



Office of the Governor of Guam

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Office of the People's Speaker
Vicente (Jun) C. Pangelinan

DEC 06 2004

TIME: 3:30 () AM (✓) PM
RECEIVED BY: 

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

03 DEC 2004

The Honorable Vicente C. Pangelinan
Speaker
Mina' Bente Siete Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 385 (COR), "AN ACT TO ADD SECTION 5212 TO CHAPTER 5 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO CLARIFY BID SECURITY AND PERFORMANCE BOND REQUIREMENTS FOR CONTRACTORS," which I signed into law on December 2, 2004 as **Public Law No. 27-127**.

Sinseru yan Magåhet,

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

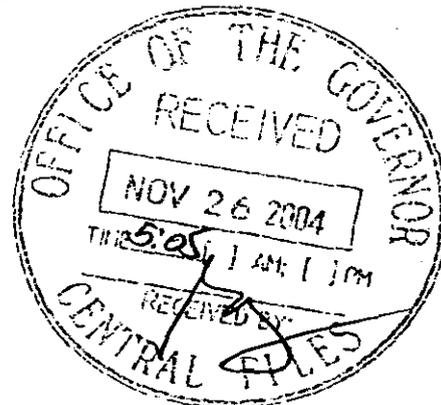
cc: The Honorable Tina Rose Muna-Barnes
Senator and Legislative Secretary



MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
TWENTY-SEVENTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

November 26, 2004

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 126(COR), 251(COR), 257(LS), 259(LS), 283(COR), 293(COR), 307(COR), 335(COR), 344(LS), 345(LS), 347(LS), 351(COR), 380(COR), 385(COR) & 387(COR), and Substitute Bill Nos. 282(COR), 290(COR), 324(COR) & 353(COR) which were passed by *I Mina' Bente Siete Na Liheslaturan Guåhan* on November 24, 2004.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Rose Muna Barnes".

TINA ROSE MUNA BARNES
Senator and Legislative Secretary

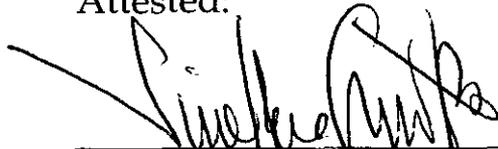
Enclosures (19)

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session

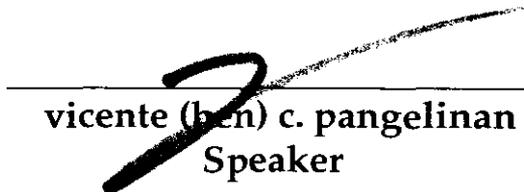
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 385 (COR), "AN ACT TO ADD SECTION 5212 TO CHAPTER 5 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO CLARIFY BID SECURITY AND PERFORMANCE BOND REQUIREMENTS FOR CONTRACTORS," was on the 24th day of November, 2004, duly and regularly passed.

Attested:

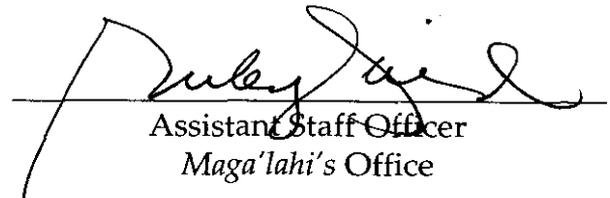


Tina Rose Muña Barnes
Senator and Legislative Secretary



vicente (ben) c. pangelinan
Speaker

This Act was received by *I Maga'lahaen Guåhan* this 26th day of November, 2004,
at 5:05 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: December 2, 2004

Public Law No. 27-127

**I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session**

Bill No. 385 (COR)

As amended on the Floor.

Introduced by:

T. R. Muña Barnes
J. M. Quinata
F. B. Aguon, Jr.
J. M.S. Brown
F. R. Cunliffe
Carmen Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L.A. Leon Guerrero
J. A. Lujan
v. c. pangelinan
R. J. Respicio
Toni Sanford
Ray Tenorio

AN ACT TO ADD SECTION 5212 TO CHAPTER 5 OF TITLE 5 OF THE GUAM CODE ANNOTATED, TO CLARIFY BID SECURITY AND PERFORMANCE BOND REQUIREMENTS FOR CONTRACTORS.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that a notable omission within Guam's Procurement Laws is a
4 provision that specifically addresses the requirements for bid security and
5 performance bonds relative to various products and services from
6 contractors who are participating in competitive sealed bidding. Instead,

1 security and performance bonds are presently determined
2 administratively.

3 *I Liheslatura* further finds that the administrative practice of requiring
4 successful bidders to post a performance bond equal to one hundred
5 percent (100%) of the bid amount is excessive in some cases, such as when
6 a procurement is limited to supplies or services. It is often quite difficult
7 for small local businesses to tie up their available cash in large performance
8 bonds, and it is likely that contractors could offer lower bid prices *if* such
9 onerous requirements for performance bonds were not administratively
10 applied.

11 *I Liheslatura* additionally recognizes that requiring one hundred
12 percent (100%) performance bonds from successful bidders may have
13 become an administrative substitute for a “determination of bidder
14 responsibility”. *If* this is the case, the practice would be in direct violation
15 of the general provisions of the Guam Administrative Rules that prescribes
16 specific bid security and performance bond requirements applicable to the
17 competitive sealed bidding procurement of supplies or services.

18 *I Liheslatura* finds that the act authorizes the General Services
19 Administration Policy Office to establish or revise regulations under the
20 Administrative Adjudication Act in conformity with these specific
21 requirements.

22 It is therefore the intent of *I Liheslaturan Guåhan* to add specific
23 language to the law concerning bid security and performance bond
24 requirements for contractors that are participating in competitive sealed

1 bidding, to allow greater participation by small, local businesses and to
2 reduce the overall cost of government.

3 **Section 2. Bid Security and Performance Bond Requirement for**
4 **Bidders.** A new §5212 is hereby *added* to Part B of Article 3 of Chapter 5 of
5 Title 5 of the Guam Code Annotated, to read:

6 **“§5212. Bid Security and Performance Bond Requirement for**
7 **Contractors.**

8 (a) **Requirement for Bid Security.** Bid security shall be
9 required for all competitive sealed bidding for the procurement of
10 supplies or services when the total price is estimated by the Chief
11 Procurement Officer to exceed Twenty-Five Thousand Dollars
12 (\$25,000.00). Bid security shall be a bond provided by a surety
13 company authorized to do business in Guam, or the equivalent in
14 cash, or otherwise supplied in a form satisfactory to the government
15 of Guam. Nothing herein prevents the requirement of such bonds on
16 the procurement of supplies or services totaling fewer than Twenty-
17 Five Thousand Dollars (\$25,000.00) when a written determination
18 and justification for such requirement is included as an integral part
19 of the Invitation for Bid solicitation package.

20 (b) **Amount of Bid Security.** Bid security shall be in an
21 amount equal to fifteen percent (15%) of the total amount bid.

22 (c) **Release of Bid Security.** The bid security required above
23 under any applicable Invitation for Bid shall *not* be released upon
24 award of the bid, but instead shall continue in full force and effect
25 until delivery of the supplies or services required by any contract

1 awarded to contractor under the associated Invitation for Bid is
2 completed.

3 (d) **Action against Bid Security.** In the event that a successful
4 bidder fails to complete delivery of supplies or services as required in
5 the contract between such contractor and the government of Guam,
6 the government of Guam may proceed to procure such supplies or
7 services from the next lowest bidder who is able to deliver such
8 supplies or services. The government of Guam may retain so much
9 of the bid security as may be required to compensate the government
10 for damages arising from contractor's failure to complete delivery of
11 such supplies or services, and the government of Guam may also
12 bring an action in the Superior Court of Guam against the contractor
13 for direct damages, *if any*, beyond the amount of the bid security
14 posted except that no action against bid security maybe taken in such
15 circumstances where supplies or services are terminated due to the
16 government of Guam's failure to pay for such services or supplies on
17 a timely basis.

18 (e) **Rejection of Bids for Noncompliance with Bid Security**
19 **Requirements.** When the Invitation for Bids requires bid security,
20 noncompliance requires that the bid be rejected unless, pursuant to
21 Policy Office regulations, it is determined that the bid fails to comply
22 in a non-substantial manner with the security requirements.

23 (f) **Withdrawal of Bids.** After the bids are opened, they shall
24 be irrevocable for the period specified in the Invitation for Bids,
25 except as provided in §5211(f) of this Chapter. *If* a bidder is

1 permitted to withdraw its bid before award, no action shall be had
2 against the bidder or the bid security.

3 (g) **No Requirement for Performance Bond.** The bid security
4 that shall be held until complete delivery of the supplies or services
5 by the successful bidder is deemed to be satisfactory to adequately
6 protect the best interest of the government of Guam, from default,
7 and thus, no separate performance bond shall be required of the
8 successful bidder on a contract for supplies or services.

9 (h) **Bond Forms.** The Policy Office shall promulgate by
10 regulation the form of the bond or other bid security required by this
11 Section together with any additional regulations necessary for the
12 administration of this Section. Any person may request and obtain
13 from the Government of Guam a certified copy of a bond upon
14 payment of the cost of reproduction of the bond and postage, *if any*.
15 A certified copy of a bond shall be prima facie evidence of the
16 contents, execution and delivery of the original.”

17 **Section 3. Amendment.** Subsection 5304 (c) of Title 5, Guam Code
18 Annotated, is hereby *amended* to read as follows:

19 “(c) **Authority to Require Additional Bonds.** Nothing in this
20 Section shall be construed to limit the authority of the Government of
21 Guam to require a performance bond or other security for a
22 construction contract awarded hereunder in addition to those bonds
23 specified in Subsection (a) of this Section.”

24 **Section 4. Severability.** *If any of the provisions of this Act or the*
25 *application thereof to any person or circumstance is held invalid, such*

1 invalidity shall *not* affect any other provision or application of this Act
2 which can be given effect without the invalid provision or application, and
3 to this end the provisions of this Act are severable.



FRANK B. AGUON, JR.

Vice Speaker

November 19, 2004

2004 NOV 22 AM 10:44

MEMORANDUM

The Honorable ben c. pangelinan
Speaker, *I Mina' Bente Siete Na Liheslaturan Guåhan*
155 Hesler Street
Hagåtña, Guam 96910

Via: Honorable Senator Lou Leon Guerrero, Committee on Rules & Health

Dear Speaker pangelinan:

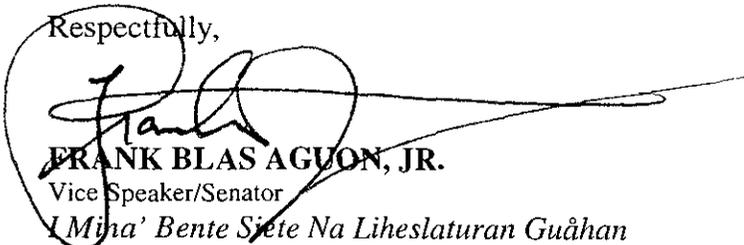
The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform, to which was referred, Bill No. 385 (COR) - An Act to add Section 5212 to Chapter 5 of Title 5 of the Guam Code Annotated to clarify bid security and performance bond requirements for contractors, has had the same under consideration, and now wishes to report back the same with the recommendation **TO DO PASS**.

The voting record is as follows:

TO PASS	<u>6</u>
NOT TO PASS	<u>Ø</u>
TO ABSTAIN DUE TO POTENTIAL CONFLICT	<u>Ø</u>
TO PLACE IN INACTIVE FILE	<u>Ø</u>

Copies of the Committee Report and other pertinent documents are attached. Thank you for your attention to this matter. **Dangkolo' Na Si Yu'os Ma'ase.**

Respectfully,



FRANK BLAS AGUON, JR.
Vice Speaker/Senator
I Mina' Bente Siete Na Liheslaturan Guåhan

Respetu Para Todu (Respect for All)

I Mina Bente-Siete Na Liheslaturan Guåhan * Twenty-Seventh Guam Legislature
Suite 101-A * Ada's Commercial and Professional Center * 118 East Marine Drive * Hagåtña, Guam 96910
Phone (671) 479-4GUM (4486/4828) * Fax (671) 479-4827





FRANK B. AGUON, JR.

Vice Speaker

November 19, 2004

MEMORANDUM

TO: Members, Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform

FROM: Vice Speaker Frank B. Aguon, Jr.
Chairman, Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform

SUBJECT: Committee Report -- Bill No. 385 (COR): An Act to add Section 5212 to Chapter 5 of Title 5 of the Guam Code Annotated to clarify bid security and performance bond requirements for contractors.

Transmitted herewith for your information and action is the report on Bill No. 385 (COR) from the Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill 385 (COR)
4. Public Hearing Sign-in Sheet
5. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me. **Dangkolo' Na Si Yu'os Ma'ase.**

Respectfully,



FRANK BLAS AGUON, JR.
Vice Speaker/Senator
I Mina Bente-Siete Na Liheslaturan Guåhan

Respetu Para Todu (Respect for All)

I Mina Bente-Siete Na Liheslaturan Guåhan * Twenty-Seventh Guam Legislature
Suite 101-A * Ada's Commercial and Professional Center * 118 East Marine Drive * Hagåtña, Guam 96910
Phone (671) 479-4GUM (4486/4828) * Fax (671) 479-4827





FRANK B. AGUON, JR.

Vice Speaker

Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform VOTING SHEET

Bill 385: An Act to add Section 5212 to Chapter 5 of Title 5 of the Guam Code Annotated to clarify bid security and performance bond requirements for contractors.

Committee Members	To Pass	Not to Pass	To Abstain due to potential Conflict	To place in Inactive File
 FRANK B. AGUON, JR. Chair	✓	_____	_____	_____
ANTOINETTE D. SANFORD Vice Chair	_____	_____	_____	_____
 LOU LEON GUERRERO Member	✓	_____	_____	_____
TINA R. MUNA-BARNES Member	✓	_____	_____	_____
 JOHN M. QUINATA Member	_____	_____	_____	_____
 RORY J. RESPICIO Member	_____	_____	_____	_____
 CARMEN FERNANDEZ Member	_____	_____	_____	_____
MARK FORBES Member	_____	_____	_____	_____
LAWRENCE F. KASPERBAUER Member	_____	_____	_____	_____



Respetu Para Todu (Respect for All)





FRANK B. AGUON, JR.

Vice Speaker

I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN

Committee on Appropriations and Budgeting,
General Governmental Operations,
Reorganization and Reform

VICE SPEAKER FRANK B. AGUON, JR.
CHAIRMAN

Committee Report
On
Bill No. 385 (COR)

**“AN ACT TO ADD SECTION 5212 TO CHAPTER 5 OF TITLE 5 OF THE
GUAM CODE ANNOTATED TO CLARIFY BID SECURITY AND
PERFORMANCE BOND REQUIREMENTS FOR CONTRACTORS.”**



Respetu Para Todu (Respect for All)

I Mina Bente-Siete Na Liheslaturan Guåhan * Twenty-Seventh Guam Legislature
Suite 101-A * Ada's Commercial and Professional Center * 118 East Marine Drive * Hagåtña, Guam 96910
Phone (671) 479-4GUM (4486/4828) * Fax (671) 479-4827



I. Overview

The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform held a public hearing on Bill No. 385 (COR) at 9:00 a.m. on Friday, November 19, 2004 in the Public Hearing Room, *I Liheslaturan Guåhan*. Public notice for this hearing was made on: Friday, November 12, 2004 and Thursday, November 18, 2004 in the Pacific Daily News in the form of a paid advertisement.

Senators present at the public hearing were:

Vice Speaker Frank B. Aguon, Jr., Chairman
Senator Toni Sanford, Vice-Chair
Senator Carmen Fernandez, Member
Speaker ben pangelinan
Senator Robert Klitzkie

II. Summary of testimony

Mr. John Limtiaco of Pacific Unlimited, Inc. appeared in support of Bill 385. He asserted that the 10% bid bond and 100% performance bond were very restrictive for small businesses. Such funds would be tied up for 90 to 120 days. If the bid was not awarded, the funds would be tied up for 30 days minimum. Vendors are lucky to be paid in 90 days.

Mr. Limtiaco suggested that the government should provide a performance bond to ensure vendors that they will be paid.

When goods are received but are not accepted, small businesses face the loss of the performance or bid bond. Perhaps debarment should be the penalty for non-performance, instead of funds.

No further testimony was received on Bill 385.

III. Findings and recommendation

The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform, to which Bill No. 385 (COR) was referred does hereby submit to *I Mina' Bente Siete Na Liheslaturan Guåhan* **TO DO PASS** Bill No. 385 (COR): "An Act to add Section 5212 to Chapter 5 of Title 5 of the Guam Code Annotated to clarify bid security and performance bond requirements for contractors".