

*I Mina'trentai Singko Na Liheslaturan Guåhan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
90-35 (COR)	Sabina Flores Perez Kelly Marsh (Taitano), PhD Amanda L. Shelton	AN ACT TO AMEND §5215 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING EMERGENCY PROCUREMENT PROVISIONS AND TRANSPARENCY, AND PROVIDING FOR EMERGENCY PROCUREMENT FOR THREATS TO THE ENVIRONMENT.	4/12/19 4:46 p.m.	5/2/19	Committee on Environment, Revenue and Taxation, and Procurement			Waiver: 4/24/19	9/4/19 5:57 p.m. As substituted by the Committee on Environment, Revenue and Taxation, and Procurement

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Chair  
Senator Amanda L. Shelton  
Vice Chair  
Speaker Tina Rose Muña Barnes  
Member  
Vice Speaker Telena Cruz Nelson  
Member  
Senator Kelly Marsh (Taitano), PhD  
Member  
Senator Sabina Flores Perez  
Member



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*I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN*  
35<sup>TH</sup> GUAM LEGISLATURE

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Member and Chairperson,  
Subcommittee on Protocol

September 4, 2019

# MEMO

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

**From:** Senator Régine Biscoe Lee  
Chair, Committee on Rules

**Re:** Bill No. 90-35 (COR), As Substituted by the Committee

*Buenas yan Håfa Adai* Madam Clerk:

As per my authority as Chair of the Committee on Rules, please ensure that **Bill No. 90-35 (COR), As substituted by the Committee on Environment, Revenue and Taxation, and Procurement ("Committee")**, be posted on the Guam Legislature website for public accessibility, as requested by the sponsor and chairperson of the Committee.

Thank you for your attention to this matter. Should you have any questions or concerns, please contact Ms. Mary Maravilla, Committee on Rules Director, at 472-2461.

Respectfully,

**Senator Régine Biscoe Lee**  
Chair, Committee on Rules

cc: Senator Sabina Flores Perez, Sponsor of Bill and Chairperson of Committee  
MIS

Attachment (2)

2019 SEP -4 PM 5: 57





**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, and Procurement

*I MINA 'TRENTAI SINGKO NA LIHESLATURAN GUAHAN*

35<sup>TH</sup> GUAM LEGISLATURE

September 4, 2019

**The Honorable Régine Biscoe Lee**

Chairperson, Committee on Rules

*I Mina 'trentai Singko Na Liheslaturan Guahan*

163 Chalan Santo Papa

*Hagåtña*, Guam 96910

**RE: Submittal of Substitute Bill No. 90-35 (COR)**

*Håfa adai* Chairperson Lee,

The Committee on Environment, Revenue and Taxation, and Procurement submits Bill No. 90-35 (COR), as substituted by the Committee. The bill has been referred to my committee and substantial changes have been made.

Bill No. 90-35 (COR), as substituted by the Committee is attached and will have a public hearing on Wednesday, September 11, 2019 at 10:30am. The Committee request that this versions be placed on the Legislature's website for public accessibility.

Thank you for your attention to this matter. Should you have any questions or concerns please contact my office #989-2968.

*Si Yu'os ma'åse'*,

Sabina Flores Perez

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

**Bill No. 90-35 (COR)**

As substituted by the Committee on Environment,  
Revenue and Taxation, and Procurement.

Introduced by:

Sabina Flores Perez  
Kelly Marsh (Taitano), PhD  
Amanda L. Shelton

**AN ACT TO REPEAL AND REENACT § 5215 OF  
SUBARTICLE B, ARTICLE 3, 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.**

~~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 may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Policy Office; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances, and further provided that the procurement agent must solicit at least three (3) informal price quotations, if time allows must give notice to~~

1 all contractors from the qualified bid list who have provided the needed supplies and  
2 services to the government within the preceding twelve (12) months, and must award  
3 the procurement to the firm with the best offer, as determined by evaluating cost and  
4 delivery time. No emergency procurement or combination of emergency  
5 procurements may be made for an amount of goods or supplies greater than the  
6 amount of such goods and supplies which is necessary to meet an emergency for the  
7 thirty (30) day period immediately following the procurement. A written  
8 determination of the basis for the emergency and for the selection of the particular  
9 contractor shall be included in the contract file. The requirements for a written  
10 determination for the emergency shall be met if the procurements are being made on  
11 the basis of the Governor's declaration of an emergency situation by Executive  
12 Order if such Order states that emergency procurement may be resorted to for the  
13 purposes of the Order. Unless authorized by an Executive Order declaring an  
14 emergency, no emergency procurement may be made except on a certificate made  
15 under penalty of perjury by the Chief Procurement Officer, Director of Public Works  
16 or the head of a purchasing agency, as the case may be. Certified copies of the  
17 certificate shall be sent, prior to award and as a condition thereof, to the Governor  
18 and Speaker of the Legislature. The certificate shall contain the following:

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

20 (b) the factual basis of the determination that an emergency  
21 procurement is necessary; and

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

24 In addition to any other requirement, the Governor must approve in writing  
25 all authorizations for emergency procurement.

26 (a) Authority to make emergency procurements. Notwithstanding  
27 any other provision of this Chapter, the Chief Procurement Officer, the

1 Director of Public Works, the head of a purchasing agency, or a designee of  
2 either officer, provided the designee of any such officer is subject to the  
3 qualifications of § 3114(b) of this Chapter, may make or authorize others to  
4 make emergency procurements of supplies, services and construction works  
5 in the manner specified in this Section when there exists a threat to public  
6 health, welfare, or safety or the health and safety of the environment in the  
7 event of an emergency as defined in § 5030(x) of this Chapter. Construction  
8 “works” authorized for emergency procurement is not as broad as the  
9 definition of “construction” in § 5030(g), but includes the emergency  
10 operation, repair, maintenance, or demolition of existing structures and real  
11 property improvements, as well as the building or assembly of temporary  
12 structures, necessary to address, within the time limits of emergency  
13 procurement specified in subsection (c) of this section, the imminent threat  
14 and nature of a particular event of emergency as described by a Determination  
15 of Emergency Procurement required in subsection (d) of this section.

16 (b) How conducted. To the extent practicable and except as  
17 otherwise allowed under this Section, emergency procurements shall be made  
18 and conducted with such competition and utilizing or adapting competitive  
19 procedures used in this Chapter as is practicable under the circumstances, in  
20 the good faith determination of the person authorized to make emergency  
21 procurements. A record shall kept of all determinations and statements  
22 required by this § 5215, as well as all other matters intended to be made a part  
23 of the procurement record by this Chapter. At the conclusion of a solicitation  
24 whether by award or cancellation, the Procurement Officer of the soliciting  
25 agency shall make, date and sign a written statement, describing: any  
26 circumstances of the event of emergency procurement which adversely  
27 impeded or affected the field of competition for the solicitation; and, the

1 solicitation processes used; and, the potential names of potential contractors  
2 contacted or otherwise engaged; and, the justification for the selection of the  
3 particular contractor(s) awarded any emergency procurement contract. The  
4 solicitation and competition for award of emergency procurement contracts  
5 should include:

6 (1) sending notice of request for indications of interest to any  
7 contractors on a qualified bidders list, and others known to the  
8 government, who have provided responsive supplies, services or  
9 construction works to the government, within the preceding twelve  
10 months, of the type expected to be needed to meet the particular  
11 emergency needs of the government, and requesting prompt expression  
12 of interest ; and,

13 (2) solicitation of at least three (3) competitive Requests for  
14 Quotations, in the manner of making small purchases as prescribed by  
15 regulations under authority of § 5213 of this Article 3 from known or  
16 potential vendors and contractors, for the acquisition of supplies,  
17 services or construction works needed, unrestricted by the qualified  
18 bidders list; and,

19 (3) award of a contract or purchase order, as fairly and  
20 expeditiously as circumstances and prudent competition may allow in  
21 the circumstances, to the responsible contractor shown to provide the  
22 lowest price and most expeditious delivery time, taking into account the  
23 price and delivery trade-off specified in § 5010 of this Chapter.

24 (c) Limitations on numbers, time and amount of emergency  
25 procurement. There shall be no limit on the numbers of emergency  
26 procurements of supplies, services and construction works, but no emergency  
27 procurement shall be made for an amount of supplies, services or construction

1 greater than the amount of such supplies, services or construction works  
2 which is necessary to address the emergency for the ninety (90) day period  
3 immediately following the date of the earliest Determination for Emergency  
4 Procurement, as described in subsection (d) of this Section. During said ninety  
5 (90) day period, the responsible government agencies shall promptly begin  
6 and expeditiously take all necessary steps to determine if there will be ongoing  
7 needs arising from the event of emergency beyond the ninety (90) day period,  
8 and make execute plans for the solicitation of supplies, services and  
9 construction for such ongoing needs under any method of procurement other  
10 than emergency procurement authorized in this Chapter. A record of such  
11 steps and plans shall be made and kept as a procurement record as required by  
12 § 5249 of this Chapter.

13 (d) Necessity of a Determination for Emergency Procurement. No  
14 emergency procurement shall be solicited or awarded without a Determination  
15 for Emergency Procurement. The Determination for Emergency Procurement  
16 shall:

17 (1) be made and dated as of the date of its making, in writing,  
18 and signed, under penalty of perjury, by the Chief Procurement Officer,  
19 the Director of Public Works, or the head of a purchasing agency,  
20 whichever is conducting emergency procurement of supplies, services  
21 or construction works, and in the event of multiple such emergency  
22 procurements, the date of the first such Determination shall be deemed  
23 the Date of the Emergency for purposes of calculating the allowed  
24 period of time to conduct and conclude emergency procurements as  
25 specified in subsection (c) of this Section; and,

26 (2) prominently warn all contractors that any contract or other  
27 arrangement made to extend or renew an emergency procurement or



1 make a new emergency procurement based on the circumstances of the  
2 event of emergency described in the instant Determination of  
3 Emergency Procurement shall be void when made and unenforceable  
4 against the government; and,

5 (3) describe with factual particularity the threat attributable to  
6 the event of emergency, including the nature and apparent cause of the  
7 event and the foreseeable adverse effects of the emergency on the  
8 environment, or the health, welfare or safety of the public or the health  
9 and safety of the environment; and,

10 (4) state that the threat of the event of emergency is imminent,  
11 and that emergency procurement authorized by this Section is  
12 necessary, without delay, to protect substantial interests of the  
13 Territory; and,

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

19 (6) be copied and a full, complete copy appended to any  
20 Declaration of Emergency by Executive Order authorizing emergency  
21 procurement and to any Certificate of Emergency, as described in  
22 subsection (e) of this section, and further attached to and made a part of  
23 any contract, purchase order or notice of Award made or given in  
24 respect of the relevant event of emergency; and,

25 (7) be made a material part of the procurement record required  
26 in this Chapter.

1           (e) Necessity of a Declaration of Emergency, or Certificate of  
2 Emergency. No emergency procurement shall be made except after and  
3 consistent with a Declaration of Emergency made by the Governor, or a  
4 Certificate of Emergency made by the Chief Procurement Officer, the  
5 Director of Public Works, or the head of a purchasing agency, whomever is  
6 conducting the procurement, as are specified in this subsection.

7           (1) A Declaration of Emergency shall be made by Executive  
8 Order duly issued, and expressly authorizing emergency procurement  
9 of supplies, services and construction works as authorized by this §  
10 5215, and pursuant to the Determination of Emergency Procurement,  
11 appended thereto as required in subsection (d) of this section.

12           (2) A Certificate of Emergency shall be made, under penalty  
13 of perjury, by the Chief Procurement Officer, or Director of Public  
14 Works, or by the head of a purchasing agency, having requisite  
15 authority to procure supplies, services or construction works, as the  
16 case may be. The Certificate of Emergency shall have appended thereto  
17 a complete and true copy of the Determination of Emergency  
18 Procurement, and contain the following:

19                   (i) a statement expressly incorporating by reference the  
20 entire unqualified and unaltered contents of the appended  
21 Determination of Emergency Procurement; and,

22                   (ii) an affirmation that the contents of the  
23 Determination of Emergency Procurement are true, correct and  
24 complete to the best informed knowledge and good faith belief  
25 of person making the Certification.

26           (3) Certified copies of the Certificate of Emergency by the  
27 Chief Procurement Officer, the Director of Public Works, or the head

1           of the purchasing agency shall be sent, prior to award, to the Governor  
2           and Attorney General. Also prior to, and as a condition precedent to an  
3           authorized award, under authority of a Certificate of Emergency under  
4           subsection (e)(2) of this Section, the Governor shall approve or  
5           acknowledge in writing the completed Certificate of Emergency.

6           **Section 2. Effective Date.** This Act *shall* be effective upon enactment.

7           **Section 3. Severability.** If any provision of this Act or its application to  
8 any person or circumstance is found to be invalid or contrary to law, such invalidity  
9 *shall not* affect other provisions or applications of this Act that can be given effect  
10 without the invalid provision or application, and to this end the provisions of this  
11 Act are severable.