



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam.

33-15-227

March 6, 2015

Office of the Speaker
Judith T. Won Pat, Ed.D

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

Date: 03-06-15
Time: 5:04 pm
Received By: [Signature]

Dear Madam Speaker:

Enclosed is Bill No. 20-33 (COR), *An Act to Amend §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 and 5485(a) . . . all of Chapter 5, Title 5, Guam Code Annotated, Relative to Legal and Contractual Remedies in Guam Procurement Law,* which I have **vetoed**.

Bill 20-33 is substantially similar to Bill 224-32, which I vetoed last year. And although a couple corrections were made, as presently written, Bill 20-33 continues to support the implementation of a procurement resolution process that is even more troublesome and protracted than the one currently in place. Further, I am greatly concerned that legal issues raised by the Office of the Attorney General with respect to Bill 224-32 have not been addressed and consequently, are repeated and continued in Bill 20-33.

For instance, the Attorney General pointed out in his letter dated January 6, 2014, that the proposed amendment to add a new Section 5425(a)(2) which says that the time limits specified for the resolution of disputes are "not intended to be jurisdictional" but instead "shall be subject to equitable estoppel" was inconsistent with the goal to expedite the dispute resolution process. In other words, under the principle of equitable estoppel, a protester would be entitled to ignore the law and the timelines for filing a protest.

The Attorney General recommended that proposed Section 5425(a)(2) be omitted because timelines *should* be jurisdictional. Otherwise, a protestor who thinks he has "just cause" or can show "compelling prejudice" as justification for missing the timeline will be able to file a protest at any time, and thereby delay or stop a procurement based entirely on his subjective perception, rather than on the actual facts or evidence.

Bill 20-33 also continues the amendment to Section 5425(f) that was originally proposed in Bill 224-33 and which permits the removal of a protest to the Superior Court in the event that the Public Auditor is disqualified from hearing an appeal. The Attorney General opined that it "is a mistake to open the courthouse door here." If the intent of the amendment is to save time,

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[Signature]

“then the better solution is for the President Judge of the Superior Court to appoint a hearing officer to proceed at the OPA level under the OPA rules.”

The nature of administrative cases is that they are resolved much quicker than cases filed in the courts. Therefore, as recommended by the Attorney General, having the Presiding Judge appoint a hearing officer, rather than removing the protest to the Superior Court to be litigated *de novo* like other civil cases, is an expeditious and economical solution that makes more sense than what is being proposed to Section 5425(f) by Bill 20-33.

In addition to the Attorney General’s comments, the testimony submitted on February 6, 2015, by the Guam Airport Authority (GIAA) also highlighted a number of other concerns, none of which were addressed in the final version of Bill 20-33. These concerns included the amendment to Section 5425(g), which would require the Government to stay procurement at any stage of the process without exception. GIAA’s testimony also raised the fact that Bill 20-33 contains troubling issues with respect to contradictory provisions in Section 5425(i) over a protestor’s right to attorneys fees, as well as what appears to be an apparent waiver of the Government’s sovereign immunity in Section 5480.

Finally, in my veto letter to Bill 224-32, I suggested that the Legislature consider requiring that persons filing a protest should deposit a nominal bond of 5% to 10% if the amount of the solicitation being protested exceeded a certain dollar amount (e.g., \$250,000 or above). My suggestion was ignored and Bill 20-33 contains no mention of a protest bond.

It is unfortunate that the Legislature appears to be responding to pressure from the private sector, rather than doing what is best for the People and the Government of Guam. It is, after all, the People’s money, and the Government has a duty to write its rules in order to achieve the best value for the Territory while still supporting local businesses and encouraging healthy competition. I continue to submit that rather than having a chilling effect on *competition*, a protest bond will instead have a chilling effect on *frivolous protests*, without discouraging legitimate protests. Under Section 5212 of the Procurement Law, contractors involved in solicitations which exceed \$25,000 are required to submit a bid bond in an amount equal to 15% of their bid. A contractor with a legitimate protest will not disagree that a 5% to 10% protest bond is less burdensome than a 15% bid bond.

The Government cannot be paralyzed from procuring important and essential goods and services. As written, however, Bill 20-33 will only prolong frivolous protests and potential increased litigation at the expense and detriment of the People.

Senseramente,



EDDIE BAZA CALVO

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

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

This is to certify that **Bill No. 20-33 (COR), "AN ACT TO AMEND §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(a) AND (b) OF ARTICLE 9; AND AMEND §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND ADD A NEW § 5710 TO ARTICLE 12, ALL OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW,"** was on the 20th day of February, 2015, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

Attested:



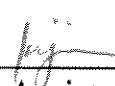
Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 23rd day of Feb,
2015, at 4:38 o'clock P M.

APPROVED:



EDWARD J.B. CALVO
I Maga'lahen Guåhan



Assistant Staff Officer
Maga'lahi's Office

Date: _____

Public Law No. _____

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

Bill No. 20-33 (COR)

As amended on the Floor.

Introduced by:

T. C. Ada
B. J.F. Cruz
V. Anthony Ada
FRANK B. AGUON, JR.
Frank F. Blas, Jr.
James V. Espaldon
Brant T. McCreddie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F.Q. San Nicolas
M. C. Torres
N. B. Underwood, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481 AND 5485(a) AND (b) OF ARTICLE 9; AND *AMEND* §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND *ADD A NEW* § 5710 TO ARTICLE 12, ALL 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), Chapter 5 of Title 5,
4 Guam Code Annotated, is *amended* to read as follows:

1 **“§ 5425. Resolution of Protested Solicitations and Awards.**

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

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

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

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

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

24 (3) *Interested party*, for purposes of this Article, means a person
25 who is an actual or prospective bidder, offeror, or contractor who is

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

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

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

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

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

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

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

17 (f) Appeal. A decision under Subsection (c) of this Section, including
18 a decision thereunder regarding entitlement to costs as provided by Subsection
19 (h) of this Section, may be appealed by the protestant to the Public Auditor: (1)
20 within fifteen (15) days after receipt by the protestant of the notice of decision
21 to reject the protest; or (2) within fifteen (15) days after the date the protest is
22 deemed rejected as provided in Subsection (e) of this Section. If for any reason
23 the Public Auditor determines that he must disqualify himself from hearing the
24 appeal, the matter *shall* be removed to the Superior Court, which *shall* hear and
25 determine the matter *de novo* pursuant to § 5480(a).

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

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

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

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

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

23 (h) Entitlement to Costs. In addition to any other relief or remedy
24 granted under Subsections (c) or (e) of this Section, or under Subsection (a) of §
25 5480 of this Chapter, including the remedies provided by Subarticle B of
26 Article 9 of this Chapter, when a protest is sustained, the protestant *shall* be

1 entitled to the reasonable costs incurred in connection with the solicitation and
2 protest, including bid preparation costs, excluding attorney's fees, if:

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

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

9 (3) The Public Auditor *shall* have the power to assess
10 reasonable costs, including reasonable attorney fees incurred by the
11 government, to include its autonomous agencies and public corporations,
12 or any protestant or interested party, against any party, including the
13 government, making a protest, motion, or bringing any action
14 fraudulently, frivolously, or with predominant intent to delay or disrupt
15 the procurement process.

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

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

23 **“§ 5426. Authority to Debar or Suspend.**

24 (a) Authority. After reasonable notice to the person involved and
25 reasonable opportunity for that person to be heard, the Chief Procurement
26 Officer, the Director of Public Works, or the head of a purchasing agency, after

1 consultation with the using agency and the Attorney General, *shall* have
2 authority to debar a person for cause, or to suspend a person for probable cause,
3 from consideration for award of contracts. The debarment *shall not* be for a
4 period of more than two (2) years. The suspension *shall not* be for a period
5 exceeding three (3) months. The authority to debar or suspend *shall* be
6 exercised in accordance with regulations promulgated by the Policy Office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (f) Any member of the public, including the bidder, offeror or
15 contractor, as well as any elected official or employee of the government, may
16 petition the Chief Procurement Officer, the Director of Public Works, or the
17 head of a purchasing agency to take action to debar or suspend pursuant to
18 Subsection (a) of this Section. The petition *shall* state the facts that the
19 complainant believes to be true that warrant a suspension or debarment pursuant
20 to this § 5426. Immediately upon the receipt of such a petition, the person
21 petitioned *shall* cause an investigation to be conducted. If the petitioned officer
22 finds insufficient facts to proceed with a debarment or suspension hearing, he
23 *shall* state the reasons in a written decision within sixty (60) days of receipt of
24 the petition. If the person petitioned determines that sufficient facts may exist
25 to debar or suspend the individual or company, then he *shall* hold a hearing as
26 authorized in Subsection (a), and issue a decision as required in Subsection (c).

1 If the petitioned officer *does not* issue the written decision required under
2 Subsection (c) of this Section within sixty (60) days after written request by the
3 petitioner for a final decision, then the petitioner may proceed with an appeal to
4 the Public Auditor as if a the petition had been rejected.”

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

8 **“§ 5427. Authority to Resolve Contract and Breach of Contract**
9 **Controversies.**

10 (a) Applicability. This Section applies to controversies between the
11 government of Guam and a contractor, and which arise under, or by virtue of, a
12 procurement contract between them, as evidenced by the written demand of
13 either party to the other for redress of a particularized claim or controversy.
14 This includes, without limitation, controversies based upon breach of contract,
15 mistake, misrepresentation, or other cause, for contract damages, modification,
16 or rescission.

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

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

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

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

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

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

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

23 **Section 4.** § 5450 of Subarticle B (Solicitations or Awards in Violation of Law)
24 of Article 9 (Legal and Contractual Remedies), Chapter 5 of Title 5, Guam Code
25 Annotated, is *amended* to read as follows:

26 **“§ 5450. Applicability of this Part.**

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

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

8 “§ 5452. **Remedies After an Award.**

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

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

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

16 (2) the contract may be terminated and the person awarded the
17 contract *shall* be compensated for the actual expenses reasonably
18 incurred under the contract, plus a reasonable profit, prior to the
19 termination.

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

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

23 (2) the contract may be ratified and affirmed if such action is in
24 the best interests of the government of Guam, without prejudice to the
25 government’s rights to such damages as may be appropriate.

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

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

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

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

20 (b) Debarment or Suspension. The Superior Court *shall* have
21 jurisdiction over an action between the government of Guam and a person who
22 is subject to a suspension or debarment proceeding, to review any decision of
23 the Public Auditor brought pursuant to § 5705 of this Chapter concerning the
24 debarment or suspension or rejection of a petition to debar or suspend, in
25 accordance with § 5426 and § 5705 of this Chapter, and relevant statutes and
26 regulations, or to determine *de novo* in the event of disqualification of the

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

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

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

21 (e) Exhaustion of Administrative Remedies. No action shall be
22 brought under any provision of this Section until all administrative remedies
23 provided in this Chapter under Part A of Article 9, and Article 12, have been
24 exhausted.

25 (f) Form of Review Under § 5480(a). All appeals permitted by
26 Subsection (a) of this Section *shall* be treated as special proceedings for

1 expeditious review of the administrative decision below, *unless* good cause is
2 shown that it should proceed as a civil action.

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

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

15 **“§ 5481. Time Limitations on Actions.**

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

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

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

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

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

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

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

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

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

25 “§ 5703. **Jurisdiction of the Public Auditor.**

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

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

16 **“§ 5705. Suspension or Debarment Proceedings.**

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

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

24 (c) Decision. The Public Auditor *shall* decide whether, or the extent
25 to which, the decision to debar or suspend, or reject a petition to do so, was in
26 accordance with the statutes, regulations and the best interest of the

1 government or any autonomous agency or public corporation, and was fair.
2 The Public Auditor *shall* issue her or his decision within thirty (30) days of the
3 completion of the hearing on the issue.

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

10 **Section 12.** § 5706(b) of Article 12 (Procurement Appeals), Chapter 5 of Title
11 5, Guam Code Annotated, is *amended* to read as follows:

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

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

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

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

24 “§ 5708. **Discontinuance of Contractor’s Appeal.**

25 It is the policy of this Act that procurement disputes be resolved
26 expeditiously. Therefore, settlement agreements between the parties are

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

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

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

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

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