

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 14 (LS)

Introduced by:

Ray Tenorio

2009 JAN - 5 AM 10: 54

**AN ACT TO ADD A NEW ARTICLE 14 TO CHAPTER 5 OF
TITLE 5, GUAM CODE ANNOTATED RELATIVE TO THE
PROCUREMENT OF SOFTWARE.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 14 is hereby *added* to Chapter 5 of 5GCA to read:

Article 14

Neutrality and Integrity in Software Procurement Act

§51401. Title. This Article may be cited as the “Neutrality and Integrity in Software Procurement” Act.

§51402. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that:

A. there is a broad variety of software products designed to serve Public Agencies;

B. Public Agencies are capable of evaluating software choices in terms of performance, value, cost, and licensing terms conveying varying rights and restrictions.

I Liheslatura intends:

1 A. to require that software procurement decisions made by Public Agencies take
2 into account the Total Cost of Ownership;

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4 B. to require that software procurement decisions made by Public Agencies take
5 into account the overall value and performance of the software, with respect to the
6 specific needs of the Public Agency and general criteria such as reliability, ease of
7 learning, ease of use, security, privacy, and interoperability;

8
9 C. to prevent Public Agencies from limiting software choice through express or
10 implied preferences for specific models of software licensing; and

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12 D. to prevent Public Agencies or public employees from circumventing
13 procurement rules when acquiring or installing software.

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15 **§51403. Definitions**

16 “Public Agencies” means a government of Guam agency, department,
17 commission, council, board, bureau, committee, institution, college, university,
18 technical school, government corporation, or other establishment of the executive,
19 legislative or judicial branches. Public Agencies also include interstate or regional
20 entities participating in multi-state or multi-jurisdictional procurements. Public
21 Agencies also include local political subdivisions such as municipalities.

22

23 “Procurement” means buying, purchasing, renting, leasing, licensing, or otherwise
24 acquiring any goods or services. It also includes all functions that pertain to the
25 obtaining of any goods or services, including description of requirements,

1 selection and solicitation of sources, preparation and award of contracts,
2 installation, maintenance, and all phases of contract administration.

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4 "Computer Software" means a set of Computer Programs, procedures and
5 associated documentation concerned with computer data or with the operation of a
6 computer, Computer Program, or Computer Network.

7

8 "Computer Program" means an ordered set of data representing coded instructions
9 or statements that, when executed by a computer, causes the computer to perform
10 one or more computer operations.

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12 "Software Source Code" means pre-compiled, human-readable versions of a
13 Computer Program.

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15 "Computer Network" means a set of related, remotely connected devices and any
16 communications facilities, including multiple computers with the capability to
17 exchange data via communications facilities.

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19 "Total Cost of Ownership" means the sum of all costs borne by the Public Agency
20 during the useful life of the software, including costs for software acquisition,
21 installation, worker training, conversion or loading of existing data, interface and
22 integration with related information systems, and long-term costs for software
23 maintenance, upgrades, and technical support.

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25 **§51404. Software Procurement Provisions**

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1 (A). Decisions by Public Agencies regarding the requisition, procurement, and
2 installation of Computer Software shall be based upon performance and value
3 criteria, including quality, functionality, security, reliability, interoperability, and
4 Total Cost of Ownership.

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6 (B). Decisions by Public Agencies regarding the requisition, procurement, and
7 installation of Computer Software must be neutral with respect to:

- 8 1. whether such Computer Software is provided by a for-profit entity or a
9 non-profit entity; and
- 10 2. the licensing model under which such Computer Software is provided.

11
12 (c). Nothing in this Article shall preclude Public Agencies from considering the
13 effect of specific licensing terms in software procurement decisions, including
14 licensing terms that govern the availability of Software Source Code, rights and
15 restrictions regarding software modification, redistribution, warranties, and
16 intellectual property indemnification.

17
18 (D). Public Agencies and public employees must conform with the government of
19 Guam's software procurement and acquisition rules regardless of the licensing
20 model under which software is provided.

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22 **§51405. Amendments to Procurement Rules and Regulations.**

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24 (A) The Department of Administration that promulgate changes and additions to
25 existing procurement rules and regulations in a manner consistent with the
26 provisions of this Article and this Chapter. Such Rules and Regulations shall

1 apply to departments, agencies and instrumentalities of the Government of Guam
2 not expressly exempted, by Public Law, from the procurement authority of the
3 General Services Agency (GSA) including those to which procurement authority
4 was granted by the GSA.

5
6 (B) All departments, agencies, and instrumentalities expressly exempted from the
7 procurement authority of the General Services Agency, by Public Law, shall
8 promulgate changes and additions to existing procurement rules and regulations in
9 a manner consistent with the provisions of this Article and this Chapter.

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11 **§51406. Effective Date**

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13 This Article will become effective upon enactment.