

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 224-32(COR)

Introduced by:

T. C. Ada 
R.J. Respicio 

AN ACT TO AMEND §5425, §5426, §5427, §5450, §5452, §5480, §5481 AND §§5485 (a) and (b) OF ARTICLE 9, AND §5703, §5705, §5706(b), §5707(a), §5708 OF ARTICLE 12, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO CLARIFYING LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW.

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

2 **Section 1. Findings and Intent.**

3 *I Liheslaturan Guåhan* finds that the procurement system is
4 intentionally created to “outsource” the real time policing of the
5 procurement process to the private sector by way of protests, and that
6 the only way procurement will remain effective is if the review process
7 is as expedited as the original procurement process.

8 *I Liheslaturan Guåhan* finds that there is a need for the prompt
9 issuance of decisions on protests related to solicitations or awards as
10 mandated by 5 GCA §5425(c) of the procurement law, and further
11 finds that the lack of a timely decision or other resolution of such
12 protests is a significant factor in prolonged procurement disputes,

2013 NOV 15 PM 4:49


1 oftentimes lasting for months.

2 *I Liheslaturan Guåhan* finds that a comprehensive review of the
3 administrative and judicial remedial scheme of the procurement law,
4 set out in Articles 9 and 12 of the Procurement Act (5 GCA Division 1,
5 Chapter 5) is appropriate and necessary to improve the efficiency and
6 efficacy of the administrative and judicial remedial scheme. *I*
7 *Liheslaturan Guahan* further finds that the general structure of the
8 remedial scheme is sound but in need of critical changes to achieve
9 this goal.

10 *I Liheslaturan Guahan* intends to enroll the good faith
11 participation of private sector participants in the procurement process
12 to assure the efficacy and integrity of the procurement system, and to
13 establish an effective and expeditious resolution of the disputes that
14 participation invites.

15

16 **Section 2. §5425 of 5GCA Chapter 5 Article 9 Legal and**
17 **Contractual Remedies is amended as follows:**

18

19 **§5425. Authority to Resolve Resolution of Protested Solicitations**
20 **and Awards.**

21

22 (a) Right to Protest. Any actual or prospective bidder, offeror,
23 or contractor who may be aggrieved in connection with the method
24 of source selection, solicitation or award of a contract, may protest to
25 the Chief Procurement Officer, the Director of Public Works or the
26 head of a purchasing agency. ~~The protest shall be submitted in~~
27 ~~writing within fourteen (14) days after such aggrieved person knows~~
28 ~~or should know of the facts giving rise thereto.~~ A protest made to the
29 office which issued a solicitation shall be deemed properly made.

1 (1) The protest shall be submitted in writing within fourteen
2 (14) days after such aggrieved person knows or should know of the
3 facts giving rise to the belief such person may be aggrieved.

4 (2) A person may reasonably be aggrieved if:

5 (i) there are facts sufficient to raise a reasonable
6 apprehension that the method of source selection, the
7 solicitation, or the award of a contract may be contrary to law or
8 regulation; and

9 (ii) there is a reasonable likelihood, based on information
10 available at the time of protest, that such person would have
11 been in a competitive position to be awarded the contract.

12 (3) The time limits specified for the resolution of disputes
13 arising under this Section, including any administrative and judicial
14 review provided in this Article 9, are not intended to be
15 jurisdictional, but shall be treated as a bar absent just cause or
16 compelling prejudice.

17
18 (b) Authority and Obligation to Resolve Protests. The Chief
19 Procurement Officer, the Director of Public Works, the head of a
20 purchasing agency, or a designee of one of these officers are
21 encouraged and shall have the authority, prior to the commencement
22 of an appeal to the Public Auditor or an action in court concerning
23 the controversy, to settle and resolve a protest of an aggrieved bidder,
24 offeror, or contractor, actual or prospective, concerning the
25 solicitation or award of a contract. It is in the best interest of the
26 Government of Guam to resolve and settle such protests

1 expeditiously and informally without administrative or judicial
2 review so long as its minimum needs may be satisfied and effective
3 competition fostered. This authority shall be exercised in accordance
4 with regulations promulgated by the Policy Office, which may
5 include use of settlement conference, expedited Alternative Dispute
6 Resolution (ADR) and debriefing methods. Any time limit
7 established by this Article for the taking of any action, administrative
8 or judicial, shall be tolled during any period in which the parties are
9 in good faith engaged to resolve and settle any dispute arising under
10 this Article.

11 (c) Decision. If the protest is not resolved by mutual agreement,
12 the Chief Procurement Officer, the Director of Public Works, the
13 head of a purchasing agency, or a designee of one of these officers
14 shall promptly issue a decision in writing accepting or rejecting the
15 protest, in whole or part. The decision shall:

16 (1) state the grounds for the protest and the factual and legal
17 reasons for the ~~action taken~~ decision made; and

18 (2) inform the ~~protestant~~ protestor that the decision of the
19 officer to whom the protest was made is final, and of ~~it's~~ the
20 protestor's right to administrative and judicial review; and

21 (3) state if the reason for denying the protest is that the protest
22 is untimely or that the protestor was not found to be aggrieved and
23 the reasons why the substantive arguments of the protest, if any,
24 must be rejected.

25

1 (d) Notice of Decision. A copy of the decision under Subsection
2 (c) of this Section shall be mailed or otherwise furnished immediately
3 to the ~~protestant~~ protestor and any other party intervening.

4
5 (e) Failure to Render Timely Decision. If the protestor does not
6 receive a decision of the protest as required under Subsection (c) of
7 this Section within twenty-one (21) days from the date of the protest,
8 the protestor may make a written request to the office wherein the
9 protest was made to render such a decision on the protest. If no
10 decision as required under Subsection (c) of this Section is made and
11 served upon the protestor within seven (7) days after receipt of such
12 written request, or within such longer period as may be expressly and
13 in writing agreed upon by the parties, then the protest shall be
14 deemed admitted.

15
16 ~~(e)(f)~~ Appeal. A decision under Subsection (c) of this Section
17 including a decision there under regarding entitlement to costs as
18 provided by Subsection (h) of this Section, may be appealed by the
19 ~~protestant~~ protestor, to the Public Auditor within fifteen (15) days
20 after receipt by the ~~protestant~~ protestor of the notice of decision: on
21 the protest, and a decision deemed admitted under Subsection (e) of
22 this Section may be appealed by the office to which the protest was
23 made, to the Public Auditor, within fifteen (15) days after the date the
24 protest is deemed admitted within fifteen (15) days after receipt by
25 the protestor of the notice of decision as provided in Subsection ~~(e)~~(i)
26 of this Section. If for any reason the Public Auditor is determined to
27 be disqualified to hear such an appeal, a decision under Subsection

1 (c) of this Section may be appealed directly to the Superior Court in
2 accordance with Subsection (a) of § 5480 of this Chapter.

3
4 ~~(f) Finality. A decision of the Public Auditor is final unless a~~
5 ~~person adversely affected by the decision commences an action in the~~
6 ~~Superior Court in accordance with Subsection (a) of §5480 of this~~
7 ~~Chapter.~~

8
9 (g) In the event of a timely protest under Subsection (a) of this
10 Section ~~or under Subsection (a) of § 5480 of this Chapter~~, the
11 Territory shall not proceed further with the solicitation, ~~or with the~~
12 award, or performance of the contract prior to the time allowed to
13 appeal from, or the final resolution of, such protest, and any such
14 further action is void, unless:

15 (1) The Chief Procurement Officer or the Director of Public
16 Works, ~~after consultation with and~~ written concurrence of the head
17 of the using or purchasing agency and the Attorney General or
18 designated Deputy Attorney General, then makes a written
19 determination that the award of the contract without delay is
20 necessary to protect substantial interests of the Territory, or the
21 Governor then issues a Declaration of Emergency Procurement as
22 authorized by § 5215 of this Chapter; and

23
24 (2) Absent a declaration of emergency procurement by the
25 Governor, the ~~protestant~~ protestor has been given at least two (2)
26 days notice of such determination ~~(exclusive of territorial holidays~~

1 as provided in 1 GCA § 1004); and
2

3 (3) If the protest is pending before the Public Auditor or the
4 Court, the Public Auditor or Court has confirmed the validity of
5 such determination and declaration, or if no such protest is pending,
6 no protest to the Public Auditor or the Court of such determination
7 or declaration is filed prior to expiration of the two (2) day period
8 specified in Item (2) of Subsection (g) of this Section; but if such a
9 protest is filed, an expedited hearing shall be noticed to all
10 interested parties and held to determine whether to confirm any
11 such determination of necessity and substantial interest or
12 declaration of emergency procurement.
13

14 (h) Entitlement to Costs. In addition to any other relief or
15 remedy granted under Subsection (c) or (e) of this Section or under
16 Subsection (a) of § 5480 of this Chapter, including the remedies
17 provided by Part B of Article 9 of this Chapter, when a protest is
18 sustained, the ~~protestant~~ protestor shall be entitled to the reasonable
19 costs incurred in connection with the solicitation and protest,
20 including bid preparation costs, excluding attorney's fees, if:

21
22 (1) the ~~protestant~~ protestor should have been awarded the
23 contract under the solicitation but was not; or
24

25 (2) there is a reasonable likelihood that the ~~protestant~~ protestor
26 may have been awarded the contract but for the breach of any
27 ethical obligation imposed by Part B of Article 11 of this Chapter or

1 the willful or reckless violation of any applicable procurement law
2 or regulation.

3
4 (3) The Public Auditor shall have the power to assess
5 reasonable costs including reasonable attorney fees incurred by the
6 government, including its autonomous agencies and public
7 corporations, or any protestor or interested party against a
8 protestant upon its finding that the any party, including the
9 government, making a the protest, motion or taking any position
10 bringing any action was made fraudulently, frivolously or solely
11 with predominant intent to delay or disrupt the procurement
12 process.

13
14 (i) Finality. A decision of the Public Auditor is final unless a
15 person adversely affected by the decision commences an appeal in
16 the Superior Court as provided by §5707(a) of this Chapter and in
17 accordance with the waiver of sovereign immunity conferred by
18 Subsection (a) of §5480 of this Chapter.

19
20 **Section 3. §5426 Authority to Debar or Suspend of 5GCA Chapter**
21 **5 Article 9 is amended as follows:**

22
23 **§ 5426. Authority to Debar or Suspend.**

24 (a) Authority. After reasonable notice to the person involved and
25 reasonable opportunity for that person to be heard, the Chief
26 Procurement Officer, the Director of Public Works or the head of a
27 purchasing agency, after consultation with the using agency and the

1 Attorney General, shall have authority to debar a person for cause, or
2 to suspend a person for probable cause, from consideration for award
3 of contracts. The debarment shall not be for a period of more than
4 two (2) years. ~~The same officer, after consultation with the using~~
5 ~~agency and the Attorney General, shall have authority to suspend a~~
6 ~~person from consideration for award of contracts if there is probable~~
7 ~~cause for debarment.~~ The suspension shall not be for a period
8 exceeding three (3) months. The authority to debar or suspend shall
9 be exercised in accordance with regulations promulgated by the
10 Policy Office.

11
12 (b) Causes for Debarment or Suspension. The causes for
13 debarment or suspension include the following:

14
15 (1) conviction for commission of a criminal offense as an
16 incident to obtaining or attempting to obtain a private contract or
17 subcontract, or in the performance of such contract or subcontract;

18
19 (2) conviction under territorial or federal statutes of
20 embezzlement, theft, forgery, bribery, falsification or destruction of
21 records, receiving stolen property, or any other offense indicating a
22 lack of business integrity or business honesty which currently,
23 seriously and directly affects responsibility as a territorial
24 contractor;

25
26 (3) conviction under federal antitrust statutes arising out of the
27 submission of bids or proposals;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

(4) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency to be so serious as to justify debarment action:

~~(A)~~i. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

~~(B)~~ii. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more procurement contracts, provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or

iii. upon a petition of the Department of Labor, failure to pay employees engaged on the contract in violation of Wage Determination law or contract conditions.

(5) any other cause the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency determines to be so serious and compelling as to affect responsibility as a territorial contractor, including debarment by another governmental entity for any cause listed in regulations of the Policy Office;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

(6) for violation of the ethical standards set forth in Article 11 of this Chapter.

(7) filing a frivolous or fraudulent petition, protest or appeal under § 5425(e), § 5426~~(f)~~(e) or of § 5427(e) of this Chapter.

(c) Decision. The Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency shall issue a written decision to debar or suspend or to reject any petition to do so brought under Subsection (f) of this Section. The decision shall:

(1) state the reasons for the ~~action taken~~ decision made; and

(2) inform the debarred or suspended person involved, or any person whose petition is rejected, of its rights to judicial or administrative review as provided in this Chapter.

(d) Notice of Decision. A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening or petitioning, and the head of all governmental bodies or purchasing agencies.

(e) Finality of Decision. A decision under Subsections (c) or (f) of this Section shall be final and conclusive, unless fraudulent, or an appeal is taken to the Public Auditor in accordance with § 5706 of

1 this Chapter. Such a decision shall be automatically stayed during
2 the pendency of any appeal, but any such appeal does not preclude
3 nor require a determination of non-responsibility in any solicitation
4 in which the person charged may participate. The officer issuing
5 such decision shall immediately notify all persons, governmental
6 bodies and purchasing agencies of the fact and effect of such appeal.

7
8 (f) Any member of the public, including bidder, offeror or
9 contractor as well as any elected official or employee of the
10 government, may petition the Chief Procurement Officer, the
11 Director of Public Works or the head of a purchasing agency to take
12 action to debar or suspend pursuant to Subsection (a) of this Section.
13 Immediately upon the receipt of such a petition, the person petitioned
14 shall cause An an investigation of each petition shall to be conducted
15 and hold a hearing as authorized in Subsection (a) promptly and a
16 writ ten report should be made of findings of fact and action taken
17 and issue a decision as required in Subsection (c). If the petitioned
18 officer does not issue the written decision required under Subsection
19 (c) of this Section within sixty (60) days after written request by the
20 petitioner for a final decision, then the petitioner may proceed with
21 an appeal to the Public Auditor as if a the petition had been rejected.

22
23 **Section 4. §5427 of 5GCA Chapter 5 Article 9 Legal and**

24 **Contractual Remedies is amended as follows:**

25 **§ 5427. Authority to Resolve Contract and Breach of Contract**
26 **Controversies.**

1 (a) Applicability. This Section applies to controversies between
2 the Territory and a contractor and which arise under, or by virtue of,
3 a procurement contract between them, as evidenced by the written
4 demand of either party to the other for redress of a particularized
5 claim or controversy. This includes without limitation controversies
6 based upon breach of contract, mistake, misrepresentation, or other
7 cause for contract damages, modification or rescission.

8
9 (b) Authority. The Chief Procurement Officer, the Director of
10 Public Works, the head of a purchasing agency, or a designee of one
11 of these officers is authorized, prior to commencement of an action in
12 a court concerning the controversy, to settle and resolve a
13 controversy described in Subsection (a) of this Section, including:
14 with the concurrence of the Attorney General, liquidating the amount
15 of any claim. This authority shall be exercised in accordance with
16 regulations promulgated by the Policy Office.

17
18 (c) Decision. If such a controversy is not resolved by mutual
19 agreement, the Chief Procurement Officer, the Director of Public
20 Works, the head of a purchasing agency, or the designee of one of
21 these officers shall promptly issue a decision in writing. The decision
22 shall:

23
24 (1) state the reasons for the ~~action taken~~ decision made; and

25
26 (2) state the liquidated amount of damages, if any, determined
27 to be payable to the contractor, with the concurrence of the

1 Attorney General, regardless whether the contractor accepts said
2 sum in mutual settlement of the controversy; and

3
4 (2)(3) inform the contractor of its rights to judicial or
5 administrative review as provided in this Chapter.

6
7 (d) Notice of Decision. A copy of the decision under Subsection
8 (c) of this Section shall be mailed or otherwise furnished immediately
9 to the contractor.

10
11 (e) Finality of Decision. The decision reached pursuant to
12 Subsection (c) of this Section shall be final and conclusive, unless
13 fraudulent, or the contractor appeals administratively to the Public
14 Auditor in accordance with § 5706 of this Chapter.

15
16 (f) Failure to Render Timely Decision. If the Chief
17 Procurement Officer, the Director of Public Works, the head of a
18 purchasing agency, or the designee of one of these officers does not
19 issue the written decision required under Subsection (c) of this
20 Section within sixty (60) days after written request for a final
21 decision, or within such longer period as may be agreed upon by the
22 parties, then the contractor may proceed as if an adverse decision had
23 been received.

24
25 **Section 5. §5450 of 5GCA Chapter 5 Article 9 Legal and**
26 **Contractual Remedies is amended as follows:**

27

1 **§ 5450. Applicability of this Part.**

2 The provisions of this Part only apply where it is determined
3 administratively, or upon administrative or judicial review of a
4 protest under the provisions of § 5425, that a solicitation or award of
5 a contract is in violation of law, and are in addition to any other
6 remedy or relief allowed by law or equity.

7

8 **Section 6. §5452 of 5GCA Chapter 5 Article 9 Legal and**
9 **Contractual Remedies is amended as follows:**

10

11 **§ 5452. Remedies After an Award.**

12 ~~(a)~~ If after an award it is determined that a solicitation or award of a
13 contract is in violation of law, then:

14

15 ~~(A)~~(a) if the person awarded the contract has not acted
16 fraudulently or in bad faith:

17

18 ~~(A)~~(1) the contract may be ratified and affirmed, provided it is
19 determined that doing so is in the best interests of the Territory; or

20

21 ~~(B)~~(2) the contract may be terminated and the person awarded
22 the contract shall be compensated for the actual expenses
23 reasonably incurred under the contract, plus a reasonable profit,
24 prior to the termination.

25

26 ~~(A)~~(b) if the person awarded the contract has acted fraudulently
27 or in bad faith:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

~~(A)(1) the contract may be declared null and void; or~~

~~(B)(2) the contract may be ratified and affirmed if such action is in the best interests of the Territory, without prejudice to the Territory's rights to such damages as may be appropriate.~~

~~(c) In either case, the determination to ratify or affirm the contract shall be made without regard to the position of the person awarded the contract and shall conclusively admit violation of law.~~

~~(b) This Section shall be read as being in addition to and not in conflict with, or repealing 4 GCA § 4137 (Prohibitions on the Activities of Government Employees).~~

Section 7. §5480 of 5GCA Chapter 5 Article 9 Legal and Contractual Remedies is amended as follows:

§ 5480. Waiver of Sovereign Immunity by Grant of Jurisdiction in Connection with Contracts Controversies Arising Under Part A of this Article.

(a) Solicitation and Award of Contracts. The Superior Court of Guam shall have jurisdiction ~~over an action between the Territory and a bidder, offeror, or contractor, either actual or prospective, to determine whether a solicitation or award of a contract is in accordance with the statutes, regulations, and the terms and conditions of the solicitation~~ to review any administrative decision ~~of the Public Auditor or determination arising under §5425 of this~~

1 Chapter, whether brought pursuant to §5707 of this Chapter after
2 appeal to the Public Auditor or brought in the absence of the
3 qualification of the Public Auditor to hear an appeal under §5425(f)
4 of this Chapter. The Superior Court shall have such jurisdiction in
5 actions at law or in equity, and whether the actions are for monetary
6 damages or for injunctive, declaratory, or other equitable relief, and
7 whether the matter is procedural or substantive in nature.

8
9 (b) Debarment or Suspension. The Superior Court shall have
10 ~~jurisdiction over an action between the Territory and to review any~~
11 ~~decision of the Public Auditor brought pursuant to § 5705 of this~~
12 ~~Chapter a person who is subject to a suspension or debarment~~
13 ~~proceeding, to determine whether concerning the debarment or~~
14 ~~suspension or rejection of a petition to debar or suspend, is in~~
15 ~~accordance with the statutes §5426 and §5705 of this Chapter and~~
16 ~~relevant statutes and regulations. The Superior Court shall have such~~
17 ~~jurisdiction, in actions at law or in equity, and whether the actions are~~
18 ~~for injunctive, declaratory, or other equitable relief.~~

19
20 (c) ~~In addition to other relief and remedies, the Superior Court~~
21 ~~shall have jurisdiction to grant injunctive relief in any action brought~~
22 ~~under Subsections (a), or (b) or (c) of this Section. Actions Under~~
23 ~~Contract or for Breach of Contract. The Superior Court shall have~~
24 ~~jurisdiction over an action between the Territory and a contractor,~~
25 ~~brought after review of the Public Auditor in accordance with § 5706~~
26 ~~of this Chapter, for any cause of action which arises under, or by~~
27 ~~virtue of, the contract, whether the action is at law or equity, whether~~

1 the action is on contract or for breach of contract, and whether the
2 action is for monetary damages or injunctive, declaratory or other
3 equitable relief.
4

5 (d) Limited Finality for Administrative Determinations. In any
6 judicial action under this Section, factual or legal determinations by
7 employees, agents or other persons appointed by the Territory shall
8 have no finality and shall not be conclusive, notwithstanding any
9 contract provision, or regulation, except to the extent provided in §§
10 5245, 5705 and 5706 and in Article 12 of this Chapter. In the event
11 any judicial action arises under Subsection (a) of this Section by
12 reason of the disqualification of the Public Auditor, the Superior
13 Court shall have such jurisdiction and authority of the Public Auditor
14 as is specified in §§ 5703 and 5704 of this Chapter.
15

16 ~~(c) For purposes of this Section a “prospective” bidder,~~
17 ~~contractor or offeror is one who will actually submit a bid, contract~~
18 ~~or otherwise offer his services if, in the actions permitted by this~~
19 ~~Section, such person would prevail. Exhaustion of Administrative~~
20 ~~Remedies. No action shall be brought under any provision of this~~
21 ~~Section until all administrative remedies provided in this Chapter~~
22 ~~under Part A of Article 9 and Article 12 have been exhausted.~~
23

24 ~~(f) All actions permitted by this Article shall be conducted as~~
25 ~~provided in the Government Claims Act. Form of Action Under §~~
26 ~~5480(a). All actions and appeals permitted by Subsection (a) of this~~
27 ~~Section shall be treated as special proceedings for expeditious review~~

1 of the administrative decision below, and may be brought by way of
2 or treated as a writ of review however captioned.

3
4 (g) Expedited Review of Appeals Under § 5480(a). Except as to
5 cases the Court considers of greater importance, proceedings before
6 the Superior Court, as authorized by Subsection (a) of this Section,
7 and appeals therefrom, take precedence over all cases and shall be
8 assigned for hearing and trial or for argument at the earliest
9 practicable date and expedited in every way. The times for
10 responsive pleadings and for hearings in these proceedings shall be
11 set by the judge of the Court with the object of securing a decision as
12 to these matters at the earliest possible time.

13
14 **Section 8.** §5481 of 5GCA Chapter 5 Article 9 Legal and Contractual
15 Remedies is amended as follows:

16
17 **§ 5481. Time Limitations on Actions.**

18
19 (a) Protested Solicitations and Awards. Any action under §
20 5480(a) of this Chapter shall be initiated, absent compelling cause or
21 unfair prejudice, within fourteen (14) days after receipt of a final
22 administrative decision, including a decision of disqualification of
23 the Public Auditor in accordance with § 5425(f) of this Chapter.

24
25 (b) Debarments and Suspensions for Cause. Any action under §
26 5480(b) of this Chapter shall be commenced within six (6) months
27 after receipt of the decision of the Policy Office under § 5651 of this

1 Chapter, or the decision of the ~~Procurement Appeals Board~~ Public
2 Auditor under § ~~5707~~ 5705 of this Chapter, whichever is applicable.

3
4 (c) Actions Under Contracts or for Breach of Contract. Any
5 action commenced under 5480(c) of this Chapter shall be
6 commenced within twelve (12) months after the date of the
7 ~~Procurement Appeals Board~~ Public Auditor's decision.

8
9 (d) The limitations on actions provided by this Section are tolled
10 during the pendency of any proceeding brought pursuant to § 5485 of
11 this Chapter.

12
13 **Section 9.** §5485(a) of 5GCA Chapter 5 Article 9 Legal and
14 Contractual Remedies is amended as follows:

15
16 **§ 5485(a). Complaints that Procurement Data was Withheld.**

17 (a) On complaint by any member of the public, the Superior
18 Court has jurisdiction to enjoin a governmental body from
19 withholding procurement data and to order the production of any
20 government data improperly withheld from the complainant. In such
21 a case, the court shall determine the matter *de novo*, and may
22 examine the contents of such procurement data in camera to
23 determine whether such records or any part thereof shall be withheld
24 under any of the exceptions set forth in ~~6-GCA § 4202~~ this Chapter
25 and, to the extent not inconsistent, Title 5, Chapter 10, Guam Code
26 Annotated and the burden is on the agency to sustain its action.

27

1 **Section 10.** §5485(b) of 5GCA Chapter 5 Article 9 Legal and
2 Contractual Remedies is amended as follows:

3 (b) Notwithstanding any other provision of law, the government
4 or a governmental body or purchasing agency shall serve an answer or
5 otherwise plead to any complaint made under this Section within thirty
6 (3) days after service of the pleading in which such complaint is made,
7 unless the court otherwise directs, for good cause shown.

8
9 **Section 11.** §5703 of Article 12, Chapter 5 of Title 5 Guam Code
10 Annotated is amended to read as follows:

11 **§ 5703. Jurisdiction of the Public Auditor.**

12 The Public Auditor shall have the power to review and
13 determine de novo any matter properly submitted to her or him. The
14 Public Auditor shall not have jurisdiction over disputes having to do
15 with money owed to or by the government of Guam except as
16 authorized under §§ 5427 and 5706 of this Chapter. Notwithstanding
17 § 5245 of this Chapter, no prior determination shall be final or
18 conclusive on the Public Auditor or upon any appeal from the Public
19 Auditor. The Public Auditor shall have the power to compel
20 attendance and testimony of, and production of documents by any
21 employee of the government of Guam, including any employee of any
22 autonomous agency or public corporation. The Public Auditor may
23 consider testimony and evidence submitted by any competing bidder,
24 offeror or contractor of the protestant. The Public Auditor's
25 jurisdiction shall be utilized to promote the integrity of the
26 procurement process and the purposes of 5 GCA Chapter 5.

1 **Section 12.** §5705 of Article 12, Chapter 5 of Title 5 Guam Code
2 Annotated is amended to read as follows:

3 **§ 5705. Suspension or Debarment Proceedings.**

4 (a) Scope. This § 5705 applies to a review by the Public Auditor
5 of a decision under § 5426(c) or (f) of this Chapter.

6 (b) Time Limitation on Filing an Appeal. The aggrieved person
7 receiving an adverse decision under Subsection (c) or (f) of § 5426 of
8 this Chapter, including a person suspended or debarred or a rejected
9 petitioner, shall file his/her an appeal with the Public Auditor within
10 sixty (60) thirty (30) days from the date of the receipt of a decision or
11 the date a petition is deemed rejected under Subsection (e) of § 5426
12 of this Chapter.

13
14 (c) Decision. The Public Auditor shall decide whether, or the
15 extent to which, the decision to debar or suspend, or reject a petition
16 to do so, debarment or suspension was in accordance with the statutes,
17 regulations and the best interest of the government or any autonomous
18 agency or public corporation, and was fair. The Public Auditor shall
19 issue her or his decision within thirty (30) days of the completion of
20 the hearing on the issue.

21 (d) Appeal. Any person receiving an adverse decision, including
22 the Chief Procurement Officer, the Director of Public Works or the
23 head of a purchasing agency, a person suspended or debarred, or a
24 rejected petitioner, may appeal from a decision by the Public Auditor
25 to the Superior Court of Guam under the waiver of sovereign
26 immunity provided in § 5480(b) of this Chapter, way of writ of
27 review.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Section 13. §5706(b) of 5 GCA Chapter 5 Article 12 Procurement Appeals is amended as follows:

§ **5706(b).** Time Limitation on Filing an Appeal. The aggrieved contractor shall file ~~his/her~~ an appeal with the Public Auditor within sixty (60) days of the receipt of the decision or within ~~sixty (60)~~ thirty (30) days following the failure to render a timely decision as provided in § 5427(f) of this Chapter.

Section 14. §5707(a) of 5 GCA Chapter 5 Article 12 Procurement Appeals is amended as follows:

§ **5707(a).** Appeal. Any person receiving an adverse decision, including the contractor, the a governmental body or purchasing agency ~~any autonomous agency or public corporation, or both,~~ may appeal from a decision by the Public Auditor to the Superior Court of Guam as provided in ~~Article Part D of Chapter~~ Article 9 of this Chapter.

Section 15. §5708 of 5 GCA Chapter 5 Article 12 Procurement Appeals is amended as follows:

§ 5708. Discontinuance of Contractor’s Appeal.

It is the policy of this Act that procurement disputes be resolved expeditiously, therefore, settlement agreements between the parties are encouraged, and appeals by a protestor or by the Chief Procurement Officer, the Director of Public Works or the head of the Purchasing Agency may be settled by them, with or without prejudice, except to the extent that the Public Auditor determines that such a

1 settlement would work an injustice on the integrity of the procurement
2 system and an unconscionable prejudice on an intervening party.
3 After notice of an appeal to the Public Auditor has been filed by the
4 Chief Procurement Officer, the Director of Public Works or the head
5 of the Purchasing Agency, a contractor may not unilaterally
6 discontinue such appeal without prejudice, except as authorized by the
7 Public Auditor.”

8

9 **Section 16.** Severability. *If* any provision of this law or its
10 application to any person or circumstance is found to be invalid or
11 contrary to law, such invalidity *shall not* affect other provisions or
12 applications of this law which can be given effect without the invalid
13 provisions or application, and to this end the provisions of this law are
14 severable.

15

16

17