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<th>BILL NO.</th>
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<th>PUBLIC HEARING DATE</th>
<th>DATE COMMITTEE REPORT FILED</th>
<th>FISCAL NOTES</th>
<th>NOTES</th>
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<tbody>
<tr>
<td>90-35 (COR)</td>
<td>Sabina Flores Perez, Kelly Marsh (Taitano), PhD Amanda L. Shelton</td>
<td>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.</td>
<td>4/12/19 4:46 p.m.</td>
<td>5/2/19</td>
<td>Committee on Environment, Revenue and Taxation, and Procurement</td>
<td>Waiver: 4/24/19</td>
<td>9/4/19 5:57 p.m. As substituted by the Committee on Environment, Revenue and Taxation, and Procurement</td>
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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 yáno Hōfa 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,

[Signature]

Senator Régine Biscoe Lee
Chair, Committee on Rules

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

Attachment (2)
September 4, 2019

The Honorable Régine Biscoe Lee
Chairperson, Committee on Rules
I Mina’trenta Singko na Liheslaturan Guåhan
163 Chalan Santo Papa
Hagåtña, Guam 96910

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

Hāfa 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 version 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’ase’,

Sabina Flores Perez

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

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

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

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

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

   (a) Authority to make emergency procurements. Notwithstanding

any other provision of this Chapter, the Chief Procurement Officer, the
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 the
qualifications of § 3114(b) of this Chapter, may make or authorize others to
make emergency procurements of supplies, services and 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. Construction
"works" authorized for emergency procurement is not as broad as the
definition of "construction" in § 5030(g), but includes the emergency
operation, repair, maintenance, or demolition of existing structures and real
property improvements, as well as the building or assembly of temporary
structures, necessary to address, within the time limits of emergency
procurement specified in subsection (c) of this section, the imminent threat
and nature of a particular event of emergency as described by a Determination
of Emergency Procurement required in subsection (d) of this section.

(b) How conducted. To the extent practicable and except as
otherwise allowed under this Section, emergency procurements shall be made
and conducted with such competition and utilizing or adapting competitive
procedures used in this Chapter as is practicable under the circumstances, in
the good faith determination of the person authorized to make emergency
procurements. A record shall kept of all determinations and statements
required by this § 5215, as well as all other matters intended to be made a part
of the procurement record by this Chapter. At the conclusion of a solicitation
whether by award or cancellation, the Procurement Officer of the soliciting
agency shall make, date and sign a written statement, describing: any
circumstances of the event of emergency procurement which adversely
impeded or affected the field of competition for the solicitation; and, the
solicitation processes used; and, the potential names of potential contractors
contacted or otherwise engaged; and, the justification for the selection of the
particular contractor(s) awarded any emergency procurement contract. The
solicitation and competition for award of emergency procurement contracts
should include:

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

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

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

(c) Limitations on numbers, time and amount of emergency
procurement. There shall be no limit on the numbers of emergency
procurements of supplies, services and construction works, but no emergency
procurement shall be made for an amount of supplies, services or construction
greater than the amount of such supplies, services or construction works which is necessary to address the emergency for the ninety (90) day period immediately following the date of the earliest Determination for Emergency Procurement, as described in subsection (d) of this Section. During said ninety (90) day period, the responsible government agencies shall promptly begin 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 make execute plans for the solicitation of supplies, services and construction for such ongoing needs under any method of procurement other than emergency procurement authorized in this Chapter. A record of such steps and plans shall be made and kept as a procurement record as required by § 5249 of this Chapter.

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

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

(2) prominently warn all contractors that any contract or other arrangement made to extend or renew an emergency procurement or
make a new emergency procurement based on the circumstances of the event of emergency described in the instant Determination of Emergency Procurement shall be void when made and unenforceable against the government; and,

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

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

(5) affirm solemnly that the emergency procurement of supplies, services or construction works, in the face of the event of 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; and,

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

(7) be made a material part of the procurement record required in this Chapter.
(e) 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, or the head of a purchasing agency, whomever is conducting the procurement, as are specified in this subsection.

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

(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, having requisite authority to procure supplies, services or construction works, as the case may be. The Certificate of Emergency shall have appended thereto a complete and true copy of the Determination of Emergency Procurement, and contain the following:

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

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

(3) Certified copies of the Certificate of Emergency by the Chief Procurement Officer, the Director of Public Works, or the head
of the purchasing agency shall be sent, prior to award, to the Governor
and Attorney General. Also prior to, and as a condition precedent to an
authorized award, under authority of a Certificate of Emergency under
subsection (e)(2) of this Section, the Governor shall approve or
acknowledge in writing the completed Certificate of Emergency.

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

Section 3. 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.