

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

**Bill No. 36 - 37 (COR)**

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

Introduced by:

Sabina Flores Perez  
Chris Barnett  
Roy A.B. Quinata  
Joanne Brown  
William A. Parkinson  
Jesse A. Lujan  
Joe S. San Agustin

**AN ACT TO *ADD* NEW §§5428 AND 5429 TO SUBARTICLE A, ARTICLE 9, CHAPTER 5, DIVISION 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE REVIEW OF CRITICAL GOVERNMENT OF GUAM PROCUREMENT CONTRACT DECISIONS REASONABLY EXPECTED TO COST FIVE MILLION DOLLARS (\$5,000,000) OR MORE.**

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

2           **Section 1. Legislative Findings and Intent.**     *I Liheslaturan Guåhan*  
3           finds protests serve an invaluable role in the procurement process by promoting  
4           accountability, bidder confidence, and agency compliance. Protests may also  
5           highlight gaps in laws, which, in turn, can initiate reforms in order to ensure vital  
6           public funds are properly spent in meeting the needs of our community.

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

11            *I Liheslaturan Guahan* intends to establish a new category of procurement  
12 contract referred to as “Critical Procurement Contracts”, which involves  
13 procurement of capital improvement or infrastructure projects funded by Federal  
14 grants or other programs that is reasonably expected to cost five million dollars  
15 (\$5,000,000) or more.

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

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

23            **“§ 5428. Administrative Review of Critical Government of Guam**  
24 **Contract Procurement Decisions.**

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

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

4           (2) the contract is reasonably expected to cost Five Million Dollars  
5           (\$5,000,000) or more; and,

6           (3) the identified funding, the required labor available, or required  
7           materials for the Critical Procurement Contract, is restricted or becomes  
8           restricted to the material detriment of the procuring agency.

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

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

18          **“§ 5429. Authority to Resolve Protested Critical Procurement Contract**  
19          **Solicitations and Awards.**

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

26          (b) Authority to Resolve Critical Procurement Contract Protests. The Chief  
27          Procurement Officer, the Director of Public Works, the head of a purchasing agency,

1 or a designee of one of these officers shall have the authority, prior to the  
2 commencement of an appeal to the Public Auditor concerning the controversy, to  
3 settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or  
4 prospective, concerning the solicitation or award of a contract. This authority shall  
5 be exercised in accordance with regulations promulgated by the Policy Office.

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

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

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

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

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

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

22 (g) Automatic Stay. In the event of a timely protest under Subsection (a)  
23 of this Section, the Territory shall not proceed further with the solicitation or with  
24 the award of the contract prior to final administrative resolution of such protest,  
25 and any such further action is void

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

1           (i) The Public Auditor shall expedite the administrative review process of  
2 the appeal in accordance with the rules and regulations to be promulgated and  
3 adopted by the Public Auditor within ninety (90) days of the effective date of this  
4 Act, notwithstanding the Administrative Adjudication Law found in Chapter 9 of  
5 Title 5, Guam Code Annotated. Protests of any Critical Procurement Contract to the  
6 Public Auditor shall be in compliance with 5 Guam Code Annotated Article 12 and  
7 2 Guam Administrative Rules and Regulations, Division 4, Chapter 12.”

8           **Section 2. Automatic Repeal.** §§ 5428 and 5429 are repealed effective  
9 December 31, 2030, unless the federal grantor agency authorizes an extension of  
10 time for the expenditure Infrastructure and Investment Jobs Act funds, in which  
11 case this Section *shall* be repealed at the end of the extension period.

12           **Section 3. Promulgation of Rules and Regulations.** The Procurement  
13 Policy Office, pursuant to 5 GCA § 5130(a), shall promulgate rules and regulations  
14 consistent with this Act no later than ninety (90) calendar days after enactment of  
15 this Act, except rules and regulations required in § 5429(i), which shall be  
16 promulgated by the Public Auditor.

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

22           **Section 5. Effective Date.** This Act shall be effective upon enactment.