Guam Legislature Clerks <clerks@guamlegislature.org>

Messages and Communciations

1 message

Speaker's Office <speaker@guamlegislature.org> Sat, Oct 31, 2020 at 2:40 PM
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

10/30/20	6:41 PM	10/30/20	Bill No. 306-35 (COR), signed into law as Public Law No. 35-106.	Office of the Governor of Guam	35GL-20-2393
10/30/20	6:41 PM	10/30/20	Bill No. 372-35 (COR), signed into law as Public Law No. 35-107.	Office of the Governor of Guam	35GL-20-2394
10/30/20	6:41 PM	10/30/20	Bill No. 298-35 (COR), signed into law as Public Law No. 35-108.	Office of the Governor of Guam	35GL-20-2395
10/30/20	6:41 PM	10/30/20	Substitute Bill No. 90-35 (COR), signed into law as Public Law No. 35-109.	Office of the Governor of Guam	35GL-20-2396
10/30/20	6:41 PM	10/30/20	Bill No. 151-35 (COR), Vetoed.	Office of the Governor of Guam	35GL-20-2397
10/30/20	6:41 PM	10/30/20	Bill No. 167-35 (COR), Vetoed.	Office of the Governor of Guam	35GL-20-2398
10/30/20	6:41 PM	10/30/20	Bill No. 215-35 (COR), Vetoed.	Office of the Governor of Guam	35GL-20-2399

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

7 attachments

- **Bill No. 306-35 (COR), signed into law as Public Law No. 35-106..pdf**
  1334K
- **Bill No. 372-35 (COR), signed into law as Public Law No. 35-107..pdf**
  1940K
- **Bill No. 298-35 (COR), signed into law as Public Law No. 35-108.pdf**
  1542K
- **Substitute Bill No. 90-35 (COR), signed into law as Public Law No. 35-109.pdf**
  2146K
- **Bill No. 151-35 (COR), Vetoed.pdf**
  1106K
- **Bill No. 167-35 (COR), Vetoed.pdf**
  3855K
- **Bill No. 215-35 (COR), Vetoed.pdf**
  939K

UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR

JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

October 30, 2020

35GL-20-2396
Speaker Tina Rose Muña Barnes

OCT 30 2020
Time 6:41 ( )AM (✓)PM
Received By:

HONORABLE TINA ROSE MUÑA BARNES
Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
35th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: **<u>Substitute Bill No. 90-35 (COR)</u> - An Act to Repeal and Reenact § 5215 of Subarticle B, Article 3, and Amend § 5030(x) of Subarticle C, Article 1, Both of Chapter 5, Title 5, Guam Code Annotated, Relative to Providing for Emergency Procurement for Threats to the Environment, Increasing Transparency, and Otherwise Improving Emergency Procurement**

Dear Madame Speaker:

Emergencies come in many forms. As a community, we understand well how to prepare and recover from emergencies presented when typhoons sweep through our region. While our existing procurement laws appeared sufficient to address such emergencies, it is appropriate to study, and, when necessary, refine even well-established and entrenched mechanisms in the law to adjust to new realities. Substitute Bill No. 90-35 recognizes that environmental threats can create an urgent need to procure services and supplies in the same way that threats to public health, welfare, and safety can. It also recognizes procurement in thirty (30) day time frames will not always be sufficient to respond adequately to such emergencies. Certainly, these are welcome changes to our procurement law which will assist our employees in best responding to and mitigating against emergent issues. As we have seen while addressing the public health emergency that we are in today, emergency circumstances do not care that our procurement laws draw arbitrary lines in the sand for expiration.

However, Substitute Bill No. 90-35 also imposes additional requirements on the processing of such emergency procurement which have the potential to slow what must be, by their very nature, quick responses. These requirements are cloaked in the language of "transparency," but really serve to create additional, unnecessary steps.

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RICARDO J. BORDALLO GOVERNOR'S COMPLEX • HAGÅTÑA, GUAM 96910
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Nonetheless, and on balance, the benefits of Substitute Bill No. 90-35 outweigh the drawbacks. And it is for this reason that I am signing it into law as ***Public Law No. 35-109***.

Senseramente,

LOURDES A. LEON GUERRERO
I Maga'hågan Guåhan
Governor of Guam

Enclosure: Substitute Bill No. 90-35 (COR) *nka P.L. 35-109*

cc via email: *Sigundo Maga'låhen Guåhan*
Compiler of Laws

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

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

This is to certify that **Substitute Bill No. 90-35 (COR), "AN ACT TO *REPEAL* AND *REENACT* § 5215 OF SUBARTICLE B, ARTICLE 3; AND *AMEND* § 5030(x) OF SUBARTICLE C, ARTICLE 1, BOTH OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR EMERGENCY PROCUREMENT FOR THREATS TO THE ENVIRONMENT, INCREASING TRANSPARENCY, AND OTHERWISE IMPROVING EMERGENCY PROCUREMENT,"** was on the 19th day of October 2020, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 19th day of October, 2020, at 5:45 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 10/30/2020

Public Law No. 35-109

Jessica Cruz

2020-11975

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 90-35 (COR)
As substituted; amended by the Committee on Environment,
Revenue and Taxation, and Procurement;
further substituted; and amended on the Floor.

Introduced by: Sabina Flores Perez
Kelly Marsh (Taitano), PhD
Amanda L. Shelton
William M. Castro
Régine Biscoe Lee
James C. Moylan
Louise B. Muña
Tina Rose Muña Barnes
Telena Cruz Nelson
Clynton E. Ridgell
Joe S. San Agustin
Telo T. Taitague
Jose "Pedo" Terlaje
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *REPEAL* AND *REENACT* § 5215 OF SUBARTICLE B, ARTICLE 3; AND *AMEND* § 5030(x) OF SUBARTICLE C, ARTICLE 1, BOTH OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR EMERGENCY PROCUREMENT FOR THREATS TO THE ENVIRONMENT, INCREASING TRANSPARENCY, AND OTHERWISE IMPROVING EMERGENCY PROCUREMENT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. § 5215 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code Annotated, is *repealed* and *reenacted* to read:

"**§ 5215. Emergency Procurements.**

(a) Emergency Procurements. Notwithstanding any other provision of this Chapter, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer, provided the designee of any such officer is subject to § 5114(b) of this Chapter, may make or authorize others to make emergency procurements of supplies, services, or emergency construction works in the manner specified in this Section when there exists a threat to public health, welfare, or safety, or the health and safety of the environment, in the event of an emergency as defined in § 5030(x) of this Chapter and defined in regulations promulgated by the Policy Office. *Emergency construction works* means the emergency operation, or demolition of existing structures and real property improvements, as well as building or assembly of temporary structures, necessary to address, within the time limits of emergency procurement specified in Subsection (e) of this Section, the imminent threat and nature of a particular event of emergency as described by a Determination of Need for an Emergency Procurement required in Subsection (c) of this Section.

(b) Necessity of a Declaration of Emergency, or Certificate of Emergency. No emergency procurement shall be made except after, and consistent with, a Declaration of Emergency made by the Governor, or a Certificate of Emergency made by the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer.

(1) A Declaration of Emergency shall be made by Executive Order duly issued by the Governor, and expressly authorizing emergency procurement of supplies, services, or emergency construction works as authorized by this Section, and pursuant to a

Determination of Need for Emergency Procurement, which shall be appended thereto.

(2) A Certificate of Emergency shall be made, under penalty of perjury, by the Chief Procurement Officer, or Director of Public Works, or by the head of a purchasing agency, or a designee of either officer having requisite authority to procure supplies, services, or emergency construction works. The Certificate of Emergency shall have appended thereto a complete and true and correct copy of the Determination of Need for Emergency Procurement, and contain the following:

(A) a statement expressly incorporating by reference the entire unaltered contents of the appended Determination of Need for Emergency Procurement; and

(B) an affirmation that the contents of the Determination of Need for Emergency Procurement are true, correct, and complete to the best, informed knowledge, and good faith belief of the person making the Certificate of Emergency.

(3) Certified copies of the Certificate of Emergency by the Chief Procurement Officer, the Director of Public Works, the head of the purchasing agency, or a designee of either officer shall be submitted, prior to award, to the Governor and the Speaker of the Legislature. Any contract awarded under a Certificate of Emergency pursuant to Subsection (b)(2) of this Section shall be null and void unless and until the Governor approves such Certificate of Emergency in writing.

(c) Determination of Need for Emergency Procurement. No emergency procurement shall be solicited or awarded without a Determination of Need for Emergency Procurement, which shall:

(1) state the date of its execution, and be signed under penalty of perjury by the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer, conducting the emergency procurement of supplies, services, or emergency construction works;

(2) describe with factual particularity, the nature and apparent cause of the condition posing an imminent threat to public health, welfare, or safety, or the health and safety of the environment, which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection;

(3) state that the threat is imminent, and that the emergency procurement authorized by this Section is necessary, without delay, to protect the public health, welfare, or safety, or the health and safety of the environment;

(4) affirm solemnly that the emergency procurement of supplies, services, or emergency construction works, in the face of the emergency described, is not being used and will not be used, directly or indirectly, to avoid other methods of source selection or the purposes and policies of this Chapter;

(5) be copied and appended to its respective Declaration of Emergency or Certificate of Emergency, as described in Subsection (b) of this Section, and further attached to and made a part of any contract, or Notice of Award made or given; and

(6) be a material part of the procurement record required in this Chapter.

(d) How Conducted. To the extent practicable and except as otherwise allowed under this Section, an emergency procurement shall be made and conducted with competition and utilize competitive procedures used in this Chapter as is practicable under the circumstances, in the good faith discretion of the person authorized to make such emergency procurement. A record shall be kept of all determinations and statements required by this § 5215, as well as all other matters required to be made a part of the procurement record by this Chapter. At the conclusion of a solicitation whether by award or cancellation, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or the authorized designee of either officer; provided, the designee of any such officer is subject to § 5114(b) of this Chapter, shall make, date, and sign a written statement describing: the circumstances of the event of the emergency procurement; the solicitation process used; the names of potential bidders or offerors contacted; and the justification for the selection of the awardee. The solicitation and competition for an award of an emergency procurement contract should include:

(1) sending a Notice of Request for Interest to contractors on a qualified bidders list, and others known to the government, who have provided responsive supplies, services, or emergency construction works to the government, within the preceding twelve (12) months, of the type needed to meet the particular emergency;

(2) a request for prompt expression of interest;

(3) at least three (3) Positive Written Quotations, which shall be solicited, recorded, and placed in the procurement file, for the acquisition of supplies, services, or emergency construction works

needed, unrestricted by the qualified bidders list; provided, that all quotations are not required to be positive if accompanied by written certification that to the maximum extent practicable, such positive quotations could not be obtained from known or potential vendors; and

(4) an award of a contract or purchase order as expeditiously as the circumstances and prudent competition may allow for, to the responsible contractor shown to provide the lowest price and most expeditious delivery time, in accordance with § 5010 of this Chapter.

(e) Limitations on Numbers, Time, and Amount of Emergency Procurement. There shall be no limit on the number of emergency procurements of supplies, services, and emergency construction works, but no emergency procurement shall be made for an amount or construction greater than the amount of such supplies, services, or emergency construction works that are necessary to address the emergency for a ninety (90) day period immediately following the date of the Determination of Need for Emergency Procurement, as described in Subsection (c) of this Section. During said ninety (90) day period, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer shall promptly and expeditiously take all necessary steps to determine if there will be ongoing needs arising from the event of emergency beyond the ninety (90) day period, and plan for the solicitation of supplies, services, and emergency construction works for such ongoing needs under a method of procurement other than the emergency procurement authorized in this Chapter. The emergency procurement may be extended beyond ninety (90) days if the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer determines additional time is necessary and the contract scope and duration are limited to the emergency. Thirty (30)

days prior to execution of the extension, a public hearing shall be held by the procuring agency, at which any person may present testimony. Notice of intent to extend an emergency contract shall be published in a newspaper of general circulation at least five (5) days prior to a public hearing. Notice shall include at least a description of the need for the emergency extension, the vendor, and the date, time, and location of the public hearing. A record of such plan shall be made and kept as a part of the procurement record as required by § 5249 of this Chapter.

Section 2. § 5030(x) of Subarticle C, Article 1, Chapter 5, Title 5, Guam Code Annotated, is *amended* to read:

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

Section 3. Effective Date. This Act shall be effective ninety (90) days after enactment.

Section 4. Severability. If any provision of this Act 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 Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.