

I Mina'trentai Siette Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
36-37 (COR) As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; substituted; and further amended on the Floor	Sabina Flores Perez Chris Barnett Roy A. B. Quinata Joanne Brown William A. Parkinson Jesse A. Lujan Joe S. San Agustin Tina Rose Muña Barnes Telo T. Taitague	AN ACT TO ADD A NEW §5428 TO SUBARTICLE A, ARTICLE 9, CHAPTER 5, DIVISION 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE REVIEW OF CRITICAL GOVERNMENT OF GUAM PROCUREMENT CONTRACT DECISIONS IN EXCESS OF FIVE MILLION DOLLARS (\$5,000,000).	2/9/23 2:22 p.m.	2/10/23	Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	Request: 2/10/23 2/16/23	2/23/23 9:00 a.m.	4/7/23 2:49 p.m. As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	Additional Testimonies 6/22/23
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
	11/27/23	AN ACT TO ADD NEW §§ 5428 AND 5429 TO SUBARTICLE A OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE REVIEW OF GOVERNMENT OF GUAM CRITICAL PROCUREMENT CONTRACT DECISIONS REASONABLY EXPECTED TO COST FIVE MILLION DOLLARS (\$5,000,000) OR MORE USING FUNDS FROM THE AMERICAN RESCUE PLAN ACT AND OR THE INFRASTRUCTURE INVESTMENT AND JOBS ACT.	11/30/23	12/1/23	12/13/23	37-51	12/13/23	Received: 12/13/23 Messages and Communications Doc. No. 37GL-23-1334	

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

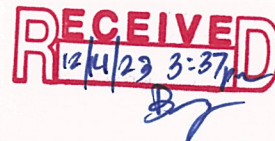
December 13, 2023

HONORABLE THERESE M. TERLAJE, Speaker
I Mina'trentai Siette Na Liheslaturan Guåhan
37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

31GL-23-1334
OFFICE OF THE SPEAKER
THERESE M. TERLAJE

DEC 13 2023

Time: 4:55 pm
Received: SW



Re: Substitute Bill No. 36-37 (COR) - AN ACT TO ADD NEW §§ 5428 AND 5429 TO SUBARTICLE A OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE REVIEW OF GOVERNMENT OF GUAM CRITICAL PROCUREMENT CONTRACT DECISIONS REASONABLY EXPECTED TO COST FIVE MILLION DOLLARS (\$5,000,000) OR MORE USING FUNDS FROM THE AMERICAN RESCUE PLAN ACT AND OR THE INFRASTRUCTURE INVESTMENT AND JOBS ACT

Håfa Adai Madame Speaker,

For the second time this year, the 37th Guam Legislature has found that the lengthy protest process impedes the procurement of goods and services by the government of Guam. Accordingly, with Bill No. 36-37, the Legislature creates a new expedited procurement protest process set to expire on December 31, 2026, for specific projects using federal funds. Bill No. 36-37 creates a category of procurements entitled Critical Procurement Contracts (“CPC”) and extends the expedited procurement protest process to these CPC procurements, which are defined as major public infrastructure or capital improvement projects valued at Five Million Dollars (\$5,000,000) or more and federally funded by at least eighty percent (80%) or more of American Rescue Plan Act (“ARPA”) of 2021 or Infrastructure Investment and Jobs Act (“IIJA”) funds.

The Legislature, with this bill, seeks to enable the government of Guam to fully utilize all available federal funding without the risk of losing funding due to the current, lengthy procurement protest process. Bill No. 36-37 provides that once an agency designates the project a CPC, those bidding on the project must consent to the special protest provisions contained in the bill. Notably, the bidders must agree to submit to an expedited review before the Public Auditor, and the decision of the Public Auditor is final, not reviewable by the courts. The Legislature voiced its concerns that the current procurement protest procedures, specifically the automatic stay, “can lead to lengthy delays, which can also lead to lost opportunities....” However, since Bill No. 36-37 terminates the automatic stay when the Office of Public Accountability (“OPA”) issues its decision, the expedited process could have been implemented without denying the parties the right

To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: December 13, 2023
Re: Bill No. 36-37 (COR) nka P.L. 37-51

Page 2 of 2

to judicial review of the OPA's decision. Terminating the stay upon the OPA rendering its decision would have satisfied the concerns expressed by the witnesses, who appeared before the Legislature, of the negative impact of the automatic stay being in place while the matter is being considered by the courts, especially when judicial review may last for months.

The Legislature has, again, created a temporary solution only applicable in a small number of cases that impact the use of federal funds rather than developing a long-term broad solution to a problem impacting all government of Guam procurements. Similarly, in Public Law 37-6, the Legislature created an expedited review process for the Guam Department of Education's capital improvement projects funded in whole or in part with ARPA, Education Stabilization Fund, and Head Start Grant funds. Rather than continuing to create individualized short-term fixes that apply only to the expenditure of federal funds, it is time that changes are made to the procurement code that alleviate the problems identified by the Legislature in their findings in both P.L. 37-6, and now, Bill No. 36-37, such as eliminating the automatic stay altogether or possibly limiting the period of the stay until the OPA has issued its ruling on the protest. If a party wishes to appeal the OPA decision the stay would not remain in effect.

In the interest of ensuring the timely use of ARPA and IJJA funds, I am signing Bill No. 36-37 (COR) into law as ***Public Law No. 37-51***.

Senseramente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan

Governor of Guam

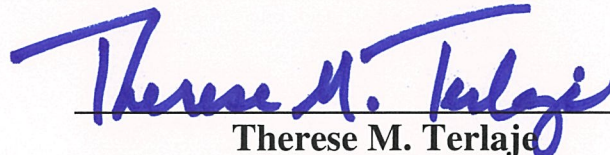
Enclosure: Bill No. 36-37 (COR) nka P.L. 37-51

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

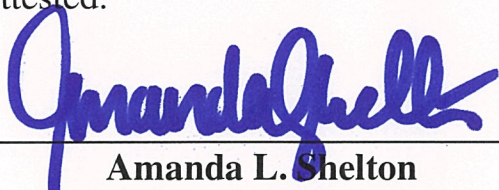
I MINA 'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

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

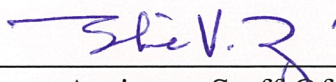
This is to certify that **Substitute Bill No. 36-37 (COR), "AN ACT TO ADD NEW §§ 5428 AND 5429 TO SUBARTICLE A OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE REVIEW OF GOVERNMENT OF GUAM CRITICAL PROCUREMENT CONTRACT DECISIONS REASONABLY EXPECTED TO COST FIVE MILLION DOLLARS (\$5,000,000) OR MORE USING FUNDS FROM THE AMERICAN RESCUE PLAN ACT AND OR THE INFRASTRUCTURE INVESTMENT AND JOBS ACT,"** was on the 30 day of Nov. 2023, duly and regularly passed.


Therese M. Terlaje
Speaker

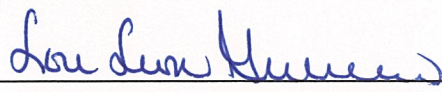
Attested:


Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 1st day of Dec.,
2023, at 3:23 o'clock P.M.


Assistant Staff Officer
Maga'håga's Office

APPROVED:


Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 12/13/23

Public Law No. 37-51

2023 - 20406
OFFICE OF THE GOVERNOR
CENTRAL FILES
Elaine Tajalle
RECEIVED BY
TIME 3:23pm 12/01/23

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 36-37 (COR)

As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; substituted; and further amended on the Floor.

Introduced by:

Sabina Flores Perez
Chris Barnett
Roy A. B. Quinata
Joanne Brown
William A. Parkinson
Jesse A. Lujan
Joe S. San Agustin
Tina Rose Muña Barnes
Telo T. Taitague
Frank Blas, Jr.
Christopher M. Dueñas
Thomas J. Fisher
Dwayne T.D. San Nicolas
Amanda L. Shelton
Therese M. Terlaje

AN ACT TO ADD NEW §§ 5428 AND 5429 TO SUBARTICLE A OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE REVIEW OF GOVERNMENT OF GUAM CRITICAL PROCUREMENT CONTRACT DECISIONS REASONABLY EXPECTED TO COST FIVE MILLION DOLLARS (\$5,000,000) OR MORE USING FUNDS FROM THE AMERICAN RESCUE PLAN ACT AND OR THE INFRASTRUCTURE INVESTMENT AND JOBS ACT.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 protests serve an invaluable role in the procurement process by promoting

1 accountability, bidder confidence, and agency compliance. Protests may also
2 highlight gaps in laws, which, in turn, can initiate reforms in order to ensure vital
3 public funds are properly spent in meeting the needs of our community.

4 *I Liheslatura* further finds that Guam’s current protest process can lead to
5 lengthy delays, which can also lead to lost opportunities to avail of federal and other
6 grants and programs, particularly in the procurement of multi-million-dollar capital
7 improvement projects, which are critical to the government and populace, and the
8 many facilities and plants that are aging and/or in disrepair. In some cases, protests
9 can lead to the inability for government agencies to undergo needed capital
10 improvements, to expend funds within required grant deadlines, or can lead to their
11 inability to maximize to the fullest extent practicable the purchasing value of public
12 funds of the government, as required by the Guam Procurement Law, 5 GCA,
13 Chapter 5, § 5001(b)(5).

14 *I Liheslaturan Guåhan* intends to establish a new category of procurement
15 contract, referred to as “Critical Procurement Contracts,” which involves
16 procurement of capital improvement or infrastructure projects funded by federal
17 grants or other programs that is reasonably expected to cost Five Million Dollars
18 (\$5,000,000) or more.

19 *I Liheslatura* also intends to create an expedited process limited to protests of
20 Critical Procurement Contracts in order to strike a balance of strengthening local
21 procurement through the protest process and acquiring much needed critical
22 procurement contracts to meet the needs of our community and to maximize the
23 purchasing value of public funds.

24 **Section 2.** A new § 5428 is hereby *added* to Subarticle A of Article 9,
25 Chapter 5, Division 1, Title 5, Guam Code Annotated, to read as follows:

26 “§ 5428. **Administrative Review of Government of Guam Critical**
27 **Procurement Contract Decisions.**

1 (a) A Critical Procurement Contract is a contract solicited as
2 contemplated in the Guam Procurement Law, 5 Guam Code Annotated
3 Chapter 5, and meets the following criteria:

4 (1) the solicitation is one which is integral to the timing of the
5 planning, development, construction, financing or completion of major
6 public infrastructure or capital improvement;

7 (2) the contract is reasonably expected to cost Five Million
8 Dollars (\$5,000,000) or more and is funded by at least eighty percent
9 (80%) or more from the American Rescue Plan Act and or the
10 Infrastructure Investment and Jobs Act funds; and

11 (3) the identified funding for the Critical Procurement
12 Contract is restricted pursuant to the American Rescue Plan Act and or
13 the Infrastructure Investment and Jobs Act or becomes restricted to the
14 material detriment of the procuring agency.

15 (b) A Critical Procurement Contract shall be designated by the Chief
16 Procurement Officer, the Director of Public Works, or the governing board of
17 the procuring agency, in accordance with regulations to be promulgated by
18 the Policy Office. The Critical Procurement Contract shall be prominently
19 designated as such in the notice of and solicitation for the contract. All
20 prospective bidders, offerors, and contractors shall acknowledge and sign an
21 affidavit that they are aware of and agree to abide by the Critical Procurement
22 Contract deadlines, rules, and regulations.”

23 **Section 3.** A new § 5429 is hereby *added* to Subarticle A of Article 9,
24 Chapter 5, Division 1, Title 5, Guam Code Annotated, to read as follows:

25 **“§ 5429. Authority to Resolve Protested Critical Procurement**
26 **Contract Solicitations and Awards.**

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

8 (b) Authority to Resolve Critical Procurement Contract Protests.
9 The Chief Procurement Officer, the Director of Public Works, the head of a
10 purchasing agency, or a designee of one of these officers shall have the
11 authority, prior to the commencement of an appeal to the Public Auditor
12 concerning the controversy, to settle and resolve a protest of an aggrieved
13 bidder, offeror, or contractor, actual or prospective, concerning the solicitation
14 or award of a contract. This authority shall be exercised in accordance with
15 regulations promulgated by the Policy Office.

16 (c) Decision. If the protest is not resolved by mutual agreement, the
17 Chief Procurement Officer, the Director of Public Works, the head of a
18 purchasing agency, or a designee of one of these officers shall promptly issue
19 a decision in writing within fifteen (15) days from the date the protest is filed.
20 The decision shall:

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

22 (2) inform the protestant of its right to administrative appeal.

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

1 (e) Appeal. A decision under Subsection (c) of this Section may be
2 appealed by the protestant to the Public Auditor within fifteen (15) days after
3 receipt by the protestant of the notice of decision.

4 (f) Finality. For the purposes of this Section, the determination of
5 facts and decision by the Public Auditor for the resolution shall be final and
6 conclusive with no right of appeal or judicial review and the automatic stay
7 for the solicitation or award of a Critical Procurement Contract shall be lifted.

8 (g) Automatic Stay. In the event of a timely protest under Subsection
9 (a) of this Section, the government of Guam shall not proceed further with the
10 solicitation or with the award of the contract prior to final administrative
11 resolution of such protest, and any such further action is void.

12 (h) No Entitlement to Costs. There shall be no entitlement to costs
13 or fees regardless of the outcome of the protest or appeal to the Public Auditor.

14 (i) The Public Auditor shall expedite the administrative review
15 process of the appeal in accordance with the rules and regulations to be
16 promulgated and adopted by the Public Auditor within sixty (60) days of the
17 effective date of this Act, notwithstanding the Administrative Adjudication
18 Law found in Chapter 9 of Title 5, Guam Code Annotated. Protests of any
19 Critical Procurement Contract to the Public Auditor shall be in compliance
20 with Title 5, Guam Code Annotated, Chapter 5, Article 12; and Title 2, Guam
21 Administrative Rules and Regulations, Division 4, Chapter 12.”

22 **Section 4. Automatic Repeal.** §§ 5428 and 5429 of Subarticle A, Article 9,
23 Chapter 5, Title 5, Guam Code Annotated, as added by this Act, are repealed
24 effective December 31, 2026, unless the federal grantor agency authorizes an
25 extension of time for the expenditure of the Infrastructure Investment and Jobs Act
26 funds, in which case these Sections shall be repealed at the end of the extension
27 period.

Section 5. Promulgation of Rules and Regulations. The Procurement Policy Office, pursuant to 5 GCA, Chapter 5, § 5130(a), shall promulgate rules and regulations consistent with this Act no later than sixty (60) calendar days after enactment of this Act, except for the rules and regulations required in § 5429(i) of Subarticle A, Article 9, Chapter 5, 5 GCA, which shall be promulgated by the Public Auditor.

Section 6. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or inorganic, 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.

Section 7. Effective Date. This Act shall be effective upon enactment.