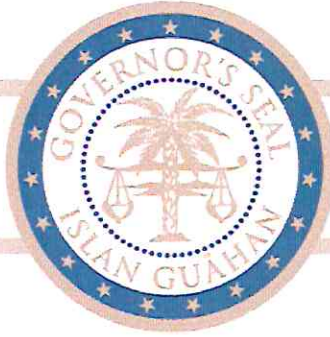


*I Mina'trentai Singko Na Liheslaturan Guåhan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
<b>90-35 (COR)</b> As substituted; amended by the Committee on Environment, Revenue and Taxation, and Procurement; further substituted; and amended on the Floor	Sabina Flores Perez Kelly Marsh (Taitano), PhD Amanda L. Shelton	AN ACT TO <i>REPEAL</i> AND <i>REENACT</i> § 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.	4/12/19 4:46 p.m.	5/2/19	Committee on Environment, Revenue and Taxation, and Procurement	6/5/19 9:00 a.m.	2/26/20 1:10 p.m.	Waiver: 4/24/19	9/4/19 5:57 p.m. As substituted by the Committee on Environment, Revenue and Taxation, and Procurement
	<b>SESSION DATE</b>	<b>TITLE</b>	<b>DATE PASSED</b>	<b>TRANSMITTED</b>	<b>DUE DATE</b>	<b>PUBLIC LAW NO.</b>	<b>DATE SIGNED</b>	<b>NOTES</b>	
10/12/20	AN ACT TO <i>REPEAL</i> AND <i>REENACT</i> § 5215 OF SUBARTICLE B, ARTICLE 3; AND <i>AMEND</i> § 5030(x) OF SUBARTICLE C, ARTICLE 1, BOTH OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR EMERGENCY PROCUREMENT FOR THREATS TO THE ENVIRONMENT, INCREASING TRANSPARENCY, AND OTHERWISE IMPROVING EMERGENCY PROCUREMENT.	10/19/20	10/19/20	10/30/20	35-109	10/30/20	Received: 10/30/20 Mess and Comm. Doc. No. 35GL-20-2396.		

LOURDES A. LEON GUERRERO  
MACA'HAGA • GOVERNOR



JOSHUA F. TENORIO  
SIGUNDO MACA'LÁHI • LIEUTENANT GOVERNOR

October 30, 2020

**HONORABLE TINA ROSE MUÑA BARNES**

*Speaker*

*I Mina'trentai Singko Na Liheslaturan Guåhan*

35<sup>th</sup> Guam Legislature  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

3564-20-2396  
Speaker Tina Rose Muña Barnes

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

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

Dear Madame Speaker:

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

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

///

///

To: Speaker Barnes  
Fr: Governor of Guam  
Dated: October 30, 2020  
Re: Substitute Bill No. 90-35 (COR) *nka P.L. 35-109*

---

Page 2 of 2

Nonetheless, and on balance, the benefits of Substitute Bill No. 90-35 outweigh the drawbacks. And it is for this reason that I am signing it into law as ***Public Law No. 35-109***.

*Senseramente,*



**LOURDES A. LEON GUERRERO**

*I Maga'hågan Guåhan*

Governor of Guam

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

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

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

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

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

  
\_\_\_\_\_  
**Tina Rose Muña Barnes**  
Speaker


Attested:

  
\_\_\_\_\_  
**Amanda L. Shelton**  
Legislative Secretary

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

  
\_\_\_\_\_  
Assistant Staff Officer  
*Maga'håga's Office*

APPROVED:

  
\_\_\_\_\_  
Lourdes A. Leon Guerrero  
*I Maga'hågan Guåhan*

Date: 10/30/2020

Public Law No. 35-109

Jessica Cruz



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

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

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

Introduced by:

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

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

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

2        **Section 1.**    § 5215 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code

3        Annotated, is *repealed* and *reenacted* to read:

1           **“§ 5215.    Emergency Procurements.**

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

3                   (d) How Conducted. To the extent practicable and except as  
4 otherwise allowed under this Section, an emergency procurement shall be  
5 made and conducted with competition and utilize competitive procedures used  
6 in this Chapter as is practicable under the circumstances, in the good faith  
7 discretion of the person authorized to make such emergency procurement. A  
8 record shall be kept of all determinations and statements required by this §  
9 5215, as well as all other matters required to be made a part of the procurement  
10 record by this Chapter. At the conclusion of a solicitation whether by award  
11 or cancellation, the Chief Procurement Officer, the Director of Public Works,  
12 the head of a purchasing agency, or the authorized designee of either officer;  
13 provided, the designee of any such officer is subject to § 5114(b) of this  
14 Chapter, shall make, date, and sign a written statement describing: the  
15 circumstances of the event of the emergency procurement; the solicitation  
16 process used; the names of potential bidders or offerors contacted; and the  
17 justification for the selection of the awardee. The solicitation and competition  
18 for an award of an emergency procurement contract should include:

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

24                   (2) a request for prompt expression of interest;

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

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

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

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



1 days prior to execution of the extension, a public hearing shall be held by the  
2 procuring agency, at which any person may present testimony. Notice of  
3 intent to extend an emergency contract shall be published in a newspaper of  
4 general circulation at least five (5) days prior to a public hearing. Notice shall  
5 include at least a description of the need for the emergency extension, the  
6 vendor, and the date, time, and location of the public hearing. A record of such  
7 plan shall be made and kept as a part of the procurement record as required by  
8 § 5249 of this Chapter.

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

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

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

18 **Section 4. Severability.** If any provision of this Act or its application to any  
19 person or circumstance is found to be invalid or contrary to law, such invalidity shall  
20 not affect other provisions or applications of this Act that can be given effect without  
21 the invalid provision or application, and to this end the provisions of this Act are  
22 severable.