

MINA' TRENTA NA LIHESLATURAN GUAHAN
2010 (Second) Regular Session

Bill No. 2774-30(COR)

Introduced by:

B.J.F. Cruz

2010 APR 27 PM 4:47



AN ACT TO AMEND §§ 5004, 5008, 5030, 5121, 5122, 5215, 5216, 5233, 5425, 5480, 5481, 5601, AND 5707 OF TITLE 5, GUAM CODE ANNOTATED AND TO ADD NEW §§ 5126, 5425.1, AND 5634 TO TITLE 5, GUAM CODE ANNOTATED; RELATIVE TO GOVERNMENT OF GUAM PROCUREMENT.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF

GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the existing regulations and statutes governing the procurement of goods, services, supplies, and construction by the agencies, autonomous and semi-autonomous agencies, public corporations and other instrumentalities of the government of Guam are largely based on the American Bar Associations (ABA) Model Procurement Code (MPC) of 1979, and that substantial problems and issues have arisen through the years with the application of or non-compliance with these rules, regulations and statutes. A number of such concerns, *inter alia*, include the following claims: (1) that the procurement statutes and regulations do permit local government agencies to obtain or transfer goods, supplies, construction or services between each other unless they do so competitively under the procurement code, (2) that there are situations where professional services are procured without or in the absence of formal written contracts which would ordinarily require the additional safeguard of having an attorney review the same, (3) that price cannot be considered a factor in Request For Proposals (RFPs) for evaluating proposals because it is not expressly provided for in the statutes or regulations, and (4) there are even more serious claims that the current procurement protests statutes and regulations unnecessarily allow

1 frivolous, costly, and time-consuming litigation where delay of the procurement becomes a more
2 important aim than having a procurement system that provides for the fair, equitable and
3 expeditious treatment of all parties in the procurement system. The purposes or intent for the
4 proposed procurement amendments may also be found in the relevant notes below each
5 amendment.

6
7 **Section 2.** Section 5004 of Title 5, Guam Code Annotated, is hereby repealed and re-
8 enacted to read:

9
10 **§ 5004. Application of this Chapter.**

11
12 (a) General Application. This Chapter applies only to contracts solicited or entered into
13 after the effective date of this Chapter unless the parties agree to its application to a contract
14 solicited or entered into prior to the effective date.

15
16 (b) Application to Territorial Procurement. This Chapter shall apply to every expenditure
17 of public funds irrespective of their source, including federal assistance funds except as
18 otherwise specified in §5501 of this Chapter, by this Territory, acting through a governmental
19 body as defined herein, under any contract, except that this Chapter shall not apply to either
20 grants or contracts between the Territory and another government, or between one government of
21 Guam agency, autonomous agency, semi-autonomous agency, public corporation, or
22 instrumentality, and another government of Guam agency, autonomous agency, semi-
23 autonomous agency, public corporation, or instrumentality. Nothing in this Chapter or in
24 regulations promulgated hereunder shall prevent any governmental body or political subdivision
25 from complying with the terms and conditions of any grant, gift, bequest, or cooperative
26 agreement.

27 **SOURCE:** GC § 6950.3. MPC § 1-104 modified.

28 **COMMENT:** The MPC assumes the existence of counties, municipalities having a separate government, and other
29 local governments. This Section has been modified to refer to Guam's structure, unified government, at the time of
30 enactment.

31 Note that this Chapter does not affect existing contracts. Also, it does not affect agreements with private parties,
32 such as when a person gives something to the government with conditions as to its use. Also, agreements with other
33 governments, such as the Federal Government in areas of, say, Intergovernmental Personnel Exchanges, are not
34 affected by this Chapter. The reason is, of course, that the other government may very well place conditions upon
35 the agreement which are not compatible with this Act, but which must be followed. Thus, federal regulations must
36 be followed in federal agreements notwithstanding any local laws.

37 **NOTE:** There have recently been claims made that the procurement code must be utilized between local
38 government of Guam agencies when they obtain, offer, or exchange supplies, services, goods, etc. from each other,
39 and there is added a clause to subsection (b) that makes it clear that there is no such requirement.

40
41 **Section 3.** Section 5008 of Title 5, Guam Code Annotated, is hereby repealed and re-
42 enacted to read:

1
2 **§ 5008. Policy In Favor of Local Procurement.**
3

4 All procurement of supplies and service shall be made from among businesses licensed to
5 do business on Guam and that maintain an office or other facility on Guam, whenever a business
6 that is willing to be a contractor is:

7 (a) a licensed bonafide manufacturing business that adds at least twenty-five
8 percent of the value of an item, not to include administrative overhead, using workers who are U.
9 S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons
10 who are lawfully admitted to the United States to work, based on their former citizenship in the
11 Trust Territory of the Pacific Islands; or

12
13 (b) a business that regularly carries an inventory for regular immediate sale of at
14 least fifty percent (50%) of the items of supplies to be procured; or

15
16 (c) a business that has a bonafide retail or wholesale business location that
17 regularly carries an inventory on Guam of a value of at least one half of the value of the bid or
18 One Hundred Fifty Thousand dollars (\$150,000) which ever is less, of supplies and items of a
19 similar nature to those being sought; or

20 (d) a service business actually in business, doing a substantial portion of its
21 business on Guam, and hiring at least 95% U. S. Citizens, lawfully admitted permanent residents
22 or nationals of the United States, or persons who are lawfully admitted to the United States to
23 work, based on their citizenship in any of the nations previously comprising the Trust Territory
24 of the Pacific Islands.

25 Procurement of supplies and services from off Guam may be made if no business
26 for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded,
27 of procurement from off island is no greater than eighty-five percent (85%) of the total cost
28 F.O.B. job site, unloaded, of the same supplies or services when procured from a business
29 licensed to do business on Guam that maintains an office or other facility on Guam and that is
30 one of the above-designated businesses entitled to preference. This section shall not apply to
31 professional services which are awarded on the basis of best qualifications without pricing
32 pursuant to § 5216 of this Chapter.

33
34 **COMMENT:** Originally added by Committee on General Government Operations. Follows a similar provision in
35 Executive Order 65-12A, the former Procurement Regulations for the government of Guam. The aim is to encourage
36 local businesses to the maximum extent possible. However, some needs of the government must be procured from
37 off-island, especially services, and often such businesses do not have a system of agencies. Also, while local
38 businesses are to be encouraged, they are not to be encouraged at a too-great expense to the general treasury. A
39 safeguard is added to ensure that the comparison is equalized - so that what is compared is the total, delivered cost,

1 not just the relative catalog costs between the on and off-island vendors. The formula "f.o.b. jobsite, unloaded" is
2 taken from Hawaii law (HRS§103-43).

3 NOTE: However, it has been found that the local preference rule cannot be applied to professional services
4 acquired pursuant to the procedures specified in § 5216. Section 5216 requires award to the best qualified based on
5 evaluation factors so long as a compensation amount which is fair and reasonable can be negotiated. A comparison
6 of prices or costs is not possible where an award is to be made to the best qualified.

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14 **Section 4.** Section 5030 of Title 5, Guam Code Annotated, is hereby repealed and re-
15 enacted to read:

16
17 **§ 5030. Definitions.**

18
19 As used in this Chapter, unless the context in which they are used requires a different
20 meaning, or unless a different definition is prescribed for a particular Chapter, Article or
21 provision:

22
23 (a) Award means granting a contract; an award is the execution of a contract between
24 the government and the bidder or offeror as the result of the procurement process; an award takes
25 place at that moment when an enforceable contract exists between the government and the
26 offeror or bidder.

27
28 (b) *Business* means any corporation, partnership, individual, sole proprietorship, joint
29 stock company, joint venture, or any other private legal entity.

30
31 (c) *Change Order* means a written order signed by the Procurement Officer, directing
32 the contractor to make changes which the changes clause of the contract authorizes the
33 Procurement Officer to order without the consent of the contractor.

34
35 (d) *Chief Procurement Officer* means the person holding the position created in
36 §5110 of this Chapter, as the head of the central procurement office of Guam.

1 (e) *Contract* means all types of territorial agreements, regardless of what they may be
2 called, for the procurement or disposal of supplies, services or construction.

3
4 (f) *Contract Modification* means any written alteration in specifications, delivery
5 point, rate of delivery, period of performance, price, quantity or other provisions of any contract
6 accomplished by mutual action of the parties to the contract.

7
8 (g) *Contractor* means any person having a contract with a governmental body.

9
10 (h) *Construction* means the process of building, altering, repairing, improving, or
11 demolishing any public structure or building, or other public improvements of any kind to any
12 public real property. It does not include the routine operation, routine repair, or routine
13 maintenance of existing structures, buildings, or real property.

14
15 (i) *Data* means recorded information, regardless of form or characteristic.

16
17 (j) *Designee* means a duly authorized representative of a person holding a superior
18 position.

19
20 (k) *Employee* means an individual drawing a salary from a governmental body,
21 whether elected or not, and any noncompensated individual performing personal services for any
22 governmental body.

23
24 (l) *Governmental Body* means any department, commission, council, board,
25 bureau, committee, institution, agency, government or public corporation, authority *or* other
26 establishment *or* establishment *or* official of the executive branch of the government of Guam,
27 *except* for the Government of Guam Retirement Fund, Guam Community College, the University
28 of Guam, the Department of Education, and the Guam Memorial Hospital Authority.

29
30 (m) *Grant* means the furnishing by the Territory of assistance, whether financial or
31 otherwise, to any person to support a program authorized by law. It does not include an award
32 whose primary purpose is to procure an end product, whether in the form of supplies, services
33 or construction; a contract resulting from such an award is not a grant but a procurement
34 contract.

1
2 (n) *May* denotes the permissive.

3
4 (o) *Person* means any business, individual, union, committee, club, other
5 organization
6 or group of individuals.

7
8 (p) *Procurement* means buying, purchasing, renting, leasing or otherwise acquiring
9 any supplies, services or construction. It also includes all functions that pertain to the obtaining
10 of any supply, service or construction, including description of requirements, selection and
11 solicitation of sources, preparation and award of contract, and all phases of contract
12 administration.

13
14 (q) *Procurement Officer* means any person duly authorized to enter into and
15 administer contracts and make written determinations with respect thereto. The term also
16 includes an authorized representative acting within the limits of authority.

17
18 (r) *Purchasing agency* means any governmental body of the Territory including but
19 not limited to any government of Guam agency, autonomous agency, semi-autonomous agency,
20 public corporation, or instrumentality other than the Chief Procurement Officer or the Director of
21 Public Works which is authorized by this Chapter or its implementing regulations, or by way of
22 delegation from the Chief Procurement Officer, to enter into contracts.

23
24 (s) *Regulation* shall have the meaning given in the Administrative Adjudication Law.

25
26 (t) *Services* means the furnishing of labor, time or effort by a contractor, not
27 involving the delivery of a specific end product other than reports which are merely incidental to
28 the required performance. This term shall not include any form of employment relationship
29 with
30 the government or collective bargaining agreements. Services also includes printing and
31 processing for printing finished products, such as books, reports, and other items which are,
32 when delivered in finished form and are not to be further processed by the using agency.

33
34 (u) *Shall* denotes the imperative.
35

1 (v) *Supplies* means all property, including but not limited to equipment, materials,
2 printing of forms, stationery and the like which are designed for further use or processing by the
3 using agency, insurance, and leases of real property, excluding land and a permanent
4 interest in land.

5
6 (w) *Using agency* means any governmental body of the Territory including but not
7 limited to any government of Guam agency, autonomous agency, semi-autonomous agency,
8 public corporation, or instrumentality which utilizes any supplies, services or construction
9 procured under this Chapter.

10
11 (x) *Entity* means any department, agency whether line, autonomous or semi-
12 autonomous, board, commission, instrumentality, public corporation or branch of the
13 government of Guam and any corporation or person expending funds appropriated from the
14 Government of Guam.

15
16 (y) *Emergency* means a condition posing an imminent threat to public health, welfare,
17 or safety which could not have been foreseen through the use of reasonable and prudent
18 management procedures, and which cannot be addressed by other procurement methods of
19 source
20 selection.

21
22 **SOURCE:** GC § 6952. MPC § 1-301 modified. Subsection (k) amended by P.L.17-27:2, P.L. 17-43:2, P.L. 29-
23 109:10 (Aug. 26, 2008). Subsection (w) added by P.L. 18-15:X:27; amended by P.L. 18-32:6. Subsection (x) added
24 by P.L. 18-44:26.

25 **COMMENT:** Reference to Department of Education changed to Guam Public School System pursuant to P.L. 28-
26 045:10 (June 6, 2005).

27 **NOTE:** The addition of a definition for the term "award" in subsection (a) attempts to clarify a term that has been varied when
28 litigated and has major consequences on which remedies to apply.

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31 **Section 5.** Section 5121 of Title 5, Guam Code Annotated, is hereby repealed and re-
32 enacted to read:

33
34 **§ 5121. Authority to Contract for Certain Services and Approval of Contracts.**

35
36 (a) General Authority. Notwithstanding any other provisions of law, for the purpose of
37 procuring the services of accountants, physicians, lawyers, dentists, licensed nurses, other
38 licensed health professionals, and other professionals, any governmental body of Guam may act

1 as a purchasing agency and contract on its own behalf for such services, *subject to* this Chapter
2 and regulations promulgated by the Policy Office and that procurement of professional services
3 under this Section also requires a written contract in a form approved by the agency's attorney or
4 the Office of the Attorney General, but this Subsection shall *not* authorize the procuring of such
5 services where any given governmental body is otherwise prohibited from procuring such
6 services.

7
8 (b) Approval of Contracts for Legal Services. No contract for the services of legal
9 counsel

10 in the Executive Branch shall be executed without the approval of the Attorney General.
11 Nothing in this Section or Chapter shall preclude the Attorney General or his designee from
12 participating in negotiations for any contract upon the request of the government officer or
13 agency primarily responsible for such negotiations.

14 (c) Approval of Contracts Generally. The Chief Procurement Officer, or his designee, or
15 a procurement officer of an agency authorized to procure the services or supplies in question, as
16 stated in the Rules promulgated by the Policy Office, shall execute all contracts for the
17 government of Guam. The Chief Procurement Officer may approve standard form contracts or
18 purchase orders which shall include a demonstration of compliance with §§ 5801 & 5802 of this
19 Chapter, where applicable, and once such approval of the standard form is given, contracts or
20 purchase orders made on such form may be executed without the further approval of the Chief
21 Procurement Officer unless he has reserved such power of approval pursuant to the applicable
22 rules promulgated by the Policy Office.

23
24 (d) Approval of Contracts by Department of Revenue and Taxation. Notwithstanding any
25 other provision of law, the Director of the Department of Revenue and Taxation or his designee
26 shall have exclusive authority to approve and execute all contracts for the procurement of
27 supplies, license plates, safety decals, tax forms, tax booklets, and printing services for the
28 department.

29
30 (e) Approval of Contracts by Government of Guam Retirement Fund. Notwithstanding
31 any other provision of law, the Board of Trustees of the Government of Guam Retirement Fund
32 shall have exclusive authority to approve and execute all contracts for the procurement of
33 professional services associated with the operation of the Fund.

34
35 **SOURCE:** GC § 6954.7. MPC § 2-302 modified. GC § 6107. Subsection (d) added by P.L. 18-15:X:43. Subsection (a) amended
36 by P.L.25-121:5. Subsection (c) amended by P.L. 28-165:2 (Jan. 4, 2007). Subsection (e) added by P.L. 28-188:2(Jan. 29,2007).

37 **NOTE:** Subsection (a) amended by P.L. 25-121:5. However, P.L. 25-121:5 purported to amend 5 GCA § 5151(a). The language
38 therein was identical to that in section 5121(a) but for the addition of "licensed nurses, other health professional" and the
39 replacing of "Territory" with "Guam." Compiler believes the use of section 5151 to have been a manifest clerical or
40 typographical error.

41 **COMMENT:** Subsection (a) recognizes that the procurement of the services of professionals usually requires extended analysis
42 by the procuring department, and procurement is needed for the specific purposes of the department. However, the final clause is
43 added by the Committee on General Governmental Operations to make sure that this Subsection does not authorize the use of, for

1 instance, legal services, where other law, i.e., that pertaining to the Attorney General, does not authorize an entity to use its own
2 legal counsel.

3 NOTE: Subsection (a) was amended further to mandate that procurement of professional services also include a written contract
4 or agreement in a form approved by an attorney or the Attorney General in order to trigger review by an attorney as there
5 have been problems with using purchase orders alone to procure professional services.

6 Subsection (b) recognizes the general primacy of the Attorney General over all legal matters of the Government of Guam. Other
7 laws provide what agencies may and may not hire their own counsel. Obviously, the Attorney General cannot act contrary to
8 those laws, but he should have the authority to check and make sure an agency does not hire its own counsel when it is not
9 authorized to do so.

10 Subsection (c) recognizes that neither the Governor nor the Attorney General sign routine purchase orders - which are contracts.
11 The Committee determined that neither the Attorney General nor the Governor should be required to sign procurement contracts.
12 However, since existing law states that all contracts are not executed until signed by the Governor, this Section must state when
13 procurement contracts are executed. If the Attorney General or the Governor wish to review any contracts, this Section will not
14 prohibit it.

15 **Section 6.** Section 5122 of Title 5, Guam Code Annotated, is hereby repealed and re-
16 enacted to read:

17
18 **§ 5122. U.S. Government.**

19
20 The General Services Agency shall procure supplies from the United States when the cost
21 to the General Services Agency, F.O.B. job site, unloaded, and if required by specifications, to
22 include maintenance is less by ten percent (10%) than from other contractors.

23
24 **SOURCE:** GC § 6954.8. New Section. See Government Code § 6117, E.O. 65-12A. Organic Act 21-A permits the government
25 of Guam to purchase through the General Services Agency of the U.S. Government.

26 NOTE: The addition of the clause, "F.O.B. job site, unloaded, and if required by specifications, to include
27 maintenance" is intended to assure that purchases from the federal catalogue are truly less by ten percent
28 assuring that the cost of the supply in the federal catalogue, being compared with the cost of other contractors,
29 includes the delivery costs to Guam and the cost of maintenance [See §5008(b)].

30
31
32 **Section 7.** A New Section 5126 of Title 5, Guam Code Annotated, is hereby added and
33 enacted to read:

34
35 **§ 5126. Joinder or Mutual Use of Contracts by Governmental Entities.**

36
37 The Chief Procurement Officer, the Director of Public Works and any purchasing agency
38 are authorized to join or use the contracts of other states or other government units within or
39 outside of Guam, with the authorization of the contracting vendor. The other states or other
40 government units wherever located are not liable for the obligations of the Guam governmental
41 entity which joins or uses the contract. Before any joinder or mutual use may take place, the
42 contracting officer must determine in writing that the other jurisdiction's contract has gone
43 through a competitive procurement process.

1 NOTE: A common practice among federal agencies and other states and local procurement units is to authorize the
2 procuring authority to use a contract of another jurisdiction. The practice saves the government time and money.

3
4
5 **Section 8.** Section 5215 of Title 5, Guam Code Annotated, is hereby repealed and re-
6 enacted to read:

7
8 **§ 5215. Emergency Procurement.**
9

10 Notwithstanding any other provision of this Chapter, the Chief Procurement Officer, the
11 Director of Public Works, the head of a purchasing agency, or a designee of either officer may
12 make or authorize others to make emergency procurements when there exists a threat to public
13 health, welfare, or safety under emergency conditions as defined in regulations promulgated by
14 the Policy Officer; provided that such emergency procurements shall be made with such
15 competition as is practicable under the circumstances, and further provided that the procurement
16 agency must solicit at least three (3) informal price quotations, if time allows must give notice to
17 all contractors from the qualified bid list who have provided the needed supplies and services to
18 the government within the preceding twelve (12) months, and must award the procurement to the
19 firm with the best offer, as determined by evaluating cost and delivery time. If the emergency
20 procurement is of a service specified in § 5121(a) of this Chapter, then the procuring agency
21 must solicit at least three (3) contractors for their qualifications and interest in providing the
22 emergency services, and their ability to perform the emergency services within the time frames
23 specified by the procuring agency, and the procuring agency shall award the procurement to the
24 contractor who the procuring agency determines best meets the agency's requirements. No
25 emergency procurement or combination of emergency procurements may be made for an amount
26 of goods or supplies greater than the amount of such goods and supplies which is necessary to
27 meet an emergency for the thirty (30) day period immediately following the procurement, except
28 that emergency procurement of services specified in § 5121(a) may be for the time period
29 necessary to complete the project contemplated by the procuring agency. If the procuring
30 agency determines in writing that it is impractical to obtain goods or supplies for thirty (30) days
31 because of the nature of the emergency, then the procuring agency may obtain an amount of
32 goods and supplies sufficient for up to ninety (90) days. A written determination of the basis for
33 the emergency and for the selection of the particular contractor shall be included in the contract
34 file. The requirements for a written determination for the emergency shall be met if the
35 procurements are being made on the basis of the Governor's declaration of an emergency
36 situation by Executive Order if such Order states that emergency procurement may be resorted to
37 for the purposes of the Order. Unless authorized by an Executive Order declaring an emergency,
38 no emergency procurement may be made except on a certificate made under penalty of perjury
39 by the Chief Procurement Officer, Director of Public Works or the head of a purchasing agency,
40 as the case may be. Certified copies of the certificate shall be sent, prior to award and as a
41 condition thereof, to the Governor and Speaker of the Legislature. The certificate shall contain
42 the following:

- 43
44 (1) a statement of the facts giving rise to the emergency;
45

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

3
4 (3) a statement that emergency procurement is not being used solely for the purpose of
5 avoidance of the provisions of this Chapter.
6

7 In addition to any other requirement, the Governor must approve in writing all
8 authorizations for emergency procurement.
9

10 NOTE: In practical application, this section has presented two problems which this amendment tries to resolve.
11 First, professional services are not solicited on the basis of price. Hence, this section must clarify that when there is
12 an emergency procurement of professional services, the basis of comparison of the contractors will be their
13 qualifications and interest in performing the services, and their ability to perform the services within the time
14 required by the emergency. Also, professional services generally involve a specific project, such as an architect who
15 is needed to design a specific structure, or an attorney who is needed for representation in a particular court case. It
16 makes better sense to allow the professional to complete the project rather than to change professionals every thirty
17 days or until such time a permanent professional is acquired. Second, some times an emergency procurement is
18 necessary to cover the interim period until a more permanent procurement can be made. In this situation, generally,
19 government agencies need a bit more time to make the permanent procurement than thirty days if the government
20 agency is to issue an invitation to bid or request for proposals. The amendment will allow the agency to make a
21 procurement for up to ninety days upon written determination stating the reasons why thirty days is insufficient.
22
23

24 **Section 9.** Section 5216 of Title 5, Guam Code Annotated, is hereby repealed and re-
25 enacted to read:
26

27 **§ 5216. Competitive Selection Procedures for Services Specified in §5121 of this Chapter.**
28

29 (a) Conditions for Use. The services specified in § 5121(a) of this Chapter shall be
30 procured in accordance with this Section, except as authorized under 5214 or 5215 of this
31 Chapter. Services for ~~architecture, engineering, construction, land surveying, environmental~~
32 ~~assessment and other such services~~ shall be procured by competitive sealed bidding and shall
33 also follow the requirements in accordance with Article 5 of this Chapter.
34

35 (b) Statement of Qualifications. Persons engaged in providing the types of services
36 specified in § 5121(a) of this Chapter may submit statements of qualifications and expressions of
37 interest in providing such types of services. The Procurement Officer may specify a uniform
38 format for statements of qualifications. Persons may amend these statements at any time by filing
39 a new statement.
40

41 (c) Public Announcement and Form of Request for Proposals. Adequate notice of the
42 need for such services shall be given by the purchasing agency through a Request for Proposals.
43 The Request for Proposals shall describe the services required, list the type of information and
44 data required of each offeror, and state the relative importance of particular qualifications.
45

1 (d) Discussions. The head of the purchasing agency or a designee of such officer may
2 conduct discussions with any offeror who has submitted a proposal to determine such offeror's
3 qualifications for further consideration. Discussions shall not disclose any information derived
4 from proposals submitted by other offerors.

5
6 (e) Award. Award shall be made to the offeror determined in writing by the head of the
7 purchasing agency or a designee of such officer to be best qualified based on the evaluation
8 factors set forth in the Request for Proposals, and negotiation of compensation determined to be
9 fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, the
10 negotiations will be formally terminated with the selected offeror. If proposals were submitted by
11 one or more other offerors determined to be qualified, negotiations may be conducted with
12 such other offeror or offerors, in the order of their respective qualification ranking, and the
13 contract may be awarded to the offeror then ranked as best qualified if the amount of
14 compensation is determined to be fair and reasonable.

15
16 (f) Evaluation Factors. The Request for Proposals shall state the relative importance of
17 factors and subfactors, if any. Price may be included as a factor or sub-factor if relevant.

18
19 **SOURCE:** GC § 6959.6. MPC § 3-207. Subsection (a) amended by P.L. 18-44:32.

20 **NOTE:** Until the recent amendments to subsection (a), the reference in subsection (a) to Article 5 was confusing
21 because Article 5 is about construction contracts and does not contain any information regarding the procurement of
22 architecture, engineering, land surveying and environmental assessment services which are professional services that
23 fall under § 5121(a).

24 **NOTE:** Subsection (f) is based on §3-203(5) of the 2000 Model Procurement Code (MPC) and deemed to be
25 necessary to allow price as a factor because former Rule 3-203 of GSA Procurement Regulations (now codified as 2
26 GAR Division 4 §3110) was believed to be repealed by P.L. 18-8:8 [also see commentary note to 5 G.C.A.
27 §5210(a)(1)].

28
29
30 **Section 10.** Section 5233 of Title 5, Guam Code Annotated, is hereby repealed and re-
31 enacted to read:

32
33 **§ 5233. Disclosure of Major Shareholders.**

34
35 (a) As a condition of submitting a bid or offer, any partnership, sole proprietorship or
36 corporation doing business with the government of Guam shall submit an affidavit executed
37 under oath that lists the name and address of any person who has held more than ten percent
38 (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation
39 at any time during the twelve (12) month period immediately preceding submission of a bid, or,
40 that it is a not for profit organization that qualifies for tax exemption under the Internal Revenue
41 Code of the United States or the Business Privilege Tax law of Guam, Title 12, Guam Code
42 Annotated, Section 26203©. With the exception of not for profit organizations, the affidavit
43 shall contain the number of shares or the percentage of all assets of such partnership, sole
44 proprietorship or corporation which have held by each such person during the twelve (12)
45 month period. In addition, the affidavit shall contain the name and address of any person who
46 has received or is entitled to receive a commission, gratuity or other compensation for procuring
47 or assisting in obtaining business related to the bid or offer and shall also contain the amounts of

1 any such commission, gratuity or other compensation. The affidavit shall be open and available
2 to the public for inspection and copying.

3
4 (b) As a condition of submitting a bid or offer, during the pendency of the bid or offer,
5 and as a condition of accepting an award of a contract with the government for supplies or
6 services, during the pendency of the contract, any partnership, sole proprietorship or corporation
7 that has a material change in the form of its business, or a material change in the interest or
8 shares of ownership in the sole proprietorship, partnership or corporation such that there is a
9 change in the identity of any person who holds more than ten percent (10%) of the outstanding
10 interest or shares in said partnership, sole proprietorship or corporation, shall submit an affidavit
11 executed under oath setting out that information identified here that has changed since
12 submission of an affidavit previously submitted pursuant to this section.

13
14 (c) Any partnership, sole proprietorship or corporation that is a sub-contractor under a
15 contract with the government of Guam, and whose sub-contract has a value more than fifty-one
16 percent (51%) of the prime contract, shall be required to comply with subsection (a) and (b) of
17 this section.

18
19 **SOURCE:** Added by P.L. 18-44:44.

20 **NOTE:** This Section on the disclosure of major shareholders required amendments that updated it which included making it
21 consistent with the tax code; not imposing the requirement on non-profit organizations; taking into account material changes of
22 ownership of the corporations, partnerships, or sole proprietorships; and requiring disclosure of certain sub-contractors under a
23 contract with the government of Guam.

24
25 **Section 11.** Section 5425 of Title 5, Guam Code Annotated, is hereby repealed and re-
26 enacted to read:

27
28 **§ 5425. Authority to Resolve Protested Solicitations and Awards.**

29
30 **(a) Right to Protest.** Any actual or prospective bidder, offeror, or contractor who ~~may be~~
31 is aggrieved in connection with the method of source selection, solicitation or award of a
32 contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head
33 of a purchasing agency. An aggrieved person or party means an actual or prospective bidder or
34 offeror, or contractor whose economic interest might be affected substantially and directly by the
35 issuance of a solicitation, the award of a contract, or by the failure to award a contract, and
36 whether an actual or prospective bidder or offeror has economic interests will depend upon the
37 circumstances of each case. The protest shall be submitted in writing within ~~fourteen (14)~~ seven
38 (7) calendar days after such aggrieved person knows or should know of the facts giving rise
39 thereto, and the written protest shall be accompanied by a protest bond in accordance with
40 §5425.1 . Any issues raised by the protesting party after the seven (7) days shall not be
41 considered as part of the protest.

42
43 **(b) Authority to Resolve Protests.** The Chief Procurement Officer, the Director of
44 Public Works, the head of a purchasing agency, or a designee of one of these officers shall have
45 the authority, prior to the commencement of an action in court concerning the controversy, to
46 settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective,

1 concerning the solicitation or award of a contract. This authority shall be exercised in accordance
2 with regulations promulgated by the Policy Office.

3
4 **(c) Decision.** If the protest is not resolved by mutual agreement, the Chief Procurement
5 Officer, the Director of Public Works, the head of a purchasing agency, or a designee of one of
6 these officers shall promptly issue a decision in writing within seven (7) calendar days of
7 receiving the written protest. The decision shall:

- 8
9 (1) state the reasons for the action taken; and
10 (2) inform the protestant of its right to administrative and judicial review.

11
12 **(d) Notice of Decision.** A copy of the decision under Subsection ©) of this Section shall
13 be mailed or otherwise furnished immediately to the protestant and any other party intervening.

14
15 **(e) Appeal.** A decision under Subsection © of this Section including a decision there
16 under regarding entitlement to costs as provided by Subsection (h) of this Section, may be
17 appealed by the protestant, to the Public Auditor within ~~fifteen (15)~~ seven calendar (7) days after
18 receipt by the protestant of the notice of decision. The Public Auditor or his or her hearing
19 officer shall hold a hearing within forty (40) calendar days of receipt of protestant's notice of
20 appeal unless good cause requires an extension of time, in which case the hearing in the
21 protestant's appeal shall be held within sixty (60) calendar days of receipt of protestant's appeal.
22 The Public Auditor shall render a written decision of the protestant's appeal within thirty (30)
23 calendar days of the completion of the hearing on the issue or issues on appealed from.

24
25 **(f) Finality.** A decision of the Public Auditor shall be is final and conclusive unless
26 fraudulent, or unless an aggrieved person adversely affected by the decision commences an
27 action in the Superior Court in accordance with Subsection (a) of §5480 of this Chapter.

28
29 **(g) Stay.** In the event of a timely protest under Subsection (a) of this Section or under
30 Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the
31 solicitation or with the award of the contract prior to final resolution of such protest, and any
32 such further action is void, unless:

33
34 (1) The Chief Procurement Officer or the Director of Public Works after
35 consultation with and written concurrence of the head of the using or purchasing agency and the
36 Attorney General or designated Deputy Attorney General, makes a written determination
37 that the solicitation or award of the contract without delay is necessary to protect substantial
38 interests of the Territory agency, autonomous agency, semi-autonomous agency, public
39 corporation, or instrumentality; and

40
41 (2) Absent a declaration of emergency by the Governor, the protestant has been
42 given at least two (2) days notice (exclusive of territorial holidays); and

43
44 (3) If the protest is pending before the Public Auditor or the Court, the Public
45 Auditor or Court has confirmed such determination of substantial interest was an abuse of

1 discretion by the Chief Procurement Officer or the Director of Public Works or head of the
2 purchasing or using agency and the Attorney General or designated Attorney General, or if no
3 such protest is pending, no protest to the Public Auditor of such determination is filed prior to
4 expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section.

5
6 (h) **Entitlement to Costs.** In addition to any other relief or remedy granted under
7 Subsection © or (e) of this Section or under Subsection (a) of § 5480 of this Chapter, including
8 the remedies provided by Part B of Article 9 of this Chapter, when a protest is sustained, the
9 protestant shall be entitled to the reasonable costs incurred in connection with the solicitation and
10 protest, including bid preparation costs, excluding attorney's fees, if:

11
12 (1) the protestant should have been awarded the contract under the solicitation but
13 was not; or

14 (2) there is a reasonable likelihood that the protestant may have been awarded the
15 contract but for the breach of any ethical obligation imposed by Part B of Article 11 of this
16 Chapter or the willful or reckless violation of any applicable procurement law or
17 regulation. The Public Auditor shall have the power to assess reasonable costs including
18 reasonable attorney fees incurred by the government, including its autonomous or semi-
19 autonomous agencies, instrumentalities and public corporations, against a protestant upon its
20 finding that the protest was made fraudulently, frivolously or solely to disrupt the procurement
21 process.

22
23 **SOURCE:** GC '6975. MPC '9-101. Repealed and reenacted by P.L. 18-44:2.Subsections (e), (f),(g)(3),(h)(2)
24 amended by P.L. 28-068:IV:67 (Sept. 30, 2005). 2 AAC (a) (7).

25 **NOTE:** The amendments to Subsection (a) further define an aggrieved protestor who has a direct interest in the
26 procurement, and also includes protest bond requirements and a shorter time line for protesting.

27 The amendments to subsections (c) and (e) also provide specific time lines for expeditious decision making in
28 protests at the agency level and by the Office of the Public Auditor or Accountability [(See 2 GAR, Div. 4, §12104
29 (c) (3) and (4): in that the Agency Report is due 10 working days after a Notice of Appeal is filed (as many as 14
30 days), a comment on the Agency Report due 10 calendar days after the report is filed, and a reply to the comments
31 due 5 working days later (as many as 7 days). (A total of as many as 32 days)].

32 The amendment to subsection (g) is intended to clarify that the substantial interests are specifically those of the
33 using or purchasing agency, and a specific standard of review that acknowledges the need for deference and
34 consideration when reviewing the substantial interest determination of the Chief Procurement Officer, Director of
35 Public Works or the head of purchasing or using agency and the Attorney General rather than a 'de novo' standard
36 that has been previously utilized by the OPA..

37
38
39 **Section 12.** A new Section 5425.1 of Title 5, Guam Code Annotated, is hereby added
40 to read:

41
42 **§ 5425. 1 Protest Bond.**

43
44 (a) Any aggrieved person who files a protest under §5425(a) shall post a bond payable to
45 the government agency or using agency or purchasing agency, autonomous agency, semi-
46 autonomous agency, public corporation, or instrumentality in an amount equal to [five percent
47 (5%) of the lowest bid submitted or lowest cost proposal evaluated or five percent (5%) of the
48 highest revenue proposal evaluated], which bond shall be conditioned upon payment of all costs

1 which may be adjudged against the protester in the administrative or appeal hearing before the
2 Public Auditor in which the action is brought and in any subsequent court or appellate court
3 proceedings.

4
5 (b)Such protest bond shall be in a form and substance acceptable to the Chief
6 Procurement Officer or Director of the Department of Public Works or the using or purchasing
7 agency and shall be immediately payable to the government agency or using agency or
8 purchasing agency, autonomous agency, semi-autonomous agency, public corporation, or
9 instrumentality. In lieu of a bond, a cashier's check, certified bank check, bank certified
10 company check, irrevocable letter of credit, money order or U.S. currency would be acceptable
11 form of security.

12
13 (c) If, after completion of the administrative hearing process before the Public Auditor
14 and any court or appellate court proceedings, the government or purchasing agency, autonomous
15 agency, semi-autonomous agency, public corporation, or instrumentality prevails, it shall
16 recover all costs and charges, which shall be included in the final order or judgment, including
17 charges made by the Public Auditor Hearings, but excluding attorney's fees. Upon payment of
18 such costs and charges by the protester, if any, the protest bond or security shall be returned;
19 provided, however, that the Public Auditor or his or her hearing officer or the court has not
20 determined that the protest was filed for a frivolous or improper purpose, including but not
21 limited to the purpose of harassing, causing unnecessary delay, or causing needless cost to the
22 the government or purchasing agency, autonomous agency, semi-autonomous agency, public
23 corporation, or instrumentality, in which case the entire amount of the bond shall be forfeited . If
24 the protester prevails, he or she shall recover from the government or purchasing agency,
25 autonomous agency, semi-autonomous agency, public corporation, or instrumentality all costs
26 and charges which shall be included in the final order of judgment, excluding attorney's fees.

27
28
29 NOTE: This new section is intended to require a protest bond by the protestant in an attempt to safeguard the
30 procurement process against protests made for frivolous, malicious or improper purposes or delays.

31
32
33 **Section 13.** Section 5480 of Title 5, Guam Code Annotated, is hereby repealed and re-
34 enacted to read:

35
36 **§ 5480. Waiver of Sovereign Immunity in Connection with Contracts.**

37
38 (a) Solicitation and Award of Contracts. The Superior Court of Guam shall have
39 jurisdiction over an appeal from the administrative decision of the Chief Procurement Officer,
40 Director of the Department of Public Works, head of the using or purchasing agency, or the
41 Public Auditor or his or her hearing officer or action between the Territory and a bidder, offeror,
42 or contractor, either actual or prospective, to determine whether a solicitation or award of a
43 contract is in accordance with the statutes, regulations, and the terms and conditions of the
44 solicitation. The Superior Court shall have such jurisdiction in actions at law or in equity, and
45 whether the actions are for monetary damages or for declaratory, or other equitable relief.

1 (b) Debarment or Suspension. The Superior Court shall have jurisdiction over an action
2 between the Territory and a person who is subject to a suspension or debarment proceeding, to
3 determine whether the debarment or suspension is in accordance with the statutes and
4 regulations. The Superior Court shall have such jurisdiction, in actions at law or in equity, and
5 whether the actions are for declaratory, or other equitable relief.
6

7 (c) In addition to other relief and remedies, the Superior Court shall have jurisdiction to
8 grant injunctive relief in any action brought under Subsections (a), (b) or © of this Section.
9

10 (d) Limited Finality for Administrative Determinations. In any judicial action under this
11 Section, factual or legal determinations by employees, agents or other persons appointed by the
12 Territory shall have no finality and shall not be conclusive, notwithstanding any contract
13 provision, or regulation, except to the extent provided in §§ 5245, 5705 and 5706 of this Chapter.
14

15 (e) For purposes of this Section a "prospective" bidder, contractor or offeror is one who
16 will actually submit a bid, contract or otherwise offer his services if, in the actions permitted by
17 this Section, such person would prevail.
18

19 (f) All actions permitted by this Article shall be conducted as provided in the Government
20 Claims Act.
21

22 **SOURCE:** GC § 6978. MPC § 9-401 heavily modified. Subsection © as amended by P.L. 18-44:9 and (d) by P.L.
23 18-44:8.

24 **COMMENT:** The MPC envisions a waiver of sovereign immunity far in excess of what has been granted
25 heretofore on Guam. Under existing law (before enactment of this Title) the Appellate Division of the District Court
26 has held, in *Alexander et al v. Bordallo* (not yet reported) (January 8, 1979, Civil Appeal No. 78-038A) that:

27 ". . . sovereign immunity applies to specific performance actions against the Government; otherwise the government
28 cannot operate effectively if its every act is subject to injunctive actions. See *Larson v. Domestic and Foreign*
29 *Corporation*, 337 U.S. 682, 69 S.Ct. 457, 93 L.Ed. 1629 (1948). Wright and Miller, Volume 14, 3655."

30 Further, the Government Claims Act, while not ideal (and substantially amended by P.L. 17-29, after the enactment
31 of this Chapter), has provided very adequate remedies in contract actions against the government. Therefore, this
32 Section has been amended to permit the additional action of declaratory judgment against the government and suits
33 as specifically permitted in this Section, but not injunctions. If the government or its employees are to be stopped in
34 undertaking actions alleged (by them) to be lawful, the plaintiff must meet the more difficult standard of a writ of
35 mandate or of prohibition.

36 Another change is to define "prospective" to limit it to a person who actually will submit a bid, contract or offer if he
37 succeeds in his suit rather than to permit wider suits by persons who may allege some vague interest in the
38 solicitation or contract, but who plan no immediate action.

39 The MPC is changed again to follow the Government Claims Act with respect to the procedure required in actions
40 against the government. Since this Section allows suits in certain specified cases, obviously claims need not first be
41 filed with the Attorney General, but at least the same court procedure must be followed.

42 A final change from the MPC is to delete references to "notwithstanding" provisions of other laws relative to finality
43 of decisions. While this Section does not permit executive action (contracts or rules of the Policy Office) to make
44 certain decisions of administrative officials unchallengeable, the change does continue former general provisions of
45 law with respect to administrative decisions and limited finality. There is no good reason to, in practice, change the
46 law so drastically. It does not serve either this title or other provisions of law on Guam. The whole aim of this
47 Chapter is to centralize procurement. The enacted amendments (P.L. 17-29) to the Government Claims Act do the
48 same with claims.

49 If this Section were to follow the MPC exactly, the net effect would be to "decentralize" and confuse the legal
50 aspects of both claims and this Chapter. Changed by Committee on GGO.

1 NOTE: The amendment to subsection (a) is intended to preclude the possibility of initiating a protest action directly
2 in the Superior Court rather than an agency should no longer be available.
3

4 **Section 14.** Section 5481 of Title 5, Guam Code Annotated, is hereby repealed and re-
5 enacted to read:
6

7 **§ 5481. Time Limitations on Actions.**
8

9 (a) **Protested Solicitations and Awards.** Notwithstanding any other law, aAny appeal
10 from the administrative decision of the protested procurement solicitation or award or action
11 between the Territory and a bidder, offeror, or contractor, either actual or prospective, to
12 determine whether a solicitation or award of a contract is in accordance with the statutes,
13 regulations, and the terms and conditions of the solicitation action under § 5480(a) of this
14 Chapter shall be initiated within ~~fourteen (14)~~ seven (7) days after receipt of a final
15 administrative decision.
16

17 (b) **Debarments and Suspensions for Cause.** Any action under §5480(b) of this Chapter
18 shall be commenced within six (6) months after receipt of the decision of the Policy Office under
19 § 5651 of this Chapter, or the decision of the Procurement Appeals Board under § 5707 of this
20 Chapter, whichever is applicable.
21

22 (c) **Actions Under Contracts or for Breach of Contract.** Any action commenced under
23 5480© of this Chapter shall be commenced within twelve (12) months after the date of the
24 Procurement Appeals Board decision.
25

26 (d) The limitations on actions provided by this Section are tolled during the pendency of
27 any proceeding brought pursuant to § 5485 of this Chapter.
28

29 **SOURCE:** GC § 6978.1. MPC § 9-402 modified (See also 2 GAR Division 4 §9102). Subsections (a), (b) and (c)
30 amended, and (d) added by P.L. 18-44:10-13 respectively.

31 **COMMENT:** Subsection © retains the limitations contained in the Government Claims Act (as in effect at the time
32 of enactment of this Chapter).

33 NOTE: The possibility of a 30 day filing period for initiating a protest action in the Superior Court without being
34 bound the seven (7) calendar days deadline to file a protest with the agency should no longer be available.
35
36

37 **Section 15.** Section 5601 of Title 5, Guam Code Annotated, is hereby repealed and re-
38 enacted to read:
39

40 **§ 5601. Definitions.**
41

42 As used in this Chapter:
43

44 (a) *Blind Trust* means an independently managed trust in which the employee-
45 beneficiary has no management rights and in which the employee-beneficiary is not given notice
46 of alterations in, or other dispositions of, the property subject to the trust.
47

1 (b) *Confidential Information* means any information which is available to an
2 employee only because of the employee's status as an employee of this Territory and is not a
3 matter of public knowledge or available to the public on request.
4

5 (c) *Conspicuously* means written in such special or distinctive format, print or
6 manner that a reasonable person against whom it is to operate ought to have noticed it.
7

8 (d) *Direct or Indirect Participation* means involvement through decision, approval,
9 disapproval, recommendation, preparation of any part of a purchase request, influencing the
10 content of any specification or procurement standard, rendering of advice, investigation, auditing
11 or in any other advisory capacity.
12

13 (e) *Financial Interest* means:
14

15 (1) ownership of any interest or involvement in any relationship from which, or as
16 a result of which, a person within the past year has received, or is presently or in the future
17 entitled to receive, more than Two Thousand Five Hundred Dollars (\$2,500) per year, or its
18 equivalent;
19

20 (2) ownership or such interest in any property or any business as may be specified
21 by the Ethics Commission; or
22

23 (3) holding a position in a business such as an officer, director, trustee, partner,
24 employee, or the like, or holding any position of management.
25

26 (f) *Gratuity* means a payment, loan, subscription, advance, deposit of money,
27 services, or anything of more than nominal value, present or promised, unless consideration of
28 substantially equal or greater value is received.
29

30 (g) *Immediate Family* means a spouse, children, a child's spouse, parents, brothers
31 and sisters, a spouse of a brother or sister, fathers- and mothers-in-law, brothers- and sisters-in-
32 law, or parents-in-laws.
33

34 (h) *Official Responsibility* means direct administrative or operating authority whether
35 intermediate or final, either exercisable alone or with others, either personally or through
36 subordinates, to approve, disapprove, or otherwise direct territorial action.
37

38 (I) *Purchase Request* means that document whereby a using agency requests that a
39 contract be entered into for a specified need, and may include, but is not limited to, the technical
40 description of the requested item, delivery schedule, transportation, criteria for evaluation,
41 suggested sources of supply, and information supplied for the making of any written
42 determination required by this Chapter.

43 **SOURCE:** GC § 6980. MPC § 12-101.

44 **NOTE:** Subsection (g) was amended to include an in-law of one's child or siblings and other in-laws as they are considered by
45 many people in our community to be a part of one's immediate family, and therefore expand the scope of conflicts of interest
46 relevant to unethical procurement conduct.

1
2 **Section 16.** A new Section 5634 of Title 5, Guam Code Annotated, is hereby added
3 and enacted to read:
4

5 **§ 5634. Organizational Conflict of Interest.**
6

7 (a) An organizational conflict of interest is a conflict of interest of a government
8 contractor that arises or might arise because the nature of the work to be performed may, absent
9 some restriction on future activities, result in an unfair competitive advantage to the contractor,
10 impair the contractor's objectivity in performing the contract work, or make the contractor
11 unable or potentially unable to render impartial assistance or advice to the government.
12

13 (b) The contracting officer is responsible for resolving any significant potential conflicts
14 before the award is made. Resolution may be by avoiding, neutralizing, or mitigating the
15 significant potential conflict, and shall be documented in writing in the procurement record.
16 Contracting officers should obtain the advice of counsel in evaluating potential conflicts and in
17 developing any necessary solicitation provisions or contract clauses, and avoid unnecessary
18 delays, burdensome information requirements, and excessive documentation.
19

20 (c) The contracting officer shall award the contract to the apparent successful offeror
21 unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before
22 determining to withhold award based on a conflict of interest consideration, the contracting
23 officer shall notify the contractor, provide the reasons therefor, and allow the contractor a
24 reasonable opportunity to respond. If the contracting officer finds that it is in the best interest of
25 the government of Guam to award the contract notwithstanding a conflict of interest, the
26 contracting officer may waive the requirements of this section and proceed with the award. The
27 determination to proceed shall be in writing and shall be included in the procurement record.
28

29 (d) If a contractor drafts, prepares or furnishes specifications to be used in an acquisition,
30 that contractor shall not be allowed to participate as a bidder or offeror in the acquisition of the
31 supplies or services specified.
32

33 (e) Contracts for the evaluation of bids or offers shall not be awarded to a contractor that
34 will evaluate its own bids or offers, or those of a competitor.
35

36 **NOTE:** This section is based on the Federal Acquisition Regulations Subpart 9.5 (48 CFR Chapter 1, Part 9)
37 concerning organization and consultant conflicts of interest.
38
39
40
41
42
43
44

45 **Section 17.** Section 5707 of Title 5, Guam Code Annotated, is hereby repealed and re-
46 enacted to read:

1
2 **§ 5707. Appeals and Review of Public Auditor Decisions.**
3

4 (a) Appeal. Any person receiving an adverse decision, the government or any
5 autonomous agency or public corporation, or both, may appeal from a decision by the Public
6 Auditor to the Superior Court of Guam as provided in ~~Article D of Chapter 9 of this Chapter~~ Part
7 D of Article 9 of this Chapter.
8

9 (b) Authorization of Appeal by the Government. No such appeal shall be made by the
10 government or an autonomous agency or public corporation unless recommended by the Chief
11 Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency
12 involved.
13

14 **NOTE:** Subsection (a) use to refer to “Article D of Chapter 9 of this Chapter”, but there is no Article D of Chapter 9
15 in this Chapter of the Guam Code Annotated. This corrects an oversight error at P.L. 28-068:IV:65. At the time that
16 the Government Code was recodified to the Guam Code Annotated, the original Article D of Chapter 9 became Part
17 D of Article 9. With this amendment Section 5707 (a) now refers to the same section of the law as did the original
18 enactment.
19
20