting will take place in the Public Hearing Room of *I Liheslaturan Guahan*. The agenda is as follows:

9:00am

Bill 1-33 (LS) J.T. Won Pat, Ed.D.

An act to transfer Title of Lot No. 5397 municipality of Barrigada, Guam to the University of Guam.

Bill 8-33 (COR) D.G. Rodriguez, Jr.

An act to provide for development and implementation of Comparable Rate Schedule R Charges for residential multifamily accommodations by the Guam Power Authority, by adding a new Item (1) to §8104(D) of Chapter 8, Title 12, Guam Code Annotated, and a new Item (1) to §3111 of Article 1, Chapter 3, Title 28, Guam Administrative Rules and Regulations.

Bill 18-33 (COR) - V.A. Ada

An act to *add* a new chapter 81 to, title 21, Guam Code Annotated relative to the development of broadband and telecommunications infrastructure on public rights of way.

2:00pm

Bill 20-33 (COR)- T.C. Ada

An act to amend articles 9 and 12 of chapter 5, title 5 Guam code annotated relative to legal and contractual remedies in Guam procurement law.

Testimony on **Bill No. 1-33 (LS)**, **Bill No. 8-33 (COR)**, **Bill No. 18-33 (COR)** and **Bill No. 20-33 (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 office@senatorada.org, or via facsimile to (671) 473-3303 until **Friday, February 6, 2015 at 5:00 pm**. 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.




Sen. Thomas Ada
Chairman

Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and Procurement
I Mina Trentai Tres Na Liheslaturan Guahan • 33rd Guam Legislature

January 27, 2015

MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson* 

Subject: **2nd Notice of Public Hearing: January 29, 2015 – 9:00 a.m. and 2:00 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 **Thursday, January 29, 2015 at 9:00 a.m. and 2:00 p.m.** This meeting will take place in the Public Hearing Room of *I Liheslaturan Guahan*. The agenda is as follows:

9:00 a.m.

Bill 1-33 (LS) - J.T. Won Pat, Ed.D.

An act to transfer Title of Lot No. 5397 municipality of Barrigada, Guam to the University of Guam.

Bill 8-33 (COR) - D.G. Rodriguez, Jr.

An act to provide for development and implementation of Comparable Rate Schedule R Charges for residential multifamily accommodations by the Guam Power Authority, by adding a new Item (1) to §8104(D) of Chapter 8, Title 12, Guam Code Annotated, and a new Item (1) to §3111 of Article 1, Chapter 3, Title 28, Guam Administrative Rules and Regulations.

Bill 18-33 (COR) - V.A. Ada

An act to *add* a new chapter 81 to, title 21, Guam Code Annotated relative to the development of broadband and telecommunications infrastructure on public rights of way.

2:00 p.m.

Bill 20-33 (COR) - T.C. Ada

An act to amend articles 9 and 12 of chapter 5, title 5 Guam code annotated relative to legal and contractual remedies in Guam procurement law.

Testimony on **Bill No. 1-33 (LS)**, **Bill No. 8-33 (COR)**, **Bill No. 18-33 (COR)** and **Bill No. 20-33 (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 Hessler Place, Hagåtña, Guam 96932, via email to office@senatorada.org, or via facsimile to (671) 473-3303 until **Friday, February 6, 2015 at 5:00 p.m.** 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.



Office of
Senator Tom Ada

Charlene Flores <flores@senatorada.org>

2nd Notice of Public Hearing and Information Briefing: February 12, 2015 at 9:00 a.m. and 2:00 p.m.

Charlene Flores <flores@senatorada.org>

Tue, Feb 10, 2015 at 8:11 AM

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February 10, 2015

MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **2nd Notice of Public Hearing and Information Briefing: February 12, 2015 at 9:00 a.m. and 2:00 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 **Thursday, February 12, 2015 at 9:00 a.m.** This meeting will take place in the public hearing room of *Liheslaturan Guahan*. The agenda is as follows:

9:00 a.m. - 10:00 a.m.

The Executive Appointment of Mr. Glenn Leon Guerrero to serve as the Director of Department of Public Works.

10:00 a.m. - 11:00 a.m.

The Executive Appointment of Ms. Katherine C. Sgro to serve as member of the A.B. Won Pat International Airport Authority Board of Directors.

2:00 p.m.

The Department of Land Management Information Briefing.

Testimony on the Executive Appointment of Mr. Glenn Leon Guerrero and Ms. Katherine C. Sgro 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 office@senatorada.org, or via facsimile to (671) 473-3303 until **Friday, February 20, 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.

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Charlene Flores

Policy Analyst

Office of Senator Thomas C. Ada

I Mind'trentai Tres na Libeslaturan Guåhan - 33rd Guam Legislature

671-473-3301

**2nd PH Notice.pdf**

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Updated as of January 9, 2015

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Updated as of January 9, 2015

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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 Guahan • 33rd Guam Legislature

AGENDA

PUBLIC HEARING

Thursday, January 29, 2015

Public Hearing Room, *I Liheslaturan Guahan*

The agenda is as follows:

9:00am

Bill 1-33 (LS) - J.T. Won Pat, Ed.D.

An act to transfer Title of Lot No. 5397 municipality of Barrigada, Guam to the University of Guam.

Bill 8-33 (COR) - D.G. Rodriguez, Jr.

An act to provide for development and implementation of Comparable Rate Schedule R Charges for residential multifamily accommodations by the Guam Power Authority, by adding a new Item (1) to §8104(D) of Chapter 8, Title 12, Guam Code Annotated, and a new Item (1) to §3111 of Article 1, Chapter 3, Title 28, Guam Administrative Rules and Regulations.

Bill 18-33 (COR) - V.A. Ada

An act to *add* a new chapter 81 to, title 21, Guam Code Annotated relative to the development of broadband and telecommunications infrastructure on public rights of way.

2:00pm

Bill 20-33 (COR) - T.C. Ada

An act to amend articles 9 and 12 of chapter 5, title 5 Guam code annotated relative to legal and contractual remedies in Guam procurement law.

Testimony on **Bill No. 1-33 (LS)**, **Bill No. 8-33 (COR)**, **Bill No. 18-33 (COR)** and **Bill No. 20-33 (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 office@senatorada.org, or via facsimile to (671) 473-3303 until **Friday, February 6, 2015 at 5:00 pm**. 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.