

I Mina'trentai Siette 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
36-37 (COR)	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 A NEW §5428 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 GENERALLY IN EXCESS OF FIVE MILLION DOLLARS (\$5,000,000).	2/9/23 2:22 p.m.						

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

Bill No. 36-37 (COR)

Introduced by:

Sabina Flores Perez *SFP*
Chris Barnett *CB*
Roy A.B. Quinata *RQ*
Joanne Brown *JB*
William A. Parkinson *WAP*
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Joe S. San Agustin *JSA*

AN ACT TO ADD A NEW §5428 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 GENERALLY IN EXCESS OF FIVE MILLION DOLLARS (\$5,000,000).

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that 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.

7 *I Liheslatura* further finds that Guam's current protest process often leads to
8 lengthy delays, particularly in the procurement of multi-million dollar capital
9 improvement projects, which are critical to the government, and its many facilities
10 that are aging and/or in disrepair. In some cases, protests can lead to the inability

1 for Government agencies to undergo needed capital improvements, to expend funds
2 within required grant deadlines, or can lead to their inability to secure the best
3 possible procurement costs to the people of Guam.

4 *I Liheslaturan Guåhan* intends to establish a new category known as Critical
5 Procurement Contracts, which involves procurement that is reasonably likely to
6 cost in excess of five million dollars (\$5,000,000). *I Liheslatura* further intends to
7 create an expedited process for protests of Critical Procurement Contracts in order
8 to strike a balance of strengthening local procurement through the protest process
9 and acquiring much needed critical procurement contracts to meet the needs of our
10 community.

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

13 **“§ 5428. Administrative Review and Judicial Appeals of Critical**
14 **Government of Guam Contract Procurement Decisions.**

15 (a) A Critical Procurement Contract is a contract solicited as contemplated
16 in the Guam Procurement Law, 5 GCA Chapter 5, except, only to the extent that:

17 (1) the solicitation is one which is integral to the timing of the
18 planning, development, construction, financing or completion of major public
19 infrastructure; and,

20 (2) is reasonably likely to cost in excess of Five Million Dollars
21 (\$5,000,000); and,

22 (3) the identified funding, or the required labor available, site, or
23 required materials for the Critical Procurement Contract, is restricted or
24 becomes restricted to the material detriment the procuring agency or other
25 agencies having a stake in the project, or the timely contract performance by
26 a Territorial or Federal entity, law, or regulation.

27 (b) A Critical Procurement Contract shall be designated as such by the
28 procuring agency in the solicitation for the contract, or upon any protest brought in

1 accordance with Subarticle A of this Article, and, such designation is ratified by the
2 Governor, no later than one week after the contract is awarded.

3 (c) Notwithstanding any other provision of law, on the protest of the
4 procurement of a Critical Procurement Contract (referred to herein as a “Critical
5 Procurement Contract”) by any actual or prospective bidder, offeror, or contractor
6 as described in §5425 of this Article 9, may be resolved or decided as specified in
7 §5425 (c), and provided, notice thereof is given in accordance with §5425 (d); and,
8 final appeal may be brought to the Public Auditor, as provided in §§5425 (e) and (f).
9 However, there shall be no stay, unless ordered by the Public Auditor, of an awarded
10 Critical Procurement Contract, nor any entitlement to costs or fees as provided in §§
11 (g) and (h) and referenced in (e). Appeals to the Public Auditor shall be had as
12 provided in 5 GCA Article 12 and 2 GAR Division 4, Chapter 12.

13 (d) The Public Auditor shall expedite the administrative review process of
14 the appeal in accordance with rules and regulation to be adopted and promulgated
15 by the Public Auditor within six (6) months of the effective date of this Act.

16 (e) Except as to cases the court considers of greater importance, judicial
17 proceedings as authorized by this Section, and appeals therefrom, take precedence
18 on the docket over all cases and shall be assigned for hearing and trial or for
19 argument at the earliest practicable date and expedited in every way.

20 (f) Notwithstanding any other provision of law, the government or
21 appropriate governmental body shall serve an answer or otherwise plead to any
22 complaint made under this Section within twenty (20) days after service of the
23 pleading in which such complaint is made, unless the court otherwise directs, for
24 good cause shown.

25 (g) The court may assess against the protestor, or a governmental body
26 reasonable attorney fees and other litigation costs reasonably incurred in any case
27 under this Section in which the complainant has substantially prevailed.”

28 **Section 2. Effective Date.** This Act shall be effective upon enactment.

29 **Section 3. Severability.** If any provision of this Act or its application to any

1 person or circumstance is found to be invalid or inorganic, such invalidity shall not
2 affect other provisions or applications of this Act that can be given effect without
3 the invalid provision or application, and to this end the provisions of this Act are
4 severable.