

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÁHAN
2024 (SECOND) Regular Session

Bill No. 254-37 (COR)

As Substituted on the Floor.

Introduced by:

Amanda L. Shelton

AN ACT TO AMEND § 22601 OF ARTICLE 6, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, AND TO AMEND § 5118, § 5121(a) AND § 5121(b), § 5150, § 5151(a), § 5425(g)(1), ALL OF CHAPTER 5, DIVISION 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE REVIEW AND APPROVAL OF CONTRACTS AND OTHER PROCUREMENT ACTIONS BY THE ATTORNEY GENERAL

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Statement. Amendments to Guam’s Procurement Law
3 and Guam’s General Fiscal Policies and Controls are proposed to amend the
4 Attorney General’s duties regarding reviews of certain procured contracts and to
5 remove reference to the Attorney General’s approval of government contracts.

6 The Executive Branch of the government of Guam operates under a
7 centralized procurement regime. 5 GCA §§ 5120, 5125; 2012 Guam 25 ¶¶ 14-16.
8 On November 27, 2009, in response to problems arising from non-standard
9 deviations from this centralized procurement system, Public Law 30-72 was enacted.
10 This law originated from Bill No. 220-30 (LS), entitled “[a]n Act to Amend § 5150,
11 Title 5, Guam Code Annotated, Relative to the Duties of the Attorney General in
12 Procurement Oversight and Advisement.” The purpose of this law was to provide
13 “for greater scrutiny in the preparation of bid documents and in the awarding of bids

1 for major purchases and contracts for services” and allowed the Office of the
2 Attorney General (“OAG”) to conduct reviews of procurements to provide a
3 measure of uniformity within government contracting in Guam. Prior to this
4 amendment, the Attorney General was not required to review or act as legal advisor
5 for any specifically designated contracts.

6 Within only a few months of this amendment to allow the Attorney General
7 to review and act as legal advisor for certain contracts over \$500,000.00, the
8 Legislature of Guam requested and received emergency certification for Bill No.
9 434-30 (LS), to amend 5 GCA § 5150 again. This new amendment was proposed to
10 “authorize the Attorney General to appoint Special Assistant Attorneys General to
11 conduct reviews of major procurement solicitations mandated by Public Law 30-
12 72.” Bill No. 434-30 (LS). The ability and authority to appoint Special Assistant
13 Attorneys General (“SAAGS”) was specifically requested by the Attorney General
14 to assist with the large quantity of pending procurement reviews and avoid delays in
15 the process.

16 Recognizing the critical importance of ensuring against delays in the
17 procurement process, the 30th Legislature of Guam swiftly passed the amendment
18 on an emergency basis in order to provide timely reviews of the government of
19 Guam’s procured contracts. The appointment of SAAGs under 5 GCA § 5150 was
20 intended to assist the Office of the Attorney General to efficiently provide
21 procurement reviews and approvals. However, upon entering office, the current
22 Attorney General revoked all existing SAAG designations and has authorized no
23 new designations. Currently, there are no SAAGs within the government of Guam
24 to assist the Attorney General with procurement reviews under this law.

25 Further, the current Attorney General has provided notice to over twenty (20)
26 executive branch agencies and instrumentalities of the government of Guam that he
27 has elected to “temporarily withdraw” from providing legal services to them,

1 including processing any documents requesting the Attorney General’s signature.
2 The Attorney General is refusing to process any documents for the agencies and
3 instrumentalities of the government of Guam, including procurement documents and
4 procured contracts. Therefore, it is necessary to amend applicable sections of Guam
5 law to ensure that government procurements proceed without undue delay, and to
6 help keep Guam’s residents, property, and operations secure from this significant
7 threat.

8 **Section 2.** § 22601 of Article 6, Chapter 22, Division 2, Title 5, Guam Code
9 Annotated, is *amended*, to read:

10 **“§ 22601. Execution of Contracts.**

11 All eContracts requiring the approval of the Governor of Guam shall, after the
12 approval of the Attorney General, be submitted to the Governor for his the
13 Governor’s signature. If the Office of the Attorney General withdraws from
14 representation of the agency executing the contract or otherwise declines to provide
15 legal services to said agency, the agency shall be authorized to submit the contract
16 to the Governor for the Governor’s signature upon approval of the contract by an
17 attorney employed or contracted by the agency to provide legal services. All such
18 contracts of whatever nature shall be executed upon the approval of the Governor.
19 All other contracts shall be executed by the Chief Procurement Officer, General
20 Services Agency, Government of Guam, or the Director, Department of Public
21 Works, Government of Guam, or the Heads of Purchasing Agencies, or the
22 Procurement Officer, or their designees in accordance with Guam’s Procurement
23 Laws and Regulations and the Procurement Regulations of the government entities
24 that are authorized by Guam’s Procurement Law to promulgate them.

25 **Section 3.** § 5118 of Subarticle B, Article 2, Chapter 5, Division 1, Title 5,
26 Guam Code Annotated, is *amended*, to read:

1 **“§ 5118. Procurement Counsel.**

2 The Department of Administration may employ an attorney to assist the
3 General Services Agency, to be called the Procurement Counsel. The Department of
4 Administration may further employ such Assistants to the Procurement Counsel as
5 may be required, to assist the Procurement Counsel in the performance of his or her
6 duties. The Director of Administration shall set the terms and conditions of
7 employment for the Procurement Counsel and the Assistant Procurement attorneys
8 and determine their his or her compensation consistent with the laws of Guam. The
9 attorneys shall be a full-time employees, and shall be admitted to practice before the
10 courts of Guam under the same conditions as are attorneys employed by the
11 government pursuant to Title 7 GCA, §§ 9A114 and 9A114A. The Procurement
12 Counsel shall assist and advise the Chief Procurement Officer on all civil matters in
13 which the General Services Agency is legally interested, provided that the Office of
14 the Attorney General shall represent the General Services Agency, unless the Office
15 of the Attorney General withdraws from such representation or fails to perform such
16 representation for a period of five (5) continuous days, then the Procurement
17 Counsel shall represent the General Services Agency in such civil matters until the
18 Office of the Attorney General resumes such representation. The attorney shall
19 provide technical assistance to the Guam Procurement Advisory Council, and shall
20 assist with the preparation of any legislation, rules or regulations. ~~The incumbent~~
21 ~~procurement advisor shall be designated as the procurement counsel.~~

22 **Section 4.** § 5121(a) and § 5121(b) of Subarticle C, Article 2, Chapter 5,
23 Division 1, Title 5, Guam Code Annotated, is *amended*, to read:

24 “(a) General Authority. For the purpose of procuring the services of
25 accountants, physicians, lawyers, dentists, licensed nurses, other licensed health
26 professionals and other professionals, any governmental body of Guam may act as
27 a purchasing agency and contract on its own behalf for such services, subject to this

1 Chapter and regulations promulgated by the Policy Office, but this Subsection shall
2 not authorize the procuring of such services where any given governmental body is
3 otherwise prohibited from procuring such services. If the Office of the Attorney
4 General withdraws from representation of a governmental body, or otherwise
5 declines to provide legal services to a governmental body, the governmental body
6 shall be authorized to employ or contract with an attorney to provide legal services
7 to the agency. Alternatively, the governmental body may enter into an agreement
8 with another governmental body for the provision of legal services.

9 (b) Approval of Contracts for Legal Services. No contract for the services of
10 legal counsel ~~in the Executive Branch~~ for any governmental body, as defined in this
11 Chapter, shall be executed without the approval of the Attorney General. Nothing in
12 this Section or Chapter shall preclude the Attorney General or his designee from
13 participating in negotiations for any contract upon the request of the government
14 officer or agency primarily responsible for such negotiations. Notwithstanding the
15 foregoing, if the Office of the Attorney General withdraws from representing any
16 governmental body, or otherwise declines to provide legal review of the contract,
17 the governmental body may execute the contract without the approval of the
18 Attorney General.”

19 **Section 5.** § 5150 of Chapter 5, Subarticle F, Article 2, Title 5, Guam Code
20 Annotated, is *amended*, to read:

21 **“§ 5150. Duties of the Attorney General.**

22 The Attorney General, the Deputy Attorney General or such Assistant Attorneys
23 General, or such Special Assistant Attorneys General as the Attorney General may
24 designate, shall serve as legal counsel and provide necessary legal services to the
25 Policy Office and the General Services Agency. Whenever the Chief Procurement
26 Officer, the Director of Public Works, or the head of any governmental body that
27 does not have its own attorney ~~executive branch agency, autonomous agency,~~

1 ~~instrumentality or public corporation of the government of Guam~~ conducts any
2 solicitation or procurement which is estimated to result in an award of ~~Five Hundred~~
3 ~~Thousand~~ One-Million Dollars (\$1,000,000) or more, the Attorney General or his
4 designees, including one (1) or more Special Assistant Attorneys General who may
5 be so designated or appointed by the Attorney General and subject to any reasonable
6 requirements or conditions determined by the Attorney General, shall act as legal
7 advisor during all phases of the solicitation or procurement process. The Attorney
8 General, or ~~his~~ the Attorney General's designee, including one (1) or more Special
9 Assistant Attorneys General or the attorneys of the governmental bodies that are
10 authorized to hire them, shall, ~~in addition,~~ when ~~he~~ they approves contracts,
11 determine not only the correctness of their form, but their legality. In making such
12 a determination of legality, ~~he~~ they may require any or all agencies involved in the
13 contract to supply ~~him~~ them with evidence that the required procedures precedent to
14 executing the contract were carried out. ~~He or his designees~~ They may prescribe the
15 forms and format required to be followed by the agencies in aiding ~~him in his~~ their
16 determination of form and legality. Notwithstanding the foregoing, if the Office of
17 the Attorney General withdraws from representing any governmental body or
18 otherwise declines to provide legal services to the governmental body as provided
19 in this Section, while the governmental body is conducting any solicitation or
20 procurement which is estimated to result in an award of One-Million Dollars
21 (\$1,000,000) or more, or fails to approve any contract resulting from such
22 solicitation or procurement when such contract is lawful and correct in form, or fails
23 to act as the legal advisor for the governmental body conducting such solicitation
24 seven (7) days after receiving notice of the solicitation or procurement from the
25 governmental body, then the governmental body may conduct the solicitation or
26 procurement, and execute a contract arising from such procurement without the
27 assistance or approval of the Attorney General.”

1 **Section 6.** § 5151(a) of Subarticle F, Article 2, Chapter 5, Division 1, Title 5,
2 Guam Code Annotated, is *amended*, to read:

3 “(a) The Department of Public Works (DPW), the Guam Board of
4 Professional Engineers, Architects and Land Surveyors (PEALS), and the Guam
5 Building Code Council (GBCC) may enter into a Memorandum of Understanding
6 (MOU) to jointly fund an Assistant Attorney General to specifically provide legal
7 services to DPW, GBCC, and the PEALS Board only, or they may employ or
8 contract with their own attorney to do so.”

9 **Section 7.** § 5425(g)(1) of Subarticle A, Article 9, Chapter 5, Division 1, Title
10 5, Guam Code Annotated, is *amended*, to read:

11 “(1) For governmental bodies, as defined in this Chapter, The Chief
12 Procurement Officer or the Director of Public Works after consultation with and
13 written concurrence of the head of the using or purchasing agency and the Attorney
14 General or designated Deputy Attorney General, makes a written determination that
15 the award of the contract without delay is necessary to protect substantial interests
16 of Guam. Notwithstanding the foregoing, if the Office of the Attorney General
17 withdraws from representing the Government Services Agency or the Department
18 of Public Works or any governmental body during the period in which the written
19 determination is made, or otherwise declines to consult with, or fails to deny or
20 concur or otherwise respond to a written determination seven (7) days after receiving
21 it, then the Chief Procurement Officer or the Director of Public Works may approve
22 the written determination without the concurrence of the Attorney General. For
23 purchasing agencies that are not subject to the centralized procurement regime
24 established by this Chapter, the head of the purchasing agency, after consultation
25 with and written concurrence by the purchasing agency’s attorney, makes a written
26 determination that the award of the contract without delay is necessary to protect
27 substantial interests of Guam; and”

1 **Section 8. Effective Date.** This Act shall be effective upon enactment.

2 **Section 9. Severability.** If any provision of this Act or its application to any
3 person or circumstance is found to be invalid or inorganic, such invalidity shall not
4 affect other provisions or applications of this Act that can be given effect without
5 the invalid provision or application, and to this end the provisions of this Act are
6 severable.