

I Mina'Trentai Tres Na Liheslaturan Received
Bill Log Sheet

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



COMMITTEE ON RULES

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

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January 12, 2015

MEMORANDUM

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

Attorney Therese M. Terlaje
Legislative Legal Counsel

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

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

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

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

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

Bill No. 20-33 (COR)

Introduced by:

T. C. Ada 

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

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

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

6

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

9

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

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1 properly submitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 administrative review as provided in this Chapter.

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

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

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

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

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

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

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

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

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

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

- 10
11 (1) state the reasons for the ~~action taken~~ decision made; and
12 (2) inform the contractor of its rights to judicial or
13 administrative review as provided in this Chapter.

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

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

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

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

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

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

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

20
21 **Section 5. §5452 of Subarticle B (Solicitations or Awards in Violation**
22 **of Law) of Article 9 (Legal and Contractual Remedies), Chapter 5**
23 **of Title 5, Guam Code Annotated is amended to read as follows:**
24

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

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

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

31
32 ~~(A)(1)~~ the contract may be ratified and affirmed, provided it

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

2 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22
23 **Section 7. §5481 of Subarticle D (Waiver of Sovereign Immunity;**
24 **Limitations on Actions) of Article 9 (Legal and Contractual**
25 **Remedies), Chapter 5 of Title 5, Guam Code Annotated, is**
26 **amended to read as follows:**
27

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

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

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

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

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

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

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

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

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

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

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

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

16
17 **“§ 5703. Jurisdiction of the Public Auditor.**

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

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

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

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

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

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

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

23 (d) Appeal. Any person receiving an adverse decision, including
24 the Chief Procurement Officer, the Director of Public Works or the
25 head of a purchasing agency, a person suspended or debarred, or a
26 rejected petitioner, may appeal from a decision by the Public Auditor
27 to the Superior Court of Guam under the waiver of sovereign
28 immunity provided in § 5480(b) of this Chapter.
29

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

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

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

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

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

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

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

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

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

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

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

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