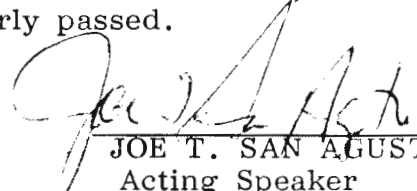


EIGHTEENTH GUAM LEGISLATURE
1986 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 743 (LS), "AN ACT TO ADD A NEW CHAPTER 12 AND TO AMEND CERTAIN CODE SECTIONS CONTAINED IN TITLE VII-A OF THE GOVERNMENT CODE, RELATIVE TO ESTABLISHING A PROCUREMENT APPEALS BOARD AND TO AMEND THE PROCUREMENT LAWS OF GUAM, AND FOR OTHER PURPOSES," was on the 6th day of November, 1986, duly and regularly passed.



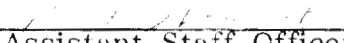
JOE T. SAN AGUSTIN
Acting Speaker

Attested:



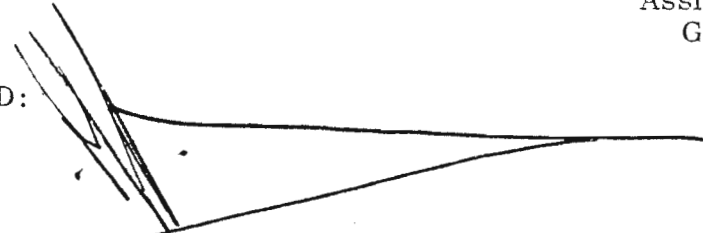
ELIZABETH P. ARRIOLA
Senator and Legislative Secretary

This Act was received by the Governor this 10th day of November, 1986, at 10:00 o'clock P.m.



Assistant Staff Officer
Governor's Office

APPROVED:



RICARDO J. BORDALLO
Governor of Guam

Date:

November 14, 1986 (10:00 AM)

Public Law No. 18-44

EIGHTEENTH GUAM LEGISLATURE
1986 (SECOND) Regular Session

Bill No. 743 (LS)
Substitute by Committee on
General Governmental Operations
further substitute by Committee on Rules
11-6-86

Introduced by:

C. T. C. Gutierrez
T. S. Nelson

AN ACT TO ADD A NEW CHAPTER 12 AND TO AMEND
CERTAIN CODE SECTIONS CONTAINED IN TITLE VII-A
OF THE GOVERNMENT CODE, RELATIVE TO
ESTABLISHING A PROCUREMENT APPEALS BOARD AND
TO AMEND THE PROCUREMENT LAWS OF GUAM, AND
FOR OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. A new Chapter 12 is added to Title VII-A of the
3 Government Code to read:

4 "CHAPTER 12

5 Procurement Appeals Board

6 Article A

7 §6983. Creation of the Procurement Appeals Board. There is
8 established an independent entity to be known as the Procurement
9 Appeals Board to be composed of a chairperson and at least six (6)
10 other members. The chairperson and members of the Board shall be
11 appointed by the Governor and confirmed with the advice and consent
12 of the Legislature and shall serve part-time as necessary.

13 §6983.1. Terms and Qualifications of Members of the Procurement
14 Appeals Board. (a) Term. The term of office of the chairperson and
15 each member of the Procurement Appeals Board shall be six (6) years
16 except that in making the initial appointments, the Governor shall
17 appoint one member for a term of four (4) years, and the chairperson
18 for a term of six (6) years, so that a term of office shall expire every
19 two (2) years. Thereafter, their successors shall be appointed for

1 terms of six (6) years, or for the balance of any unexpired term, but
2 members may continue to serve beyond their terms until their
3 successors take office. Members may be reappointed for succeeding
4 terms. If there is no chairperson, or if such officer is absent or
5 unable to serve, the senior member in length of service shall be
6 temporary chairperson.

7 (b) Authority of the Chairperson. The chairperson may adopt
8 operational procedures and issue such orders, not inconsistent with
9 this Title, as may be necessary in the execution of the Board's
10 functions. The chairperson's authority may be delegated to the
11 Board's members and employees, but only members of the Board may
12 issue decisions on appeals.

13 (c) Support. The Civil Service Commission is authorized to
14 provide for the Board such services as the chairperson requests, on
15 such basis, reimbursable or otherwise, as may be agreed upon between
16 the Civil Service Commission and the chairperson. The Board is
17 empowered to hire legal counsel, accountants, staff and other
18 personnel, and to provide for training of its staff and members.

19 (d) Qualifications for Board Membership. (1) One (1) member
20 shall be a member in good standing of the Guam Bar Association who
21 has been admitted to practice before the highest court of a state,
22 territory or the District of Columbia for at least five (5) years prior
23 to his appointment, one (1) member shall be a certified public
24 accountant and the other members shall have demonstrated experience
25 of at least five (5) years in procurement.

26 (2) No member shall be an employee of the government, a
27 recipient of any annuity from the government, a member of any
28 board or commission of the government, nor a member of the
29 immediate family of an employee of the government. As used in
30 this Section, 'immediate family' means a collective body of persons
31 living together in one house under one head.

32 (3) The appointment of any person to the Commission shall
33 become void if at any time during his term of office he shall

1 become an employee of the government or accept an annuity from
2 the government.

3 (4) When a vacancy occurs, the Governor shall appoint a
4 new member within sixty (60) days of the commencement of the
5 vacancy.

6 (e) Removal of Members. Notwithstanding any other provision of
7 this Chapter, the Governor or the Procurement Appeals Board by
8 three (3) positive votes of its members may recuse a member of the
9 Procurement Appeals Board from participation in a matter before the
10 board due to

11 (i) disability,

12 (ii) conflict of interest with respect to service on the
13 Board and engagement in any private business,

14 (iii) for other good cause.

15 Any removal pursuant to items (ii) and (iii) of this Subsection
16 shall be effective no sooner than ten (10) calendar days subsequent to
17 the delivery of written notice of such removal by the Governor or the
18 Board to the Legislative Secretary of the Legislature. Removal
19 pursuant to item (i) of this Section shall be effective pursuant to the
20 notice of the action taken.

21 A member of the Procurement Appeals Board may recuse himself.

22 For purposes of this Section, recuse means to disqualify from
23 hearing the matter and taking any action on it.

24 (f) Appointment, Qualifications and Function of Alternates. At
25 the same time as members of the Procurement Appeals Board are
26 appointed by the Governor, the Governor shall appoint three (3)
27 alternate members to the Board, all of whom shall serve for a term of
28 six (6) years.

29 (1) Each alternate shall, at the time of his appointment, be
30 designated either First Alternate, Second Alternate or Third
31 Alternate. For the first year of his appointment each alternate
32 shall serve in the order designated, and each year thereafter
33 they shall rotate the order, so that during the second year, the
34 First Alternate shall serve second, the Second Alternate third,

1 and the Third first, and so on for each successive year until
2 their terms expire.

3 (2) Each alternate shall fulfill the same requirements for
4 membership on the Board as any of the regular board members
5 fulfill and shall be subject to the same removal procedures as
6 regular board members.

7 (3) The alternates shall fill in on matters before the
8 Procurement Appeals Board when a member is absent or recused
9 pursuant to Subsection (e) of this Section and each alternate
10 shall fill in for an absent or recused member in the order they
11 are designated to serve, so that the alternate serving first fills
12 in for the first absence or recusal, the alternate serving second
13 fills in for the second absence or recusal, and so forth.

14 §6983.2. Rules of Procedure. The Procurement Appeals Board
15 shall adopt rules of procedure which, to the fullest extent possible,
16 will provide for the expeditious resolution of controversies in
17 accordance with the requirements of this Chapter.

18 The Board shall have the authority to appoint a hearing officer,
19 who shall take written, oral or otherwise presented testimony, evaluate
20 such testimony and make recommendations to the Board.

21 The Board may adopt Small Claims Procedures for the resolution
22 of controversies involving claims of less than Twenty-five Thousand
23 Dollars (\$25,000).

24 §6983.3. Decisions of the Procurement Appeals Board. Four (4)
25 affirmative votes shall be required to decide any matter before the
26 Procurement Appeals Board. Four (4) affirmative votes are required
27 to overturn a decision that is appealed to the Procurement Appeals
28 Board. The Procurement Appeals Board shall issue a decision in
29 writing or take other appropriate action on each appeal submitted. A
30 copy of any decision shall be provided to all parties, and, as
31 appropriate, the Chief Procurement Officer, the Director of Public
32 Works and the head of a purchasing agency.

33 §6983.4. Jurisdiction of the Procurement Appeals Board. The
34 Board shall have the power to review and determine de novo any

1 matter properly submitted to it. The Board shall not have jurisdiction
2 over disputes having to do with money owed to or by the government
3 of Guam. Notwithstanding §6964 of this Title, no prior determination
4 shall be final or conclusive on the Board or upon any appeal from the
5 Board. The Board shall have the power to compel attendance and
6 testimony of, and production of documents by, any employee of the
7 territory. The Board may consider testimony and evidence submitted
8 by any competing bidder, offerer or contractor of the protestant. The
9 Board's jurisdiction shall be utilized to promote the integrity of the
10 procurement process and the purposes of Title VII-A of the
11 Government Code.

12 §6983.5. Standard of Review. Any determination of an issue or
13 a finding of fact by the Board shall be final and conclusive unless
14 arbitrary, capricious, fraudulent, clearly erroneous, or contrary to
15 law. Any decision of the Board, including any determination
16 regarding the application or interpretation of the procurement law or
17 regulations, shall be entitled to great weight and the benefit of
18 reasonable doubt, although it shall not be conclusive on any court
19 having competent jurisdiction.

20 §6983.6. Suspension or Debarment Proceedings. (a) Scope.
21 This §6983.6 applies to a review by the Procurement Appeals Board of
22 a decision under §6975.1 of this Title.

23 (b) Time limitation on filing an appeal. The aggrieved person
24 shall file its appeal with the Board within sixty (60) days of the
25 receipt of a decision under Subsection (c) of §6975.1 of this Title.

26 (c) Decision. The Board shall decide whether, or the extent to
27 which, the debarment or suspension was in accordance with the
28 statutes, regulations and the best interest of the territory, and was
29 fair. The Board shall issue its decision within thirty (30) days of the
30 completion of the hearing on the issue.

31 §6983.7. Contract and Breach of Contract Controversies.

32 (a) Scope. This §6983.7 applies to a review by the Procurement
33 Appeals Board of a decision under §6975.2 of this Title.

1 (b) Time limitation on filing an appeal. The aggrieved
2 contractor shall file its appeal with the Board within sixty (60) days of
3 the receipt of the decision or within sixty (60) days following the
4 failure to render a timely decision as provided in §6975.2 of this Title.

5 (c) Decision. The Board shall decide the contract or breach of
6 contract controversy and shall issue its decision within thirty (30)
7 days of the completion of the hearing on the issue.

8 §6983.8. Appeals and Review of Procurement Appeals Board
9 Decisions. (a) Appeal. Any person receiving an adverse decision,
10 the territory, or both may appeal from a decision by the Procurement
11 Appeals Board to the Superior Court of Guam as provided in Article D
12 of Chapter 9 of this Title.

13 (b) Authorization of appeal by the government. No such appeal
14 shall be made by the territory unless recommended by the Chief
15 Procurement Officer, the Director of Public Works, or the head of the
16 Purchasing Agent involved and approved by the Attorney General.

17 §6983.9. Discontinuance of Contractor's Appeal. After notice of
18 an appeal to the Procurement Appeals Board has been filed by the
19 Chief Procurement Officer, the Director of Public Works or the head of
20 a Purchasing Agency, a contractor may not discontinue such appeal
21 without prejudice, except as authorized by the Board."

22 Section 2. Section 6975 of the Government Code is repealed and
23 reenacted to read:

24 "§6975. (a) Right to Protest. Any actual or prospective
25 bidder, offerer or contractor who may be aggrieved in connection with
26 the method of source selection, solicitation or award of a contract, may
27 protest to the Chief Procurement Officer, the Director of Public Works,
28 or the head of a Purchasing Agency. The protest shall be submitted
29 in writing within fourteen (14) days after such an aggrieved person
30 knows or should know of the facts giving rise thereto.

31 (b) Authority to Resolve Protests. The Chief Procurement
32 Officer, the Director of Public Works, the head of a purchasing
33 agency, or a designee of one of these officers shall have the
34 authority, prior to the commencement of an action in court concerning

1 the controversy, to settle and resolve a protest of an aggrieved
2 bidder, offerer, 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 (c) Decision. If the protest is not resolved by mutual
6 agreement, the Chief Procurement Officer, the Director of Public
7 Works, the head of a purchasing agency, or a designee of one of these
8 officers shall promptly issue a decision in writing. The decision shall:

9 (1) state the reasons for the action taken; and

10 (2) inform the protestant of its right to administrative and
11 judicial review.

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

15 (e) Appeal. A decision under Subsection (c) of this Section
16 including a decision thereunder regarding entitlement to costs as
17 provided by Subsection (h) of this Section, may be appealed by the
18 protestant, to the Procurement Appeals Board within fifteen (15) days
19 after receipt by the protestant of the notice of decision.

20 (f) Finality. A decision of the Procurement Appeals Board is
21 final unless a person adversely affected by the decision commences an
22 action in the Superior Court in accordance with Subsection (a) of
23 Section 6978 of this Title.

24 (g) In the event of a timely protest under Subsection (a) of this
25 Section or under Subsection (a) of Section 6978 of this Title, the
26 territory shall not proceed further with the solicitation or with the
27 award of the contract prior to final resolution of such protest, and
28 any such further action is void, unless:

29 (1) The Chief Procurement Officer or the Director of Public
30 Works after consultation with and written concurrence of the head
31 of the using or Purchasing Agency and the Attorney General or
32 designated Deputy Attorney General, makes a written
33 determination that the award of the contract without delay is
34 necessary to protect substantial interests of the territory; and

1 (2) Absent a declaration of emergency by the Governor, the
2 protestant has been given at least two (2) days notice (exclusive
3 of territorial holidays); and

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

9 (h) Entitlement to Costs. In addition to any other relief or
10 remedy granted under Subsection (c) or (e) of this Section or under
11 Subsection (a) of Section 6978 of this Title, including the remedies
12 provided by Article B of Chapter 9 of this Title, when a protest is
13 sustained, the protestant shall be entitled to the reasonable costs
14 incurred in connection with the solicitation and protest, including bid
15 preparation costs, excluding attorney fees, if:

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

18 (2) there is a reasonable likelihood that the protestant may
19 have been awarded the contract but for the breach of any ethical
20 obligation imposed by Article B of Chapter 11 of this Title or the
21 willful or reckless violation of any applicable procurement law or
22 regulation. The Procurement Appeals Board shall have the power
23 to assess reasonable costs other than attorney fees incurred by
24 the territory against a protestant upon its finding that the
25 protest was made fraudulently, frivolously or solely to disrupt the
26 procurement process."

27 Section 3. Subsection (c) of Section 6975.1 of the Government Code is
28 amended to read:

29 "(c) Decision. The Chief Procurement Officer, the Director of
30 Public Works or the head of a purchasing agency shall issue a written
31 decision to debar or suspend. The decision shall:

32 (1) state the reasons for the action taken; and

1 (2) inform the debarred or suspended person involved of
2 its rights to judicial or administrative review as provided in this
3 Title."

4 Section 4. Subsection (e) of Section 6975.1 is amended to read:

5 "(e) Finality of Decision. A decision under Subsections (c) or
6 (f) of this Section shall be final and conclusive, unless fraudulent, or
7 an appeal is taken to the Procurement Appeals Board in accordance
8 with Section 6983.6 of this Title."

9 Section 5. A new Subsection (f) is added to Section 6975.1 of the
10 Government Code to read:

11 "(f) Any member of the public may petition the Chief
12 Procurement Officer, the Director of Public Works or the head of a
13 purchasing agency to take action to debar or suspend pursuant to
14 Subsection (a) of this Section. An investigation of each petition shall
15 be conducted promptly and a written report should be made of findings
16 of fact and action taken."

17 Section 6. Subsection (c) of Section 6975.2 of the Government Code is
18 amended to read:

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

24 (1) state the reasons for the action taken; and

25 (2) inform the contractor of its rights to judicial or
26 administrative review as provided in this Title."

27 Section 7. Subsection (e) of Section 6975.2 of the Government Code is
28 amended to read:

29 "(e) Finality of Decision. The decision reached pursuant to
30 Subsection (c) of this Section shall be final and conclusive, unless
31 fraudulent, or the contractor appeals administratively to the
32 Procurement Appeals Board in accordance with Section 6983.7 of this
33 Title."

1 Section 8. Subsection (d) of Section 6978 of the Government Code is
2 amended to read:

3 "(d) Limited Finality for Administrative Determinations. In any
4 judicial action under this Section, factual or legal determinations by
5 employees, agents or other persons appointed by the Territory shall
6 have no finality and shall not be conclusive, notwithstanding any
7 contract provision, or regulation, except to the extent provided in
8 §§6964, 6983.4 and 6983.5 of this Title."

9 Section 9. Subsection (c) of Section 6978 of the Government Code is
10 repealed and reenacted to read:

11 "(c) In addition to other relief and remedies, the Superior Court
12 shall have jurisdiction to grant injunctive relief in any action brought
13 under Subsections (a), (b) or (c) of this Section."

14 Section 10. Subsection (a) of Section 6978.1 of the Government Code
15 is repealed and reenacted to read:

16 "(a) Protested Solicitations and Awards. Any action under
17 Section 6978(a) of this Chapter shall be initiated within fourteen (14)
18 days after receipt of a final administrative decision."

19 Section 11. Subsection (b) of Section 6978.1 of the Government Code
20 is amended to read:

21 "(b) Debarments and Suspensions for Cause. Any action under
22 Section 6978(b) of this Chapter shall be commenced within six (6)
23 months after receipt of the decision of the Policy Office under Section
24 6981.1 of this Title, or the decision of the Procurement Appeals Board
25 under Section 6983.6 of this Title, whichever is applicable."

26 Section 12. Subsection (c) of Section 6978.1 of the Government Code
27 is amended to read:

28 "(c) Actions Under Contracts or for Breach of Contract. Any
29 action commenced under Section 6978(c) of this Chapter shall be
30 commenced within twelve (12) months after the date of the Procurement
31 Appeals Board decision."

32 Section 13. A new Subsection (d) is added to Section 6978.1 of the
33 Government Code to read:

1 "(d) The limitations on actions provided by this Section are
2 tolled during the pendency of any proceeding brought pursuant to
3 Section 6978.2 of this Title."

4 Section 14. Section 6976 of the Government Code is amended to read:

5 "Section 6976. Applicability of this Article. The provisions of
6 this Article apply where it is determined administratively, or upon
7 administrative or judicial review, that a solicitation or award of a
8 contract is in violation of law."

9 Section 15. A new Subsection (d) is added to Section 6980.6 of the
10 Government Code:

11 "(d) Favors to the Territory. For purposes of this Section, a
12 favor is anything, including raffle tickets, of more than de minimus
13 value and whether intended for the personal enjoyment of the receiver
14 or for the department or organization in which they are employed or
15 for any person, association, club or organization associated therewith
16 or sponsored thereby. It shall be a breach of ethical standards for
17 any person who is or may become a contractor, a subcontractor under
18 a contract to the prime contractor or higher tier contractor, or any
19 person associated therewith, to offer, give or agree to give any
20 employee or agent of the territory or for any employee or agent of the
21 territory to solicit or accept from any such person or entity or agent
22 thereof, a favor or gratuity on behalf of the territory whether or not
23 such favor or gratuity may be considered a reimbursable expense of
24 the territory, during the pendency of any matter related to
25 procurement, including contract performance and warranty periods."

26 Section 16. Subsection (c) of Section 6980.6 of the Government Code
27 is amended to read:

28 "(c) Contract Clause. The prohibition against gratuities,
29 kickbacks and favors to the territory prescribed in this Section shall
30 be conspicuously set forth in every contract and solicitation therefor."

31 Section 17. A new Section 6964.4 is added to the Government Code to
32 read:

1 "Section 6964.4. Record of Procurement Actions. Each
2 procurement officer shall maintain a complete record of each
3 procurement. The record shall include the following:

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

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

10 (3) sound recordings of all pre-bid conferences, negotiations
11 arising from a request for proposals and discussions with vendors
12 concerning small purchase procurement;

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

17 (5) the requesting agency's determination of need."

18 Section 18. A new Section 6964.5 is added to the Government Code to
19 read:

20 "Section 6964.5. Certification of Record. No procurement award
21 shall be made unless the responsible procurement officer certifies in
22 writing under penalty of perjury that he has maintained the record
23 required by Section 6964.4 of this Chapter and that it is complete and
24 available for public inspection. The certificate is itself a part of the
25 record."

26 Section 19. A new Section 6964.6 is added to the Government Code to
27 read:

28 "Section 6964.6. The record required by Section 6964.4 of this
29 Chapter is a public record and, subject to rules promulgated by the
30 Procurement Appeals Board, any person may inspect and copy any
31 portion of the record."

32 Section 20. A new Section 6964.7 is added to the Government Code to
33 read:

1 "Section 6964.7 The rules promulgated pursuant to Section 6964.6
2 of this Chapter shall:

3 (1) protect the integrity of the bidding process;

4 (2) protect the confidentiality of trade secrets;

5 (3) establish reasonable charges for copying papers;

6 (4) provide for transcription of sound recordings;

7 (5) require public access to the record at the earliest
8 possible time; and

9 (6) not require that the record be complete or that the
10 procurement award be made before inspection and copying are
11 permitted."

12 Section 21. A new Section 6965.7 is added to the Government Code to
13 read:

14 "Section 6965.7. Publication of Source of Specifications. The
15 specifications contained in any invitation for bids or request for
16 proposals, and any amendment thereto, for the procurement of supplies
17 shall identify the person responsible for drafting the specifications and
18 any persons, technical literature or manufacturer's brochures relied
19 upon by the responsible person in drafting the specifications."

20 Section 22. A new Section 6965.8 is added to the Government Code to
21 read:

22 "Section 6965.8. Salient Features. (a) Specifications shall not
23 include requirements, such as but not limited to restrictive dimensions,
24 weights or materials, which unnecessarily restrict competition, and
25 shall include only the essential physical characteristics and functions
26 required to meet the territory's minimum needs.

27 (b) Purchase descriptions shall not specify a product having
28 features which are peculiar to the products of one manufacturer,
29 producer or distributor unless it has been determined in writing by
30 the Director of the using agency that those particular features are
31 essential to its requirements and specifying the reason that similar
32 products lacking those features would not meet minimum requirements
33 for the item.

1 (c) Purchase descriptions shall describe the salient technical
2 requirements or desired performance characteristics of supplies or
3 services to be procured without including restrictions which do not
4 significantly affect the technical requirements or performance
5 characteristics."

6 Section 23. Section 6959.5 of the Government Code is amended to
7 read:

8 "§6959.5. Emergency Procurements. Notwithstanding any other
9 provision of this Title, the Chief Procurement Officer, the Director of
10 Public Works, the head of a purchasing agency, or a designee of either
11 officer may make or authorize others to make emergency procurements when
12 there exists a threat to public health, welfare, or safety under emergency
13 conditions as defined in regulations promulgated by the Policy Office;
14 provided that such emergency procurements shall be made with such
15 competition as is practicable under the circumstances, and further provided
16 that the procurement agent must solicit at least three (3) informal price
17 quotations, if time allows must give notice to all contractors from the
18 qualified bid list who have provided the needed supplies and services to the
19 government within the preceding twelve (12) months, and must award the
20 procurement to the firm with the best offer, as determined by evaluating
21 cost and delivery time. No emergency procurement or combination of
22 emergency procurements may be made for an amount of goods or supplies
23 greater than the amount of such goods and supplies which is necessary to
24 meet an emergency for the thirty (30) day period immediately following the
25 procurement. A written determination of the basis for the emergency and
26 for the selection of the particular contractor shall be included in the
27 contract file. The requirements for a written determination for the
28 emergency shall be met if the procurements are being made on the basis of
29 the Governor's declaration of an emergency situation by Executive Order if
30 such Order states that emergency procurement may be resorted to for
31 purposes of the Order. Unless authorized by an Executive Order declaring
32 an emergency, no emergency procurement may be made except on a
33 certificate made under penalty of perjury by the Chief Procurement Officer,
34 Director of Public Works or the head of a purchasing agency, as the case

1 may be. Certified copies of the certificate shall be sent, prior to award
2 and as a condition thereof, to the Governor and Speaker of the Legislature.

3 The certificate shall contain the following:

- 4 (1) a statement of the facts giving rise to the emergency;
- 5 (2) the factual basis of the determination that an emergency
6 procurement is necessary; and
- 7 (3) a statement that emergency procurement is not being used solely
8 for the purpose of avoidance of the provisions of this Title.

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

11 Section 24. 6 GCA §4102 is amended to read:

12 "§4102. Public Writings Defined. 'Public Writings' are:

13 (1) The written acts of records of the acts of the sovereign
14 authority, of official bodies and tribunals, and of public officers,
15 legislative, judicial and executive, whether of the territory of
16 Guam, of any state, of the United States or insular possessions
17 thereof, of the Trust Territory of the Pacific Islands, or of a
18 foreign country;

19 (2) Public records, kept in Guam, of private writings; and

20 (3) All data produced, generated or stored by a
21 government body, as defined in Subsection (h) of Section 6952 of
22 Title VII-A of the Government Code, in any way related to
23 procurement, as defined in Subsection (c) of Section 6952 of Title
24 VII-A of the Government Code."

25 Section 25. Subsection (b) of Section 6950 of the Government Code is
26 amended to read:

27 "(b) Purposes and Policies. The underlying purposes and
28 policies of this Title are:

29 (1) to simplify, clarify, and modernize the law governing
30 procurement by this Territory;

31 (2) to permit the continued development of procurement
32 policies and practices;

33 (3) to provide for increased public confidence in the
34 procedures followed in public procurement;

1 (4) to ensure the fair and equitable treatment of all persons
2 who deal with the procurement system of this Territory;

3 (5) to provide increased economy in territorial activities and
4 to maximize to the fullest extent practicable the purchasing value
5 of public funds of the Territory;

6 (6) to foster effective broad-based competition within the
7 free enterprise system;

8 (7) to provide safeguards for the maintenance of a
9 procurement system of quality and integrity; and

10 (8) to require public access to all aspects of procurement
11 consistent with the 'sealed bid' procedure and the integrity of the
12 procurement process."

13 Section 26. A new Subsection (x) is added to Section 6952 of the
14 Government Code to read:

15 "(x) 'Emergency' means a condition posing an imminent threat to
16 public health, welfare, or safety which could not have been foreseen
17 through the use of reasonable and prudent management procedures,
18 and which cannot be addressed by other procurement methods of
19 source selection."

20 Section 27. A new Article E is added to Chapter 9 of Title VII-A of
21 the Government Code to read:

22 "Article E

23 "Section 6978.2. (a) On complaint by any member of the public,
24 the Superior 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 a
27 case the court shall determine the matter de novo, and may examine
28 the contents of such procurement data in camera to determine whether
29 such records or any part thereof shall be withheld under any of the
30 exceptions set forth in 6 GCA §4202 and the burden is on the agency
31 to sustain its action.

32 (b) Notwithstanding any other provision of law, the government
33 or a governmental body shall serve an answer or otherwise plead to
34 any complaint made under this Section within thirty (30) days after

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

3 (c) Except as to cases the court considers of greater
4 importance, proceedings as authorized by this Section, and appeals
5 therefrom, take precedence on the docket over all cases and shall be
6 assigned for hearing and trial or for argument at the earliest
7 practicable date and expedited in every way.

8 (d) The court may assess against the government or
9 governmental body reasonable attorney fees and other litigation costs
10 reasonably incurred in any case under this Section in which the
11 complainant has substantially prevailed.

12 (e) Whenever the court orders the production of any
13 procurement data improperly withheld from the complainant and
14 assesses against the government or governmental body reasonable
15 attorney fees and other litigation costs, and the court additionally
16 issues a written finding that the circumstances surrounding the
17 withholding raise questions whether government personnel acted
18 arbitrarily or capriciously with respect to the withholding, apart from
19 such other actions as the Court may take, the Civil Service Commission
20 shall promptly initiate a proceeding to determine whether disciplinary
21 action is warranted against the officer or employee who was primarily
22 responsible for the withholding. The Commission, after investigation
23 and consideration of the evidence submitted, shall submit its findings
24 to the administrative authority of the agency concerned and shall send
25 copies of the findings and recommendations to the officer of employee
26 or his representative. The administrative authority shall take the
27 corrective action that the Commission recommends. No right or power
28 granted to the Civil Service Commission shall bar or preclude the
29 Court from issuing such orders, imposing such sanctions or providing
30 such remedy or relief as it deems proper.

31 (f) In the event of noncompliance with the order of the Court,
32 the Superior Court may punish for contempt, the responsible employees
33 or officer."

1 Section 28. A new Section 6954.11 is added to the Government Code
2 to read:

3 "\$6954.11. Every governmental body which is in the purview of
4 the Executive Branch and including Guam Community College, the
5 University of Guam, the Department of Education, the Guam Memorial
6 Hospital and Guam Visitor's Bureau shall be governed by Chapters 1,
7 3, 6, 7, 10, 11 and 12 of this Title, except to the extent that any such
8 governmental body or other above-named body may be exempted from
9 the centralized procurement regime of Chapter 2 of this Title, in which
10 event the Director of each such governmental body or other
11 above-named body shall be substituted wherever there is reference to
12 the Public Policy Office or Chief Procurement Officer or Director of
13 Public Works in Chapters 4, 5, 8 and 9 of Title VII-A of the
14 Government Code.

15 It is the intent of the Legislature to require all Executive Branch
16 governmental bodies, including autonomous agencies, and other
17 above-named bodies, to be governed to the maximum extent practicable
18 by Title VII-A. This provision requires any governmental body and
19 each above-named body to conduct their procurement activities
20 pursuant to Title VII-A, except insofar as said Title establishes and
21 effects a system of centralized procurement."

22 Section 29. A new Section 6955.1 is added to the Government Code to
23 read:

24 "\$6955.1. Each governmental body and each named body in
25 Section 6954.11 of this Title shall adopt the procurement regulations
26 promulgated pursuant to Section 6955(a) of this Title to the extent
27 such agency is subject to such regulations according to the terms of
28 Section 6954.11 of this Title"

29 Section 30. A new Section 6950.9 is added to the Government Code to
30 read:

31 §6950.9. Policy in Favor of Planned Procurement. All
32 procurements of supplies and services shall, where possible, be made
33 sufficiently in advance of need for delivery or performance to promote
34 maximum competition and good management of resources. Publication of

1 bids and requests for proposals shall not be manipulated so as to place
2 potential bidders at unnecessary competitive disadvantage. Except in
3 emergency situations, lower price bids are generally preferable to
4 shorten delivery or performance bids. Delivery time may be
5 considered as a factor in making an award to a responsive bidder only
6 if his average delivery time bid is at least ten percent (10%) shorter
7 than the average delivery time of a lower price responsive bidder and
8 if the price offered by the bidder offering the faster delivery or
9 performance does not exceed one hundred five percent (105%) of the
10 lower price bidder."

11 Section 31. Subsection (b) of Section 6975.1 of the Government Code
12 is amended to read:

13 "(b) Causes for Debarment or Suspension. The causes for
14 debarment or suspension include the following:

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

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

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

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

31 (i) deliberate failure without good cause to perform in
32 accordance with the specifications or within the time limit
33 provided in the contract; or

1 (ii) a recent record of failure to perform or of
2 unsatisfactory performance in accordance with the terms of
3 one or more contracts, provided, that failure to perform or
4 unsatisfactory performance caused by acts beyond the
5 control of the contractor shall not be considered to be a
6 basis for debarment;

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

13 (6) for violation of the ethical standards set forth in
14 Chapter 11 of this Title; and

15 (7) filing a frivolous or fraudulent petition, protest or
16 appeal under Section 6975(e), of Section 6975.1(f) or of Section
17 6975.2(e) of this Title."

18 Section 32. Subsection (a) of Section 6959.6 of the Government Code
19 is amended to read:

20 "(a) Conditions for Use. The services specified in §6954.7(a) of
21 this Title shall be procured in accordance with this Section, except as
22 authorized under §6959.4 or §6959.5 of this Title. Services for
23 architecture, engineering, construction, land surveying, environmental
24 assessment and other such services shall be procured in accordance
25 with Chapter 5 of this Title."

26 Section 33. The provisions of Sections 1 through 32, inclusive, of
27 this Act shall become effective on January 4, 1987.

28 Section 34. A new 4 GCA §6218 is added to read:

29 "§6218. Cause of Action for Overtime. It is the intent of the
30 Legislature that all overtime which has been approved be promptly
31 paid. Therefore: any employee who is entitled to overtime may bring
32 action in the Superior Court against the government of Guam for
33 payment of all back pay due as a result of overtime, in addition to all
34 other remedies allowed at law or equity. In any such case, the Court

1 may order pendente lite and permanently that the appropriate officer
2 or officers of the Government pay such sums to the employee as may
3 become due in the future on such terms as the Court deems just.

4 In any such case, ten (10) or more employees similarly situated
5 may initiate and bring a class action on behalf of all employees
6 similarly situated. In such case, the Court shall set reasonable
7 attorney's fees upon conclusion of the case in an amount not to exceed
8 ten percent (10%) of the recovery, to be paid by the government of
9 Guam if the employees prevail."

10 Section 35. Notwithstanding any other provision of law, the Governor
11 is authorized to expend from the operational budget available to the
12 Executive Branch of the government in FY 1987 such sums as are necessary
13 to fund all the pay reclassifications authorized to be implemented in PL
14 18-32 and PL 18-33 for FY 1987. The Governor shall submit a request for
15 supplemental funding for such pay reclassifications to the Legislature by
16 December 1, 1986.

17 Section 36. (a) O'Hara Street situated in Agana, Guam, shall
18 hereinafter be known as the "Archbishop Felixberto Camacho Flores Street".

19 (b) Any provisions in the statutes referencing O'Hara Street are
20 amended to read: "Archbishop Felixberto Camacho Flores Street".

21 (c) The Governor of Guam with the Agana Commissioner and the
22 Municipal Planning Council, shall cause to be erected appropriate nameplates
23 or signs designating O'Hara Street as the "Archbishop Felixberto Camacho
24 Flores Street". Further, at such ceremony as the Governor, along with the
25 Agana Commissioner and the Municipal Planning Council deem appropriate,
26 said "Archbishop Felixberto Camacho Flores Street" shall be officially named
27 and a plaque bearing the name, picture and brief history of the
28 contributions of the late Archbishop Felixberto Camacho Flores shall be
29 affixed at a suitable spot with or near the street name.

30 Section 37. Subsection (a) of Section 26106 of the Government Code is
31 repealed and reenacted to read:

32 "(a) Whenever there are two (2) or less current licenses in
33 effect, the Board shall conduct a public meeting at which it shall
34 review cockpit operations and authorize the letting of bids for licenses

1 which will be new or which will replace the expired or non-renewed
 2 licenses."

3 Section 38. Subsection (b) of Section 26106 of the Government Code is
 4 amended to read:

5 "(b) Not later than ninety (90) days prior to the expiration of
 6 an existing license the Board shall publish in a newspaper of general
 7 circulation within the territory its invitation for bids."

8 Section 39. Notwithstanding any other provision of law, the balance
 9 remaining of any sums appropriated in Section 13 of P.L. 18-6, Sections 4
 10 and 8 of P.L. 18-1, Section 8 of P.L. 17-18, and Section 5 of P.L. 17-2 are
 11 reprogrammed and reappropriated from their original sources to the
 12 Legislative Operations Fund for the operation of the Eighteenth Guam
 13 Legislature until January 4, 1987.

14 Section 40. Section C of Part II of Section 1 of Chapter II of Public
 15 Law 18-15 is amended to read:

	General Fund	Other Fund	Federal Fund	Total
"C. For Federal - State Marketing Improvement Program				
1. Operating Expenses	\$ 12,500		\$ 19,500	\$ 32,000
	<u>\$ 12,500</u>		<u>\$ 19,500</u>	<u>\$ 32,000"</u>

16 Section 41. Section K of Part II of Section 1 of Chapter II of Public
 17 Law 18-15 is amended to read:

	General Fund	Other Fund	Federal Fund	Total
"K. For Soil and Water Conservation				
1. Personnel Services	\$ 13,102			\$ 13,102
	(1.0 FTE)			(1.0 FTE)
2. Operating Expenses	3,950			3,950
3. Stipends Water Conservation District Officers	7,000			7,000
	<u>\$ 24,052</u>			<u>\$ 24,052"</u>

1 Section 42. The sum of Five Hundred Thirty Six Thousand Dollars
2 (\$536,000) of the funds available for use for the Medically Indigent Program
3 of the Department of Public Health and Social Services for Fiscal Year 1987
4 are appropriated to the Department of Public Health and Social Services for
5 the payment of patient charges incurred in Fiscal Year 1986 for the
6 Medically Indigent Program.

7 Section 43. No later than forty-five (45) days subsequent to the date
8 of enactment of this Act, the Governor shall submit to the Legislature an
9 equitable plan for the salaries of all unclassified employees in all
10 departments and agencies of the government, both autonomous and
11 non-autonomous. Such plan shall include proposed salaries for all
12 unclassified employees and identify sources of funding sufficient to
13 implement the plan.

14 Section 44. A new Section 6961.3 is added to the Government Code to
15 read:

16 "Section 6961.3. Disclosure of major shareholders. As a
17 condition of bidding, any partnership, sole proprietorship or
18 corporation doing business with the government of Guam shall submit
19 an affidavit executed under oath that lists the name and address of
20 any person who has held more than ten percent (10%) of the
21 outstanding interest or shares in said partnership, sole proprietorship
22 or corporation at any time during the twelve (12) month period
23 immediately preceding submission of a bid. The affidavit shall contain
24 the number of shares or the percentage of all assets of such
25 partnership, sole proprietorship or corporation which have been held
26 by each such person during the twelve (12) month period. In
27 addition, the affidavit shall contain the name and address of any
28 person who has received or is entitled to receive a commission,
29 gratuity or other compensation for procuring or assisting in obtaining
30 business related to the bid for the bidder and shall also contain the
31 amounts of any such commission, gratuity or other compensation. The
32 affidavit shall be open and available to the public for inspection and
33 copying."

1 Section 45. A new 10 GCA §41107 is added to read:

2 "§41107. Executive Officer: Special Duties. (a) In addition to
3 any other powers and duties of the Executive Officer, the Executive
4 Officer shall, by whatever means deemed appropriate, certify that a
5 person is disabled after receipt of a signed statement from a licensed
6 physician supporting the claim of the disabled person. The Executive
7 Officer shall also certify those vehicles which transport disabled
8 persons regularly.

9 (b) A disabled Parking Advisory Committee is hereby created.
10 Four (4) members of the Commission shall be selected by the Executive
11 Officer and shall consist of one (1) paraplegic, one (1) quadriplegic,
12 one (1) blind person, and one (1) disabled person who must rely on
13 crutches for mobility. The Director of Public Works shall choose one
14 (1) member who shall be a representative of the Department of Public
15 Works. The Director of the Department of Vocational Rehabilitation
16 shall be an ex-officio member. The Disabled Parking Advisory
17 Committee shall submit to the Department of Public Works their
18 recommendations regarding location of parking spaces which, pursuant
19 to Subsection (b) of Section 10001.9 of the Government Code, are to
20 be assigned to the disabled."

21 Section 46. A new Section 350 is added to the Code of Civil Procedure
22 to read:

23 "Section 350. Exposure to Asbestos, Actions for Injury, Illness
24 or Wrongful Death. (a) In any civil action for injury or illness based
25 upon exposure to asbestos, chemicals, or other toxic agents, the time
26 for the commencement of the action shall be the later of the following:

27 (1) Within two (2) years after the date the plaintiff first
28 suffered disability and either before or after suffering the
29 disability the plaintiff was informed by a licensed physician,
30 clearly and comprehensively, to the degree that the plaintiff
31 is capable of understanding, that he was diagnosed as
32 having any one or more of the following several and distinct
33 injuries, pleural disease, or pulmonary asbestosis, or

1 malignant mesothelioma, or other carcinoma or other specific
2 asbestos-related injury, causing the disability; or

3 (2) Within two (2) years after the date the plaintiff either knew,
4 or through the exercise of reasonable diligence should have
5 known, (i) that such disability was caused or contributed to
6 by such exposure and (ii) that the disability or injury was
7 caused by a violation of a duty towards the plaintiff; or

8 (3) Two (2) years from the effective date of this Act.

9 (b) 'Disability' as used in Subsection (a) of this Section means
10 the loss of time from work as a result of exposure to asbestos, which
11 precludes the performance of the employee's regular occupation.

12 (c) In an action for the wrongful death of any plaintiff's
13 decedent, based upon exposure to asbestos, the time for commencement
14 of an action shall be the later of the following:

15 (1) Within two (2) years from the date of death of the plaintiff's
16 decedent, or the date of enactment of this Act, whichever is
17 later; or

18 (2) Within two (2) years from the date the plaintiff first knew,
19 or through the exercise of reasonable diligence should have
20 known, that the death was caused or contributed to by such
21 exposure.

22 (d) The provisions of this Section shall apply retroactively to all
23 unfiled claims and to all pending litigation in the courts of Guam, or
24 which are on appeal. Pending litigation as used in this Subsection
25 shall include any action that has been filed in the courts of Guam.

26 (e) The burden of proving that this Section is a bar to any
27 cause of action for illness, injury, property damage or wrongful death
28 is upon the party asserting this section as a defense.

29 (f) Nothing in this Section shall be construed as waiving the
30 sovereign immunity of the government of Guam.

31 (g) This Section shall not change the statute of limitations for
32 any claim against the Government of Guam."

33 Section 47. The Governor shall appoint seven (7) members to a task
34 force as soon as practicable after the effective date of this Section of this

1 Act and charge the task force with preparing a comprehensive plan,
2 including recommended legislation, for the territory to identify the
3 presence, in government buildings and areas under the control of the
4 government, of asbestos and other environmental substances capable of
5 causing latent harm to the people of Guam, and to identify necessary steps
6 to remove this harm. This task force shall make its report and forward the
7 report to the Governor and the Legislature within one hundred eighty (180)
8 days from the effective date of this Section of this Act.

9 Section 48. The sum of Nine Hundred Seventy Eight Thousand Three
10 Hundred Sixty-five Dollars (\$978,365.00) is appropriated from the General
11 Fund to the Government of Guam Retirement Fund for the purpose of
12 funding a Four Hundred Nineteen Dollar (\$419.00) lump sum Cost of Living
13 Allowance for government of Guam retirees or their survivors for Fiscal
14 Year 1987 only.

15 Section 49. The sum of Twenty-eight Thousand Dollars (\$28,000.00) is
16 appropriated from the General Fund to the Legislature Operations Fund for
17 expenses of the state funerals for former Commissioners Pedro Rosario and
18 Jose Tyquiengco and former Senator Cecilia Bamba.

19 Section 50. (a) Any agreement for termination of the Power Pool
20 Agreement of the Island Wide Power System between the Guam Power
21 Authority and the United States Government or the United States Navy shall
22 provide that the United States Government or the United States Navy shall
23 not purchase electrical power from the Guam Power Authority at a
24 preferential rate. In any event, any electrical rate for the United States
25 Navy or the United States Government shall be not less than the average
26 amount per kilowatt hour paid by all classes of electrical power consumers
27 on Guam, and shall, as a minimum, incorporate all social and economic
28 considerations pertinent to the community of Guam.

29 (b) Any agreement between the Guam Power Authority and the United
30 States Government or the United States Navy for the purchase of electrical
31 power shall provide that the United States Government or the United States
32 Navy shall not purchase electrical power from the Guam Power Authority at
33 a preferential rate. In any event, any electrical rate for the United States
34 Navy or the United States Government shall be not less than the average

1 amount per kilowatt hour paid by all classes of electrical power consumers
2 on Guam, and shall, as a minimum, incorporate all social and economic
3 considerations pertinent to the community of Guam.

4 (c) Any agreement for termination of the Power Pool Agreement of the
5 Island Wide Power System between the Guam Power Authority and the
6 United States Government or the United States Navy, and any agreement
7 between the Guam Power Authority and the United States Government or the
8 United States Navy for the purchase of electrical power from the Guam
9 Power Authority must be approved by the Board of Directors of the Guam
10 Power Authority, Public Utilities Commission and Guam law prior to
11 implementation, and shall have no force and effect until such approval has
12 been granted.

13 Section 51. The sum of Eighty Thousand Dollars (\$80,000) is
14 appropriated from the General Fund to the Bureau of Budget and
15 Management Research for the purpose of providing staff, rental, utilities,
16 supplies and equipment for the transition for the Office of Governor-elect
17 and the Office of Lieutenant Governor-elect. The Director of the Bureau of
18 Budget and Management Research shall serve as the certifying officer for
19 expenditure of this appropriation. The executive branch shall provide such
20 equipment, supplies and staff assistance as requested by the Governor-elect
21 and the Lieutenant Governor-elect for the transition office without cost to
22 the transition office.

23 Section 52. The sum of Thirteen Thousand Five Hundred Dollars
24 (\$13,500) is appropriated from the Tourist Attraction Fund to the
25 Department of Parks and Recreation for repair of the stair railings at the
26 Two Lovers' Point for FY 1987.

27 Section 53. The sum of Twenty Three Thousand Five Hundred Sixty
28 Six Dollars and Eighty Seven Cents (\$23,566.87) is appropriated from the
29 General Fund for the operation of the Twelfth Guam Youth Congress. The
30 unused balance of the Tenth and Eleventh Guam Youth Congress is further
31 reappropriated to the Twelfth Guam Youth Congress.

EIGHTEENTH GUAM LEGISLATURE

ROLL CALL SHEET

Bill No.: 743

DATE: 11-6-86

Resolution No.: _____

QUESTION: for passage

<u>SENATOR</u>	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. F. Ada	✓			
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. M. Bamba			✓	
F. F. Blas	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
C. T. C. Gutierrez	✓			
F. J. Gutierrez	✓			
A. C. Lamorena III	✓			
P. C. Lujan	✓			
M. D. A. Manibusan	✓			
_____	_____	_____	_____	_____
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. Quitugua	✓			
J. M. Rivera	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka				✓
A. R. Unpingco	✓			

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EIGHTEENTH GUAM LEGISLATURE

ROLL CALL SHEET

Bill No.: _____

DATE: 11/6/86

Resolution No.: _____

QUESTION: *see 2-36 C743*

<u>SENATOR</u>	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. F. Ada	✓			
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. M. Bamba	✓			
F. F. Blas	✓			
H. D. Dierking		✓		
E. R. Duenas	✓			
C. T. C. Gutierrez		✓		
F. J. Gutierrez		✓		
A. C. Lamorena III	✓			
P. C. Lujan	✓			
M. D. A. Manibusan	✓			
_____	_____	_____	_____	_____
T. S. Nelson		✓		
D. Parkinson	✓			
F. J. Quitugua	✓			
J. M Rivera	✓			
J. T. San Agustin		✓		
F. R. Santos	✓			
T. V. C. Tanaka				✓
A. R. Unpingco	✓			

13-5

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EIGHTEENTH GUAM LEGISLATURE

ROLL CALL SHEET

Bill No.: _____

DATE: 11/5/86

Resolution No.: _____

QUESTION: 4 103 ✓ 61 2 17 36 - (74)

<u>SENATOR</u>	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. F. Ada	✓			
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. M. Bamba	✓			
F. F. Blas	✓			
H. D. Dierking		✓		
B. R. Duenas	✓			
C. T. C. Gutierrez	✓			
F. J. Gutierrez	✓			
A. C. Lamorena III	✓			
P. C. Lujan	✓			
M. D. A. Manibusan	✓			
_____	/	/	/	/
T. S. Nelson		✓		
D. Parkinson	✓			
F. J. Quitugua	✓			
J. M Rivera	✓			
J. T. San Agustin		✓		
F. R. Santos	✓			
T. V. C. Tanaka				✓
A. R. Unpingco	✓			

15 3 2

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B-743

EIGHTEENTH GUAM LEGISLATURE

ROLL CALL SHEET

Bill No.: _____

DATE: 9-24-86

Resolution No.: _____

QUESTION: Is it possible to have the decision of the chair be overruling?

<u>SENATOR</u>	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. F. Ada	✓			
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. M. Bamba				✓
F. F. Blas	✓			
H. D. Dierking		✓		
E. R. Duenas	✓			
C. T. C. Gutierrez		✓		
F. J. Gutierrez		✓		
A. C. Lamorena III	✓			
P. C. Lujan				✓
M. D. A. Manibusan ^H	✓			
SENATOR	✓	✓	✓	✓
T. S. Nelson		✓		
D. Parkinson ⁺		✓		
F. J. Quitugua		✓		
J. M Rivera	✓			
J. T. San Agustin		✓		
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

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B743

EIGHTEENTH GUAM LEGISLATURE

ROLL CALL SHEET

Bill No.: _____

DATE: 9-24-86

Resolution No.: _____

QUESTION:

y u frs / me 27 36, USB 743
Motion of Sen. Santos to delete Sec. 36

<u>SENATOR</u>	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
----------------	------------	------------	-------------------	---------------

J. F. Ada	✓			
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. M. Bamba				✓
F. F. Blas	✓			
H. D. Dierking		✓		
E. R. Duenas	✓			
C. T. C. Gutierrez		✓		
F. J. Gutierrez		✓		
A. C. Lamorena III ✓	✓			
P. C. Lujan				✓
M. D. A. Manibusan ✓		✓		
XXXXXXXX	✓	✓	✓	✓
T. S. Nelson		✓		
D. Parkinson ✓		✓		
F. J. Quitugua	✓			
J. M Rivera *	✓			
J. T. San Agustin		✓		
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

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EIGHTEENTH GUAM LEGISLATURE
1986 (SECOND) Regular Session

Bill No. 743
Substitute by Committee on
General Governmental Operations
further substitute by Committee on Rules
11-6-86

6 11/6/86

Introduced by: C. T. C. Gutierrez
T. S. Nelson

AN ACT TO ADD A NEW CHAPTER 12 AND TO AMEND
CERTAIN CODE SECTIONS CONTAINED IN TITLE VII-A
OF THE GOVERNMENT CODE, RELATIVE TO
ESTABLISHING A PROCUREMENT APPEALS BOARD AND
TO AMEND THE PROCUREMENT LAWS OF GUAM, AND
FOR OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. A new Chapter 12 is added to Title VII-A of the
3 Government Code to read:

4 "CHAPTER 12

5 Procurement Appeals Board

6 Article A

7 §6983. Creation of the Procurement Appeals Board. There is
8 established an independent entity to be known as the Procurement
9 Appeals Board to be composed of a chairperson and at least six (6)
10 other members. The chairperson and members of the Board shall be
11 appointed by the Governor and confirmed with the advice and consent
12 of the Legislature and shall serve part-time as necessary.

13 §6983.1. Terms and Qualifications of Members of the Procurement
14 Appeals Board. (a) Term. The term of office of the chairperson and
15 each member of the Procurement Appeals Board shall be six (6) years
16 except that in making the initial appointments, the Governor shall
17 appoint one member for a term of four (4) years, and the chairperson
18 for a term of six (6) years, so that a term of office shall expire every
19 two (2) years. Thereafter, their successors shall be appointed for

1 terms of six (6) years, or for the balance of any unexpired term, but
2 members may continue to serve beyond their terms until their
3 successors take office. Members may be reappointed for succeeding
4 terms. If there is no chairperson, or if such officer is absent or
5 unable to serve, the senior member in length of service shall be
6 temporary chairperson.

7 (b) Authority of the Chairperson. The chairperson may adopt
8 operational procedures and issue such orders, not inconsistent with
9 this Title, as may be necessary in the execution of the Board's
10 functions. The chairperson's authority may be delegated to the
11 Board's members and employees, but only members of the Board may
12 issue decisions on appeals.

13 (c) Support. The Civil Service Commission is authorized to
14 provide for the Board such services as the chairperson requests, on
15 such basis, reimbursable or otherwise, as may be agreed upon between
16 the Civil Service Commission and the chairperson. The Board is
17 empowered to hire legal counsel, accountants, staff and other
18 personnel, and to provide for training of its staff and members.

19 (d) Qualifications for Board Membership. (1) One (1) member
20 shall be a member in good standing of the Guam Bar Association who
21 has been admitted to practice before the highest court of a state,
22 territory or the District of Columbia for at least five (5) years prior
23 to his appointment, one (1) member shall be a certified public
24 accountant and the other members shall have demonstrated experience
25 of at least five (5) years in procurement.

26 (2) No member shall be an employee of the government, a
27 recipient of any annuity from the government, a member of any
28 board or commission of the government, nor a member of the
29 immediate family of an employee of the government. As used in
30 this Section, 'immediate family' means a collective body of persons
31 living together in one house under one head.

32 (3) The appointment of any person to the Commission shall
33 become void if at any time during his term of office he shall

1 become an employee of the government or accept an annuity from
2 the government.

3 (4) When a vacancy occurs, the Governor shall appoint a
4 new member within sixty (60) days of the commencement of the
5 vacancy.

6 (e) Removal of Members. Notwithstanding any other provision of
7 this Chapter, the Governor or the Procurement Appeals Board by
8 three (3) positive votes of its members may recuse a member of the
9 Procurement Appeals Board from participation in a matter before the
10 board due to

11 (i) disability,

12 (ii) conflict of interest with respect to service on the
13 Board and engagement in any private business,

14 (iii) for other good cause.

15 Any removal pursuant to items (ii) and (iii) of this Subsection
16 shall be effective no sooner than ten (10) calendar days subsequent to
17 the delivery of written notice of such removal by the Governor or the
18 Board to the Legislative Secretary of the Legislature. Removal
19 pursuant to item (i) of this Section shall be effective pursuant to the
20 notice of the action taken.

21 A member of the Procurement Appeals Board may recuse himself.

22 For purposes of this Section, recuse means to disqualify from
23 hearing the matter and taking any action on it.

24 (f) Appointment, Qualifications and Function of Alternates. At
25 the same time as members of the Procurement Appeals Board are
26 appointed by the Governor, the Governor shall appoint three (3)
27 alternate members to the Board, all of whom shall serve for a term of
28 six (6) years.

29 (1) Each alternate shall, at the time of his appointment, be
30 designated either First Alternate, Second Alternate or Third
31 Alternate. For the first year of his appointment each alternate
32 shall serve in the order designated, and each year thereafter
33 they shall rotate the order, so that during the second year, the
34 First Alternate shall serve second, the Second Alternate third,

1 and the Third first, and so on for each successive year until
2 their terms expire.

3 (2) Each alternate shall fulfill the same requirements for
4 membership on the Board as any of the regular board members
5 fulfill and shall be subject to the same removal procedures as
6 regular board members.

7 (3) The alternates shall fill in on matters before the
8 Procurement Appeals Board when a member is absent or recused
9 pursuant to Subsection (e) of this Section and each alternate
10 shall fill in for an absent or recused member in the order they
11 are designated to serve, so that the alternate serving first fills
12 in for the first absence or recusal, the alternate serving second
13 fills in for the second absence or recusal, and so forth.

14 §6983.2. Rules of Procedure. The Procurement Appeals Board
15 shall adopt rules of procedure which, to the fullest extent possible,
16 will provide for the expeditious resolution of controversies in
17 accordance with the requirements of this Chapter.

18 The Board shall have the authority to appoint a hearing officer,
19 who shall take written, oral or otherwise presented testimony, evaluate
20 such testimony and make recommendations to the Board.

21 The Board may adopt Small Claims Procedures for the resolution
22 of controversies involving claims of less than Twenty-five Thousand
23 Dollars (\$25,000).

24 §6983.3. Decisions of the Procurement Appeals Board. Four (4)
25 affirmative votes shall be required to decide any matter before the
26 Procurement Appeals Board. Four (4) affirmative votes are required
27 to overturn a decision that is appealed to the Procurement Appeals
28 Board. The Procurement Appeals Board shall issue a decision in
29 writing or take other appropriate action on each appeal submitted. A
30 copy of any decision shall be provided to all parties, and, as
31 appropriate, the Chief Procurement Officer, the Director of Public
32 Works and the head of a purchasing agency.

33 §6983.4. Jurisdiction of the Procurement Appeals Board. The
34 Board shall have the power to review and determine de novo any

1 matter properly submitted to it. The Board shall not have jurisdiction
2 over disputes having to do with money owed to or by the government
3 of Guam. Notwithstanding §6964 of this Title, no prior determination
4 shall be final or conclusive on the Board or upon any appeal from the
5 Board. The Board shall have the power to compel attendance and
6 testimony of, and production of documents by, any employee of the
7 territory. The Board may consider testimony and evidence submitted
8 by any competing bidder, offerer or contractor of the protestant. The
9 Board's jurisdiction shall be utilized to promote the integrity of the
10 procurement process and the purposes of Title VII-A of the
11 Government Code.

12 §6983.5. Standard of Review. Any determination of an issue or
13 a finding of fact by the Board shall be final and conclusive unless
14 arbitrary, capricious, fraudulent, clearly erroneous, or contrary to
15 law. Any decision of the Board, including any determination
16 regarding the application or interpretation of the procurement law or
17 regulations, shall be entitled to great weight and the benefit of
18 reasonable doubt, although it shall not be conclusive on any court
19 having competent jurisdiction.

20 §6983.6. Suspension or Debarment Proceedings. (a) Scope.
21 This §6983.6 applies to a review by the Procurement Appeals Board of
22 a decision under §6975.1 of this Title.

23 (b) Time limitation on filing an appeal. The aggrieved person
24 shall file its appeal with the Board within sixty (60) days of the
25 receipt of a decision under Subsection (c) of §6975.1 of this Title.

26 (c) Decision. The Board shall decide whether, or the extent to
27 which, the debarment or suspension was in accordance with the
28 statutes, regulations and the best interest of the territory, and was
29 fair. The Board shall issue its decision within thirty (30) days of the
30 completion of the hearing on the issue.

31 §6983.7. Contract and Breach of Contract Controversies.

32 (a) Scope. This §6983.7 applies to a review by the Procurement
33 Appeals Board of a decision under §6975.2 of this Title.

1 (b) Time limitation on filing an appeal. The aggrieved
2 contractor shall file its appeal with the Board within sixty (60) days of
3 the receipt of the decision or within sixty (60) days following the
4 failure to render a timely decision as provided in §6975.2 of this Title.

5 (c) Decision. The Board shall decide the contract or breach of
6 contract controversy and shall issue its decision within thirty (30)
7 days of the completion of the hearing on the issue.

8 §6983.8. Appeals and Review of Procurement Appeals Board
9 Decisions. (a) Appeal. Any person receiving an adverse decision,
10 the territory, or both may appeal from a decision by the Procurement
11 Appeals Board to the Superior Court of Guam as provided in Article D
12 of Chapter 9 of this Title.

13 (b) Authorization of appeal by the government. No such appeal
14 shall be made by the territory unless recommended by the Chief
15 Procurement Officer, the Director of Public Works, or the head of the
16 Purchasing Agent involved and approved by the Attorney General.

17 §6983.9. Discontinuance of Contractor's Appeal. After notice of
18 an appeal to the Procurement Appeals Board has been filed by the
19 Chief Procurement Officer, the Director of Public Works or the head of
20 a Purchasing Agency, a contractor may not discontinue such appeal
21 without prejudice, except as authorized by the Board."

22 Section 2. Section 6975 of the Government Code is repealed and
23 reenacted to read:

24 "§6975. (a) Right to Protest. Any actual or prospective
25 bidder, offerer or contractor who may be aggrieved in connection with
26 the method of source selection, solicitation or award of a contract, may
27 protest to the Chief Procurement Officer, the Director of Public Works,
28 or the head of a Purchasing Agency. The protest shall be submitted
29 in writing within fourteen (14) days after such an aggrieved person
30 knows or should know of the facts giving rise thereto.

31 (b) Authority to Resolve Protests. The Chief Procurement
32 Officer, the Director of Public Works, the head of a purchasing
33 agency, or a designee of one of these officers shall have the
34 authority, prior to the commencement of an action in court concerning

1 the controversy, to settle and resolve a protest of an aggrieved
2 bidder, offerer, 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 (c) Decision. If the protest is not resolved by mutual
6 agreement, the Chief Procurement Officer, the Director of Public
7 Works, the head of a purchasing agency, or a designee of one of these
8 officers shall promptly issue a decision in writing. The decision shall:

9 (1) state the reasons for the action taken; and

10 (2) inform the protestant of its right to administrative and
11 judicial review.

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

15 (e) Appeal. A decision under Subsection (c) of this Section
16 including a decision thereunder regarding entitlement to costs as
17 provided by Subsection (h) of this Section, may be appealed by the
18 protestant, to the Procurement Appeals Board within fifteen (15) days
19 after receipt by the protestant of the notice of decision.

20 (f) Finality. A decision of the Procurement Appeals Board is
21 final unless a person adversely affected by the decision commences an
22 action in the Superior Court in accordance with Subsection (a) of
23 Section 6978 of this Title.

24 (g) In the event of a timely protest under Subsection (a) of this
25 Section or under Subsection (a) of Section 6978 of this Title, the
26 territory shall not proceed further with the solicitation or with the
27 award of the contract prior to final resolution of such protest, and
28 any such further action is void, unless:

29 (1) The Chief Procurement Officer or the Director of Public
30 Works after consultation with and written concurrence of the head
31 of the using or Purchasing Agency and the Attorney General or
32 designated Deputy Attorney General, makes a written
33 determination that the award of the contract without delay is
34 necessary to protect substantial interests of the territory; and

1 (2) Absent a declaration of emergency by the Governor, the
2 protestant has been given at least two (2) days notice (exclusive
3 of territorial holidays); and

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

9 (h) Entitlement to Costs. In addition to any other relief or
10 remedy granted under Subsection (c) or (e) of this Section or under
11 Subsection (a) of Section 6978 of this Title, including the remedies
12 provided by Article B of Chapter 9 of this Title, when a protest is
13 sustained, the protestant shall be entitled to the reasonable costs
14 incurred in connection with the solicitation and protest, including bid
15 preparation costs, excluding attorney fees, if:

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

18 (2) there is a reasonable likelihood that the protestant may
19 have been awarded the contract but for the breach of any ethical
20 obligation imposed by Article B of Chapter 11 of this Title or the
21 willful or reckless violation of any applicable procurement law or
22 regulation. The Procurement Appeals Board shall have the power
23 to assess reasonable costs other than attorney fees incurred by
24 the territory against a protestant upon its finding that the
25 protest was made fraudulently, frivolously or solely to disrupt the
26 procurement process."

27 Section 3. Subsection (c) of Section 6975.1 of the Government Code is
28 amended to read:

29 "(c) Decision. The Chief Procurement Officer, the Director of
30 Public Works or the head of a purchasing agency shall issue a written
31 decision to debar or suspend. The decision shall:

32 (1) state the reasons for the action taken; and

1 (2) inform the debarred or suspended person involved of
2 its rights to judicial or administrative review as provided in this
3 [Chapter] Title."

4 Section 4. Subsection (e) of Section 6975.1 is amended to read:

5 "(e) Finality of Decision. A decision under Subsections (c) or
6 (f) of this Section shall be final and conclusive, unless fraudulent, [or
7 the debarred or suspended person commences an action in court in
8 accordance with §6978(b) of this Chapter.] or an appeal is taken to
9 the Procurement Appeals Board in accordance with Section 6983.6 of
10 this Title."

11 Section 5. A new Subsection (f) is added to Section 6975.1 of the
12 Government Code to read:

13 "(f) Any member of the public may petition the Chief
14 Procurement Officer, the Director of Public Works or the head of a
15 purchasing agency to take action to debar or suspend pursuant to
16 Subsection (a) of this Section. An investigation of each petition shall
17 be conducted promptly and a written report should be made of findings
18 of fact and action taken."

19 Section 6. Subsection (c) of Section 6975.2 of the Government Code is
20 amended to read:

21 "(c) Decision. If such a controversy is not resolved by mutual
22 agreement, the Chief Procurement Officer, the Director of Public
23 Works, the head of a purchasing agency, or the designee of one of
24 these officers shall promptly issue a decision in writing. The decision
25 shall:

26 (1) state the reasons for the action taken; and

27 (2) inform the contractor of its rights to judicial or
28 administrative review as provided in this [Chapter] Title."

29 Section 7. Subsection (e) of Section 6975.2 of the Government Code is
30 amended to read:

31 "(e) Finality of Decision. The decision reached pursuant to
32 Subsection (c) of this Section shall be final and conclusive, unless
33 fraudulent, [or the contractor commences an action in court in
34 accordance with §6978(c) of this Chapter] or the contractor appeals

1 administratively to the Procurement Appeals Board in accordance with
2 Section 6983.7 of this Title."

3 Section 8. Subsection (d) of Section 6978 of the Government Code is
4 amended to read:

5 "(d) Limited Finality for Administrative Determinations. In any
6 judicial action under this Section, factual or legal determinations by
7 employees, agents or other persons appointed by the Territory shall
8 have no finality and shall not be conclusive, notwithstanding any
9 contract provision, or regulation, except to the extent provided in
10 §§6964, 6983.4 and 6983.5 of this Title."

11 Section 9. Subsection (c) of Section 6978 of the Government Code is
12 repealed and reenacted to read:

13 "(c) In addition to other relief and remedies, the Superior Court
14 shall have jurisdiction to grant injunctive relief in any action brought
15 under Subsections (a), (b) or (c) of this Section."

16 Section 10. Subsection (a) of Section 6978.1 of the Government Code
17 is repealed and reenacted to read:

18 "(a) Protested Solicitations and Awards. Any action under
19 Section 6978(a) of this Chapter shall be initiated within fourteen (14)
20 days after receipt of a final administrative decision."

21 Section 11. Subsection (b) of Section 6978.1 of the Government Code
22 is amended to read:

23 "(b) Debarments and Suspensions for Cause. Any action under
24 Section 6978(b) of this Chapter shall be commenced within six (6)
25 months after receipt of the decision of the [Chief Procurement Officer,
26 the Director of Public Works or head of a purchasing agency under
27 Section 6975.1(c) of this Chapter or the decision of the] Policy Office
28 under Section 6981.1 of this Title, or the decision of the Procurement
29 Appeals Board under Section 6983.6 of this Title, whichever is
30 applicable."

31 Section 12. Subsection (c) of Section 6978.1 of the Government Code
32 is amended to read:

33 "(c) Actions Under Contracts or for Breach of Contract. Any
34 action commenced under Section 6978(c) of this Chapter shall be

1 commenced [within six months of the date the claim arose, or within
2 six months of the date the claimant knew, or should have known, that
3 a claim existed against the other party] within twelve (12) months
4 after the date of the Procurement Appeals Board decision ."

5 Section 13. A new Subsection (d) is added to Section 6978.1 of the
6 Government Code to read:

7 "(d) The limitations on actions provided by this Section are
8 tolled during the pendency of any proceeding brought pursuant to
9 Section 6978.2 of this Title."

10 Section 14. Section 6976 of the Government Code is amended to read:

11 "Section 6976. Applicability of this Article. The provisions of
12 this Article apply where it is determined administratively, or upon
13 administrative or judicial review, that a solicitation or award of a
14 contract is in violation of law."

15 Section 15. A new Subsection (d) is added to Section 6980.6 of the
16 Government Code:

17 "(d) Favors to the Territory. For purposes of this Section, a
18 favor is anything, including raffle tickets, of more than de minimus
19 value and whether intended for the personal enjoyment of the receiver
20 or for the department or organization in which they are employed or
21 for any person, association, club or organization associated therewith
22 or sponsored thereby. It shall be a breach of ethical standards for
23 any person who is or may become a contractor, a subcontractor under
24 a contract to the prime contractor or higher tier contractor, or any
25 person associated therewith, to offer, give or agree to give any
26 employee or agent of the territory or for any employee or agent of the
27 territory to solicit or accept from any such person or entity or agent
28 thereof, a favor or gratuity on behalf of the territory whether or not
29 such favor or gratuity may be considered a reimbursable expense of
30 the territory, during the pendency of any matter related to
31 procurement, including contract performance and warranty periods."

32 Section 16. Subsection (c) of Section 6980.6 of the Government Code
33 is amended to read:

1 "(c) Contract Clause. The prohibition against gratuities, [and]
2 kickbacks and favors to the territory prescribed in this Section shall
3 be conspicuously set forth in every contract and solicitation therefor."
4 Section 17. A new Section 6964.4 is added to the Government Code to
5 read:

6 "Section 6964.4. Record of Procurement Actions. Each
7 procurement officer shall maintain a complete record of each
8 procurement. The record shall include the following:

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

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

15 (3) sound recordings of all pre-bid conferences, negotiations
16 arising from a request for proposals and discussions with vendors
17 concerning small purchase procurement;

18 (4) brochures and submittals of potential vendors, manufacturers
19 or contractors, and all drafts, signed and dated by the draftsman,
20 and other papers or materials used in the development of
21 specifications; and

22 (5) the requesting agency's determination of need."

23 Section 18. A new Section 6964.5 is added to the Government Code to
24 read:

25 "Section 6964.5. Certification of Record. No procurement award
26 shall be made unless the responsible procurement officer certifies in
27 writing under penalty of perjury that he has maintained the record
28 required by Section 6964.4 of this Chapter and that it is complete and
29 available for public inspection. The certificate is itself a part of the
30 record."

31 Section 19. A new Section 6964.6 is added to the Government Code to
32 read:

33 "Section 6964.6. The record required by Section 6964.4 of this
34 Chapter is a public record and, subject to rules promulgated by the

1 Procurement Appeals Board, any person may inspect and copy any
2 portion of the record."

3 Section 20. A new Section 6964.7 is added to the Government Code to
4 read:

5 "Section 6964.7 The rules promulgated pursuant to Section 6964.6
6 of this Chapter shall:

- 7 (1) protect the integrity of the bidding process;
- 8 (2) protect the confidentiality of trade secrets;
- 9 (3) establish reasonable charges for copying papers;
- 10 (4) provide for transcription of sound recordings;
- 11 (5) require public access to the record at the earliest
12 possible time; and
- 13 (6) not require that the record be complete or that the
14 procurement award be made before inspection and copying are
15 permitted."

16 Section 21. A new Section 6965.7 is added to the Government Code to
17 read:

18 "Section 6965.7. Publication of Source of Specifications. The
19 specifications contained in any invitation for bids or request for
20 proposals, and any amendment thereto, for the procurement of supplies
21 shall identify the person responsible for drafting the specifications and
22 any persons, technical literature or manufacturer's brochures relied
23 upon by the responsible person in drafting the specifications."

24 Section 22. A new Section 6965.8 is added to the Government Code to
25 read:

26 "Section 6965.8. Salient Features. (a) Specifications shall not
27 include requirements, such as but not limited to restrictive dimensions,
28 weights or materials, which unnecessarily restrict competition, and
29 shall include only the essential physical characteristics and functions
30 required to meet the territory's minimum needs.

31 (b) Purchase descriptions shall not specify a product having
32 features which are peculiar to the products of one manufacturer,
33 producer or distributor unless it has been determined in writing by
34 the Director of the using agency that those particular features are

1 essential to its requirements and specifying the reason that similar
2 products lacking those features would not meet minimum requirements
3 for the item.

4 (c) Purchase descriptions shall describe the salient technical
5 requirements or desired performance characteristics of supplies or
6 services to be procured without including restrictions which do not
7 significantly affect the technical requirements or performance
8 characteristics."

9 Section 23. Section 6959.5 of the Government Code is amended to
10 read:

11 "\$6959.5. Emergency Procurements. Notwithstanding any other
12 provision of this Title, the Chief Procurement Officer, the Director of
13 Public Works, the head of a purchasing agency, or a designee of either
14 officer may make or authorize others to make emergency procurements when
15 there exists a threat to public health, welfare, or safety under emergency
16 conditions as defined in regulations promulgated by the Policy Office;
17 provided that such emergency procurements shall be made with such
18 competition as is practicable under the circumstances, and further provided
19 that the procurement agent must solicit at least three (3) informal price
20 quotations, if time allows must give notice to all contractors from the
21 qualified bid list who have provided the needed supplies and services to the
22 government within the preceding twelve (12) months, and must award the
23 procurement to the firm with the best offer, as determined by evaluating
24 cost and delivery time. No emergency procurement or combination of
25 emergency procurements may be made for an amount of goods or supplies
26 greater than the amount of such goods and supplies which is necessary to
27 meet an emergency for the thirty (30) day period immediately following the
28 procurement. A written determination of the basis for the emergency and
29 for the selection of the particular contractor shall be included in the
30 contract file. The requirements for a written determination for the
31 emergency shall be met if the procurements are being made on the basis of
32 the Governor's declaration of an emergency situation by Executive Order if
33 such Order states that emergency procurement may be resorted to for
34 purposes of the Order. Unless authorized by an Executive Order declaring

1 an emergency, no emergency procurement may be made except on a
2 certificate made under penalty of perjury by the Chief Procurement Officer,
3 Director of Public Works or the head of a purchasing agency, as the case
4 may be. Certified copies of the certificate shall be sent, prior to award
5 and as a condition thereof, to the Governor and Speaker of the Legislature.
6 The certificate shall contain the following:

- 7 (1) a statement of the facts giving rise to the emergency;
8 (2) the factual basis of the determination that an emergency
9 procurement is necessary; and
10 (3) a statement that emergency procurement is not being used solely
11 for the purpose of avoidance of the provisions of this Title.

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

14 Section 24. 6 GCA §4102 is amended to read:

15 "§4102. Public Writings Defined. 'Public Writings' are:

16 (1) The written acts of records of the acts of the sovereign
17 authority, of official bodies and tribunals, and of public officers,
18 legislative, judicial and executive, whether of the territory of
19 Guam, of any state, of the United States or insular possessions
20 thereof, of the Trust Territory of the Pacific Islands, or of a
21 foreign country; [and]

22 (2) Public records, kept in Guam, of private writings; and

23 (3) All data produced, generated or stored by a
24 government body, as defined in Subsection (h) of Section 6952 of
25 Title VII-A of the Government Code, in any way related to
26 procurement, as defined in Subsection (o) of Section 6952 of Title
27 VII-A of the Government Code."

28 Section 25. Subsection (b) of Section 6950 of the Government Code is
29 amended to read:

30 "(b) Purposes and Policies. The underlying purposes and
31 policies of this Title are:

- 32 (1) to simplify, clarify, and modernize the law governing
33 procurement by this Territory;

1 (2) to permit the continued development of procurement
2 policies and practices;

3 (3) to provide for increased public confidence in the
4 procedures followed in public procurement;

5 (4) to ensure the fair and equitable treatment of all persons
6 who deal with the procurement system of this Territory;

7 (5) to provide increased economy in territorial activities and
8 to maximize to the fullest extent practicable the purchasing value
9 of public funds of the Territory;

10 (6) to foster effective broad-based competition within the
11 free enterprise system; [and]

12 (7) to provide safeguards for the maintenance of a
13 procurement system of quality and integrity; and

14 (8) to require public access to all aspects of procurement
15 consistent with the 'sealed bid' procedure and the integrity of the
16 procurement process ."

17 Section 26. A new Subsection (x) is added to Section 6952 of the
18 Government Code to read:

19 "(x) 'Emergency' means a condition posing an imminent threat to
20 public health, welfare, or safety which could not have been foreseen
21 through the use of reasonable and prudent management procedures,
22 and which cannot be addressed by other procurement methods of
23 source selection."

24 Section 27. A new Article E is added to Chapter 9 of Title VII-A of
25 the Government Code to read:

26 "Article E

27 "Section 6978.2. (a) On complaint by any member of the public,
28 the Superior Court has jurisdiction to enjoin a governmental body from
29 withholding procurement data and to order the production of any
30 government data improperly withheld from the complainant. In such a
31 case the court shall determine the matter de novo, and may examine
32 the contents of such procurement data in camera to determine whether
33 such records or any part thereof shall be withheld under any of the

1 exceptions set forth in 6 GCA §4202 and the burden is on the agency
2 to sustain its action.

3 (b) Notwithstanding any other provision of law, the government
4 or a governmental body shall serve an answer or otherwise plead to
5 any complaint made under this Section within thirty (30) days after
6 service of the pleading in which such complaint is made, unless the
7 court otherwise directs, for good cause shown.

8 (c) Except as to cases the court considers of greater
9 importance, proceedings as authorized by this Section, and appeals
10 therefrom, take precedence on the docket over all cases and shall be
11 assigned for hearing and trial or for argument at the earliest
12 practicable date and expedited in every way.

13 (d) The court may assess against the government or
14 governmental body reasonable attorney fees and other litigation costs
15 reasonably incurred in any case under this Section in which the
16 complainant has substantially prevailed.

17 (e) Whenever the court orders the production of any
18 procurement data improperly withheld from the complainant and
19 assesses against the government or governmental body reasonable
20 attorney fees and other litigation costs, and the court additionally
21 issues a written finding that the circumstances surrounding the
22 withholding raise questions whether government personnel acted
23 arbitrarily or capriciously with respect to the withholding, apart from
24 such other actions as the Court may take, the Civil Service Commission
25 shall promptly initiate a proceeding to determine whether disciplinary
26 action is warranted against the officer or employee who was primarily
27 responsible for the withholding. The Commission, after investigation
28 and consideration of the evidence submitted, shall submit its findings
29 to the administrative authority of the agency concerned and shall send
30 copies of the findings and recommendations to the officer of employee
31 or his representative. The administrative authority shall take the
32 corrective action that the Commission recommends. No right or power
33 granted to the Civil Service Commission shall bar or preclude the

1 Court from issuing such orders, imposing such sanctions or providing
2 such remedy or relief as it deems proper.

3 (f) In the event of noncompliance with the order of the Court,
4 the Superior Court may punish for contempt, the responsible employees
5 or officer."

6 Section 28. A new Section 6954.11 is added to the Government Code
7 to read:

8 "§6954.11. Every governmental body which is in the purview of
9 the Executive Branch and including Guam Community College, the
10 University of Guam, the Department of Education, the Guam Memorial
11 Hospital and Guam Visitor's Bureau shall be governed by Chapters 1,
12 3, 6, 7, 10, 11 and 12 of this Title, except to the extent that any such
13 governmental body or other above-named body may be exempted from
14 the centralized procurement regime of Chapter 2 of this Title, in which
15 event the Director of each such governmental body or other
16 above-named body shall be substituted wherever there is reference to
17 the Public Policy Office or Chief Procurement Officer or Director of
18 Public Works in Chapters 4, 5, 8 and 9 of Title VII-A of the
19 Government Code.

20 It is the intent of the Legislature to require all Executive Branch
21 governmental bodies, including autonomous agencies, and other
22 above-named bodies, to be governed to the maximum extent practicable
23 by Title VII-A. This provision requires any governmental body and
24 each above-named body to conduct their procurement activities
25 pursuant to Title VII-A, except insofar as said Title establishes and
26 effects a system of centralized procurement."

27 Section 29. A new Section 6955.1 is added to the Government Code to
28 read:

29 "§6955.1. Each governmental body and each named body in
30 Section 6954.11 of this Title shall adopt the procurement regulations
31 promulgated pursuant to Section 6955(a) of this Title to the extent
32 such agency is subject to such regulations according to the terms of
33 Section 6954.11 of this Title"

1 Section 30. A new Section 6950.9 is added to the Government Code to
2 read:

3 §6950.9. Policy in Favor of Planned Procurement. All
4 procurements of supplies and services shall, where possible, be made
5 sufficiently in advance of need for delivery or performance to promote
6 maximum competition and good management of resources. Publication of
7 bids and requests for proposals shall not be manipulated so as to place
8 potential bidders at unnecessary competitive disadvantage. Except in
9 emergency situations, lower price bids are generally preferable to
10 shorten delivery or performance bids. Delivery time may be
11 considered as a factor in making an award to a responsive bidder only
12 if his average delivery time bid is at least ten percent (10%) shorter
13 than the average delivery time of a lower price responsive bidder and
14 if the price offered by the bidder offering the faster delivery or
15 performance does not exceed one hundred five percent (105%) of the
16 lower price bidder."

17 Section 31. Subsection (b) of Section 6975.1 of the Government Code
18 is amended to read:

19 "(b) Causes for Debarment or Suspension. The causes for
20 debarment or suspension include the following:

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

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

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

33 (4) violation of contract provisions, as set forth below, of a
34 character which is regarded by the Chief Procurement Officer,

1 the Director of Public Works or the head of a purchasing agency
2 to be so serious as to justify debarment action:

3 (i) deliberate failure without good cause to perform in
4 accordance with the specifications or within the time limit
5 provided in the contract; or

6 (ii) a recent record of failure to perform or of
7 unsatisfactory performance in accordance with the terms of
8 one or more contracts, provided, that failure to perform or
9 unsatisfactory performance caused by acts beyond the
10 control of the contractor shall not be considered to be a
11 basis for debarment;

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

18 (6) for violation of the ethical standards set forth in
19 Chapter 11 of this Title[.]; and

20 (7) filing a frivolous or fraudulent petition, protest or
21 appeal under Section 6975(e), of Section 6975.1(f) or of Section
22 6975.2(e) of this Title."

23 Section 32. Subsection (a) of Section 6959.6 of the Government Code
24 is amended to read:

25 "(a) Conditions for Use. The services specified in §6954.7(a) of
26 this Title shall be procured in accordance with this Section, except as
27 authorized under §6959.4 or §6959.5 of this Title. Services for
28 architecture, engineering, construction, land surveying, environmental
29 assessment and other such services shall be procured in accordance
30 with Chapter 5 of this Title."

31 Section 33. The provisions of Sections 1 through 32, inclusive, of
32 this Act shall become effective on January 4, 1987.

33 Section 34. A new 4 GCA §6218 is added to read:

1 "§6218. Cause of Action for Overtime. It is the intent of the
2 Legislature that all overtime which has been approved be promptly
3 paid. Therefore: any employee who is entitled to overtime may bring
4 action in the Superior Court against the government of Guam for
5 payment of all back pay due as a result of overtime, in addition to all
6 other remedies allowed at law or equity. In any such case, the Court
7 may order pendente lite and permanently that the appropriate officer
8 or officers of the Government pay such sums to the employee as may
9 become due in the future on such terms as the Court deems just.

10 In any such case, ten (10) or more employees similarly situated
11 may initiate and bring a class action on behalf of all employees
12 similarly situated. In such case, the Court shall set reasonable
13 attorney's fees upon conclusion of the case in an amount not to exceed
14 ten percent (10%) of the recovery, to be paid by the government of
15 Guam if the employees prevail."

16 Section 35. Notwithstanding any other provision of law, the Governor
17 is authorized to expend from the operational budget available to the
18 Executive Branch of the government in FY 1987 such sums as are necessary
19 to fund all the pay reclassifications authorized to be implemented in PL
20 18-32 and PL 18-33 for FY 1987. The Governor shall submit a request for
21 supplemental funding for such pay reclassifications to the Legislature by
22 December 1, 1986.

23 Section 36. Subsection (b) of Section 26109 of the Government Code is
24 amended to read:

25 "(b) No more than three (3) licenses in which amara fights may
26 be conducted shall be granted, provided, that [this restriction shall
27 not take effect until the expiration of licenses issued pursuant to
28 previous law] one (1) of these three (3) shall be located in the area of
29 Dededo-Yigo and is to be given to the highest responsible bidder."

30 Section 37. Subsection (a) of Section 26106 of the Government Code is
31 repealed and reenacted to read:

32 "(a) Whenever there are two (2) or less current licenses in
33 effect, the Board shall conduct a public meeting at which it shall

1 review cockpit operations and authorize the letting of bids for licenses
 2 which will be new or which will replace the expired or non-renewed
 3 licenses."

4 Section 38. Subsection (b) of Section 26106 of the Government Code is
 5 amended to read:

6 "(b) [Upon determining such a need exists or n]Not later than
 7 ninety (90) days prior to the expiration of an existing license the
 8 Board shall publish in a newspaper of general circulation within the
 9 territory its invitation for bids."

10 Section 39. Notwithstanding any other provision of law, the balance
 11 remaining of any sums appropriated in Section 13 of P.L. 18-6, Sections 4
 12 and 8 of P.L. 18-1, Section 8 of P.L. 17-18, and Section 5 of P.L. 17-2 are
 13 reprogrammed and reappropriated from their original sources to the
 14 Legislative Operations Fund for the operation of the Eighteenth Guam
 15 Legislature until January 4, 1987.

16 Section 40. Section C of Part II of Section 1 of Chapter II of Public
 17 Law 18-15 is amended to read:

	<u>General</u> <u>Fund</u>	<u>Other</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Total</u>
"C. For Federal - State Marketing Improvement Program				
1. Operating Expenses	[\$ 19,500]		\$ 19,500	[\$ 39,000]
	<u>\$ 12,500</u>			<u>\$ 32,000</u>
	<u>[\$ 19,500]</u>	-----	<u>\$ 19,500</u>	<u>[\$ 39,000]</u>
	<u>\$ 12,500</u>			<u>\$ 32,000"</u>

18 Section 41. Section K of Part II of Section 1 of Chapter II of Public
 19 Law 18-15 is amended to read:

	<u>General</u> <u>Fund</u>	<u>Other</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Total</u>
"K. For Soil and Water Conservation				
1. Personnel Services	\$ 13,102			\$ 13,102
	(1.0 FTE)			(1.0 FTE)

2.	Operating Expenses	3,950		3,950
3.	<u>Stipends Water Conservation</u>			
	<u>District Officers</u>	<u>7,000</u>		<u>7,000</u>
		[\$ 17,052]		[\$ 17,052]
		\$ 24,052		\$ 24,052"

1 Section 42. The sum of Five Hundred Thirty Six Thousand Dollars
2 (\$536,000) of the funds available for use for the Medically Indigent Program
3 of the Department of Public Health and Social Services for Fiscal Year 1987
4 are appropriated to the Department of Public Health and Social Services for
5 the payment of patient charges incurred in Fiscal Year 1986 for the
6 Medically Indigent Program.

7 Section 43. No later than forty-five (45) days subsequent to the date
8 of enactment of this Act, the Governor shall submit to the Legislature an
9 equitable plan for the salaries of all unclassified employees in all
10 departments and agencies of the government, both autonomous and
11 non-autonomous. Such plan shall include proposed salaries for all
12 unclassified employees and identify sources of funding sufficient to
13 implement the plan.

14 Section 44. A new Section 6961.3 is added to the Government Code to
15 read:

16 "Section 6961.3. Disclosure of major shareholders. As a
17 condition of bidding, any partnership, sole proprietorship or
18 corporation doing business with the government of Guam shall submit
19 an affidavit executed under oath that lists the name and address of
20 any person who has held more than ten percent (10%) of the
21 outstanding interest or shares in said partnership, sole proprietorship
22 or corporation at any time during the twelve (12) month period
23 immediately preceding submission of a bid. The affidavit shall contain
24 the number of shares or the percentage of all assets of such
25 partnership, sole proprietorship or corporation which have been held
26 by each such person during the twelve (12) month period. In
27 addition, the affidavit shall contain the name and address of any
28 person who has received or is entitled to receive a commission,

1 gratuity or other compensation for procuring or assisting in obtaining
2 business related to the bid for the bidder and shall also contain the
3 amounts of any such commission, gratuity or other compensation. The
4 affidavit shall be open and available to the public for inspection and
5 copying."

6 Section 45. A new 10 GCA §41107 is added to read:

7 "§41107. Executive Officer: Special Duties. (a) In addition to
8 any other powers and duties of the Executive Officer, the Executive
9 Officer shall, by whatever means deemed appropriate, certify that a
10 person is disabled after receipt of a signed statement from a licensed
11 physician supporting the claim of the disabled person. The Executive
12 Officer shall also certify those vehicles which transport disabled
13 persons regularly.

14 (b) A disabled Parking Advisory Committee is hereby created.
15 Four (4) members of the Commission shall be selected by the Executive
16 Officer and shall consist of one (1) paraplegic, one (1) quadriplegic,
17 one (1) blind person, and one (1) disabled person who must rely on
18 crutches for mobility. The Director of Public Works shall choose one
19 (1) member who shall be a representative of the Department of Public
20 Works. The Director of the Department of Vocational Rehabilitation
21 shall be an ex-officio member. The Disabled Parking Advisory
22 Committee shall submit to the Department of Public Works their
23 recommendations regarding location of parking spaces which, pursuant
24 to Subsection (b) of Section 10001.9 of the Government Code, are to
25 be assigned to the disabled."

26 Section 46. A new Section 350 is added to the Code of Civil Procedure
27 to read:

28 "Section 350. Exposure to Asbestos, Actions for Injury, Illness
29 or Wrongful Death. (a) In any civil action for injury or illness based
30 upon exposure to asbestos, chemicals, or other toxic agents, the time
31 for the commencement of the action shall be the later of the following:

- 32 (1) Within two (2) years after the date the plaintiff first
33 suffered disability and either before or after suffering the
34 disability the plaintiff was informed by a licensed physician,

1 clearly and comprehensively, to the degree that the plaintiff
2 is capable of understanding, that he was diagnosed as
3 having any one or more of the following several and distinct
4 injuries, pleural disease, or pulmonary asbestosis, or
5 malignant mesothelioma, or other carcinoma or other specific
6 asbestos-related injury, causing the disability; or

- 7 (2) Within two (2) years after the date the plaintiff either knew,
8 or through the exercise of reasonable diligence should have
9 known, (i) that such disability was caused or contributed to
10 by such exposure and (ii) that the disability or injury was
11 caused by a violation of a duty towards the plaintiff; or
12 (3) Two (2) years from the effective date of this Act.

13 (b) 'Disability' as used in Subsection (a) of this Section means
14 the loss of time from work as a result of exposure to asbestos, which
15 precludes the performance of the employee's regular occupation.

16 (c) In an action for the wrongful death of any plaintiff's
17 decedent, based upon exposure to asbestos, the time for commencement
18 of an action shall be the later of the following:

- 19 (1) Within two (2) years from the date of death of the plaintiff's
20 decedent, or the date of enactment of this Act, whichever is
21 later; or
22 (2) Within two (2) years from the date the plaintiff first knew,
23 or through the exercise of reasonable diligence should have
24 known, that the death was caused or contributed to by such
25 exposure.

26 (d) The provisions of this Section shall apply retroactively to all
27 unfiled claims and to all pending litigation in the courts of Guam, or
28 which are on appeal. Pending litigation as used in this Subsection
29 shall include any action that has been filed in the courts of Guam.

30 (e) The burden of proving that this Section is a bar to any
31 cause of action for illness, injury, property damage or wrongful death
32 is upon the party asserting this section as a defense.

33 (f) Nothing in this Section shall be construed as waiving the
34 sovereign immunity of the government of Guam.

1 (g) This Section shall not change the statute of limitations for
2 any claim against the Government of Guam."

3 Section 47. The Governor shall appoint seven (7) members to a task
4 force as soon as practicable after the effective date of this Section of this
5 Act and charge the task force with preparing a comprehensive plan,
6 including recommended legislation, for the territory to identify the
7 presence, in government buildings and areas under the control of the
8 government, of asbestos and other environmental substances capable of
9 causing latent harm to the people of Guam, and to identify necessary steps
10 to remove this harm. This task force shall make its report and forward the
11 report to the Governor and the Legislature within one hundred eighty (180)
12 days from the effective date of this Section of this Act.

13 Section 48. The sum of Nine Hundred Seventy Eight Thousand Three
14 Hundred Sixty-five Dollars (\$978,365.00) is appropriated from the General
15 Fund to the Government of Guam Retirement Fund for the purpose of
16 funding a Four Hundred Nineteen Dollar (\$419.00) lump sum Cost of Living
17 Allowance for government of Guam retirees or their survivors for Fiscal
18 Year 1987 only.

19 Section 49. The sum of Twenty-eight Thousand Dollars (\$28,000.00) is
20 appropriated from the General Fund to the Legislature Operations Fund for
21 expenses of the state funerals for former Commissioners Pedro Rosario and
22 Jose Tyquiengco and former Senator Cecilia Bamba.

23 Section 50. (a) Any agreement for termination of the Power Pool
24 Agreement of the Island Wide Power System between the Guam Power
25 Authority and the United States Government or the United States Navy shall
26 provide that the United States Government or the United States Navy shall
27 not purchase electrical power from the Guam Power Authority at a
28 preferential rate. In any event, any electrical rate for the United States
29 Navy or the United States Government shall be not less than the average
30 amount per kilowatt hour paid by all classes of electrical power consumers
31 on Guam, and shall, as a minimum, incorporate all social and economic
32 considerations pertinent to the community of Guam.

1 (b) Any agreement between the Guam Power Authority and the United
2 States Government or the United States Navy for the purchase of electrical
3 power shall provide that the United States Government or the United States
4 Navy shall not purchase electrical power from the Guam Power Authority at
5 a preferential rate. In any event, any electrical rate for the United States
6 Navy or the United States Government shall be not less than the average
7 amount per kilowatt hour paid by all classes of electrical power consumers
8 on Guam, and shall, as a minimum, incorporate all social and economic
9 considerations pertinent to the community of Guam.

10 (c) Any agreement for termination of the Power Pool Agreement of the
11 Island Wide Power System between the Guam Power Authority and the
12 United States Government or the United States Navy, and any agreement
13 between the Guam Power Authority and the United States Government or the
14 United States Navy for the purchase of electrical power from the Guam
15 Power Authority must be approved by the Board of Directors of the Guam
16 Power Authority, Public Utilities Commission and Guam law prior to
17 implementation, and shall have no force and effect until such approval has
18 been granted.

TSN Dr - [unclear] (7) 36 etc.)
FS Dr - \$20,000
FS Dr - \$13,500
Egan Dr - \$

FLOOR AMENDMENT
BY SENATOR E.P. ARRIOLA

SECTION _____. THE SUM OF TWENTY THREE THOUSAND FIVE HUNDRED SIXTY SIX DOLLARS AND EIGHTY SEVEN CENTS, (\$23,566.87) IS APPROPRIATED FROM THE GENERAL FUND FOR THE OPERATION OF THE TWELFTH GUAM YOUTH CONGRESS. THE UNUSED BALANCE OF THE TENTH AND ELEVENTH GUAM YOUTH CONGRESS IS FURTHER REAPPROPRIATED TO THE TWELFTH GUAM YOUTH CONGRESS.

FLOOR AMENDMENT

frs
01

1. Add the following new Section to read:
2. "Section 53. The sum of Eighty Thousand Dollars (\$80,000)
3. is appropriated from the General Fund to the Bureau of Budget
4. and Management Research for the purpose of providing staff, rental,
5. utilities, supplies and equipment for the transition for the
6. Office of Governor-elect and the Office of Lieutenant Governor-elect.
7. The Director of the Bureau of Budget and Management Research shall
8. serve as the certifying officer for expenditure of this appropriation.
9. The executive branch shall provide such equipment, supplies and
10. staff assistance as requested by the Governor-elect and the
11. Lieutenant Governor-elect for the transition office without cost to
12. the transition office."

FLOOR AMENDMENT

1 Add the following new Section to read:

2 "Section 53. The sum of Eighty Thousand Dollars (\$80,000)
3 is appropriated from the General Fund to the Bureau of Budget
4 and Management for the purpose of providing staff, rental, utilities,
5 supplies and equipment for the transition for the Office of Governor-
6 elect and the Office of the Lieutenant Governor-elect. The Director
7 of the Bureau of Budget and Management Research shall serve as
8 certifying officer for expenditure of this appropriation. The
9 executive branch shall provide such equipment and staff assistance
10 as requested by the Governor-elect and Lieutenant Governor-elect
11 for the transition Office."

FLOOR AMENDMENT

OFFERED BY

SENATOR TED S. NELSON

7
36

743

1 Section 36 ^(a) O'Hara Street situated in Agana, Guam, shall
2 hereinafter be known as the "Archbishop Felixberto Camacho Flores
3 Street".

4 ~~Section~~ ^(b) Any provisions in the statues referencing
5 O'Hara Street are amended to read: "Archbishop Felixberto Camacho
6 Flores Street".

7 ~~Section~~ ^(c) The Governor of Guam with the Agana Commis-
8 sioner and the Municipal Planning Council, shall cause to be
9 erected appropriate nameplates or signs designating O'Hara Street
10 as the "Archbishop Felixberto Camacho Flores Street". Further,
11 at such ceremony as the Governor, along with the Agana Commis-
12 sioner and the Municipal Planning Council deem appropriate,
13 said "Archbishop Felixberto Camacho Flores Street" shall be
14 officially named and a plaque bearing the name, picture and
15 brief history of the contributions of the late Archbishop Felix-
16 berto Camacho Flores shall be affixed at a suitable spot with
17 or near the street name.

(P)

FLOOR AMENDMENT

Section ⁵² . The sum of Thirteen Thousand Five Hundred Dollars (\$13,500.00) is appropriated from the Tourist Attraction Fund to the Department of Parks and Recreation for repair of the stair railings at the Two Lovers' Point for FY 1987.



TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U.S.A.

RICARDO J. BORDALLO
GOVERNOR

Recd
CB



September 8, 1986

Honorable Carl T.C. Gutierrez
Speaker, Eighteenth Guam Legislature
P.O. Box CB-1
Agana, Guam 96910

Dear Mr. Speaker:

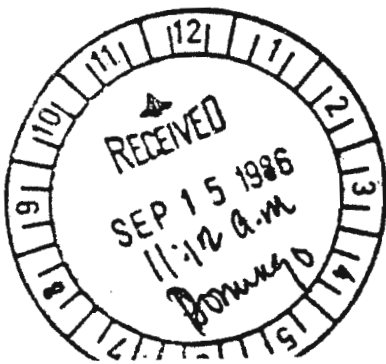
I sign bill 16 into law today, mainly because I agree with the provisions remedying past injustices, with respect to persons practicing in the fields of architecture and engineering.

I have been advised that the Filipino American Society of Architects and Engineers (FASAE), the Guam Society of Professional Engineers, and the American Institute of Architects on Guam, have all positively endorsed Bill 16. If these professional organizations have seen fit to support Bill 16, I believe that the integrity and standards of the professionals involved are indeed upheld by the bill.

I must also comment on Section 29 of Bill 16, which appropriates \$13,500 from the Tourist Attraction Fund to the Guam Visitors Bureau, for the purpose of repairing the stair railings at Two Lovers' Point, for FY '87. Although I agree with the intent of this appropriation - to ensure the safety of tourists and residents who visit Two Lovers' Point - I disagree with the appropriateness of involving the GVB. I believe a government agency, particularly the Department of Parks and Recreation, would be the more suitable entity to repair a public park facility. The Department of Parks and Recreation represents the interests of all the People of Guam, with respect to public parks and recreational facilities. The Guam Visitors Bureau was held not to be an instrumentality of the Government of Guam, in a recent District Court decision (DC No. CV 83-0095-CCD). Therefore, I have deemed it necessary to item veto Section 29.

Sincerely,


RICARDO BORDALLO



182454

(P)

FLOOR AMENDMENT
BY SENATOR E.P. ARRIOLA

SECTION 53. THE SUM OF TWENTY THREE THOUSAND FIVE HUNDRED SIXTY SIX DOLLARS AND EIGHTY SEVEN CENTS, (\$23,566.87) IS APPROPRIATED FROM THE GENERAL FUND FOR THE OPERATION OF THE TWELFTH GUAM YOUTH CONGRESS. THE UNUSED BALANCE OF THE TENTH AND ELEVENTH GUAM YOUTH CONGRESS IS FURTHER REAPPROPRIATED TO THE TWELFTH GUAM YOUTH CONGRESS.

EIGHTEENTH GUAM LEGISLATURE

CHAIRMAN, COMMITTEE ON RULES

Members: Speaker Carl T.C. Gutierrez
Sens. Elizabeth P. Arriola,
Hermilina D. Dierking,
Franklin J. Gutierrez,
Pilar C. Lujan,
Ted S. Nelson,
Don Parkinson
Franklin J. Quitugua,
Joe T. San Agustin,
Francisco R. Santos,
Edward R. Duenas



SENATOR JOHN PEREZ AGUON
P.O. Box CB-1
Agana, Guam USA 96910
472-2990, 472-3426, 472-6614

MEMBER

Committee on General Governmental
Operations
Committee on Economic Development,
Housing and Community Development
Committee on Tourism, Transportation
and Communications
Committee on Federal, Foreign and
Legal Affairs

November 6, 1986

The Honorable Carl T.C. Gutierrez
Speaker
Eighteenth Guam Legislature
P.O. Box CB-1
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Rules at its meeting on November 6, 1986, approved the placement of Bill No. 743 first item on the Second Reading File; and hereby transmits to the full Legislature Bill No. 743 as Substituted by the Committee on General Governmental Operations and further Substituted by the Committee on Rules on November 6, 1986.

The Committee voting record for passage of Bill No. 743 is as follows:

TO DO PASS	<u>8</u>
TO NOT PASS	<u>0</u>
ABSTAIN	<u>2</u>
COMMENTS	<u>2</u>

A copy of the Committee Report and all pertinent documents are attached for your information.

Sincerely yours,

Handwritten signature of John P. Aguon.
JOHN P. AGUON
Chairman

Attachments

<u>MEMBERS</u>	<u>TO DO PASS</u>	<u>TO NOT PASS</u>	<u>ABSTAINED</u>	<u>COMMENTS</u>
<i>John P. Aguon</i> SEN. JOHN P. AGUON Chairperson	✓			
<i>Elizabeth P. Arriola</i> SEN. ELIZABETH P. ARRIOLA Member			✓	
<i>Herminda D. Dierrick</i> SEN. HERMINIA D. DIERRICK Member	✓			
<i>Carl T. C. Gutierrez</i> SEN. CARL T. C. GUTIERREZ Member	✓			
<i>Franklin J. Gutierrez</i> SEN. FRANKLIN J. GUTIERREZ Member	✓			
<i>Elmar C. Lujan</i> SEN. ELMAR C. LUJAN Member	✓			
<i>Th. S. Nelson</i> SEN. TH. S. NELSON member	✓			
<i>Don Parkinson</i> SEN. DON PARKINSON Member	✓			
<i>Franklin J. Quitugua</i> SEN. FRANKLIN J. QUITUGUA Member				<i>to report</i>
<i>Joe T. San Agustin</i> SEN. JOE T. SAN AGUSTIN Member	✓			
<i>Francisco R. Santos</i> SEN. FRANCISCO R. SANTOS Member	✓			
<i>Edward R. Duenas</i> SEN. EDWARD R. DUENAS Member				<i>to report</i> <i>out</i>

COMMITTEE REPORT
COMMITTEE ON RULES
November 6, 1986

The Committee on Rules met at 11:00 a.m. on Thursday, November 6, 1986 to discuss Substitute Bill 743. This Bill, pursuant to the meeting of October 2, 1986, remained in the Committee on Rules.

Substitute Bill 743, dated 10-2-86, was further discussed. One additional section was added to the Bill.

A new Section 50 was added to the Bill setting out the manner in which a termination of the Power Pool Agreement of the Island Wide Power System between the Guam Power Authority and the United States Government or the United States Navy shall be effectuated.

Some other minor changes were made to the Bill as follows:

1. In Section 33, the date for the effectiveness of the provisions of Sections 1 through 32 of the Bill was made to be January 4, 1987.

2. Section 49 of the Bill was amended to reflect that \$28,000.00 is the proper amount approved by the Committee on Rules to be appropriated from the General Fund for the expenses of state funerals, rather than the \$24,199.86 as previously set out in Section 49.

After adopting the above changes, the Committee on Rules adopted Substitute Bill 743 as dated 11-6-86 and placed that Bill first on the Second Reading Agenda for the session at 2:00 p.m. November 6, 1986.

COMMITTEE REPORT

COMMITTEE ON RULES

October 2, 1986

The Committee on Rules met at 10:00 a.m. on Thursday, October 2, 1986 to discuss Substitute Bill 743, previously placed by the Committee first on the Session Agenda for Wednesday, September 24, 1986 at 2:00 p.m.

Substitute Bill No. 743, dated 9-23-86, was pulled back by the Committee from the Second Reading File for the purpose of making changes to the bill, and later to be placed back first on the Second Reading File for Session agenda.

The Committee on Rules instructed the legal counsel to provide language, if not already provided by the Committee members, to make the following changes to Substitute Bill No. 743, 9-23-86:

1. Section 34 of the Bill was deleted and replaced with a new Section 34, which is essentially the same as the first except all references to reclassifications were deleted from the Section so that the cause of action specified in that Section is for overtime only.
2. New Subsections (e) and (f) were added to Section 6983.1 of the Government Code, contained in Section 1 of the Bill, dealing with the removal of members of the Procurement Appeals Board. A mechanism was included so that the Governor may remove a member of the Procurement Appeals Board, or three members of the Board or a member himself may also remove himself from the Board for the purposes of hearing a particular matter before it. Also, a provision for appointing alternates was included so that if a member of the Board is absent or disqualified from hearing a matter for any reason, an alternate can fill in to take his place.

During the discussion of the functioning of the Procurement Appeals Board, various adjustments were made in the functioning of the Board as set out in Bill 743 and these changes were included. Provisions were made that four affirmative votes are necessary for the Board to decide any matter before it and also to overturn a decision before it. The power to appoint a hearing officer was also included, so that the hearing officer can gather evidence in a particular case. A time limit to act on an appeal was included so that the Board cannot postpone action on a matter before it for an indefinite time.

Section 23 of the Substitute Bill 743 was deleted and a different section was inserted regarding emergency procurement of the Government. This new Section makes it clear that, although the Chief Procurement Officer, Director of Public Works, the head of a purchasing agency or a designee may make emergency procurements, all emergency procurements must be approved in writing by the Governor. Additionally, the procurement agent must solicit three informal price quotations and if time permits must give notice to all persons who have for one year previously provided the supplies or services which are needed on an emergency basis and emergencies may not be certified for any situation lasting longer than thirty days. There must be certification concerning the emergency unless the emergency is declared by Executive Order.

Section 6954.11 of the Government Code, included in Section 28 of Sub Bill 743, was deleted and a new Section 6954.11 was added making numerous technical amendments as well as some substantive amendments. The new Section which was inserted makes it clear that certain portions of Chapter VII-A of the Government Code are to include the autonomous agencies of the Executive Branch of the Government of Guam and the Guam Visitors Bureau, but that those named Chapters are not to apply to the Judicial Branch or the Legislative Branch of the Government. The Section also makes clear that the agencies specified in that Section are not required to centralized their procurement through the GSA but are to follow the procedures outlined in the rest of Title VII-A of the Government Code.

3. Section 36 regarding cockpit licensing, particularly in the Dededo Yigo area, was discussed, and to effectuate the purposes of Section 36, new Sections 37 and 38 were added to the Bill. Section 37 repeals and reenacts Subsection (a) of Section 26106 of the Government Code, and mandates that when there are two or less current licenses for cockpits in effect, the Cockpit License Board must conduct a public hearing and let bids for the new, expired or non-renewed license slots. Also, Subsection (b) of Section 26106 of the Government Code was amended in Section 38 of the Bill, and basically mandates that the Cockpit License Board have three cockpits in operation on Guam, and the Board should not determine when a need for a new cockpit exists, as required under present law.
4. A new Section 39 was added to the Bill, taking appropriations which were previously made to the Legislature and for which cash was never transmitted to the Legislature and making such appropriations continue to be available for the operation of the Eighteenth Guam Legislature until January 4, 1987. Because of the wording in previous appropriations, these appropriations have not lapsed, but are outstanding on the books, although unspent.

5. New Sections 40 and 41 were added to the Bill, amending Section C and Section K of Part II of Section 1 of Chapter II of Public Law 18-15, programming the Department of Agriculture budget to provide for the use of appropriated funds for the Soil and Water Conservation District officers' stipends.
6. A new Section 42 was added to the Bill authorizing funds available for Fiscal Year 1987 to the Department of Public Health and Social Services for use in the Medically Indigent Program to be used for payment of charges incurred in Fiscal Year 1986 for the Medically Indigent Program.
7. A new Section 43 was added to the Bill, mandating that the Governor provide a plan for equitable salaries for unclassified employees in all the departments and agencies of the government of Guam, whether or not they are autonomous or non-autonomous. This plan must be submitted to the Legislature no later than forty-five days from the date of enactment of the Act, and must include sources of funding for the plan.
8. A new Section 44 was added to the Bill adding a new Section 6961.3 to the Government Code. This Section requires that for any partnership, sole proprietorship or corporation to do business with the government of Guam, it must submit an affidavit listing those persons who have more than ten percent of the outstanding interest or shares in the business during the previous twelve month period, and also, any person entitled to receive a commission, gratuity or other compensation for procuring the business with the government must also be contained in the affidavit, which is open for public inspection and copying.
9. A new Section 45 was added to the Bill adding a new 10 GCA §41107. This Section was previously contained in Section 5 of Public Law 18-28, however when Chapter 41 of 10 GCA was repealed and reenacted in Public Law 18-32, this Section was inadvertently repealed by that technicality and is re-included into the Guam Code Annotated again.
10. A new Section 46 was added to the Bill, designating a statute of limitations for causes of action for disability suffered as a result of exposure to asbestos.
11. A new Section 47 was added to the Bill mandating the Governor to appoint a task force to study asbestos and other hazardous substances under control of the government of Guam and report on the problem to the Legislature and Governor within 180 days.

12. A new Section 48 was added to the Bill appropriating Nine Hundred Seventy-eight Thousand Three Hundred Sixty-five Dollars (\$978,365) from the General Fund to the government of Guam Retirement Fund for a Fiscal Year 1987 only COLA.
13. A new Section 49 was added to the Bill appropriating the sum of \$24,199.86 from the General Fund to the Legislature Operation Fund to reimburse the Legislature for the state funerals of former Commissioners Pedro Rosario and Jose Tyquiengco, and former Senator Cecilia C. Bamba.

After all the above-mentioned changes were incorporated into Substitute Bill 743, 9-23-86, the Bill was further substituted by the Committee on Rules and redesignated with the date 10-2-86.

The Bill remains in the Committee on Rules until the next Rules meeting.

EIGHTEENTH GUAM LEGISLATURE
1986 (SECOND) Regular Session

Bill No. 743
Substitute by Committee on
General Governmental Operations
further substitute by Committee on Rules
11-6-86

Introduced by:

C. T. C. Gutierrez
T. S. Nelson

AN ACT TO ADD A NEW CHAPTER 12 AND TO AMEND
CERTAIN CODE SECTIONS CONTAINED IN TITLE VII-A
OF THE GOVERNMENT CODE, RELATIVE TO
ESTABLISHING A PROCUREMENT APPEALS BOARD AND
TO AMEND THE PROCUREMENT LAWS OF GUAM, AND
FOR OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. A new Chapter 12 is added to Title VII-A of the
3 Government Code to read:

4 "CHAPTER 12

5 Procurement Appeals Board

6 Article A

7 §6983. Creation of the Procurement Appeals Board. There is
8 established an independent entity to be known as the Procurement
9 Appeals Board to be composed of a chairperson and at least six (6)
10 other members. The chairperson and members of the Board shall be
11 appointed by the Governor and confirmed with the advice and consent
12 of the Legislature and shall serve part-time as necessary.

13 §6983.1. Terms and Qualifications of Members of the Procurement
14 Appeals Board. (a) Term. The term of office of the chairperson and
15 each member of the Procurement Appeals Board shall be six (6) years
16 except that in making the initial appointments, the Governor shall
17 appoint one member for a term of four (4) years, and the chairperson
18 for a term of six (6) years, so that a term of office shall expire every
19 two (2) years. Thereafter, their successors shall be appointed for

1 terms of six (6) years, or for the balance of any unexpired term, but
2 members may continue to serve beyond their terms until their
3 successors take office. Members may be reappointed for succeeding
4 terms. If there is no chairperson, or if such officer is absent or
5 unable to serve, the senior member in length of service shall be
6 temporary chairperson.

7 (b) Authority of the Chairperson. The chairperson may adopt
8 operational procedures and issue such orders, not inconsistent with
9 this Title, as may be necessary in the execution of the Board's
10 functions. The chairperson's authority may be delegated to the
11 Board's members and employees, but only members of the Board may
12 issue decisions on appeals.

13 (c) Support. The Civil Service Commission is authorized to
14 provide for the Board such services as the chairperson requests, on
15 such basis, reimbursable or otherwise, as may be agreed upon between
16 the Civil Service Commission and the chairperson. The Board is
17 empowered to hire legal counsel, accountants, staff and other
18 personnel, and to provide for training of its staff and members.

19 (d) Qualifications for Board Membership. (1) One (1) member
20 shall be a member in good standing of the Guam Bar Association who
21 has been admitted to practice before the highest court of a state,
22 territory or the District of Columbia for at least five (5) years prior
23 to his appointment, one (1) member shall be a certified public
24 accountant and the other members shall have demonstrated experience
25 of at least five (5) years in procurement.

26 (2) No member shall be an employee of the government, a
27 recipient of any annuity from the government, a member of any
28 board or commission of the government, nor a member of the
29 immediate family of an employee of the government. As used in
30 this Section, 'immediate family' means a collective body of persons
31 living together in one house under one head.

32 (3) The appointment of any person to the Commission shall
33 become void if at any time during his term of office he shall

1 become an employee of the government or accept an annuity from
2 the government.

3 (4) When a vacancy occurs, the Governor shall appoint a
4 new member within sixty (60) days of the commencement of the
5 vacancy.

6 (e) Removal of Members. Notwithstanding any other provision of
7 this Chapter, the Governor or the Procurement Appeals Board by
8 three (3) positive votes of its members may recuse a member of the
9 Procurement Appeals Board from participation in a matter before the
10 board due to

11 (i) disability,

12 (ii) conflict of interest with respect to service on the
13 Board and engagement in any private business,

14 (iii) for other good cause.

15 Any removal pursuant to items (ii) and (iii) of this Subsection
16 shall be effective no sooner than ten (10) calendar days subsequent to
17 the delivery of written notice of such removal by the Governor or the
18 Board to the Legislative Secretary of the Legislature. Removal
19 pursuant to item (i) of this Section shall be effective pursuant to the
20 notice of the action taken.

21 A member of the Procurement Appeals Board may recuse himself.

22 For purposes of this Section, recuse means to disqualify from
23 hearing the matter and taking any action on it.

24 (f) Appointment, Qualifications and Function of Alternates. At
25 the same time as members of the Procurement Appeals Board are
26 appointed by the Governor, the Governor shall appoint three (3)
27 alternate members to the Board, all of whom shall serve for a term of
28 six (6) years.

29 (1) Each alternate shall, at the time of his appointment, be
30 designated either First Alternate, Second Alternate or Third
31 Alternate. For the first year of his appointment each alternate
32 shall serve in the order designated, and each year thereafter
33 they shall rotate the order, so that during the second year, the
34 First Alternate shall serve second, the Second Alternate third,

1 and the Third first, and so on for each successive year until
2 their terms expire.

3 (2) Each alternate shall fulfill the same requirements for
4 membership on the Board as any of the regular board members
5 fulfill and shall be subject to the same removal procedures as
6 regular board members.

7 (3) The alternates shall fill in on matters before the
8 Procurement Appeals Board when a member is absent or recused
9 pursuant to Subsection (e) of this Section and each alternate
10 shall fill in for an absent or recused member in the order they
11 are designated to serve, so that the alternate serving first fills
12 in for the first absence or recusal, the alternate serving second
13 fills in for the second absence or recusal, and so forth.

14 §6983.2. Rules of Procedure. The Procurement Appeals Board
15 shall adopt rules of procedure which, to the fullest extent possible,
16 will provide for the expeditious resolution of controversies in
17 accordance with the requirements of this Chapter.

18 The Board shall have the authority to appoint a hearing officer,
19 who shall take written, oral or otherwise presented testimony, evaluate
20 such testimony and make recommendations to the Board.

21 The Board may adopt Small Claims Procedures for the resolution
22 of controversies involving claims of less than Twenty-five Thousand
23 Dollars (\$25,000).

24 §6983.3. Decisions of the Procurement Appeals Board. Four (4)
25 affirmative votes shall be required to decide any matter before the
26 Procurement Appeals Board. Four (4) affirmative votes are required
27 to overturn a decision that is appealed to the Procurement Appeals
28 Board. The Procurement Appeals Board shall issue a decision in
29 writing or take other appropriate action on each appeal submitted. A
30 copy of any decision shall be provided to all parties, and, as
31 appropriate, the Chief Procurement Officer, the Director of Public
32 Works and the head of a purchasing agency.

33 §6983.4. Jurisdiction of the Procurement Appeals Board. The
34 Board shall have the power to review and determine de novo any

1 matter properly submitted to it. The Board shall not have jurisdiction
2 over disputes having to do with money owed to or by the government
3 of Guam. Notwithstanding §6964 of this Title, no prior determination
4 shall be final or conclusive on the Board or upon any appeal from the
5 Board. The Board shall have the power to compel attendance and
6 testimony of, and production of documents by, any employee of the
7 territory. The Board may consider testimony and evidence submitted
8 by any competing bidder, offerer or contractor of the protestant. The
9 Board's jurisdiction shall be utilized to promote the integrity of the
10 procurement process and the purposes of Title VII-A of the
11 Government Code.

12 §6983.5. Standard of Review. Any determination of an issue or
13 a finding of fact by the Board shall be final and conclusive unless
14 arbitrary, capricious, fraudulent, clearly erroneous, or contrary to
15 law. Any decision of the Board, including any determination
16 regarding the application or interpretation of the procurement law or
17 regulations, shall be entitled to great weight and the benefit of
18 reasonable doubt, although it shall not be conclusive on any court
19 having competent jurisdiction.

20 §6983.6. Suspension or Debarment Proceedings. (a) Scope.
21 This §6983.6 applies to a review by the Procurement Appeals Board of
22 a decision under §6975.1 of this Title.

23 (b) Time limitation on filing an appeal. The aggrieved person
24 shall file its appeal with the Board within sixty (60) days of the
25 receipt of a decision under Subsection (c) of §6975.1 of this Title.

26 (c) Decision. The Board shall decide whether, or the extent to
27 which, the debarment or suspension was in accordance with the
28 statutes, regulations and the best interest of the territory, and was
29 fair. The Board shall issue its decision within thirty (30) days of the
30 completion of the hearing on the issue.

31 §6983.7. Contract and Breach of Contract Controversies.

32 (a) Scope. This §6983.7 applies to a review by the Procurement
33 Appeals Board of a decision under §6975.2 of this Title.

1 (b) Time limitation on filing an appeal. The aggrieved
2 contractor shall file its appeal with the Board within sixty (60) days of
3 the receipt of the decision or within sixty (60) days following the
4 failure to render a timely decision as provided in §6975.2 of this Title.

5 (c) Decision. The Board shall decide the contract or breach of
6 contract controversy and shall issue its decision within thirty (30)
7 days of the completion of the hearing on the issue.

8 §6983.8. Appeals and Review of Procurement Appeals Board
9 Decisions. (a) Appeal. Any person receiving an adverse decision,
10 the territory, or both may appeal from a decision by the Procurement
11 Appeals Board to the Superior Court of Guam as provided in Article D
12 of Chapter 9 of this Title.

13 (b) Authorization of appeal by the government. No such appeal
14 shall be made by the territory unless recommended by the Chief
15 Procurement Officer, the Director of Public Works, or the head of the
16 Purchasing Agent involved and approved by the Attorney General.

17 §6983.9. Discontinuance of Contractor's Appeal. After notice of
18 an appeal to the Procurement Appeals Board has been filed by the
19 Chief Procurement Officer, the Director of Public Works or the head of
20 a Purchasing Agency, a contractor may not discontinue such appeal
21 without prejudice, except as authorized by the Board."

22 Section 2. Section 6975 of the Government Code is repealed and
23 reenacted to read:

24 "§6975. (a) Right to Protest. Any actual or prospective
25 bidder, offerer or contractor who may be aggrieved in connection with
26 the method of source selection, solicitation or award of a contract, may
27 protest to the Chief Procurement Officer, the Director of Public Works,
28 or the head of a Purchasing Agency. The protest shall be submitted
29 in writing within fourteen (14) days after such an aggrieved person
30 knows or should know of the facts giving rise thereto.

31 (b) Authority to Resolve Protests. The Chief Procurement
32 Officer, the Director of Public Works, the head of a purchasing
33 agency, or a designee of one of these officers shall have the
34 authority, prior to the commencement of an action in court concerning

1 the controversy, to settle and resolve a protest of an aggrieved
2 bidder, offerer, 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 (c) Decision. If the protest is not resolved by mutual
6 agreement, the Chief Procurement Officer, the Director of Public
7 Works, the head of a purchasing agency, or a designee of one of these
8 officers shall promptly issue a decision in writing. The decision shall:

9 (1) state the reasons for the action taken; and

10 (2) inform the protestant of its right to administrative and
11 judicial review.

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

15 (e) Appeal. A decision under Subsection (c) of this Section
16 including a decision thereunder regarding entitlement to costs as
17 provided by Subsection (h) of this Section, may be appealed by the
18 protestant, to the Procurement Appeals Board within fifteen (15) days
19 after receipt by the protestant of the notice of decision.

20 (f) Finality. A decision of the Procurement Appeals Board is
21 final unless a person adversely affected by the decision commences an
22 action in the Superior Court in accordance with Subsection (a) of
23 Section 6978 of this Title.

24 (g) In the event of a timely protest under Subsection (a) of this
25 Section or under Subsection (a) of Section 6978 of this Title, the
26 territory shall not proceed further with the solicitation or with the
27 award of the contract prior to final resolution of such protest, and
28 any such further action is void, unless:

29 (1) The Chief Procurement Officer or the Director of Public
30 Works after consultation with and written concurrence of the head
31 of the using or Purchasing Agency and the Attorney General or
32 designated Deputy Attorney General, makes a written
33 determination that the award of the contract without delay is
34 necessary to protect substantial interests of the territory; and

1 (2) Absent a declaration of emergency by the Governor, the
2 protestant has been given at least two (2) days notice (exclusive
3 of territorial holidays); and

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

9 (h) Entitlement to Costs. In addition to any other relief or
10 remedy granted under Subsection (c) or (e) of this Section or under
11 Subsection (a) of Section 6978 of this Title, including the remedies
12 provided by Article B of Chapter 9 of this Title, when a protest is
13 sustained, the protestant shall be entitled to the reasonable costs
14 incurred in connection with the solicitation and protest, including bid
15 preparation costs, excluding attorney fees, if:

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

18 (2) there is a reasonable likelihood that the protestant may
19 have been awarded the contract but for the breach of any ethical
20 obligation imposed by Article B of Chapter 11 of this Title or the
21 willful or reckless violation of any applicable procurement law or
22 regulation. The Procurement Appeals Board shall have the power
23 to assess reasonable costs other than attorney fees incurred by
24 the territory against a protestant upon its finding that the
25 protest was made fraudulently, frivolously or solely to disrupt the
26 procurement process."

27 Section 3. Subsection (c) of Section 6975.1 of the Government Code is
28 amended to read:

29 "(c) Decision. The Chief Procurement Officer, the Director of
30 Public Works or the head of a purchasing agency shall issue a written
31 decision to debar or suspend. The decision shall:

32 (1) state the reasons for the action taken; and

1 (2) inform the debarred or suspended person involved of
2 its rights to judicial or administrative review as provided in this
3 [Chapter] Title."

4 Section 4. Subsection (e) of Section 6975.1 is amended to read:

5 "(e) Finality of Decision. A decision under Subsections (c) or
6 (f) of this Section shall be final and conclusive, unless fraudulent, [or
7 the debarred or suspended person commences an action in court in
8 accordance with §6978(b) of this Chapter.] or an appeal is taken to
9 the Procurement Appeals Board in accordance with Section 6983.6 of
10 this Title."

11 Section 5. A new Subsection (f) is added to Section 6975.1 of the
12 Government Code to read:

13 "(f) Any member of the public may petition the Chief
14 Procurement Officer, the Director of Public Works or the head of a
15 purchasing agency to take action to debar or suspend pursuant to
16 Subsection (a) of this Section. An investigation of each petition shall
17 be conducted promptly and a written report should be made of findings
18 of fact and action taken."

19 Section 6. Subsection (c) of Section 6975.2 of the Government Code is
20 amended to read:

21 "(c) Decision. If such a controversy is not resolved by mutual
22 agreement, the Chief Procurement Officer, the Director of Public
23 Works, the head of a purchasing agency, or the designee of one of
24 these officers shall promptly issue a decision in writing. The decision
25 shall:

26 (1) state the reasons for the action taken; and

27 (2) inform the contractor of its rights to judicial or
28 administrative review as provided in this [Chapter] Title."

29 Section 7. Subsection (e) of Section 6975.2 of the Government Code is
30 amended to read:

31 "(e) Finality of Decision. The decision reached pursuant to
32 Subsection (c) of this Section shall be final and conclusive, unless
33 fraudulent, [or the contractor commences an action in court in
34 accordance with §6978(c) of this Chapter] or the contractor appeals

1 administratively to the Procurement Appeals Board in accordance with
2 Section 6983.7 of this Title."

3 Section 8. Subsection (d) of Section 6978 of the Government Code is
4 amended to read:

5 "(d) Limited Finality for Administrative Determinations. In any
6 judicial action under this Section, factual or legal determinations by
7 employees, agents or other persons appointed by the Territory shall
8 have no finality and shall not be conclusive, notwithstanding any
9 contract provision, or regulation, except to the extent provided in
10 §§6964, 6983.4 and 6983.5 of this Title."

11 Section 9. Subsection (c) of Section 6978 of the Government Code is
12 repealed and reenacted to read:

13 "(c) In addition to other relief and remedies, the Superior Court
14 shall have jurisdiction to grant injunctive relief in any action brought
15 under Subsections (a), (b) or (c) of this Section."

16 Section 10. Subsection (a) of Section 6978.1 of the Government Code
17 is repealed and reenacted to read:

18 "(a) Protested Solicitations and Awards. Any action under
19 Section 6978(a) of this Chapter shall be initiated within fourteen (14)
20 days after receipt of a final administrative decision."

21 Section 11. Subsection (b) of Section 6978.1 of the Government Code
22 is amended to read:

23 "(b) Debarments and Suspensions for Cause. Any action under
24 Section 6978(b) of this Chapter shall be commenced within six (6)
25 months after receipt of the decision of the [Chief Procurement Officer,
26 the Director of Public Works or head of a purchasing agency under
27 Section 6975.1(c) of this Chapter or the decision of the] Policy Office
28 under Section 6981.1 of this Title, or the decision of the Procurement
29 Appeals Board under Section 6983.6 of this Title, whichever is
30 applicable."

31 Section 12. Subsection (c) of Section 6978.1 of the Government Code
32 is amended to read:

33 "(c) Actions Under Contracts or for Breach of Contract. Any
34 action commenced under Section 6978(c) of this Chapter shall be

1 commenced [within six months of the date the claim arose, or within
2 six months of the date the claimant knew, or should have known, that
3 a claim existed against the other party] within twelve (12) months
4 after the date of the Procurement Appeals Board decision ."

5 Section 13. A new Subsection (d) is added to Section 6978.1 of the
6 Government Code to read:

7 "(d) The limitations on actions provided by this Section are
8 tolled during the pendency of any proceeding brought pursuant to
9 Section 6978.2 of this Title."

10 Section 14. Section 6976 of the Government Code is amended to read:

11 "Section 6976. Applicability of this Article. The provisions of
12 this Article apply where it is determined administratively, or upon
13 administrative or judicial review, that a solicitation or award of a
14 contract is in violation of law."

15 Section 15. A new Subsection (d) is added to Section 6980.6 of the
16 Government Code:

17 "(d) Favors to the Territory. For purposes of this Section, a
18 favor is anything, including raffle tickets, of more than de minimus
19 value and whether intended for the personal enjoyment of the receiver
20 or for the department or organization in which they are employed or
21 for any person, association, club or organization associated therewith
22 or sponsored thereby. It shall be a breach of ethical standards for
23 any person who is or may become a contractor, a subcontractor under
24 a contract to the prime contractor or higher tier contractor, or any
25 person associated therewith, to offer, give or agree to give any
26 employee or agent of the territory or for any employee or agent of the
27 territory to solicit or accept from any such person or entity or agent
28 thereof, a favor or gratuity on behalf of the territory whether or not
29 such favor or gratuity may be considered a reimbursable expense of
30 the territory, during the pendency of any matter related to
31 procurement, including contract performance and warranty periods."

32 Section 16. Subsection (c) of Section 6980.6 of the Government Code
33 is amended to read:

1 "(c) Contract Clause. The prohibition against gratuities, [and]
2 kickbacks and favors to the territory prescribed in this Section shall
3 be conspicuously set forth in every contract and solicitation therefor."

4 Section 17. A new Section 6964.4 is added to the Government Code to
5 read:

6 "Section 6964.4. Record of Procurement Actions. Each
7 procurement officer shall maintain a complete record of each
8 procurement. The record shall include the following:

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

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

15 (3) sound recordings of all pre-bid conferences, negotiations
16 arising from a request for proposals and discussions with vendors
17 concerning small purchase procurement;

18 (4) brochures and submittals of potential vendors, manufacturers
19 or contractors, and all drafts, signed and dated by the draftsman,
20 and other papers or materials used in the development of
21 specifications; and

22 (5) the requesting agency's determination of need."

23 Section 18. A new Section 6964.5 is added to the Government Code to
24 read:

25 "Section 6964.5. Certification of Record. No procurement award
26 shall be made unless the responsible procurement officer certifies in
27 writing under penalty of perjury that he has maintained the record
28 required by Section 6964.4 of this Chapter and that it is complete and
29 available for public inspection. The certificate is itself a part of the
30 record."

31 Section 19. A new Section 6964.6 is added to the Government Code to
32 read:

33 "Section 6964.6. The record required by Section 6964.4 of this
34 Chapter is a public record and, subject to rules promulgated by the

1 Procurement Appeals Board, any person may inspect and copy any
2 portion of the record."

3 Section 20. A new Section 6964.7 is added to the Government Code to
4 read:

5 "Section 6964.7 The rules promulgated pursuant to Section 6964.6
6 of this Chapter shall:

- 7 (1) protect the integrity of the bidding process;
- 8 (2) protect the confidentiality of trade secrets;
- 9 (3) establish reasonable charges for copying papers;
- 10 (4) provide for transcription of sound recordings;
- 11 (5) require public access to the record at the earliest
12 possible time; and
- 13 (6) not require that the record be complete or that the
14 procurement award be made before inspection and copying are
15 permitted."

16 Section 21. A new Section 6965.7 is added to the Government Code to
17 read:

18 "Section 6965.7. Publication of Source of Specifications. The
19 specifications contained in any invitation for bids or request for
20 proposals, and any amendment thereto, for the procurement of supplies
21 shall identify the person responsible for drafting the specifications and
22 any persons, technical literature or manufacturer's brochures relied
23 upon by the responsible person in drafting the specifications."

24 Section 22. A new Section 6965.8 is added to the Government Code to
25 read:

26 "Section 6965.8. Salient Features. (a) Specifications shall not
27 include requirements, such as but not limited to restrictive dimensions,
28 weights or materials, which unnecessarily restrict competition, and
29 shall include only the essential physical characteristics and functions
30 required to meet the territory's minimum needs.

31 (b) Purchase descriptions shall not specify a product having
32 features which are peculiar to the products of one manufacturer,
33 producer or distributor unless it has been determined in writing by
34 the Director of the using agency that those particular features are

1 essential to its requirements and specifying the reason that similar
2 products lacking those features would not meet minimum requirements
3 for the item.

4 (c) Purchase descriptions shall describe the salient technical
5 requirements or desired performance characteristics of supplies or
6 services to be procured without including restrictions which do not
7 significantly affect the technical requirements or performance
8 characteristics."

9 Section 23. Section 6959.5 of the Government Code is amended to
10 read:

11 "\$6959.5. Emergency Procurements. Notwithstanding any other
12 provision of this Title, the Chief Procurement Officer, the Director of
13 Public Works, the head of a purchasing agency, or a designee of either
14 officer may make or authorize others to make emergency procurements when
15 there exists a threat to public health, welfare, or safety under emergency
16 conditions as defined in regulations promulgated by the Policy Office;
17 provided that such emergency procurements shall be made with such
18 competition as is practicable under the circumstances, and further provided
19 that the procurement agent must solicit at least three (3) informal price
20 quotations, if time allows must give notice to all contractors from the
21 qualified bid list who have provided the needed supplies and services to the
22 government within the preceding twelve (12) months, and must award the
23 procurement to the firm with the best offer, as determined by evaluating
24 cost and delivery time. No emergency procurement or combination of
25 emergency procurements may be made for an amount of goods or supplies
26 greater than the amount of such goods and supplies which is necessary to
27 meet an emergency for the thirty (30) day period immediately following the
28 procurement. A written determination of the basis for the emergency and
29 for the selection of the particular contractor shall be included in the
30 contract file. The requirements for a written determination for the
31 emergency shall be met if the procurements are being made on the basis of
32 the Governor's declaration of an emergency situation by Executive Order if
33 such Order states that emergency procurement may be resorted to for
34 purposes of the Order. Unless authorized by an Executive Order declaring

1 an emergency, no emergency procurement may be made except on a
2 certificate made under penalty of perjury by the Chief Procurement Officer,
3 Director of Public Works or the head of a purchasing agency, as the case
4 may be. Certified copies of the certificate shall be sent, prior to award
5 and as a condition thereof, to the Governor and Speaker of the Legislature.
6 The certificate shall contain the following:

- 7 (1) a statement of the facts giving rise to the emergency;
- 8 (2) the factual basis of the determination that an emergency
9 procurement is necessary; and
- 10 (3) a statement that emergency procurement is not being used solely
11 for the purpose of avoidance of the provisions of this Title.

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

14 Section 24. 6 GCA §4102 is amended to read:

15 "§4102. Public Writings Defined. 'Public Writings' are:

16 (1) The written acts of records of the acts of the sovereign
17 authority, of official bodies and tribunals, and of public officers,
18 legislative, judicial and executive, whether of the territory of
19 Guam, of any state, of the United States or insular possessions
20 thereof, of the Trust Territory of the Pacific Islands, or of a
21 foreign country; [and]

22 (2) Public records, kept in Guam, of private writings; and

23 (3) All data produced, generated or stored by a
24 government body, as defined in Subsection (h) of Section 6952 of
25 Title VII-A of the Government Code, in any way related to
26 procurement, as defined in Subsection (o) of Section 6952 of Title
27 VII-A of the Government Code."

28 Section 25. Subsection (b) of Section 6950 of the Government Code is
29 amended to read:

30 "(b) Purposes and Policies. The underlying purposes and
31 policies of this Title are:

32 (1) to simplify, clarify, and modernize the law governing
33 procurement by this Territory;

1 (2) to permit the continued development of procurement
2 policies and practices;

3 (3) to provide for increased public confidence in the
4 procedures followed in public procurement;

5 (4) to ensure the fair and equitable treatment of all persons
6 who deal with the procurement system of this Territory;

7 (5) to provide increased economy in territorial activities and
8 to maximize to the fullest extent practicable the purchasing value
9 of public funds of the Territory;

10 (6) to foster effective broad-based competition within the
11 free enterprise system; [and]

12 (7) to provide safeguards for the maintenance of a
13 procurement system of quality and integrity; and

14 (8) to require public access to all aspects of procurement
15 consistent with the 'sealed bid' procedure and the integrity of the
16 procurement process ."

17 Section 26. A new Subsection (x) is added to Section 6952 of the
18 Government Code to read:

19 "(x) 'Emergency' means a condition posing an imminent threat to
20 public health, welfare, or safety which could not have been foreseen
21 through the use of reasonable and prudent management procedures,
22 and which cannot be addressed by other procurement methods of
23 source selection."

24 Section 27. A new Article E is added to Chapter 9 of Title VII-A of
25 the Government Code to read:

26 "Article E

27 "Section 6978.2. (a) On complaint by any member of the public,
28 the Superior Court has jurisdiction to enjoin a governmental body from
29 withholding procurement data and to order the production of any
30 government data improperly withheld from the complainant. In such a
31 case the court shall determine the matter de novo, and may examine
32 the contents of such procurement data in camera to determine whether
33 such records or any part thereof shall be withheld under any of the

1 exceptions set forth in 6 GCA §4202 and the burden is on the agency
2 to sustain its action.

3 (b) Notwithstanding any other provision of law, the government
4 or a governmental body shall serve an answer or otherwise plead to
5 any complaint made under this Section within thirty (30) days after
6 service of the pleading in which such complaint is made, unless the
7 court otherwise directs, for good cause shown.

8 (c) Except as to cases the court considers of greater
9 importance, proceedings as authorized by this Section, and appeals
10 therefrom, take precedence on the docket over all cases and shall be
11 assigned for hearing and trial or for argument at the earliest
12 practicable date and expedited in every way.

13 (d) The court may assess against the government or
14 governmental body reasonable attorney fees and other litigation costs
15 reasonably incurred in any case under this Section in which the
16 complainant has substantially prevailed.

17 (e) Whenever the court orders the production of any
18 procurement data improperly withheld from the complainant and
19 assesses against the government or governmental body reasonable
20 attorney fees and other litigation costs, and the court additionally
21 issues a written finding that the circumstances surrounding the
22 withholding raise questions whether government personnel acted
23 arbitrarily or capriciously with respect to the withholding, apart from
24 such other actions as the Court may take, the Civil Service Commission
25 shall promptly initiate a proceeding to determine whether disciplinary
26 action is warranted against the officer or employee who was primarily
27 responsible for the withholding. The Commission, after investigation
28 and consideration of the evidence submitted, shall submit its findings
29 to the administrative authority of the agency concerned and shall send
30 copies of the findings and recommendations to the officer of employee
31 or his representative. The administrative authority shall take the
32 corrective action that the Commission recommends. No right or power
33 granted to the Civil Service Commission shall bar or preclude the

1 Court from issuing such orders, imposing such sanctions or providing
2 such remedy or relief as it deems proper.

3 (f) In the event of noncompliance with the order of the Court,
4 the Superior Court may punish for contempt, the responsible employees
5 or officer."

6 Section 28. A new Section 6954.11 is added to the Government Code
7 to read:

8 "§6954.11. Every governmental body which is in the purview of
9 the Executive Branch and including Guam Community College, the
10 University of Guam, the Department of Education, the Guam Memorial
11 Hospital and Guam Visitor's Bureau shall be governed by Chapters 1,
12 3, 6, 7, 10, 11 and 12 of this Title, except to the extent that any such
13 governmental body or other above-named body may be exempted from
14 the centralized procurement regime of Chapter 2 of this Title, in which
15 event the Director of each such governmental body or other
16 above-named body shall be substituted wherever there is reference to
17 the Public Policy Office or Chief Procurement Officer or Director of
18 Public Works in Chapters 4, 5, 8 and 9 of Title VII-A of the
19 Government Code.

20 It is the intent of the Legislature to require all Executive Branch
21 governmental bodies, including autonomous agencies, and other
22 above-named bodies, to be governed to the maximum extent practicable
23 by Title VII-A. This provision requires any governmental body and
24 each above-named body to conduct their procurement activities
25 pursuant to Title VII-A, except insofar as said Title establishes and
26 effects a system of centralized procurement."

27 Section 29. A new Section 6955.1 is added to the Government Code to
28 read:

29 "§6955.1. Each governmental body and each named body in
30 Section 6954.11 of this Title shall adopt the procurement regulations
31 promulgated pursuant to Section 6955(a) of this Title to the extent
32 such agency is subject to such regulations according to the terms of
33 Section 6954.11 of this Title"

1 Section 30. A new Section 6950.9 is added to the Government Code to
2 read:

3 §6950.9. Policy in Favor of Planned Procurement. All
4 procurements of supplies and services shall, where possible, be made
5 sufficiently in advance of need for delivery or performance to promote
6 maximum competition and good management of resources. Publication of
7 bids and requests for proposals shall not be manipulated so as to place
8 potential bidders at unnecessary competitive disadvantage. Except in
9 emergency situations, lower price bids are generally preferable to
10 shorten delivery or performance bids. Delivery time may be
11 considered as a factor in making an award to a responsive bidder only
12 if his average delivery time bid is at least ten percent (10%) shorter
13 than the average delivery time of a lower price responsive bidder and
14 if the price offered by the bidder offering the faster delivery or
15 performance does not exceed one hundred five percent (105%) of the
16 lower price bidder."

17 Section 31. Subsection (b) of Section 6975.1 of the Government Code
18 is amended to read:

19 "(b) Causes for Debarment or Suspension. The causes for
20 debarment or suspension include the following:

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

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

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

33 (4) violation of contract provisions, as set forth below, of a
34 character which is regarded by the Chief Procurement Officer,

1 the Director of Public Works or the head of a purchasing agency
2 to be so serious as to justify debarment action:

3 (i) deliberate failure without good cause to perform in
4 accordance with the specifications or within the time limit
5 provided in the contract; or

6 (ii) a recent record of failure to perform or of
7 unsatisfactory performance in accordance with the terms of
8 one or more contracts, provided, that failure to perform or
9 unsatisfactory performance caused by acts beyond the
10 control of the contractor shall not be considered to be a
11 basis for debarment;

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

18 (6) for violation of the ethical standards set forth in
19 Chapter 11 of this Title[.]; and

20 (7) filing a frivolous or fraudulent petition, protest or
21 appeal under Section 6975(e), of Section 6975.1(f) or of Section
22 6975.2(e) of this Title."

23 Section 32. Subsection (a) of Section 6959.6 of the Government Code
24 is amended to read:

25 "(a) Conditions for Use. The services specified in §6954.7(a) of
26 this Title shall be procured in accordance with this Section, except as
27 authorized under §6959.4 or §6959.5 of this Title. Services for
28 architecture, engineering, construction, land surveying, environmental
29 assessment and other such services shall be procured in accordance
30 with Chapter 5 of this Title."

31 Section 33. The provisions of Sections 1 through 32, inclusive, of
32 this Act shall become effective on January 4, 1987.

33 Section 34. A new 4 GCA §6218 is added to read:

1 "§6218. Cause of Action for Overtime. It is the intent of the
2 Legislature that all overtime which has been approved be promptly
3 paid. Therefore: any employee who is entitled to overtime may bring
4 action in the Superior Court against the government of Guam for
5 payment of all back pay due as a result of overtime, in addition to all
6 other remedies allowed at law or equity. In any such case, the Court
7 may order pendente lite and permanently that the appropriate officer
8 or officers of the Government pay such sums to the employee as may
9 become due in the future on such terms as the Court deems just.

10 In any such case, ten (10) or more employees similarly situated
11 may initiate and bring a class action on behalf of all employees
12 similarly situated. In such case, the Court shall set reasonable
13 attorney's fees upon conclusion of the case in an amount not to exceed
14 ten percent (10%) of the recovery, to be paid by the government of
15 Guam if the employees prevail."

16 Section 35. Notwithstanding any other provision of law, the Governor
17 is authorized to expend from the operational budget available to the
18 Executive Branch of the government in FY 1987 such sums as are necessary
19 to fund all the pay reclassifications authorized to be implemented in PL
20 18-32 and PL 18-33 for FY 1987. The Governor shall submit a request for
21 supplemental funding for such pay reclassifications to the Legislature by
22 December 1, 1986.

23 Section 36. Subsection (b) of Section 26109 of the Government Code is
24 amended to read:

25 "(b) No more than three (3) licenses in which amara fights may
26 be conducted shall be granted, provided, that [this restriction shall
27 not take effect until the expiration of licenses issued pursuant to
28 previous law] one (1) of these three (3) shall be located in the area of
29 Dededo-Yigo and is to be given to the highest responsible bidder."

30 Section 37. Subsection (a) of Section 26106 of the Government Code is
31 repealed and reenacted to read:

32 "(a) Whenever there are two (2) or less current licenses in
effect, the Board shall conduct a public meeting at which it shall

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Archibald
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1 review cockpit operations and authorize the letting of bids for licenses
 2 which will be new or which will replace the expired or non-renewed
 3 licenses."

4 Section 38. Subsection (b) of Section 26106 of the Government Code is
 5 amended to read:

6 "(b) [Upon determining such a need exists or n]Not later than
 7 ninety (90) days prior to the expiration of an existing license the
 8 Board shall publish in a newspaper of general circulation within the
 9 territory its invitation for bids."

10 Section 39. Notwithstanding any other provision of law, the balance
 11 remaining of any sums appropriated in Section 13 of P.L. 18-6, Sections 4
 12 and 8 of P.L. 18-1, Section 8 of P.L. 17-18, and Section 5 of P.L. 17-2 are
 13 reprogrammed and reappropriated from their original sources to the
 14 Legislative Operations Fund for the operation of the Eighteenth Guam
 15 Legislature until January 4, 1987.

16 Section 40. Section C of Part II of Section 1 of Chapter II of Public
 17 Law 18-15 is amended to read:

	<u>General</u> <u>Fund</u>	<u>Other</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Total</u>
"C. For Federal - State Marketing Improvement Program				
1. Operating Expenses	[\$ 19,500]		\$ 19,500	[\$ 39,000]
	<u>\$ 12,500</u>			<u>\$ 32,000</u>
	<u>[\$ 19,500]</u>	-----	<u>\$ 19,500</u>	<u>[\$ 39,000]</u>
	<u>\$ 12,500</u>			<u>\$ 32,000"</u>

18 Section 41. Section K of Part II of Section 1 of Chapter II of Public
 19 Law 18-15 is amended to read:

	<u>General</u> <u>Fund</u>	<u>Other</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Total</u>
"K. For Soil and Water Conservation				
1. Personnel Services	\$ 13,102			\$ 13,102
	(1.0 FTE)			(1.0 FTE)

2.	Operating Expenses	3,950		3,950
3.	<u>Stipends Water Conservation</u>			
	<u>District Officers</u>	<u>7,000</u>		<u>7,000</u>
		<u>[\$ 17,052]</u>		<u>[\$ 17,052]</u>
		<u>\$ 24,052</u>		<u>\$ 24,052"</u>

1 Section 42. The sum of Five Hundred Thirty Six Thousand Dollars
2 (\$536,000) of the funds available for use for the Medically Indigent Program
3 of the Department of Public Health and Social Services for Fiscal Year 1987
4 are appropriated to the Department of Public Health and Social Services for
5 the payment of patient charges incurred in Fiscal Year 1986 for the
6 Medically Indigent Program.

7 Section 43. No later than forty-five (45) days subsequent to the date
8 of enactment of this Act, the Governor shall submit to the Legislature an
9 equitable plan for the salaries of all unclassified employees in all
10 departments and agencies of the government, both autonomous and
11 non-autonomous. Such plan shall include proposed salaries for all
12 unclassified employees and identify sources of funding sufficient to
13 implement the plan.

14 Section 44. A new Section 6961.3 is added to the Government Code to
15 read:

16 "Section 6961.3. Disclosure of major shareholders. As a
17 condition of bidding, any partnership, sole proprietorship or
18 corporation doing business with the government of Guam shall submit
19 an affidavit executed under oath that lists the name and address of
20 any person who has held more than ten percent (10%) of the
21 outstanding interest or shares in said partnership, sole proprietorship
22 or corporation at any time during the twelve (12) month period
23 immediately preceding submission of a bid. The affidavit shall contain
24 the number of shares or the percentage of all assets of such
25 partnership, sole proprietorship or corporation which have been held
26 by each such person during the twelve (12) month period. In
27 addition, the affidavit shall contain the name and address of any
28 person who has received or is entitled to receive a commission,

1 gratuity or other compensation for procuring or assisting in obtaining
2 business related to the bid for the bidder and shall also contain the
3 amounts of any such commission, gratuity or other compensation. The
4 affidavit shall be open and available to the public for inspection and
5 copying."

6 Section 45. A new 10 GCA §41107 is added to read:

7 "§41107. Executive Officer: Special Duties. (a) In addition to
8 any other powers and duties of the Executive Officer, the Executive
9 Officer shall, by whatever means deemed appropriate, certify that a
10 person is disabled after receipt of a signed statement from a licensed
11 physician supporting the claim of the disabled person. The Executive
12 Officer shall also certify those vehicles which transport disabled
13 persons regularly.

14 (b) A disabled Parking Advisory Committee is hereby created.
15 Four (4) members of the Commission shall be selected by the Executive
16 Officer and shall consist of one (1) paraplegic, one (1) quadriplegic,
17 one (1) blind person, and one (1) disabled person who must rely on
18 crutches for mobility. The Director of Public Works shall choose one
19 (1) member who shall be a representative of the Department of Public
20 Works. The Director of the Department of Vocational Rehabilitation
21 shall be an ex-officio member. The Disabled Parking Advisory
22 Committee shall submit to the Department of Public Works their
23 recommendations regarding location of parking spaces which, pursuant
24 to Subsection (b) of Section 10001.9 of the Government Code, are to
25 be assigned to the disabled."

26 Section 46. A new Section 350 is added to the Code of Civil Procedure
27 to read:

28 "Section 350. Exposure to Asbestos, Actions for Injury, Illness
29 or Wrongful Death. (a) In any civil action for injury or illness based
30 upon exposure to asbestos, chemicals, or other toxic agents, the time
31 for the commencement of the action shall be the later of the following:

- 32 (1) Within two (2) years after the date the plaintiff first
33 suffered disability and either before or after suffering the
34 disability the plaintiff was informed by a licensed physician,

1 clearly and comprehensively, to the degree that the plaintiff
2 is capable of understanding, that he was diagnosed as
3 having any one or more of the following several and distinct
4 injuries, pleural disease, or pulmonary asbestosis, or
5 malignant mesothelioma, or other carcinoma or other specific
6 asbestos-related injury, causing the disability; or

- 7 (2) Within two (2) years after the date the plaintiff either knew,
8 or through the exercise of reasonable diligence should have
9 known, (i) that such disability was caused or contributed to
10 by such exposure and (ii) that the disability or injury was
11 caused by a violation of a duty towards the plaintiff; or
12 (3) Two (2) years from the effective date of this Act.

13 (b) 'Disability' as used in Subsection (a) of this Section means
14 the loss of time from work as a result of exposure to asbestos, which
15 precludes the performance of the employee's regular occupation.

16 (c) In an action for the wrongful death of any plaintiff's
17 decedent, based upon exposure to asbestos, the time for commencement
18 of an action shall be the later of the following:

- 19 (1) Within two (2) years from the date of death of the plaintiff's
20 decedent, or the date of enactment of this Act, whichever is
21 later; or
22 (2) Within two (2) years from the date the plaintiff first knew,
23 or through the exercise of reasonable diligence should have
24 known, that the death was caused or contributed to by such
25 exposure.

26 (d) The provisions of this Section shall apply retroactively to all
27 unfiled claims and to all pending litigation in the courts of Guam, or
28 which are on appeal. Pending litigation as used in this Subsection
29 shall include any action that has been filed in the courts of Guam.

30 (e) The burden of proving that this Section is a bar to any
31 cause of action for illness, injury, property damage or wrongful death
32 is upon the party asserting this section as a defense.

33 (f) Nothing in this Section shall be construed as waiving the
34 sovereign immunity of the government of Guam.

1 (g) This Section shall not change the statute of limitations for
2 any claim against the Government of Guam."

3 Section 47. The Governor shall appoint seven (7) members to a task
4 force as soon as practicable after the effective date of this Section of this
5 Act and charge the task force with preparing a comprehensive plan,
6 including recommended legislation, for the territory to identify the
7 presence, in government buildings and areas under the control of the
8 government, of asbestos and other environmental substances capable of
9 causing latent harm to the people of Guam, and to identify necessary steps
10 to remove this harm. This task force shall make its report and forward the
11 report to the Governor and the Legislature within one hundred eighty (180)
12 days from the effective date of this Section of this Act.

13 Section 48. The sum of Nine Hundred Seventy Eight Thousand Three
14 Hundred Sixty-five Dollars (\$978,365.00) is appropriated from the General
15 Fund to the Government of Guam Retirement Fund for the purpose of
16 funding a Four Hundred Nineteen Dollar (\$419.00) lump sum Cost of Living
17 Allowance for government of Guam retirees or their survivors for Fiscal
18 Year 1987 only.

19 Section 49. The sum of Twenty-eight Thousand Dollars (\$28,000.00) is
20 appropriated from the General Fund to the Legislature Operations Fund for
21 expenses of the state funerals for former Commissioners Pedro Rosario and
22 Jose Tyquiengco and former Senator Cecilia Bamba.

23 Section 50. (a) Any agreement for termination of the Power Pool
24 Agreement of the Island Wide Power System between the Guam Power
25 Authority and the United States Government or the United States Navy shall
26 provide that the United States Government or the United States Navy shall
27 not purchase electrical power from the Guam Power Authority at a
28 preferential rate. In any event, any electrical rate for the United States
29 Navy or the United States Government shall be not less than the average
30 amount per kilowatt hour paid by all classes of electrical power consumers
31 on Guam, and shall, as a minimum, incorporate all social and economic
32 considerations pertinent to the community of Guam.

1 (b) Any agreement between the Guam Power Authority and the United
2 States Government or the United States Navy for the purchase of electrical
3 power shall provide that the United States Government or the United States
4 Navy shall not purchase electrical power from the Guam Power Authority at
5 a preferential rate. In any event, any electrical rate for the United States
6 Navy or the United States Government shall be not less than the average
7 amount per kilowatt hour paid by all classes of electrical power consumers
8 on Guam, and shall, as a minimum, incorporate all social and economic
9 considerations pertinent to the community of Guam.

10 (c) Any agreement for termination of the Power Pool Agreement of the
11 Island Wide Power System between the Guam Power Authority and the
12 United States Government or the United States Navy, and any agreement
13 between the Guam Power Authority and the United States Government or the
14 United States Navy for the purchase of electrical power from the Guam
15 Power Authority must be approved by the Board of Directors of the Guam
16 Power Authority, Public Utilities Commission and Guam law prior to
17 implementation, and shall have no force and effect until such approval has
18 been granted.

Section 52 - FJG 2 lovers Point
" 53 - EPA
" ~~54~~ -

GOVERNMENT OF GUAM
DEPARTMENT OF REVENUE AND TAXATION
TERRITORIAL COCKPIT BOARD
855 WEST MARINE DRIVE
ANIGUA, GUAM 96910

222943

NO. 84-CB-1

FEE \$ 25,000

ISSUED: March 29, 1984

() NEW
(X) RENEWAL

TO: L & A Cockpit

DBA: SAME

LOCATION LOT FOR WHICH ISSUED: 2110 Tamuning, Guam

TYPE OF LICENSE: AMARA

RECORDS OF FEES PAID:

EFFECTIVE DATE: March 29, 1984 OFFICIAL RECEIPT: D6-077657 EXPIRATION DATE: March 29, 1989

AUTHORITY: XXVII, CHAPTER 2 GOVERNMENT CODE OF GUAM, AND RULES AND REGULATIONS OF THE COCKPIT LICENSE BOARD, AS SET FORTH IN EXECUTIVE ORDER NOS. 1959, 63-23 AND 68-17.

Dave J. Santos
DAVE J. SANTOS
Executive Secretary

Ricardo Bordallo
RICARDO BORDALLO
Governor of Guam

Antonio Perez
BY: ANTONIO PEREZ

TERRITORIAL COCKPIT BOARD
Dolores Lizama
BY: DOLORES LIZAMA

Tomas Limitaco
BY: TOMAS LIMITACO

TITLE: CHAIRMAN

TITLE: MEMBER

TITLE: MEMBER

KEEP POSTED IN A CONSPICUOUS PLACE

ANY PERSON WHO MALICIOUSLY MUTILATES, TEARS, DEFACES, OBLITERATES OR DESTROYS THIS DOCUMENTS IS LIABLE TO PUNISHMENT UNDER SECTION 46.40 CRIMINAL CORRECTIONAL CODE OF GUAM.

DEPARTMENT OF REVENUE & TAXATION
TERRITORIAL COCKPIT BOARD
GOVERNMENT OF GUAM
AGANA, GUAM

0684

COCKPIT LICENSE RENEWAL AGREEMENT

This Agreement entered into by and between L & A Cockpit, Inc., herein called L & A COCKPIT, INC., and the Government of Guam, represented by the Cockpit Board, herein called the GOVERNMENT.

W I T N E S S E T H:

WHEREAS, L & A COCKPIT, INC. has indicated a desire to exercise its option to renew its Cockpit License executed on this 7th day of February 1984 for a period of five (5) years; and

WHEREAS, L & A COCKPIT, INC. has agreed that it will truthfully and faithfully comply with Sections 2.14 and 2.15 of the Regulations of the Cockpit Board; and

WHEREAS L & A COCKPIT, INC. and the GOVERNMENT desire to spell out the rights and responsibilities conferred and imposed by said Cockpit License.

NOW, THEREFORE, the parties hereto agree as follows:

1. The GOVERNMENT hereby grants to L & A COCKPIT, INC. a license to operate an Amara Cockpit in the municipality of Tamuning, of this Territory for a period of five (5) years, said license shall be effective March 29, 1984 to March 29, 1989, inclusive.
2. L & A COCKPIT, INC. will pay to the Government of Guam for said license the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) on or before five (5) days prior to expiration of the current license.
3. L & A COCKPIT, INC. agrees that one of the purposes of the existing law on cockpits is to make the sport a point of interest for tourists and other visitors to Guam. Accordingly, the cockpit facility shall comply with Section 2.12 and 2.13 of the Regulations of the Cockpit Board; the

facility, including all the land involved and all the furnishings, shall conform to the Regulations.

- 4. The above described facility shall be available for use immediately upon the effective date thereof, and may start to operate within said premises and the GOVERNMENT will issue to L & A COCKPIT, INC. a license to so operate.
- 5. The parties hereto agree that if any portion of this Agreement is found to be in contravention of any statute or regulations, the said portion shall be null and void, but the remaining provisions shall continue to bind the parties hereto.

Dated at Agana, Guam this 27th day of March, 1984.

L & A COCKPIT, INC.
Licensee

Date: 3-9-1984

GOVERNMENT OF GUAM:

ANTONIO B. PEREZ, Chairman
Territorial Cockpit Board

Date: 3/7/84

APPROVED AS TO FORM:

RICHARD OPPER
Attorney General

Date: MAR 21 1984

APPROVED:

RICHARDO J. BORDALLO

RICHARDO J. BORDALLO
Governor of Guam

Date: MAR 27 1984

P

FLOOR AMENDMENT

OFFERED BY

SENATOR TED S. NELSON

Make
tech
amend
SO reads as
marked.

Section 36
(a)

1 ~~Section~~ (a). O'Hara Street situated in Agana, Guam, shall
2 hereinafter be known as the "Archbishop Felixberto Camacho Flores
3 Street".

4 ~~Section~~ (b). Any provisions in the statues referencing
5 O'Hara Street are amended to read: "Archbishop Felixberto Camacho
6 Flores Street".

7 ~~Section~~ (c). The Governor of Guam with the Agana Commis-
8 sioner and the Municipal Planning Council, shall cause to be
9 erected appropriate nameplates or signs designating O'Hara Street
10 as the "Archbishop Felixberto Camacho Flores Street". Further,
11 at such ceremony as the Governor, along with the Agana Commis-
12 sioner and the Municipal Planning Council deem appropriate,
13 said "Archbishop Felixberto Camacho Flores Street" shall be
14 officially named and a plaque bearing the name, picture and
15 brief history of the contributions of the late Archbishop Felix-
16 berto Camacho Flores shall be affixed at a suitable spot with
17 or near the street name.

add to 743

FRS

FLOOR AMENDMENT

1 Add the following new Section to read:

2 "Section 51. The sum of Eighty Thousand Dollars (\$80,000)
3 is appropriated from the General Fund to the Bureau of Budget
4 and Management for the purpose of providing staff, rental, utilities,
5 supplies and equipment for the transition for the Office of Governor-
6 elect and the Office of the Lieutenant Governor-elect. The Director
7 of the Bureau of Budget and Management Research shall serve as
8 certifying officer for expenditure of this appropriation. The
9 executive branch shall provide such equipment and staff assistance
10 as requested by the Governor-elect and Lieutenant Governor-elect
11 for the transition Office."

*other
copy w/o
typos provided
to recording secty.*

Introduced

JAN 22 '86

EIGHTEENTH GUAM LEGISLATURE
1985 (FIRST) Regular Session

Bill No. 743 (LS)

Introduced by:


C. T. C. Gutierrez

AN ACT TO ADD A NEW CHAPTER 12 AND TO AMEND
CERTAIN CODE SECTIONS CONTAINED IN TITLE VII-A
OF THE GOVERNMENT CODE, RELATIVE TO
ESTABLISHING A PROCUREMENT APPEALS BOARD AND
TO AMEND THE PROCUREMENT LAWS OF GUAM.

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

2 Section 1. A new Chapter 12 is added to Title VII-A of the
3 Government Code to read:

4 "CHAPTER 12
5 Procurement Appeals Board
6 Article A

7 Section 6983. Creation of the Procurement Appeals Board. There
8 is established an independent entity to be known as the 'Procurement
9 Appeals Board' to be composed of a Chairperson and at least two (2)
10 other members, but not more than seven (7) members. The
11 Chairperson and members of the Board shall be appointed by the
12 Governor and confirmed with the advice and consent of the Legislature
13 and shall serve full-time.

14 Section 6983.1. Terms and qualifications of members of the
15 Procurement Appeals Board.

16 (a) Term. The term of office of the Chairperson and each
17 member of the Procurement Appeals Board shall be six (6) years
18 except that in making the initial appointments, the Governor shall
19 appoint one (1) member for a term of two (2) years, one (1) member
20 for a term of four (4) years, and the Chairperson for a term of six
21 (6) years, so that a term of office shall expire every two years.
22 Thereafter, their successors shall be appointed for terms of six (6)
23 years, or for the balance of any unexpired term, but members may

1 continue to serve beyond their terms until their successors take office.
2 Members may be reappointed for succeeding terms. If there is no
3 chairperson, or if such officer is absent or unable to serve, the senior
4 member in length of service shall be temporary chairperson.

5 (b) Authority of the Chairperson. The Chairperson may adopt
6 operational procedures and issue such orders, not inconsistent with his
7 title, as may be necessary in the execution of the Board's functions.
8 The Chairperson's authority may be delegated to the Board's members
9 and employees, but only members of the Board may issue decisions on
10 appeals.

11 (c) Administrative Support. The Civil Service Commission is
12 authorized to provide for the Board such services as the Chairperson
13 requests, on such basis, reimbursable or otherwise, as may be agreed
14 upon between the Civil Service Commission and the Chairperson.

15 (c) Qualifications for Board Membership. The Chairperson and
16 members of the Board shall be:

17 (1) Members in good standing of the Guam Bar for at least
18 five (5) years, and experienced in contracts or commercial
19 matters; or

20 (2) Members of the public who have demonstrated
21 experience of at least five (5) years in procurement.

22 Section 6983.2. Rules of Procedure. The Procurement Appeals
23 Board shall adopt rules of procedure which, to the fullest extent
24 possible, will provide for the expeditious resolution of controversies.
25 The Board may adopt Small Claims Procedures for the resolution of
26 controversies involving claims of less than Twenty-Five Thousand
27 Dollars (\$25,000).

28 Section 6983.3. Decisions of the Procurement Appeals Board.
29 Acting by one or more of its members, the Procurement Appeals Board
30 shall issue a decision in writing or take other appropriate action on
31 each appeal submitted. A copy of any decision shall be provided to all
32 parties, the Chief Procurement Officer, the Director of Public Works
33 and the head of a Purchasing Agency.

1 Section 6983.4. Jurisdiction of the Procurement Appeals Board.
2 Unless an action has been initiated previously in the Superior Court
3 for essentially the same cause of action, unless within fifteen (15)
4 days after the action is brought before the Procurement Appeals
5 Board, written objection is made by either the aggrieved bidder,
6 offeror or contractor, prospective or actual, or the Chief procurement
7 officer, the Director of Public Works or head of a Purchasing Agency
8 with the concurrence of the Attorney General, the Board shall have
9 jurisdiction to review and determine de novo:

10 (a) Any protest of a solicitation or award of a contract
11 addressed to the Board or by an aggrieved actual or prospective
12 bidder or offeror, or a contractor; and

13 (b) Any appeal by an aggrieved party from a determination by
14 the Chief procurement officer, the Director of Public Works, the head
15 of a Purchasing Agency, or a designee of either officer which is
16 authorized by Article A of Chapter 9 of this Title.

17 Section 6983.5. Protest of Solicitations or Awards.

18 (a) Scope. This Section applies to:

19 (1) A protest of a solicitation or award of a contract
20 addressed to the Procurement Appeals Board an aggrieved actual
21 or prospective bidder or offeror, or a contractor, and

22 (2) An appeal addressed to the Board of a decision under
23 Section 6975(c).

24 (b) Time limitations on filing a protest or an appeal.

25 (1) For a protest under Subsection (a)(1) of this Section,
26 the aggrieved person shall file a protest with the Board within
27 fourteen (14) days after the aggrieved person knew or should
28 have known of the facts and circumstances upon which the
29 protest is based.

30 (2) For an appeal under Subsection (a)(2) of this Section,
31 the aggrieved person shall file an appeal within seven (7) days of
32 receipt of a decision under Section 6975(c).

1 (c) Decision. On any direct protest under Subsection (a)(1) of
2 this Section or appeal under Subsection (a)(2) of this Section, the
3 Board shall promptly decide whether the solicitation or award was in
4 accordance with the statutes, regulations, and the terms of the
5 conditions of the solicitation. The proceeding shall be de novo. Any
6 prior determinations by administrative officials shall not be final or
7 conclusive.

8 (d) Standard of review for factual issues. A determination of an
9 issue of fact by the Board under Subsection (c) of this Section shall
10 be final and conclusive unless arbitrary, capricious, fraudulent, or
11 clearly erroneous.

12 Section 6983.6. Suspension or Debarment Proceedings. (a)
13 Scope. This Section applies to a review of the Procurement Appeals
14 Board of a decision under Section 6975.1 of this Title.

15 (b) Time limitation on filing an appeal. The aggrieved person
16 shall file its appeal with the Board within sixty (60) days of the
17 receipt of a decision under 6975.1(c).

18 (c) Decision. The Board shall promptly decide whether, or the
19 extent to which, the debarment or suspension was in accordance with
20 the statutes, regulations and the best interest of the territory, and
21 was fair. The proceeding shall be de novo. Any prior determinations
22 by administrative officials shall not be final or conclusive.

23 (d) Standard or review for factual issues. A determination of an
24 issue of fact by the Board under Subsection (c) of this Section shall
25 be final and conclusive unless arbitrary, capricious, fraudulent or
26 clearly erroneous.

27 Section 6983.7. Contract and Breach of Contract Controversies.

28 (a) Scope. This Section applies to a review by the Procurement
29 Appeals Board of a decision under Section 6975.2 of this Title.

30 (b) Time limitation on filing an appeal. The aggrieved
31 contractor shall file its appeal with the Board within sixty (60) days of
32 the receipt of the decision under Section 6975.2(c) of this Title.

33 (c) Decision. The Board shall promptly decide the contract or
34 breach of contract controversy. The proceeding shall be de novo.

1 (d) Standard of review for factual issues. A determination of an
2 issue of fact by the Board under Subsection (c) of this Section shall
3 be final and conclusive unless arbitrary, capricious, fraudulent, or
4 clearly erroneous.

5 Section 6983.8. No Finality to a Decision on a Issue of Law. No
6 determination by the Procurement Appeals Board on an issue of law
7 shall be final or conclusive.

8 Section 6983.9. Appeal and Review of Procurement Appeals Board
9 Decisions.

10 (a) Appeal. Any person receiving an adverse decision, the
11 territory, or both may appeal from a decision by the Procurement
12 Appeals Board to the Superior Court of the territory of Guam.

13 (b) Authorization of appeal by the territory. No such appeals
14 shall be made by the territory unless recommended by the Chief
15 Procurement Officer, the Director of Public Works, or the head of the
16 Purchasing Agency involved and approved by the Attorney General.

17 Section 6970. Discontinuance of Contractor's Appeal. After
18 notice of an appeal to the Procurement Appeals Board has been filed
19 by the Chief Procurement Officer, the Director of Public Works or the
20 head of a Purchasing Agency, a contractor may not discontinue such
21 appeal without prejudice, except as authorized by the Board."

22 Section 2. Subsection (c) of Section 6975 of the Government Code is
23 amended to read:

24 "(c) Decision. If the protest is not resolved by mutual
25 agreement, the Chief procurement officer, the Director of Public
26 Works, the head of a purchasing agency, or a designee of one of these
27 officers shall promptly issue a decision in writing. The decision shall:

28 (1) State the reasons for the action taken; and

29 (2) Inform the protestant of its right to judicial or
30 administrative review as provided in this [Chapter] Title."

31 Section 3. Subsection (e) of Section 6975 of the Government Code is
32 amended to read:

33 "(e) Finality of decision. A decision under Subsection (c) of
34 this Section shall be final and conclusive unless fraudulent, or (1) any

1 person adversely affected by the decision commences an action in
2 Court in accordance with Section 6978(a) of this Chapter; or (2) any
3 person adversely affected by the decision appeals administratively to
4 the Procurement Appeals Board in accordance with Section 6983.5 of
5 this Title."

6 Section 4. Subsection (f) of Section 6975 of the Government Code is
7 amended to read:

8 "(f) Stay of procurements during protest. In the event of a
9 timely protest under Subsection (a) of this Section [or] , under
10 Section 6978(a) of this Chapter, or under Section 6983.5 of this Title,
11 the territory shall not proceed further with the solicitation or with the
12 award of the contract until the Chief Procurement Officer or the
13 Director of Public Works, after consultation with the head of the using
14 agency or the head of a Purchasing Agency, makes a written
15 determination that the award of a contract without delay is necessary
16 to protect substantial interests of the territory."

17 Section 5. Subsection (c) of Section 6975.1 of the Government Code is
18 amended to read:

19 "(c) Decision. The Chief Procurement Officer, the Director of
20 Public Works or the head of a Purchasing Agency shall issue a written
21 decision to debar or suspend. The decision shall:

22 (1) State the reasons for the action taken; and

23 (2) Inform the debarred or the suspended person involved
24 of its rights to judicial or administrative review as provided in
25 this [Chapter] Title."

26 Section 6. Subsection (e) of Section 6975.1 is amended to read:

27 "(e) Finality of Decision. A decision under Subsection (c) of
28 this Section shall be final and conclusive, unless fraudulent, or (1)
29 the debarred or suspended person commences an action in court in
30 accordance with Section 6978(b) of this Chapter; or (2) the debarred
31 or suspended person appeals administratively to the Procurement
32 Appeals Board in accordance with Section 6983.6 of this Title."

33 Section 7. Subsection (c) of Section 6975.2 of the Government Code is
34 amended to read:

1 "(c) Decision. If such a controversy is not resolved by mutual
2 agreement, the Chief Procurement Officer, the Director of Public
3 Works, the head of a Purchasing Agency or the designee of one of
4 these officers shall promptly assure a decision in writing. The
5 decision shall:

6 (1) State the reasons for the action taken; and

7 (2) Inform the contractor of its right to judicial or
8 administrative review as provided in this [Chapter] Title."

9 Section 8. Subsection (e) of Section 6975.2 of the Government Code is
10 amended to read:

11 "(e) Finality of Decision. The decision under Subsection (c) of
12 this Section shall be final and conclusive unless fraudulent, or; (a)
13 The contractor commences an action in Court in accordance with
14 Section 6978(c) of this Chapter; or (b) The Contractor appeals
15 administratively to the Procurement Appeals Board in accordance with
16 Section 6983.7 of this Title."

17 Section 9. Subsection (d) of Section 6978 of the Government Code is
18 amended to read:

19 "(d) Limited Finality for Administrative Determinations. In any
20 judicial action under this Section, factual or legal determinations by
21 employees, agents or other persons appointed by the territory shall
22 have no finality and shall not be conclusive, notwithstanding any
23 contract provision, or regulation, except to the extent provided in
24 §§6964, 6983.5(d), 6983.6(d), and 6983.7(d) of this Title."

25 Section 10. Subsection (a) of Section 6978.1 of the Government Code
26 is amended to read:

27 "6978.1. Time limitations on actions.

28 (a) Protested Solicitations and Awards. Any action under
29 Section 6978(a) of this Chapter shall be initiated as follows:

30 (1) Within thirty (30) days after the aggrieved person
31 knows or should have known of the facts giving rise to the
32 action; or

1 (2) Within fourteen (14) days after receipt of a final
2 administrative decision pursuant to Section 6975 of this Chapter
3 or Section 6983.5(c), whichever is applicable."

4 Section 11. Subsection (b) of Section 6978.1 of the Government Code
5 is amended to read:

6 "(b) Debarments and Suspensions for Cause. Any action under
7 Section 6978(b) of this Chapter shall be commenced six (6) months
8 after receipt of the decision of the Chief Procurement Officer, the
9 Director of Public works, or head of a Purchasing Agency under
10 Section 6975.1(c) of this Chapter [or], the decision of the Policy
11 Office under Section 6981.1 of this Title, or the decision of the
12 Procurement Appeals Board under Section 6983.6(c) of this Title,
13 whichever is applicable."

14 Section 12. Subsection (c) of Section 6978.1 of the Government Code
15 is amended to read:

16 "(c) Actions Under Contracts or for Breach of Contract. Any
17 action commenced under Section 6978(c) of this Chapter shall be
18 commenced within six (6) months of the date the claim arose, or within
19 six (6) months the claimant knew or should have known, that a claim
20 existed against the other party, except notice of appeals from the
21 Procurement Appeals Board pursuant to Section 6983.9 concerning
22 actions on a contract or for breach of contract shall be filed within
23 twelve (12) months after the date of the Procurement Appeals Board
24 decision."

25 Section 13. Section 6976 of the Government Code is amended to read:

26 "§6976. Applicability of this article. The provisions of this
27 Article apply where it is determined administratively, or upon
28 administrative or judicial review, that a solicitation or award of a
29 contract is in violation of law."

30 Section 14. A new subsection (d) is added to §6980.6 of the
31 Government Code to read:

32 "(d). Favors to the Territory. It shall be a breach of ethical
33 standards for any person who is or may become a contractor, a
34 subcontractor under a contract to the prime contractor or higher tier

1 contractor, or any person associated therewith, to offer, give or agree
2 to give to any employee or agent of the territory, or for any employee
3 or agent of the territory to accept, a favor or gratuity on behalf of
4 the territory whether or not such favor or gratuity may be considered
5 a reimbursable expense of the territory, during the pendency of any
6 matter related to procurement from such person or any entity
7 represented by such person."

8 Section 15. Subsection (c) of §6980.6 of the Government Code is
9 amended to read:

10 "(c). Contract Clause. The prohibition against gratuities [and]
11 , kickbacks and favours to the territory prescribed in this section shall
12 be conspicuously set forth in every contract and solicitation therefor."

13 Section 16. A new §6964.4 is added to the Government Code to read:

14 "6964.4. Record of Procurement Actions Taken Pursuant to This
15 Title. The process of procurement shall be documented at each step
16 of the process, regardless of the manner of procurement authorized for
17 the particular goods or services to be delivered to the government.

18 (a) All pre-bid conferences shall be tape recorded and a
19 transcript of the tape recordings shall be made available to any
20 member of the public who requests it within ten (10) days of the
21 pre-bid conference.

22 (b) All specifications drawn up by the government for
23 procurement purposes shall state within the specifications themselves
24 what sources were used for drawing them up, who was consulted about
25 their preparation, and who drew up the specifications.

26 (c) All decisions made concerning procurement shall be in writing
27 and shall contain the bases for the decision, including a record of the
28 underlying reasoning and process of deliberations. Copies of any
29 decision shall be available to any member of the public who requests it
30 immediately after the issuance of such decision."

31 Section 17. Section 6969.5 of the Government Code is amended to
32 read:

33 "§6959.5. Emergency Procurements.

1 Notwithstanding any other provision of this Title, the Chief
2 Procurement Officer, the Director of Public Works, the head of a
3 purchasing agency, or a designee of either officer may make or
4 authorize others to make emergency procurements when there exists a
5 threat to public health, welfare, or safety under emergency conditions
6 as defined in regulations promulgated by the Policy Office; provided
7 that such emergency procurements shall be made with such competition
8 as is practicable under the circumstances. A written determination of
9 the basis for the emergency and for the selection of the particular
10 contractor shall be included in the contract file. The requirements for
11 a written determination for the emergency shall be met if the
12 procurements are being made on the basis of the Governor's
13 declaration of an emergency situation by Executive Order if such
14 Order states that emergency procurement may be resorted to for the
15 purposes of the Order.

16 No situation shall be considered an emergency unless clear and
17 compelling evidence for such emergency exists and no situation shall
18 be considered an emergency where reasonable and prudent
19 administrative and management procedures should have foreseen and
20 precluded the emergency."