

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

Bill No. 246-32 (COR)

Introduced by:

T. C. Ada
R.J. Respicio

2013 DEC 20 PM 4:00

**AN ACT TO AMEND SECTIONS OF ARTICLE 3 OF CHAPTER
5, TITLE 5, GUAM CODE ANNOTATED RELATIVE TO
SOURCE SELECTION AND CONTRACT FORMATION IN
GUAM PROCUREMENT LAW**

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

2 **Section 1. Findings and Intent.** *I Liheslaturan Guåhan* finds that the
3 preferred method of source selection of any solicitation for supplies, services
4 or construction is the competitive sealed bidding method, recognizing of
5 course that other methods may be warranted depending on the
6 circumstances.

7 *I Liheslatura* further finds that the use of a “competitive sealed
8 proposal” method of source selection should be made available as an option
9 for source selection to procure supplies, services, or construction services if
10 price is not intended to be a determining factor for selection for award of a
11 contract for supplies, services, or construction. Under competitive sealed
12 proposals, the quality of competing products may be compared and trade-
13 offs made between price and quality of the products offered as described in
14 the Request for Competitive Proposals.

1 *I Liheslatura* further finds it essential in some circumstances to
2 procure “Bridge Contracts” in order to avoid the disruption in the continued
3 or recurring provision of supplies or rendition of services which are critical
4 to governmental operations, between the end of the old contract and the
5 beginning of the new contract.

6 *I Liheslatura* further finds that to foster competition and maximize the
7 purchasing value of public funds, it is presumed that it is not in the best
8 interests of the Territory to make a contract for supplies or services for a
9 total term, including renewals or extensions, in excess of five (5) years.

10 *I Liheslaturan Guåhan* intends to make amendments to Article 3
11 (Source Selection and Contract Formation) of the Guam Procurement law in
12 order to improve the effectiveness of the government’s procurement
13 processes.

14
15 **Section 2.** Subsections (e), (f) and (g) of Section 5201 of Chapter 5 of
16 Title 5 Guam Code Annotated are hereby amended as follows:

17 “(e) Requests for Proposals means all documents, whether
18 attached or incorporated by reference, utilized for soliciting proposals
19 under either § 5212 or § 5216. Unless the context indicates otherwise,
20 the abbreviation RFP refers to the source selection method under §
21 5216 and RFCP refers to the source selection method under § 5212.

22 (f) Responsible Bidder or ~~Officer~~ *Offeror* means a person who
23 has the capability in all respects to perform fully the contract
24 requirements, and the integrity and reliability which will assure good
25 faith performance, as determined at any time before award.

26 (g) Responsive Bidder means a person who has submitted a bid
27 which conforms, at bid opening, in all material respects to the

1 Invitation for Bids.”

2
3 **Section 3.** A new Subsection (h) is hereby added to §5201 of Chapter
4 5, Title 5 Guam Code Annotated to read as follows:

5 “(h) Responsive means conforming in all material respects to
6 the purchase description and contract terms contained in the Invitation
7 for Bids or Request for Proposal or Request for Quotes or other
8 solicitation. A nonconforming bid is nonresponsive if it contains a
9 material nonconforming term or condition that is in any respect
10 prejudicial to other bidders, that is, the effect of such nonconforming
11 term or condition on price, quantity, quality, delivery, or contractual
12 terms specified in the IFB is more than negligible. A responsive bid is
13 an offer by the bidder which unconditionally undertakes to provide the
14 supply, service or construction the government intends to acquire as
15 specified in the IFB, and only on contract terms and conditions as are
16 materially consistent with those specified in the IFB.”

17
18 **Section 4.** Section 5210 of Chapter 5, Title 5 Guam Code Annotated
19 is hereby amended as follows:

20 **“§5210. Methods of Source Selection.**

21 (a) Unless otherwise authorized by law, all territorial contracts
22 shall be awarded by one of the methods of source selection specified
23 in this Part. ~~competitive sealed bidding, pursuant to § 5211 of this~~
24 ~~Article, except for the procurement of professional services and~~
25 ~~except as provided in:~~

26 (1) ~~Section 5212 of this Article; [see note below]~~

27 (2) ~~Section 5213 of this Article;~~

- 1 ~~(3) Section 5214 of this Article;~~
2 ~~(4) Section 5215 of this Article;~~
3 ~~(5) Section 5216 of this Article for services specified in §~~
4 ~~5121 of this Chapter; or~~
5 ~~(6) Section 5217 of this Article.~~

6 (b) ~~Nothing in this Section requiring competitive bidding shall~~
7 ~~prohibit the development of specifications which require compatibility~~
8 ~~with existing supplies, equipment or data processing systems. The~~
9 competitive sealed bidding method of source selection is the preferred
10 and default method of source selection, authorized for any solicitation
11 for supplies, services or construction. All other methods allowed by
12 this Part shall only be used in the circumstances or on the conditions
13 specified.”

14
15 **Section 5.** Section 5211 of Chapter 5, Title 5 of the Guam Code
16 Annotated is hereby amended as follows:

17 “**§5211. Competitive Sealed Bidding.**

18 (a) Conditions for Use. Contracts shall be awarded by
19 competitive sealed bidding except as otherwise provided in § 5210 of
20 this Part Article.

21 (b) Invitation for Bids. An Invitation for Bids shall be issued
22 and shall include a purchase description, ~~a recitation of the Wage~~
23 ~~Determination most recently issued by the U.S. Department of Labor,~~
24 and all contractual terms and conditions applicable to the procurement
25 including ~~a demonstration of compliance with §§ 5801 & 5802 of this~~
26 ~~Chapter, if applicable,~~ and may include other information or requests
27 for information. In addition, an Invitation for Bids shall include a

1 recitation of the Wage Determination most recently issued by the U.S.
2 Department of Labor applicable to Guam and demonstration of
3 compliance with §§ 5801 & 5802 of this Chapter, if applicable. The
4 requirement in an Invitation for Bid to provide any particular
5 information concerning the bidder shall not of itself reflect on the
6 responsiveness of a bid. The determination of bidder responsibility is
7 determined as specified in § 5230 of this Article.

8 (c) Public Notice. Adequate public notice of the Invitation for
9 Bids shall be given in a manner and in a reasonable time prior to the
10 date set forth therein for the opening of bids to foster effective
11 competition, in accordance with regulations promulgated by the
12 Policy Office. ~~Such notice may include publication in a newspaper of~~
13 ~~general circulation a reasonable time prior to bid opening. If a bid is~~
14 ~~given public notice which is within the time specified in the Policy~~
15 ~~Office's rules and regulations on the subject, it shall not be challenged~~
16 ~~unless the bidder can show exceptional circumstances which would~~
17 ~~render the rules and regulations inapplicable in the case of a particular~~
18 ~~bid being requested.~~

19 (d) Bid Opening. Bids shall be opened publicly in the presence
20 of one or more witnesses at the time and place designated in the
21 Invitation for Bids. The amount of each bid, and such other relevant
22 information as may be specified by regulation, together with the name
23 of each bidder shall be recorded; the record and each bid shall be open
24 to public inspection.

25 (e) Bid Acceptance and Bid Evaluation. Bids shall be
26 unconditionally accepted for evaluation without alteration or
27 correction by either the bidder or the government, except as

1 authorized in this Chapter or regulations promulgated by the Policy
2 Office. Bids shall be evaluated based on the requirements set forth in
3 the Invitation for Bids, which may include criteria to determine
4 acceptability such as inspection, testing, quality, workmanship,
5 delivery and suitability for a particular purpose. Those criteria that
6 will affect the bid price and be considered in evaluation for award
7 shall be objectively measurable, such as discounts, transportation
8 costs, and total or life cycle costs. The Invitation for Bids shall set
9 forth the evaluation criteria to be used. No criteria may be used in bid
10 evaluation that are not set forth in the Invitation for Bids.

11 (f) Correction or Withdrawal of Bids; Cancellation of Awards.
12 Correction or withdrawal of inadvertently erroneous bids before or
13 after award, or cancellation of awards or contracts based on such bid
14 mistakes, shall be permitted in accordance with regulations
15 promulgated by the Policy Office. After bid opening, no changes in
16 bid prices or other provisions of bids prejudicial to the interest of the
17 Territory or fair competition shall be permitted, nor shall there be
18 permitted any material change in or waiver of any specification,
19 evaluation factor or contract term of the Invitation for Bids. Except as
20 otherwise provided by regulation, all decisions to permit the
21 correction or withdrawal of bids, or to cancel or alter awards or
22 contracts based on bid mistakes of the bidder, shall be supported by a
23 written determination made by the Chief Procurement Officer, the
24 Director of Public Works, or head of a purchasing agency, as
25 appropriate.

26 (g) Award. The contract shall be awarded with reasonable
27 promptness by written notice to the lowest responsible bidder whose

1 bid is responsive ~~meets the requirements and criteria set forth in the~~
2 ~~Invitation for Bids~~ and whose bid amount is determined, by effective
3 competition or otherwise, to be fair and reasonable, and reasonably
4 appears sufficient to comply with Article 13 of this Chapter, if
5 applicable. Written notice of the award, including the dollar amount
6 of the awarded contract, shall be promptly given to all other bidders,
7 and, in the case of a contract awarded in amount greater than One
8 Hundred Thousand Dollars (\$100,000), a copy of the contract. In the
9 event all bids for a construction project exceed available funds as
10 certified by the appropriate fiscal officer, and the low responsive and
11 responsible bid does not exceed such funds by more than five percent
12 (5%), the Chief Procurement Officer, the Director of Public Works, or
13 the head of a purchasing agency, is authorized, in situations where
14 time or economic considerations preclude resolicitation of work of a
15 reduced scope, to negotiate an adjustment of the bid price, including
16 changes in the bid requirements, with the low responsive and
17 responsible bidder, in order to bring the bid within the amount of
18 available funds.

19 (h) Multi-Step Competitive Sealed Bidding. When low price is
20 desired to be a determining factor but it is considered ~~impractical to~~
21 ~~initially~~ preferable to evolve or test the adequacy of ~~prepare~~ a
22 purchase description's market acceptability ~~to support an award based~~
23 ~~on price~~, an Invitation for Bids may be issued and conducted in two
24 phases, the first requesting the submission of unpriced technical
25 offers, which may involve description of service qualifications and
26 performance, in one or more rounds in which discussions may be
27 conducted to supplement or amend technical offers or bid

1 specifications or both, to be followed by an Invitation for Bids limited
2 to a second phase in which the unsealed price bids of those bidders
3 whose offers have been or become qualified as acceptable under the
4 criteria set forth in the first phase solicitation are opened as in a
5 normal competitive sealed bid process. The Policy Office shall
6 promulgate such regulations as may be efficacious to the use of this
7 method of source selection under this Subsection.”
8

9 **Section 6.** Section 5212 of Chapter 5, Title 5 Guam Code Annotated
10 is hereby repealed and reenacted as follows:

11 **“§5212. Competitive Sealed Proposals.**

12 (a) Conditions for use. The competitive sealed proposal method
13 of source selection is available to procure supplies, services or
14 construction if price is not intended to be a determining factor for
15 selection for award of a contract for supplies, services or construction,
16 and may be used for certain project delivery methods as described in
17 Article 5 of this Chapter. Under competitive sealed proposals, the
18 quality of competing products may be compared and trade-offs made
19 between price and quality of the products offered as described in the
20 Request for Competitive Proposals. It shall not be used when another
21 method of source selection is required or as appropriate. Other
22 conditions for use include the following and if any such condition
23 cannot be met, the competitive sealed proposal method shall not be
24 used:

25 (1) The Chief Procurement Officer, the Director of Public
26 Works, or the head of a purchasing agency, as the case may be,
27 must make a determination, in writing, that price is not intended

1 to be the determining factor for award of contract in the
2 solicitation, and that the use of both variants of the competitive
3 sealed bidding method are either not practicable or
4 advantageous to the Government of Guam, such determination
5 to be made part of the Request for Proposals.

6 (2) Planning for a Request for Competitive Sealed
7 Proposal ("RFCP") is essential and adequate time and effort
8 must be allocated to that process. Prior to preparing any
9 solicitation document, the purchasing agency shall prepare a
10 written plan for the solicitation, which plan shall include the
11 budget allocated, funding source, and market research
12 identifying potential sources, which shall be part of the
13 procurement record.

14 (3) A specific weighting shall be applied to the price
15 factor, which must not be more than fifty percent (50%) of all
16 relevant factors. If price is intended to be the most significant
17 factor, the Multi-step method or, in the case of professional
18 services, the Request for Proposal method, as provided in this
19 Part, shall be used. All other evaluation factors shall be as
20 objectively defined by outcomes, functions or performance
21 specifications desired, as is practicable to specify.

22 (4) All discussions with offerors authorized by this
23 method shall be conducted in the presence of the head of
24 procurement of the procuring agency, whether that is the Chief
25 Procurement Officer, the Director of Public Works or the head
26 of the purchasing agency, as well as legal counsel for such
27 person.

1 (5) All evaluators must be impartial persons acting in the
2 best interests of the government, with sufficient knowledge of
3 the government's needs and experience to capably appreciate
4 the nature of the product being procured and independently
5 assess and apply the proposals submitted to the evaluation
6 criteria.

7 (6) The Policy Office shall specify such other conditions
8 and procedures as it deems appropriate by regulation.

9 (b) Request and notice for Competitive Proposals. Competitive
10 sealed proposals shall be solicited by issuance of a written Request for
11 Competitive Sealed Proposals ("RFCP"). Adequate public notice of
12 the RFCP shall be given in sufficient time adequate to foster and
13 allow the preparation of competitive responses prior to the submission
14 date specified, in accordance with regulations promulgated by the
15 Policy Office.

16 (c) Receipt of and Publicity Regarding Competitive Proposals.
17 Competitive sealed proposals shall be opened so as to avoid disclosure
18 of contents to competing offerors during the process of negotiation. A
19 Register of Competitive Proposals shall be prepared in accordance
20 with regulations, which shall not be opened for public inspection until
21 after contract award.

22 (d) Evaluation Factors. The RFCP shall state the relative
23 importance of price and the factors and subfactors, if any, to be
24 evaluated. Except for the price factor which must be specifically
25 weighted, other factors should be specifically weighted to provide all
26 potential offerors sufficient guidance to consider and prepare their
27 proposals and a more objectively verifiable selection process.

1 (e) Discussion with Responsible Offerors and Revisions to
2 Proposals. As provided under regulations and, to the extent consistent
3 therewith, the RFCP, discussions may be conducted with responsible
4 offerors who submit proposals determined to be reasonably qualified
5 for selection for award for the purpose of clarification to assure full
6 understanding of, and responsiveness to, the solicitation requirements.
7 Offerors shall each be accorded fair and equal treatment with respect
8 to any opportunity for discussion and revision of proposals provided
9 to any of them. Revisions and the subject of discussions may be
10 subjected to uniform time and other limits reasonably specified by the
11 procurement officer. Revisions may be permitted after prior
12 submissions or in response to a request for the best and final offer, but
13 there shall be no revision allowed to a best and final offer nor after
14 award.

15 (f) Award. Award shall be made to the responsible offeror
16 whose proposal conforms to the solicitation and is determined in
17 writing to be the most advantageous to the Government of Guam,
18 taking into consideration only price and the evaluation factors set
19 forth in the RFCP. No other factors or criteria shall be used to affect
20 the evaluation. The procurement officer must prepare a written
21 explanation setting forth the comparative facts and factors which form
22 the basis on which the award is made which shall be part of the
23 procurement record. Written notice of the award to the successful
24 offeror shall be promptly given to all other offerors.

25 (g) Debriefings. The procurement officer is authorized and
26 encouraged to provide debriefings that furnish the basis for the source
27 selection decision and contract award.”

1
2 **Section 7.** Section 5214 of Chapter 5, Title 5 Guam Code Annotated
3 is hereby amended to read as follows:

4 **“§5214. Sole Source Procurement.**

5 A contract may be awarded for a supply, service, or construction item
6 without competition when, under regulations promulgated by the Policy
7 Office, the Chief Procurement Officer, the Director of Public Works, the
8 head of a purchasing agency, or a designee of either officer above the level
9 of the Procurement Officer in advance determines in writing that there is
10 only one source for the required supply, service or construction item. A sole
11 source contract shall not be issued for a term greater than one (1) year, with
12 four (4) successive annual options to renew, such option being exercisable
13 by the government and only if there is, at the time to be exercised, no other
14 available source. Prior to and as a condition of making such determination,
15 the purchasing agency shall prepare a written report to the person making
16 such determination which shall detail an analysis of the minimal needs of the
17 government upon which the contract is based, and the findings of a thorough
18 market research and conclusion that there is no other source which will
19 satisfy the government need. The report must be signed by the person or
20 persons conducting the analysis and market research, and shall be made part
21 of the procurement record. The purchasing agency shall also make a written
22 determination that the price of any sole source contract is fair and
23 reasonable, which determination shall include relevant cost and pricing
24 information for the sole source as well as comparable or alternative sources,
25 supplies or services. In the event any such contract is in excess of the
26 amount of Fifty Thousand Dollars (\$50,000.), the purchasing agency shall,
27 within fourteen (14) days of making the contract, publish notice of the

1 making of the contract, including the name of the purchasing agency, the
2 contractor, the contract amount and its term, and the nature of the contract,
3 in a newspaper of general circulation on Guam and on its website.”
4

5 **Section 8.** Section 5215 of Chapter 5, Title 5 Guam Code Annotated
6 is hereby amended to read as follows:

7 **“§5215. Emergency Procurements.**

8 Notwithstanding any other provision of this Chapter, the Chief
9 Procurement Officer, the Director of Public Works, the head of a purchasing
10 agency, or a designee of either officer may make or authorize others to make
11 emergency procurements when there exists a threat to public health, welfare,
12 or safety under emergency conditions as defined in this Chapter and
13 regulations promulgated by the Policy Office; provided that such emergency
14 procurements shall be made with such competition as is practicable under
15 the circumstances, and further provided that the ~~procurement agent~~
16 purchasing agency must solicit at least three (3) informal price quotations, if
17 time allows must give notice to all contractors from the qualified bid list
18 who have provided the needed supplies and services to the government
19 within the preceding twelve (12) months, and must award the procurement
20 to the firm with the best offer, as determined by evaluating cost and delivery
21 time. No emergency procurement ~~or combination of emergency~~
22 ~~procurements~~ may be made for an amount of goods or supplies greater than
23 the amount of such goods and supplies which is necessary to meet an
24 emergency for ~~a specified period of time not extending beyond the thirty~~
25 ~~(30)~~ ninety (90) day period immediately following the procurement, and no
26 other procurement shall be made of any such supply or service under
27 authority of this Section; any contract given therefor shall be void. The

1 ninety (90) day period may be extended or exceeded by a Declaration of
2 Emergency authorized by Executive Order of the Governor only in the event
3 of an emergency recognized by a Declaration of National Disaster or other
4 significant emergency event recognized by Declaration of the President of
5 the United States of America. A written determination of the basis for the
6 emergency and for the selection of the particular contractor shall be included
7 in the contract file. The requirements for a written determination for the
8 emergency shall be met if the procurements are being made on the basis of
9 the Governor's declaration of an emergency situation by Executive Order if
10 such Order states that emergency procurement may be resorted to for the
11 purposes of the Order. Unless authorized by an Executive Order declaring an
12 emergency, no emergency procurement may be made except on a certificate
13 made under penalty of perjury by the Chief Procurement Officer, Director of
14 Public Works or the head of a purchasing agency, as the case may be.
15 Certified copies of the certificate shall be sent, prior to award and as a
16 condition thereof, to the Governor and Speaker of the Legislature. The
17 certificate shall contain the following:

18 (a) a statement of the facts giving rise to the emergency;

19 (b) the factual basis of the determination that an emergency
20 procurement is necessary; and

21 (c) a statement that emergency procurement is not being used
22 solely for the purpose of avoidance of the provisions of this
23 Chapter.

24 In addition to any other requirement, the Governor must approve in
25 writing all authorizations for emergency procurement.”

26
27 **Section 9.** Section 5216 of Chapter 5, Title 5 Guam Code Annotated

1 is hereby amended to read as follows:

2 **“§5216. Competitive Selection Procedures for Services Specified**
3 **in §5121 of this Chapter.**

4 (a) Conditions for Use. The professionally licensed services
5 specified in § 5121(a) of this Chapter ~~shall~~ may be procured in
6 accordance with this Section, except as authorized under §§ 5214 or
7 5215 of this Chapter, or as specified in Services for architecture,
8 engineering, construction, land surveying, environmental assessment
9 and other such services shall be procured in accordance with Article 5
10 of this Chapter.

11 (b) Statement of Qualifications. Persons engaged in providing
12 the types of services specified in § 5121(a) of this Chapter may submit
13 statements of qualifications and expressions of interest, but not prices,
14 in providing such types of services. The Procurement Officer may
15 specify a uniform format for statements of qualifications. Persons
16 may amend these statements at any time by filing a new statement.
17 Statements shall be kept by the purchasing agency only for reference
18 in the nature of a response to a request for information and not as a
19 solicitation to or by the purchasing agency, and shall be purged one
20 (1) year from receipt. Submitting a statement of qualification by any
21 person does not entitle any such person to actual notice nor shall
22 submission of proposals by offerors be limited to those persons who
23 have submitted any such statement.

24 (c) Public Announcement and Form of Request for Proposals.
25 Adequate public notice of the need for such services shall be given by
26 the purchasing agency through a Request for Proposals (“RFP”). The
27 Request for Proposals shall describe the services required, list the type

1 of information and data required of each offeror, specify if errors and
2 omissions insurance must be provided as specified in Subsection (f)
3 and the amount of coverage required, and state the relative importance
4 of particular qualifications.

5 (d) Discussions. The head of the purchasing agency or a
6 designee of such officer may conduct discussions with any offeror
7 who has submitted a proposal in response to an RFP, to determine
8 such offeror's qualifications and understanding of the evaluation
9 factors and services sought for further consideration. Discussions
10 shall not disclose any information derived from proposals submitted
11 by other offerors. Price is not a factor to be discussed or considered
12 until after the ranking of the offerors and the process of negotiation
13 for compensation begins.

14 (e) Award. Award shall be made to the offeror determined in
15 writing by the head of the purchasing agency or a designee of such
16 officer to be best qualified based on the evaluation factors set forth in
17 the Request for Proposals, and negotiation of compensation
18 determined to be fair and reasonable. If compensation cannot be
19 agreed upon with the best qualified offeror, the negotiations will be
20 formally terminated with the selected offeror. If proposals were
21 submitted by one or more other offerors determined to be qualified,
22 negotiations may be conducted with such other offeror or offerors, in
23 the order of their respective qualification ranking, and the contract
24 may be awarded to the offeror then ranked as best qualified if the
25 amount of compensation is determined to be fair and reasonable.

26 (f) Errors and Omissions Insurance. Regulations shall be
27 promulgated that specify circumstances in which the Chief

1 Procurement Officer or Director of Public Works shall require
2 offerors of professional services to provide appropriate errors and
3 omissions insurance, or equivalent, to adequately cover the particular
4 services to be rendered under the contract awarded. Satisfactory
5 evidence of such required insurance shall be produced prior to any
6 award.”
7

8 **Section 10.** Section 5217 of Chapter 5, Title 5 Guam Code Annotated
9 is hereby amended to read as follows:

10 **“§5217. Procurement from Nonprofit Corporations.**

11 A contract may be awarded for a supply or service without
12 competition when the contractor is a certified nonprofit Guam
13 incorporated and based corporation employing ~~sheltered or~~
14 ~~handicapped workers~~ persons with disabilities on Guam. As a
15 condition of the award of the contract the contractor must certify that
16 labor employed to manufacture the supply or perform the services on
17 the project will be performed on Guam by ~~handicapped~~ persons with
18 disabilities except that supervisory personnel do not have to be
19 ~~handicapped~~ persons with disabilities. A contractor awarded a contract
20 pursuant to this Section shall not be required to post any of the bonds
21 required under ~~Article 5 of~~ this Chapter.”
22

23 **Section 11.** Subsection (e) of §5219 of Chapter 5, Title 5 Guam Code
24 Annotated is hereby amended to read as follows:

25 “(e) Competitive Sealed Bidding Required. All unsolicited offers
26 considered as being desirable shall be subjected to the Competitive Sealed
27 Bidding process under § 5211. Notwithstanding any other provision of law,

1 sole source procurement shall not be permissible in any procurement arising
2 from an unsolicited offer. The criteria set forth in the Invitation for Bids
3 shall not require the inclusion of any confidential proprietary or trade secret
4 item, service or method proposed in the unsolicited offer, and the proprietary
5 character of an unsolicited offer or the inclusion of a proprietary item in the
6 unsolicited offer shall not be used to favor the offer or any other bid, nor be
7 a determining factor in awarding a bid. Such Invitation for Bids shall not
8 contain any reference to the financial offer of the unsolicited offeror, but
9 shall contain a sufficient technical description to allow other parties to
10 identify the technical concept of the offer, and to prepare bids.”

11

12 **Section 12.** Section 5220 of Chapter 5, Title 5 Guam Code Annotated
13 is hereby amended to read as follows:

14 **“§5220 Publication of IFB, ~~and~~ RFP, and RFCP Documents on**
15 **the Agency’s Website.**

16 (a) Notwithstanding any other provision of this Chapter, Invitations
17 for Bid (IFBs), ~~and~~ Requests for Proposals (RFPs), and Requests for
18 Competitive Sealed Proposals (RFCPs) shall be posted on the procuring
19 agency’s website. IFBs, ~~and~~ RFPs, and RFCPs procured through the General
20 Services Agency (GSA) or the Department of Public Works (DPW) shall be
21 posted, on the date of the ~~IFB/RFP~~ announcement of the solicitation,
22 simultaneously on the procuring agency’s website and the websites of GSA
23 and DPW respectively. No fees shall be assessed to prospective bidders or
24 other parties for accessing/downloading procurement documents from an
25 agency’s website. Such documents shall remain on the respective agencies’
26 websites for a period of not less than one hundred eighty (180) days
27 following the award of the Bid or Proposal.

1 (b) The procuring agency, and GSA and DPW if applicable, shall
2 provide notice in each ~~IFB/RFP~~ solicitation announcement that recommends
3 that prospective bidders/~~respondents~~ offerors register contact information
4 with the agency to ensure that they receive any notices regarding any
5 changes or updates to the ~~IFB/RFP~~ solicitation. The procuring agency, and
6 GSA and DPW shall not be liable for failure to provide notice to any party
7 who did not register contact information.

8 (c) Nothing herein is intended to prevent the procuring agency, GSA,
9 or DPW from making physical or digital media copies of procurement
10 documents and assessing reasonable fees for such documents in a manner
11 consistent with public law, administrative rules and regulations, and
12 departmental policy that existed prior to the enactment of this Section.”

13
14 **Section 13.** A new Section 5221 is hereby added to Chapter 5, Title 5,
15 Guam Code Annotated to read as follows:

16 **“§ 5221. Procurement of Bridge Contracts.**

17 (a) Description of Bridge Contract. For purposes of this
18 Section, a Bridge Contract is one written to avoid the disruption in the
19 continued or recurring provision of supplies or rendition of services
20 which are critical to governmental operations, between the end of one
21 contract, the “existing” contract, and the beginning of the next, the
22 “new” contract. The existing contract may be current, expired or
23 terminated. The new contract is intended to continue the provision of
24 the same or functional equivalent supply or service as was provided
25 under the existing contract.

26 (b) Conditions of Use. A purchasing agency may solicit and
27 award a Bridge Contract to acquire continuing but temporary source

1 of the supply or service described in the existing contract only in the
2 following circumstances or upon the following conditions:

3 (1) The Chief Procurement Officer must first make a
4 written determination of the particularized critical need for such
5 supply or service and the facts and circumstances why no other
6 option is available, naming persons responsible for the carriage
7 of the solicitation of the new contract, and that the contract is
8 immediately necessary and in the best interests of the
9 government.

10 (2) The term shall commence as soon as practicable upon
11 termination or expiration of the existing contract, and terminate
12 not later than the earlier of four (4) months from
13 commencement of the bridge contract, or the commencement of
14 a contract awarded by competitive sealed bid, competitive
15 sealed proposal, request for proposal or sole source, in
16 accordance with the provisions of this Part. Commencement is
17 the date of a purchase order or contract executing the award.

18 (3) The term of a bridge contract may be extended on a
19 month to month basis up to a total term of nine (9) months, but
20 each extension must be signed by the Chief Procurement
21 Officer.

22 (4) The Governor shall in writing approve the bridge
23 contract as to form and substance, and each extension thereof.

24 (5) An existing contract shall not have been the result of
25 an emergency or bridge contract method of source selection.

26 (6) If the existing contract was procured by IFB, the
27 bridge contract shall be offered in response to a Request for

1 Quotes given to a sufficient number of bidders to foster
2 competition, which shall include all actual bidders under any
3 pending IFB; but, if bids of an IFB for the new contract have
4 been opened, only those bids shall be considered. The contract
5 shall be made for the lowest responsive bid quoted or revealed
6 at opening, provided such bidder is not determined to be
7 nonresponsive.

8 (7) In all other cases, the bridge contract shall be offered
9 to the incumbent so long as the delay in awarding the new
10 contract is not the result of a protest brought by the incumbent,
11 but if so, then it shall be made in the best judgment of the Chief
12 Procurement Officer to any available responsive and
13 responsible source who offers a fair and reasonable price, in the
14 manner of a sole source award, as though such source were in
15 fact the sole source, provided only that all offerors who have
16 actually submitted proposals shall be considered.

17 (c) Effect on other matters. There shall be no protest or appeal
18 of award of a bridge contract. An existing contract may be extended
19 upon the same price and terms for a period not exceeding thirty (30)
20 days, solely for the purpose of providing time to award a bridge
21 contract. A bridge contract may be awarded notwithstanding any
22 protest of the new solicitation or award and without regard to the
23 automatic stay.”

24
25 **Section 14.** Section 5230 of Chapter 5, Title 5 Guam Code Annotated
26 is hereby amended to read as follows:

27 **“§5230. Responsibility of Bidders and Offerors.**

1 (a) Determination of Nonresponsibility. A written determination of
2 nonresponsibility of a bidder or offeror shall be made and served on a bidder
3 or offeror prior to award, and shall be determined in accordance with
4 regulations promulgated by the Policy Office. A finding of
5 nonresponsibility in any particular instance does not require a finding of
6 nonresponsibility in any dissimilar solicitation. The unreasonable failure of
7 a bidder or offeror to promptly supply information in connection with an
8 inquiry with respect to responsibility may be grounds for a determination of
9 nonresponsibility with respect to such bidder or offeror.

10 (b) Right of Nondisclosure. Trade secret or confidential proprietary
11 information furnished and identified as such by a bidder or offeror in
12 connection with an inquiry with respect to responsibility pursuant to this
13 Section, and confirmed as such by the Chief Procurement Officer, Director
14 or Public Works or purchasing agency, shall not be disclosed outside of the
15 General Services Agency, the Department of Public Works or the purchasing
16 agency without prior written consent by the bidder or offeror, but may be
17 disclosed to the Attorney General at any time.”

18
19 **Section 15.** Section 5231 of Chapter 5, Title 5 Guam Code Annotated
20 is hereby amended to read as follows:

21 **“§5231. Prequalification of Suppliers.**

22 Prospective ~~suppliers~~ bidders or offerors may be prequalified for
23 solicitation of particular types of supplies, services and construction.
24 Solicitation mailing lists of potential contractors shall include but shall not
25 be limited to such prequalified suppliers. Prequalification or failure to
26 prequalify does not determine responsibility in and of itself, nor shall any
27 bidder or offeror be rejected for failure to prequalify, nor shall public notice

1 be limited to those who have prequalified.”

2
3 **Section 16.** Subsection (a)(1) of Section 5232 of Chapter 5, Title 5
4 Guam Code Annotated is hereby amended to read as follows:

5 “(1) The pricing of any contract awarded by competitive sealed
6 proposals (§ 5212) or pursuant to the sole source procurement authority (§
7 5214) where the total contract price is expected to exceed an amount
8 established by Policy Office regulations; or”

9
10 **Section 17.** Section 5233 of Chapter 5, Title 5 Guam Code Annotated
11 is hereby amended to read as follows:

12 **“§5233. Disclosure of Major Shareholders Ownership, Financial**
13 **and Conflict of Interests.**

14 (a) Purpose: The disclosures required by this section are
15 intended to reveal information regarding the responsibility of a bidder,
16 and can be obtained by an inquiry regarding responsibility.

17 (b) Definitions.

18 (1) As used herein, the term “person” shall include the
19 definition found in Title 1, Chapter 7, Section 715, Guam Code
20 Annotated, and in § 5030(n) of this Chapter, and includes a
21 natural person as well as every person of whatever form or
22 composition (an “artificial person”) recognized under the laws
23 of Guam other than a natural person.

24 (2) The ownership interests to be disclosed under this
25 section include the interest of a sole proprietor, a partner limited
26 or otherwise, a shareholder of every class (in which case the
27 percentage ownership interest test shall be based on each class),

1 a member of an association or company, limited or otherwise,
2 and any person owning a beneficial legal interest in any trust or
3 artificial person having the power to contract, hold title to
4 property, sue or be sued, and any other capacity or status
5 necessary to perform the prospective contract.

6 (c) Disclosure of Ownership: Every person who is a prospective
7 contractor under any method of source selection authorized by this
8 Chapter shall submit a Disclosure Statement, executed as an affidavit
9 under oath, disclosing the name of each person who has owned an
10 ownership interest in the prospective contractor, greater than ten
11 percent (10%), at any time during the twelve (12) month period
12 immediately preceding the date of the solicitation (the “relevant
13 disclosure period”). If a prospective contractor is an artificial person,
14 the Disclosure Statement shall disclose the name of each person who
15 has owned an ownership interest in such artificial person (a “second
16 tier owner”), greater than twenty-five percent (25%), at any time
17 during the relevant disclosure period. If any such second tier owner is
18 also an artificial person, the Disclosure Statement shall disclose the
19 name of each person who has owned an ownership interest in such
20 second tier owner (a “third tier owner”) of forty-nine percent (49%) or
21 more during the relevant disclosure period. If the name of no natural
22 person has been identified as an owner, or a second or third tier owner
23 of the prospective contractor, the Disclosure Statement shall include
24 the name and position of the natural person responsible for the
25 performance of the prospective contract and the name of any natural
26 person who has the power to remove and replace the responsible
27 person or otherwise control the performance of the prospective

1 contract during the proposed term of the contract.

2 (d) Disclosure of Financial Interest. A prospective contractor
3 shall disclose any person who has received or is entitled to receive a
4 commission, gratuity, contingent fee or other compensation to solicit
5 or secure or assist in obtaining business related to the solicitation by
6 means of a Disclosure Statement, executed as an affidavit under oath,
7 disclosing such interest and shall also contain the amounts of any such
8 commission, gratuity or other compensation.

9 (e) Disclosure of Conflict of Interest. A prospective contractor
10 shall disclose any person who directly or indirectly participates in any
11 solicitation if such person is an employee of the Government of
12 Guam, or of the Government of the United States if federal funds are
13 used in payment of the contract.

14 (f) Every disclosure of an ownership or financial interest
15 required to be identified by this Section, shall name the person
16 required to be disclosed, the street address of the residence or
17 principle place of business, and, in the case of an artificial person, a
18 Taxpayer Identification Number shall be provided. All information
19 disclosed or meant to be disclosed under this Section is public
20 procurement data and shall be kept as part of the public record of each
21 procurement.

22 ~~As a condition of bidding, any partnership, sole proprietorship or~~
23 ~~corporation doing business with the government of Guam shall submit an~~
24 ~~affidavit executed under oath that lists the name and address of any person~~
25 ~~who has held more than ten percent (10%) of the outstanding interest or~~
26 ~~shares in said partnership, sole proprietorship or corporation at any time~~
27 ~~during the twelve (12) month period immediately preceding the submission~~

1 ~~of a bid. The affidavit shall contain the number of shares or the percentage~~
2 ~~of all assets of such partnership, sole proprietorship or corporation which~~
3 ~~have held by each such person during the twelve (12) month period. In~~
4 ~~addition, the affidavit shall contain the name and address of any person who~~
5 ~~has received or is entitled to receive a commission, gratuity or other~~
6 ~~compensation for procuring or assisting in obtaining business related to the~~
7 ~~bid for the bidder and shall also contain the amounts of any such~~
8 ~~commission, gratuity or other compensation. The affidavit shall be open and~~
9 ~~available to the public for inspection and copying.”~~

10
11 **Section 18.** Section 5235 of Chapter 5, Title 5 of the Guam Code
12 Annotated is hereby amended to read as follows:

13 **“§5235. Types of Contracts.**

14 Subject to the limitations of this ~~Section~~ Chapter and regulations
15 adopted by the Policy Office, any type of contract which will promote the
16 best interest of the Territory may be used; provided that the use of cost-plus-
17 a-percentage-of-cost contract is prohibited. A cost reimbursement contract
18 may be used only when a determination is made in writing that such contract
19 is likely to be less costly to the Territory than any other type or that it is
20 impracticable to obtain the supplies, services or construction required except
21 under such contract.”

22
23 **Section 19.** Section 5237 of Chapter 5, Title 5 Guam Code Annotated
24 is hereby amended to read as follows:

25 **“§5237. Multi-Year Contracts.**

26 (a) Specified Period. It is the policy of the Government of
27 Guam to minimize the use of multi-year contracts, and to require that

1 the terms of all contracts be for only such minimal term as is
2 practicable. No contract shall be issued for an indefinite term nor
3 shall it be renewable indefinitely, provided however, that a contract
4 may be issued for supplies or services on a month to month basis
5 provided the monthly price of the contract, when annualized, does not
6 exceed the amount established by authority of § 5213 of this Chapter
7 (Small Purchases). Unless otherwise provided by law, a contract for
8 supplies or services may be entered into for any minimum period of
9 time ~~deemed~~ determined to be in the best interests of the Territory
10 provided the term of the contract and conditions of renewal or
11 extension, if any, are included in the solicitation and funds are
12 available for the first fiscal period at the time of contracting. Payment
13 and performance obligations for succeeding fiscal periods shall be
14 subject to the availability and appropriation of funds therefor.

15 (b) Presumption of five (5) year limit. To foster competition
16 and maximize the purchasing value of public funds, it is presumed
17 that it is not in the best interests of the Territory to make a contract for
18 supplies or services for a total term, including renewals or extensions,
19 in excess of five (5) years. A contract may be made for a term in
20 excess of five (5) years (an “exceptional term”) only with the written
21 determination, made by the Chief Procurement Officer and
22 incorporated in the solicitation documents, describing compelling
23 circumstances and interests of the Territory which justify the necessity
24 of the exceptional term. Every exceptional term contract shall be
25 reviewed annually by the Chief Procurement Officer, and must
26 contain a termination for convenience clause as authorized under
27 §5307(c)(4) of this Chapter.

1 (c) Determination Prior to Use. Prior to the ~~utilization~~ issuance
2 of a solicitation of a multi-year contract, it shall be determined in
3 writing:

4 (1) that estimated requirements cover the period of the
5 contract and are reasonably firm and continuing; and

6 (2) that such a contract will serve the best interests of the
7 Territory by encouraging effective competition or otherwise
8 promoting economies in territory procurement.

9 (d) Cancellation Due to Unavailability of Funds in Succeeding
10 Fiscal Periods. When funds are not appropriated or otherwise made
11 available to support continuation of performance in a subsequent
12 fiscal period, the contract shall be cancelled and, notwithstanding any
13 provision of the contract to the contrary, the contractor shall only be
14 reimbursed for the reasonable value of any non-recurring costs
15 incurred but not amortized in the price of the supplies or services
16 delivered under the contract. The cost of cancellation may be paid
17 from any appropriations available for such purposes.”

18
19 **Section 20.** Section 5240 of Chapter 5 Title 5 Guam Code Annotated
20 is hereby amended to read as follows:

21 **“§5240. Right to Inspect Plant.**

22 The Territory may, at reasonable times, inspect ~~the~~ every part of the
23 plant or place of business of a contractor or any subcontractor which is
24 related to the performance of any contract awarded or to be awarded by the
25 Territory.”

26
27 **Section 21.** Section 5245 of Chapter 5, Title 5 Guam Code Annotated

1 is hereby amended to read as follows:

2 **“§5245. Finality of Determinations.**

3 The determinations required by §§ 5211(f), 5212(a), 5212(gf), 5214,
4 5215, 5216(e), 5230(a), 5232(c), 5235, 5236 and 5237(bc) of this Chapter
5 are final and conclusive unless they are clearly erroneous, arbitrary,
6 capricious or contrary to law.”

7

8 **Section 22.** Section 5248 of Chapter 5, Title 5 Guam Code Annotated
9 is hereby amended to read as follows:

10 **“§5248. Record of Procurement Actions Taken Under §§5214 and**
11 **5215 of this Chapter.**

12 (a) Contents of Record. The Chief Procurement Officer or the
13 Director of Public Works shall maintain a record listing of all
14 contracts made under § 5214 (Sole Source Procurement) or § 5215
15 (Emergency Procurement) of this Chapter for a minimum of five (5)
16 years. The record shall contain:

17 (1) each contractor’s name;

18 (2) the amount and type of each contract; and

19 (3) a listing of the supplies, services or construction
20 procured under each contract.

21 (b) Submission to Legislature and Procurement Advisory
22 Council. A copy of such record shall be submitted to the Legislature
23 and to the Guam Procurement Advisory Council on an annual basis.
24 The record shall be available for public inspection.”

25

26

27 **Section 23.** Section 5249 of Chapter 5, Title 5 Guam Code Annotated

1 is hereby amended to read as follows:

2 **“§ 5249. Record of Procurement Actions.**

3 Each procurement officer shall make and maintain a complete record
4 of each procurement. The key to public and vendor confidence in the
5 procurement system is the existence of reliable records as to how
6 procurement decisions are made and implemented. Records, either
7 electronic or paper, that are sufficient to document decisions must be created
8 and maintained. The record shall include, but not be limited to, the
9 following:

10 (a) the date, time, subject matter and names of participants at
11 any meeting including government employees that is in any way
12 related to a particular procurement;

13 (b) a log of all communications between government employees
14 and any member of the public, potential bidder, vendor or
15 manufacturer which is in any way related to the procurement;

16 (c) sound or video recordings of all pre-bid conferences,;
17 negotiations arising from a any type of request for proposals, and
18 discussions with vendors concerning small purchase procurement;

19 (d) brochures and submittals of unsolicited offerors, potential
20 vendors, manufacturers or contractors, and all drafts, signed and dated
21 by the draftsman, and other papers or materials used in the
22 development of specifications; and

23 (e) the requesting agency’s determination of need.

24 (f) all bids and proposals, unless withdrawn, and all contracts
25 and purchase orders, provided only that no trade secret, proprietary
26 information, or offer which is, pursuant to this Chapter or its
27 regulations, required to be held confidential or not disclosed shall be

1 redacted or kept apart and not available for public inspection.”

2
3 **Section 24.** Section 5251 of Chapter 5, Title 5 Guam Code Annotated
4 is hereby amended to read as follows:

5 **“§5251. Public Record.**

6 The record required by § 5249 of this Chapter is a public record ~~and,~~
7 ~~subject to rules promulgated by the Public Auditor, any.~~ All records shall be
8 presumed public and the burden of establishing that a document or record is
9 private shall be upon the agency or person claiming that the document or
10 record should not be disclosed or inspected. Any bidder, offeror or
11 disinterested person may inspect and copy any portion of the record
12 regardless of except only those parts of the record which are, by law or
13 regulation, specifically designated as not subject to disclosure.”

14
15 **Section 25.** Section 5252 of Chapter 5, Title 5 Guam Code Annotated
16 is hereby amended to read as follows:

17 **“§5252. Rules for Procurement Records.**

18 (a) The ~~rules~~ regulations that may be promulgated pursuant to § 5251-
19 5102 of this Chapter shall:

20 (a~~1~~) protect the integrity of the bidding process;

21 (b~~2~~) protect the confidentiality of trade secrets and
22 proprietary commercial data;

23 (c~~3~~) establish reasonable charges for copying papers;

24 (d~~4~~) provide for transcription of sound recordings;

25 (e~~5~~) require public access to the record at the earliest
26 possible time; and

27 (f~~6~~) not require that the record be complete or that the

1 procurement award be made before inspection and copying are
2 permitted.

3 (7) permit disclosure of records pertaining to pending
4 agency decision, administrative appeal, or the public documents
5 of any judicial review under Part A of Article 9 of this Chapter.

6 (b) The provisions of this Chapter shall apply notwithstanding
7 any contrary provision of Title 5, Chapter 10, Guam Code Annotated.

8 (c) This Chapter does not allow limitations on access to a public
9 record based upon the purpose for which the record is being
10 requested, if the record is otherwise subject to disclosure.”

11
12 **Section 26.** A new Section 5254 is hereby added to Chapter 5, Title 5
13 Guam Code Annotated to read as follows:

14 **“§5254. Special Provisions Applicable to Source Selection.**

15 (a) Professional Services. It is the policy of the Government of
16 Guam to publicly announce all requirements for the professional
17 services of architects, engineers and land surveyors as specified in §
18 5216 of this Chapter on the basis of demonstrated competence and
19 qualification of the services required, and at fair and reasonable
20 prices, and such services shall be procured in accordance with the
21 professional services method of source selection described in § 5216
22 as modified by the requirements of this Subsection.

23 (1) Notwithstanding any provision of law to the contrary,
24 the Director of Public Works shall be responsible to conduct the
25 procurement of such services.

26 (2) In any solicitation reasonably expected to be priced
27 above \$500,000, the Director of Public Works shall appoint the

1 most qualified engineer in the Department to serve on the
2 evaluation and selection team.

3 (b) Design-Build, Design-Build-Operate-Maintain, and Design-
4 Build-Finance-Operate-Maintain Projects. All design-build, design-
5 build-operate-maintain, and design-build-finance-operate-maintain
6 projects shall be procured in accordance with the competitive sealed
7 proposal method of source selection described in § 3212 of this
8 Chapter as modified by the requirements of this Subsection.

9 (1) The RFCP for each such project:

10 (A) shall include design requirements;

11 (B) shall solicit proposal development documents;

12 (C) may, when the Director of Public Works
13 determines that the cost of preparing proposals is high in
14 proportion to the size, estimated price and complexity of
15 the procurement:

16 (i) prequalify offerors by issuing a Request
17 for Qualifications in the time and manner required
18 of an RFCP, in advance of the RFCP, stating that
19 all persons intending to offer a proposal for the
20 project must first respond to the Request for
21 Qualifications; and,

22 (ii) select a short list of responsible offerors
23 prior to any discussions and evaluations of any
24 proposals, provided that the number of proposals
25 that will be short-listed is stated in the RFCP and
26 prompt notice is given to all offerors, to such
27 points of contact as are known as well as by public

1 notice, as to which proposals have been short-
2 listed; or,

3 (iii) pay stipends to unsuccessful offerors,
4 provided that the amount of such stipends and the
5 terms under which stipends will be paid are stated
6 in the RFCP.

7 (D) shall state the relative importance of (i)
8 demonstrated compliance with the design requirements,
9 (ii) offeror qualifications, (iii) financial capability, (iv)
10 project schedule, (v) price (if design-build) or life-cycle
11 cost (if any other delivery method), and (vi) any other
12 factors; and

13 (E) if the contract price is estimated to exceed
14 \$10,000,000 or whenever the contract period of
15 operations and maintenance is ten (10) years or longer,
16 shall require each offeror to identify an Independent Peer
17 Reviewer to perform the services described in § 5301(g),
18 whose competence and qualifications to provide such
19 services shall be an additional evaluation factor in the
20 award of contract, provided however, if the Director of
21 Public Works determines that it is not in the best interest
22 of the Department to contract with the Independent Peer
23 Reviewer so designated, the Director shall contract with
24 another Independent Peer Reviewer to provide the
25 services required.”
26

27 **Section 27. Effective Date.** This Act shall become effective upon its

1 enactment.

2

3 **Section 28. Severability.** *If* any provision of this law or its application
4 to any person or circumstance is found to be invalid or contrary to law, such
5 invalidity *shall not* affect other provisions or applications of this law which
6 can be given effect without the invalid provisions or application, and to this
7 end the provisions of this law are severable