

I Mina'trentai Siette Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
149-37 (COR)	Sabina Flores Perez	AN ACT TO ADD A NEW § 1221, DIVISION 4, CHAPTER 12, OF TITLE 2, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE ADOPTION OF RULES AND REGULATIONS PROVIDING TEMPORARY EXPEDITED PROCUREMENT PROTEST PROCEDURES FOR ACQUISITIONS FUNDED WITH AMERICAN RESCUE PLAN ACT, EDUCATION STABILIZATION FUND, OR HEAD START GRANT MONEYS ALLOTTED TO THE GUAM DEPARTMENT OF EDUCATION.	7/7/23 2:22 p.m.						

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

Bill No. 149-37 (COR)

Introduced by:

Sabina Flores Perez *SFP*

AN ACT TO *ADD* A NEW § 1221, DIVISION 4, CHAPTER 12, OF TITLE 2, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE ADOPTION OF RULES AND REGULATIONS PROVIDING TEMPORARY EXPEDITED PROCUREMENT PROTEST PROCEDURES FOR ACQUISITIONS FUNDED WITH AMERICAN RESCUE PLAN ACT, EDUCATION STABILIZATION FUND, OR HEAD START GRANT MONEYS ALLOTTED TO THE GUAM DEPARTMENT OF EDUCATION.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the proposed Rules and Regulation providing temporary expedited procurement protest procedures for acquisitions funded with the American Rescue Plan Act, Education Stabilization Fund, or Head Start Grant monies allotted to the Guam Department of Education was submitted by the Public Auditor to *I Liheslaturan Guåhan* pursuant to Public Law 37-6 on June 1, 2023. Public Law 37-6 added a new § 5425.2 of Part A of Article 9, Chapter 5, Title 5, Guam Code Annotated, which authorized the Public Auditor to adopt and promulgate rules and regulations to carry out the provisions of the mandate.

It is therefore the intent of *I Liheslaturan Guåhan* to adopt the rules and regulations providing temporary expedited procurement protest procedures for

1 acquisitions funded with the American Rescue Plan Act, Education Stabilization
2 Fund, or Head Start Grant monies allotted to the Guam Department of Education.

3 **Section 2.** A new § 12217, Division 4, Chapter 12, of Title 2, Guam
4 Administrative Rules and Regulations is hereby *added* to read as follows:

5 **“§ 12217. Expedited Protest Procedure for Procurements Funded in**
6 **Whole or in Part by Funds Allotted to the Department of Education from the**
7 **American Rescue Plan Act of 2021, Education Stabilization Fund, or Head**
8 **Start Grant.**

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5 (a) Definitions. When used in this Regulation, the following definitions
6 shall apply:

7 (1) An “Aggrieved Person” shall mean a non-selected actual or
8 prospective vendor, contractor or service provider who may be aggrieved in
9 connection with a solicitation or an award of a contract that is funded in whole
10 or in part by funds allotted to the Department of Education, government of
11 Guam from the American Rescue Plan of 2021, the Education Stabilization
12 Fund, or Head Start Grant.

13 (2) “ARPA” shall refer to the American Rescue Plan of 2021; “ESF”
14 shall refer to the Education Stabilization Fund; and “HSG” shall refer to the
15 Head Start Grant.

16 (3) “Decision” shall mean a written decision or order of the Public
17 Auditor that is issued pursuant to 5 GCA § 5425.2 and the procedure found in
18 this Regulation.

19 (4) “DOE” shall refer to the Department of Education of the
20 government of Guam.

21 (5) “Person” shall refer to both natural and non-natural persons,
22 depending on the context.

23 (6) “Procedure” shall refer to the expedited procedure for resolution
24 of protests pursuant to this Regulation, as mandated by Public Law 37-6 and
25 the Legislature’s intent as announced in Section 1 of Public Law 37-6.

26 (7) “Procurement” shall refer to any procurement or stage of
27 procurement for a capital improvement project that is funded in whole or in
28 part by funds allotted to the Department of Education, government of Guam,

1 from the American Rescue Plan of 2021, the Education Stabilization Fund, or
2 Head Start Grant.

3 (8) “Protest” shall refer to a written dispute of a procurement
4 solicitation, selection, award, or contract for a capital improvement project
5 funded in whole or in part by funds allotted to the Department of Education,
6 government of Guam from the American Rescue Plan of 2021, the Education
7 Stabilization Fund, or Head Start Grant.

8 (9) “Regulation” shall refer to the regulation required to be
9 promulgated by the Public Auditor pursuant to Section 2 of Public Law 37-6,
10 and as promulgated and codified at this 2 GAR Div. 4 § 12217, to provide for
11 final, conclusive and exclusive resolution of Protests of Procurements.

12 (b) **Exclusive Jurisdiction.** The Public Auditor shall have exclusive
13 jurisdiction over a Protest under this Expedited Procedure. The Public Auditor’s
14 exclusive jurisdiction under 5 GCA § 5425.2 and this regulation shall lapse on the
15 fifteenth (15th) calendar day after the Aggrieved Person knew or should have known
16 of the facts giving rise to a protest. The Public Auditor’s Decision under this
17 Procedure shall be final and conclusive, and there is no right to file an action under
18 5 GCA § 5480, no right to judicial review or appellate review, and no interlocutory
19 appeal of a Decision or order that is issued under this Procedure.

20 (c) **Exclusive Procedure for Protests.** This Procedure is the exclusive
21 procedure to file a Protest of a Procurement. An Aggrieved Person must utilize this
22 Procedure to file a legally cognizable Protest.

23 (d) **Right to Protest.** An Aggrieved Person shall have the right under this
24 Procedure to file a Protest with the Public Auditor within fourteen (14) calendar days
25 from the date that such Person knew or should have known of the facts giving rise
26 to the Protest. The Protest may be of any phase of solicitation or award. Such right
27 to protest shall lapse and be unenforceable on the fifteenth (15th) calendar day after

1 the date that the Aggrieved Person knew or should have known of the facts giving
2 rise to the Protest.

3 (1) The Protest at a minimum should include:

4 (A) the name and address of the Aggrieved Person;

5 (B) appropriate identification of the procurement and, if a
6 contract has been awarded, its number;

7 (C) a statement of the reasons for the Protest;

8 (D) the earliest date that the Aggrieved Person had reason to
9 know of the fact(s) giving rise to the Protest; and

10 (E) supporting exhibits, evidence or documents to substantiate
11 the Protest.

12 (e) Service. The Aggrieved Person shall serve the Protest through any
13 means authorized by the Guam Rules of Civil Procedure for service of process.
14 Service of all other documents filed with the Public Auditor may be effected through
15 email to the party's attorney of record or to the party's email on record with DOE.
16 If a party serves a filed document by email, a notice of service by email together
17 with the email transmittal shall be filed with the Public Auditor.

18 (f) Protest resolution by mutual agreement. The Aggrieved Person, the
19 Department of Education, and the interested party shall have up to twenty (20)
20 calendar days from the date of the filing of a Protest to resolve, by mutual agreement,
21 the Protest under this Procedure. Such mutual agreement shall be in writing and shall
22 be filed with the Public Auditor by the twentieth (20th) calendar day after a Protest
23 has been filed under this Procedure.

24 (g) Procurement Record. The Aggrieved Person is required to provide
25 DOE no less than one (1) business day advanced notice prior to filing a Protest to
26 notify DOE in writing of its intent to file a Protest with the Public Auditor so that,
27 DOE may timely produce the procurement record. DOE shall provide the
28 procurement record to the Public Auditor within two (2) days of the filing of the

1 Protest. The Public Auditor may treat either the Aggrieved Person's failure to timely
2 provide DOE notification of an intent to file a Protest or a failure of DOE to timely
3 provide the procurement record as a default and render a Decision on such default.

4 **(h) Response to Protest.** The interested party and DOE shall have seven
5 (7) days from the date of the filing of the Protest to file a response to the Protest. The
6 Public Auditor may treat a failure to file a timely response to the Protest as a default
7 and render a Decision on such default.

8 **(i) Decision of the Public Auditor.** If there is no mutual agreement within
9 twenty (20) calendar days of the filing of the Protest, the Public Auditor shall
10 expedite the administrative review process and decide the Protest by issuing a
11 written Decision within twenty (20) days of the filing of the protest, Saturdays,
12 Sundays and government of Guam holidays excepted.

13 (1) The Decision of the Public Auditor shall provide the reasoning
14 for the Decision and shall inform the unsuccessful party that they have no
15 right to an action under 5 GCA § 5480, judicial review, final or interlocutory
16 appeal of the Decision.

17 (2) The Decision shall be served by certified mail at the addresses
18 provided in the procurement record or through personal service to DOE, the
19 vendor, contractor, or service provider who filed the protest (i.e. the
20 Aggrieved Person), as well as to the person awarded the contract (i.e., the
21 interested party), and to all other non-selected bidders or offerors.

22 (3) A party may elect to receive service of the Decision via email to
23 the party or the party's attorney of record, in lieu of service by certified mail
24 or by personal service, by filing a waiver of service of the Decision with the
25 Public Auditor and designating in the waiver the email to be used for such
26 service.

27 **(j) Hearing on the merits of the Protest.** The Public Auditor shall hear
28 the merits of the Protest within fifteen (15) days, Saturdays, Sundays and

1 government of Guam Holidays excepted, of the filing of the Protest. The hearing on
2 the merits of the Protest is to determine whether the method of selection, solicitation
3 or award of a contract, or entitlement to costs under 5 GCA § 5425 (h) is in
4 accordance with statutes, regulations, and the terms and conditions of the
5 solicitation.

6 (1) Where not provided for in this 2 GAR Div. 4 § 12217; 2 GAR
7 Div. 4 § 12108 shall be read and interpreted to apply to the hearing on the
8 merits of the Protest by substitution of “Protest” for “Appeal”. Where not
9 provided for in 2 GAR Div. 4 CH. 12, the Public Auditor shall treat issues that
10 arise during the Protest as sui generis and decide the issues on such basis.

11 (2) A party may be present at the hearing; may present any relevant
12 evidence; will be given full opportunity to cross-examine all witnesses
13 testifying against the party; and if the party is a natural person, the party may
14 be, but need not be, represented by counsel.

15 (3) A party shall be entitled to the issuance of subpoenas to compel
16 the attendance of witnesses and the production of books, documents or other
17 things by applying to the Public Auditor.

18 (4) The Aggrieved Person shall have the burden of proof to show by
19 a preponderance of the evidence that the method of selection, solicitation or
20 award of a contract or entitlement to costs under 5 GCA § 5425 (h) was not in
21 accordance with statutes, regulations or the terms and conditions of the
22 solicitation.

23 (5) The Aggrieved Person may waive a hearing on the merits of the
24 Protest pursuant to 2 GAR § 12108 Div. 4 (a).

25 **(k) No automatic stay of Procurement or award.** There shall be no stay,
26 automatic or otherwise, pursuant to 5 GCA § 5425 (g) or 4 GAR Div. 4 § 9101, of
27 the Procurement, or of an award of a contract, unless the Public Auditor shall

1 exercise discretion to order a stay. Such discretion, if it is to be exercised, shall be
2 exercised within five (5) days of the filing of the Protest.

3 (1) The Aggrieved Person, DOE and the interested party may, within
4 three (3) days of the filing of the Protest, file a statement with the Public
5 Auditor in support of, or against, the stay of the Procurement or award.

6 (2) The Public Auditor's discretion to order or deny a stay of the
7 Procurement or award shall be exercised upon consideration of whether the
8 solicitation or award of contract without delay is necessary to protect the
9 substantial interests of DOE.

10 (3) The Attorney General's written concurrence of the Public
11 Auditor's order staying or denying a stay of the Procurement or award is not
12 a requirement under this Procedure.

13 **(I) Notice of Expedited Procedures.** The Department of Education shall
14 ensure that the expedited procedures implemented by this Regulation shall be
15 prominently displayed in the notice and the solicitation. The notice and the
16 solicitation shall at a minimum state the following:

17 **Notice of Expedited Procedures for Resolution of Protests of**
18 **Procurements Funded in whole or in part with funds Allotted to the Guam**
19 **Department of Education from American Rescue Plan Act of 2021, Education**
20 **Stabilization Fund, or Head Start Grant.** The Department of Education is
21 soliciting proposals/invitations for a procurement no. _____ for a capital
22 improvement project that is to be funded with an allocation to the Department of
23 Education from the American Rescue Plan Act of 2021("ARPA"), Education
24 Stabilization Fund ("ESF"), or Head Start Grant ("HSG"). Any protest at any stage
25 of this procurement shall be subject to the Expedited Procedure Regulation found at
26 2 GAR Div. 4 GCA § 12217. Under the Expedited Procedure Regulation, among
27 other things: (1) an Aggrieved Person shall have the right to file a Protest with the
28 Public Auditor within fourteen (14) days from the date that such Person knew or

1 should have known of the facts giving rise to the Protest; (2) the Aggrieved Person
2 is required to provide DOE no less than one (1) business day advanced notice prior
3 to filing a Protest to notify DOE in writing of its intent to file a Protest with the
4 Public Auditor; (3) DOE shall provide the procurement record to the Public Auditor
5 within two (2) days of the date of the filing of the Protest; (4) the Aggrieved Person,
6 DOE, and the interested party shall have up to twenty (20) days from the date of the
7 filing of the Protest to resolve it by mutual agreement; (5) a hearing on the merits of
8 the Protest shall be held within fifteen (15) days, Saturdays, Sundays and
9 government of Guam holidays excepted, of the filing of the Protest and (6) the
10 Public Auditor shall expedite the administrative review process and decide the
11 Protest by issuing a written Decision within twenty (20) days, Saturdays, Sundays
12 and government of Guam holidays excepted, after the date of the filing of the protest.
13 The Decision of the Public Auditor shall be final and conclusive, and no action,
14 judicial review, appellate review or interlocutory appeal shall be available to any
15 unsuccessful party. Prospective bidders, offerors and contractors who respond to this
16 solicitation are required as part of their response to this solicitation to acknowledge
17 and sign an affidavit stating that they are aware of the Expedited Procedure
18 Regulation and that they agree to abide by the rules and the deadlines in the
19 Regulation.

20 **(m) Requirement of Signed Affidavit.** DOE shall require that prospective
21 bidders, offerors, and contractors acknowledge and sign an affidavit stating that they
22 are aware of the expedited process and agree to abide by the rules and deadlines in
23 this Regulation. The affiant shall at a minimum attest under penalty of perjury:

24 that, the affiant is aware of and agrees to be bound by the Expedited
25 Procedure Regulation found at 2 GAR Div. 4 GCA § 12217; that, under the
26 Procedure an Aggrieved Person shall have the right to file a Protest with the
27 Public Auditor within fourteen (14) days from the date that such Person knew
28 or should have known of the facts giving rise to the Protest; that, DOE is

1 required to provide the procurement record to the Public Auditor within two
2 (2) days of the date of the filing of the Protest; that, the Aggrieved Person,
3 DOE, and the interested party have up to twenty (20) calendar days from the
4 date of the filing of the Protest to resolve it by mutual agreement; that, a
5 hearing on the merits of the Protest shall be held within fifteen (15) days,
6 Saturdays, Sundays and government of Guam holidays excepted, of the filing
7 of the Protest; that, the Public Auditor is to expedite the administrative review
8 process and decide the Protest by issuing a written Decision within twenty
9 (20) days, Saturdays, Sundays and government of Guam holidays excepted,
10 after the date of the filing of the Protest; and that, Decision of the Public
11 Auditor shall be final and conclusive, and no action, judicial review, appellate
12 review or interlocutory appeal is available to any unsuccessful party.

13 **(n) Last effective date of this regulation.**

14 This regulation shall be effective until the later of December 31, 2024, or the
15 latest date under any extension of time for expenditure of ARPA funds by the grantor
16 agency.”