EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

FEB 0 2 2017

GL#34-17-159
Speaker Benjamin J.F. Cruz

FEB 0 2 2017
Time: 4:23 [ ] AM [ ] PM File No.
Received By:

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåtro Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Attached unsigned is Bill No. 162-33 (COR) which was passed by the 33rd Guam Legislature and transmitted on December 30, 2016. The adjournment of the 33rd Guam Legislature prevented the return of the bill and more than thirty days have passed since its presentation. As set forth in Section 1423i of the Organic Act of Guam, the withholding of my signature has precluded the bill from becoming law.

Senseramente,

EDDIE BAZA CALVO

0159

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Substitute Bill No. 162-33 (COR), "AN ACT TO *AMEND* §§ 5201, 5210, 5211, 5213, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5241, 5245, 5248, 5249, 5251 AND 5252, AND *ADD* NEW §§ 5212 AND 5254, ALL OF ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION; TO *AMEND* §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481, AND 5485(a) AND (b), ALL OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED; AND TO *AMEND* §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND *ADD* A NEW § 5710, ALL OF ARTICLE 12, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW,"** was on the 30th day of December 2016, 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'låhen Guåhan* this 30th day of DEC, 2016, at 8:50 o'clock P.M.

PATRICK G. CORPUZ
Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date:_____

Public Law No._____

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

Bill No. 162- 33 (COR)
As substituted by the Sponsor;
and amended on the Floor.

Introduced by:

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

AN ACT TO *AMEND* §§ 5201, 5210, 5211, 5213, 5214, 5215, 5216, 5217, 5219, 5220, 5230, 5231, 5232, 5233, 5235, 5237, 5240, 5241, 5245, 5248, 5249, 5251 AND 5252, AND *ADD* NEW §§ 5212 AND 5254, ALL OF ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO SOURCE SELECTION AND CONTRACT FORMATION; TO *AMEND* §§ 5425, 5426, 5427, 5450, 5452, 5480, 5481, AND 5485(a) AND (b), ALL OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED; AND TO *AMEND* §§ 5703, 5705, 5706(b), 5707(a) AND 5708, AND *ADD* A NEW § 5710, ALL OF ARTICLE 12, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO LEGAL

AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

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

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

I Liheslaturan Guåhan finds that by reforming Guam's procurement code the government of Guam can more effectively accomplish the procurement of supplies and services to improve the effectiveness of the government's procurement process by providing clarification that is consistent with making the process more expeditious. It

would allow the government to provide vital services in a timely and cost effective manner.

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

"**§ 5201. Definitions.**

As used in this Chapter:

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

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

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

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

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

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

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

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

(f) *Responsible bidder* or *offeror* means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(g) *Responsive bid* means a bid which conforms, at bid opening, in all material respects to the Invitation for Bids. A responsive bid is an offer by the bidder that unconditionally undertakes to provide the supply, service, or construction the government intends to acquire as specified in the IFB, and only on contract terms and conditions as are materially consistent with those specified in the IFB.

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

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

"**§ 5210. Methods of Source Selection.**

(a) Unless otherwise authorized by law, all government of Guam procurement contracts *shall* be awarded by one of the methods of source selection specified in this Part."

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

"**§ 5211. Competitive Sealed Bidding.**

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

(b) Invitation for Bids. An Invitation for Bids *shall* be issued and *shall* include a purchase description, and all contractual terms and conditions applicable to the procurement, and may include other information or requests for information. The determination of bidder responsibility is determined as specified in § 5230 of this Article and not by information requested by the Invitation for Bids.

(c) Public Notice. Adequate public notice of the Invitation for Bids *shall* be given in a manner and in a reasonable time prior to the date set forth therein for the opening of bids to foster effective competition, in accordance with regulations promulgated by the Policy Office.

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

(e) Bid Acceptance and Bid Evaluation. Bids *shall* be unconditionally accepted for evaluation without alteration or correction by either the bidder or the government, except as authorized in this Chapter or regulations promulgated by

the Policy Office. Bids *shall* be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose; however, in the case of equipment the requirements *shall* include factors that bear on the bid price and *shall* include life cycle costs of the equipment, including acquisition, transportation, installation, operation, consumables, supplies, maintenance, and disposal costs. Those criteria that will affect the bid price and be considered in evaluation for award *shall* be objectively measurable. The Invitation for Bids *shall* set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

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

(g) Award. The contract *shall* be awarded with reasonable promptness by written notice of award to the responsible bidder whose bid is responsive and

is the lowest cost. Written notice of award, including the dollar amount of the awarded contract, *shall* simultaneously be given to all other bidders, and, in the case of a contract awarded in an amount greater than or equal to One Hundred Thousand Dollars ($100,000), a copy of the contract *shall* be provided within two (2) working days after receipt of a written request. The notice of award *shall* specifically state that the bid of the awardee is unconditionally accepted, and *shall* remain posted on the website of the agency issuing the solicitation, for a period of *no less than* one hundred eighty (180) days or for the term of the contract whichever is greater.

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

(i) Multi-Step Sealed Bidding. When low price is desired to be a determining factor for award to the bidder of an acceptable product or service, but it is considered preferable to evolve or test the adequacy of a purchase description's market feasibility, an Invitation for Bids may be issued and conducted in two (2) phases, the first requesting the submission of unpriced technical offers, which may involve description of service qualifications and performance, in one (1) or more rounds in which discussions may be conducted

to supplement or amend technical offers or bid specifications or both, to be followed by a second phase in which the unsealed price bids of those bidders whose offers have been or become qualified as acceptable under the criteria set forth in the first phase are requested and then opened as in a normal competitive sealed bid process. The Policy Office *shall* promulgate such regulations as may be efficacious to the use of this method of source selection under this Subsection."

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

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

(a) Conditions for use. Under competitive sealed proposals, the quality of competing products may be compared and trade-offs made between price and quality of the products offered as described in the Request for Competitive Proposals (RFCP). It *shall* not be used when another method of source selection is required or is appropriate. Other conditions for use include the following, provided that if any such condition cannot be met, the competitive sealed proposal method *shall not* be used:

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

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

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

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

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

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

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

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

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

(e) Discussion with Responsible Offerors and Revisions to Proposals. As provided under regulations and, to the extent consistent therewith, the RFCP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably qualified for selection for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors *shall* each be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals

provided to any of them. Revisions and the subject of discussions may be subjected to uniform time and other limits reasonably specified by the procurement officer. Revisions of submissions may be permitted prior to final submissions and in response to a request for the best and final offer, but there *shall* be no revision allowed to a best and final offer nor after award.

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

(g) Justification. The head of the agency conducting the procurement or a designee *shall* prepare a memorandum setting forth the basis of award including:

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

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

All memoranda *shall* be included in the contract file and be available for public inspection."

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

"**§ 5213. Small Purchases.**

(a) Any procurement greater than One Thousand Dollars ($1,000), but not exceeding Thirty Thousand Dollars ($30,000) for supplies or services and not exceeding One Hundred Thousand Dollars ($100,000) for construction, may be made in accordance with small purchase procedures promulgated by the Policy Office; provided, however, that procurement requirements *shall not* be artificially divided so as to constitute a small purchase under this Section.

(b) For making small purchases of less than One Thousand Dollars ($1,000), price quotations may be obtained via telephone. The names of the business and authorized personnel submitting quotations, to include the date and amount of each quotation, *shall* be recorded and maintained as a public record."

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

"**§ 5214. Sole Source Procurement.**

(a) A contract may be awarded for a supply, service, or construction item without competition when, under regulations promulgated by the Policy Office, the Chief Procurement Officer, the Director of Public Works, or the head of the agency issuing the solicitation, or a designee of either officer above the level of the Procurement Officer in advance determines in writing that there is only one (1) source for the required supply, service, or construction item.

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

(c) The agency issuing the solicitation *shall* post on its website the nature of all sole source contracts awarded and the respective recipients, and

remain posted for no less than one hundred eighty (180) days or the term of the contract, whichever is greater.

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

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

(f) In the event any such contract, or series of related contracts, is in excess of the amount of One Hundred Thousand Dollars ($100,000), the agency issuing the solicitation *shall*, within fourteen (14) days of making the contract, publish notice of the making of the contract, including the name of the agency

issuing the solicitation, the contractor, the contract amount and its term, and the nature of the contract, in a newspaper of general circulation on Guam and by posting such notice on its website, which *shall not* be taken down for one (1) year."

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

"**§ 5215. Emergency Procurement.**

(a) Determination of Emergency. Notwithstanding any other provision of this Chapter, the Chief Procurement Officer, the Director of Public Works, the head of the agency issuing the solicitation, or a designee of either officer may make or authorize others to make emergency procurements when there exists an emergency under such conditions and as defined in § 5030(x) and regulations promulgated by the Policy Office; provided, that an independent written determination of the basis for the emergency as thus defined is first made by such officer and is included in the contract file. The requirements for a written determination for the emergency procurement *shall* be met if the procurements are being made on the basis of the Governor's declaration, by Executive Order, of an emergency situation justifying procurement under this Section. Unless authorized by such an Executive Order, no emergency procurement may be made except on a certificate of emergency made under penalty of perjury by the Chief Procurement Officer, Director of Public Works, or the head of the agency issuing the solicitation, as the case may be, that an emergency condition exists justifying emergency procurement. Certified copies of the certificate *shall* be sent, prior to award and as a condition thereof, to the Governor, who *shall* approve such certificate, in writing, and to the Speaker of the Legislature. For autonomous agencies who have been granted or delegated authority to perform their own

procurement function, approval of emergency certifications *shall* come from their respective board of directors. Certified copies of the board approved certificate *shall* be sent, in writing, prior to award and as a condition thereof, to the Governor and to the Speaker of the Legislature. The certificate *shall* contain the following:

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

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

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

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

Section *shall* be posted on the website of the agency issuing the solicitation, on the date of the award and for the duration of the contract or a period of one hundred eighty (180) days, whichever is greater.

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

Section 9. § 5216 of Article 3, Chapter 5, Title 5, Guam Code Annotated, is hereby *amended* to read as follows:

"**§ 5216. Competitive Selection Procedures for Services Specified in § 5121 of this Chapter.**

(a) Conditions for Use. The professional services specified in § 5121(a) of this Chapter or as specified in Article 5 of this Chapter may be procured in accordance with this Section, except as authorized under §§ 5214 or 5215 of this Chapter.

(b) Statement of Qualifications. Persons engaged in providing the types of services specified in § 5121(a) of this Chapter may submit statements of qualifications and expressions of interest, but not prices, in providing such types of services. The Procurement Officer may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement. Statements *shall* be kept by the agency issuing the solicitation, only for reference in the nature of a response to a request for information and not as a solicitation to or by the agency issuing the solicitation, and *shall* be purged one (1) year from receipt. Submitting a statement of

qualification by any person does not entitle any such person to actual notice nor *shall* submission of proposals by offerors be limited to those persons who have submitted any such statement.

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

(d) Discussions. The head of the agency issuing the solicitation or a designee of such officer may conduct discussions with any offeror who has submitted a proposal in response to an RFP, to determine such offeror's qualifications and understanding of the evaluation factors and services sought. Discussions *shall not* disclose any information derived from proposals submitted by other offerors. Price is not a factor to be discussed or considered until after the ranking of the offerors and the process of negotiation for compensation begins.

(e) Award. Award *shall* be made to the offeror determined in writing by the head of the agency issuing the solicitation or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, the negotiations will be formally terminated with the selected offeror. If proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the

offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

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

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

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

(a) Award of Contract Without Competition. A contract may be awarded for a supply or service without competition when the prospective contractor is a responsible and responsive nonprofit corporation based and incorporated in Guam, possesses a current certificate of good standing from the Department of Revenue and Taxation, and employing persons with disabilities on Guam to provide the supply or service. The nonprofit corporation *shall* obtain certification from the Department of Integrated Services for Individuals with Disabilities (DISID) that the organization currently employs persons with disabilities or will have the needed employees when notice to proceed is issued by the purchasing agency.

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

(1) The contractor must certify that labor employed to manufacture the supply or perform the services on the project will be performed on Guam by persons with disabilities who are residents of

Guam, except that supervisory personnel do not have to be persons with disabilities.

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

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

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

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

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

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

"**§ 5219. Unsolicited Offers.**

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

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

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

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

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

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

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

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

(e) Competition Required. All unsolicited offers considered as being desirable *shall* be subjected to the most appropriate competitive method of source selection particularly specified in § 5210 of this Subarticle. The criteria set forth in the solicitation *shall not* require the inclusion of any confidential, proprietary or trade secret item, service or method that was proposed in the unsolicited offer, and the proprietary character of an unsolicited offer or the inclusion of a proprietary item in the unsolicited offer *shall not* be used to favor the offer or any other bid, nor be a determining factor in awarding a bid."

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

"**§ 5220. Electronic Publication and Notice of IFB, RFP, and RFCP Solicitation Documents and Awards Thereto.**

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

(1) Invitations for Bid (IFBs), Requests for Proposals (RFPs), and Requests for Competitive Sealed Proposals (RFCPs), Requests for Quotes (RFQs) and a Request for Information (RFI), individually and collectively referred to in this Section as a "Solicitation Request," *shall*:

(A) be posted on the website of the agency issuing the solicitation and the requesting agency. A Solicitation Request procured or to be procured through the General Services Agency (GSA), the Department of Public Works (DPW), or agency issuing

the solicitation, who have been granted or delegated authority to perform their own procurement function, *shall* be posted, on the date of the public announcement of the solicitation, website of the agency issuing the solicitation and on the websites of GSA or DPW respectively; and

(B) be electronically mailed from the agency issuing the solicitation to the persons specified in Subsection (2) of this Section, on the date of the public announcement of the Solicitation Request. A Solicitation Request procured through GSA or DPW *shall* be electronically mailed to such organizations on such date by the agency issuing the solicitation, GSA or DPW, respectively.

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

(3) No fees shall be assessed to any person or other parties for accessing or downloading procurement documents from any agency's website nor for notice of solicitation announcements as allowed in Subsection (a)(1)(B) of this Section. Documents required by this Section to be posted *shall* remain on the respective agencies' websites for a period of *not less than* one hundred eighty (180) days following the award of the bid or proposal. Awards *shall* be promptly posted and maintained for a minimum of one hundred eighty (180) days or for the duration of the contract, whichever is greater.

(b) The agency issuing the solicitation, and GSA, or DPW if applicable, *shall* provide notice in each solicitation announcement that prospective bidders or offerors register contact information with the agency to ensure that they receive any notices regarding any changes or updates to the solicitation, provided that such registration *shall not* be a matter of responsiveness or otherwise materially nonconforming to the solicitation. The agency issuing the solicitation, GSA, or DPW *shall not* be liable for failure to provide notice to any party who did not register contact information.

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

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

"**§ 5230. Responsibility of Bidders and Offerors.**

(a) Determination of Nonresponsibility. A written determination of nonresponsibility of any bidder or offeror *shall* be made and given notice on such bidder or offeror before an award can be made, and *shall* be determined in accordance with regulations promulgated by the Policy Office. A finding of nonresponsibility in any particular instance does not require a finding of nonresponsibility in any other solicitation. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

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

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

"**§ 5231. Potential Contractor Lists.**

Information and interest of prospective bidders or offerors may be sought by any purchasing agency for solicitation of particular types of supplies, services and construction for the purpose of providing a purchasing agency information regarding possible sources of supplies, services and construction and the potential field of competition, and to prepare and maintain lists of potential contractors. Distribution of solicitation documents and notices of solicitation may be sent to

such identified potential contractors. Inclusion of a potential contractor on any such list of potential contractors does not determine responsibility in and of itself, nor shall any bidder or offeror be rejected for failure to be included, nor shall public notice be limited to those who have been included."

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

"**§ 5232. Cost or Pricing Data.**

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

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

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

(b) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required *shall* contain a provision that the price to the government of Guam, including profit or fee, *shall* be adjusted to exclude any significant sums by which the government of Guam finds that such price was increased because the contractor furnished cost or pricing data that was

inaccurate, incomplete, or not current as of the date agreed upon between the parties. The price *shall* also be adjusted to reflect non-payment by the contractor of any taxes that would have been paid by him were it not for the exclusion provided by 11 GCA § 26203(k)(15) (Business Privilege Tax).

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

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

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

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

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

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

"**§ 5233. Disclosure of Ownership, Financial and Conflict of Interests.**

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

(b) Definitions.

(1) As used herein, the term "person" *shall* include the definition found in 1 GCA § 715, and in § 5030(n) of this Chapter, and includes a natural person as well as every person of whatever form or composition

(an "artificial person") recognized under the laws of Guam other than a natural person.

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

(c) Disclosure of Ownership. As a condition of bidding, every person who is a prospective contractor under any method of source selection authorized by this Chapter, except for emergency procurement under § 5215, *shall* submit a Disclosure Statement, executed as an affidavit under oath, disclosing the name of each person who has owned an ownership interest in the prospective contractor, greater than ten percent (10%), at any time during the twelve (12) month period immediately preceding the submission of a bid (the "relevant disclosure period"). If a prospective contractor is an artificial person, the Disclosure Statement *shall* disclose the name of each person who has owned an ownership interest in such artificial person (a "second tier owner"), greater than twenty-five percent (25%), at any time during the relevant disclosure period. If any such second tier owner is also an artificial person, the Disclosure Statement *shall* disclose the name of each person who has owned an ownership interest in such second tier owner (a "third tier owner") of forty-nine percent (49%) or more during the relevant disclosure period. If the name of no natural person has been identified as an owner, or a second or third tier owner of the prospective contractor, the

Disclosure Statement *shall* include the name and position of the natural person responsible for the performance of the prospective contract and the name of any natural person who has the power to remove and replace the responsible person or otherwise control the performance of the prospective contract during the proposed term of the contract.

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

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

(f) Every disclosure of an ownership or financial interest required to be identified by this Section *shall* name the person required to be disclosed, the mailing address, and the street address of the residence or principal place of business. All information disclosed or meant to be disclosed under this Section is public procurement data and shall be kept as part of the public record of each procurement."

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

"**§ 5235. Types of Contracts.**

Subject to the limitations of this Chapter and regulations adopted by the Policy Office, any type of contract that will promote the best interest of the government of Guam may be used; provided that the use of cost-plus-a-percentage-of-cost contract is prohibited; and further provided that an indefinite quantity contract *shall not* be used to acquire supplies by lease if the acquisition would extend performance of the contract, beyond the term of the contract. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the government of Guam than any other type or that it is impracticable to obtain the supplies, services or construction required except under such contract."

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

"**§ 5237. Multi-Year Contracts.**

(a) Specified Period. No contract shall be issued for an indefinite term nor shall it be renewable indefinitely, provided however, that a contract may be issued for supplies or services on a month to month basis provided the monthly price of the contract, when annualized, does not exceed the amount established by authority of § 5213 of this Chapter (Small Purchases). Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time consistent with this Section and determined to be in the best interests of the government of Guam, provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods *shall* be subject to the availability and appropriation of funds therefor.

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

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

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

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

(d) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract *shall* be cancelled and, notwithstanding any provision of the contract to the contrary, the

contractor *shall* only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes."

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

"**§ 5240. Right to Inspect Plant.**

The government of Guam may, at reasonable times, inspect every part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the government of Guam."

Section 20. § 5241 of Article 3, Chapter 5, Title 5, Guam Code Annotated, is hereby *amended* to read as follows:

"**§ 5241. Right to Audit Records.**

(a) Audit of Cost or Pricing Data. The government of Guam may, at reasonable times and places, audit the books and records of any person who has submitted costs or pricing data pursuant to § 5232 of this Chapter to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required *shall* maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) Contract Audit. The government of Guam *shall* be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract.

Such books and records *shall* be maintained by the contractor for a minimum period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a minimum period of three (3) years from the date of final payment under the subcontract, unless a longer period is otherwise required by other law and regulations.

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

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

"**§ 5245. Finality of Determinations.**

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

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

"**§ 5248. Record of Procurement Actions Taken Under §§ 5214 and 5215 of this Chapter.**

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

and said record *shall* also be posted on the agency website for the same period of time. The record *shall* contain:

(1) each contractor's name;

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

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

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

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

"**§ 5249. Record of Procurement Actions.**

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

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

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

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

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

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

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

(g) all records of contract administration, including contract disputes; and

(h) a summary of the basis of selection regardless of solicitation method.

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

"**§ 5251. Public Record.**

The record required by § 5249 of this Chapter is a public record. All records *shall* be presumed public and the burden of establishing that a document or record is private *shall* be upon the agency or person claiming that the document on record should not be disclosed or inspected. Any bidder, offeror, or any person

may inspect and copy any portion of the record except those parts of the record that are non-disclosable pursuant to law or regulation.

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

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

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

The regulations that may be promulgated pursuant to § 5102 of this Chapter *shall*:

(a) protect the integrity of the solicitation process;

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

(c) establish reasonable charges for copying papers;

(d) provide for transcription of sound recordings;

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

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

(g) clarify, as necessary, those records that are accessible under law during the pendency of a protest, administrative appeal, or appeals to the courts of Guam."

Section 26. A new § 5254 is hereby *added* to Article 3 of Chapter 5, Title 5, Guam Code Annotated, to read as follows:

"**§ 5254. Special Provisions Applicable to Source Selection.**

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

(1) Notwithstanding any provision of law to the contrary, the Director of Public Works, or the heads of purchasing agencies that employ or contract professional licensed architect, engineers, or land surveyors *shall* be responsible to conduct the procurement of such services.

(2) In any solicitation for architectural, engineering, or land surveying services reasonably expected to be priced above Five Hundred Thousand Dollars ($500,000), the Director of Public Works, or the heads of purchasing agencies which employ professional architects, engineers, or land surveyors *shall* appoint the most appropriately qualified person in the Department to serve on the evaluation and selection team.

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

(1) The RFCP for each such project:

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

(i) required features, functions, characteristics, qualities, and properties that are required by the government;

(ii) the anticipated schedule, including start, duration, and completion;

(iii) estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance; and

(iv) the design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project;

(B) *shall* solicit proposal development documents. *Proposal development documents* means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method;

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

(i) prequalify offerors by issuing a Request for Qualifications in the time and manner required of an RFCP,

in advance of the RFCP, stating that all persons intending to offer a proposal for the project must first respond to the Request for Qualifications; and

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

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

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

(E) if the contract price is estimated to exceed Ten Million Dollars ($10,000,000) or whenever the contract period of operations and maintenance is ten (10) years or longer, *shall* require each offeror to identify an Independent Peer Reviewer, whose competence and qualifications to provide such services *shall* be an additional evaluation factor in the award of contract, provided however, if, as appropriate, the Director of Public Works, the Chief Procurement Officer, or head of the agency issuing the solicitation, determines that it is not in the best interest of the Department to contract with the Independent Peer Reviewer so

designated, the Director *shall* contract with another Independent Peer Reviewer.

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

"**§ 5425. Resolution of Protested Solicitations and Awards.**

(a) Right to Protest. Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works, or the head of the agency issuing the solicitation. The protest *shall* be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise to the protest.

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

means includes, at a minimum, a written agreement of the interested parties. *Interested party,* for purposes of this Article, means a person who is an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract, or by the protest or resolution of it.

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

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

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

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

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

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

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

(g) Disqualification of Public Auditor. The Public Auditor may recuse herself or himself at any time and notify all parties, or any party may raise the issue of disqualification and state the relevant fact prior to the hearing. The Public Auditor *shall* make a determination and notify all parties. In the event of disqualification or recusal of the Public Auditor, the Public Auditor *shall* designate the senior member of his or her audit staff to be the appointed hearing officer for procurement appeals to preside over the matter. If no member of the Public Auditor's staff or the appointed hearing officer is able to preside over the matter due to disqualification, then such matter may be taken to the Superior Court of Guam in accordance with 5 GCA § 5480.

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

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

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

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

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

(5) An immediate appeal of a decision of the Public Auditor to confirm or reject the determination of necessity and substantial interest may be taken to the Superior Court as provided in § 5480(a) of this Article without regard to the obligation to first fully exhaust administrative remedies. Following judicial review of such decision, the matter shall be returned to the Public Auditor for final decision of the protest.

(i) Entitlement to Costs. In addition to any other relief or remedy granted under Subsections (c) or (e) of this Section, or under Subsection (a) of § 5480 of this Chapter, including the remedies provided by Subarticle B of Article

9 of this Chapter, when a protest is sustained, the protestant *shall* be entitled to the reasonable costs incurred in connection with the solicitation and protest, including bid preparation costs, excluding attorney's fees, if:

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

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

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

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

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

"**§ 5426. Authority to Debar or Suspend.**

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer, the Director of Public Works, or the head the agency issuing the solicitation, after consultation with the using agency and the Attorney General,

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

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

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

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

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

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

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

(B) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more

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

(C) upon a finding of the Department of Labor, failure to pay employees engaged on the contract in violation of the wage determination law or contract conditions.

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

(6) for violation of the ethical standards set forth in Article 11 of this Chapter; or

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

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

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

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

(d) Notice of Decision. A copy of the decision under Subsection (c) of this Section *shall* be mailed electronically or otherwise furnished immediately to

the debarred or suspended person, and any other party intervening or petitioning, and the head of all governmental bodies or purchasing agencies.

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

(f) Any member of the public, including the bidder, offeror or contractor, as well as any elected official or employee of the government, may petition the Chief Procurement Officer, the Director of Public Works, or the head of the agency issuing the solicitation, to take action to debar or suspend pursuant to Subsection (a) of this Section. The petition *shall* state the facts that the complainant believes to be true that warrant a suspension or debarment pursuant to this § 5426. Immediately upon the receipt of such a petition, the person petitioned *shall* cause an investigation to be conducted. If the petitioned officer finds insufficient facts to proceed with a debarment or suspension hearing, he *shall* state the reasons in a written decision within sixty (60) days of receipt of the petition. If the person petitioned determines that sufficient facts may exist to debar or suspend the individual or company, then he *shall* hold a hearing as authorized in Subsection (a), and issue a decision as required in Subsection (c). If the petitioned officer *does not* issue the written decision required under Subsection (c) of this Section within sixty (60) days after written request by the

petitioner for a final decision, then the petitioner may proceed with an appeal to the Public Auditor as if the petition had been rejected."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 5452. Remedies After an Award.**

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

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

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

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

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

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

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

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

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

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

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

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

(c) Actions Under Contract or for Breach of Contract. The Superior Court *shall* have jurisdiction over an action between the government of Guam and a contractor, brought after review by the Public Auditor in accordance with § 5706 of this Chapter, for any cause of action which arises under, or by virtue

of, the contract, whether the action is at law or equity, whether the action is on the contract or for breach of contract, and whether the action is for monetary damages or injunctive, declaratory or other equitable relief.

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

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

(f) Form of Review Under § 5480(a). All appeals permitted by Subsection (a) of this Section *shall* be treated as special proceedings for expeditious review of the administrative decision below, *unless* good cause is shown that it should proceed as a civil action.

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

(2) Effect on Automatic Stay. Upon timely appeal, the automatic stay *shall* be continued until there is a final decision; provided, the stay *shall not* be continued unless the appellant posts security in the manner

required by GRCP Rule 65(c) and the provisions of Subsection (f)(3) of this Section.

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 5703. Jurisdiction of the Public Auditor.**

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

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

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

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

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

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

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

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

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

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

"(a) Appeal. Any person receiving an adverse decision, including the contractor, the governmental body, or the agency issuing the solicitation, may

appeal from a decision by the Public Auditor to the Superior Court of Guam, as provided in Article 9 of this Chapter."

Section 40. § 5708 of Article 12, Chapter 5, Title 5, Guam Code Annotated, is *amended* to read as follows:

"**§ 5708. Discontinuance of Contractor's Appeal.**

It is the policy of this Act that procurement disputes be resolved expeditiously. Therefore, settlement agreements between the parties are encouraged, and appeals by a protestant or by the Chief Procurement Officer, the Director of Public Works, or the head of the agency issuing the solicitation, may be settled by them, with or without prejudice, *except* to the extent that the Public Auditor determines that such a settlement would work an injustice on the integrity of the procurement system and an unconscionable prejudice on an intervening party. After notice of an appeal to the Public Auditor has been filed by the Chief Procurement Officer, the Director of Public Works, or the head of the agency issuing the solicitation, a contractor may *not* unilaterally discontinue such appeal without prejudice, except as authorized by the Public Auditor."

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

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

5102. The Office of Public Accountability (OPA) *shall* perform as the Policy Office until the Policy Office is established with its full complement of members."

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

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