

I Mina'trentai Ocho Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
353-38 (COR)	Sabina Flores Perez Therese M. Terlaje Chris Barnett	AN ACT TO <i>AMEND</i> §5020 OF SUBARTICLE B, ARTICLE 1, TO ADD A NEW §5249(f) TO SUBARTICLE G, ARTICLE 3, AND AMEND § 5425 OF SUBARTICLE A, OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO INCORPORATING TIMELINES AND CLARIFYING WRITTEN DETERMINATIONS WITHIN GOVERNMENT PROCUREMENT.	8/31/26 9:54 a.m.						

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2026 (SECOND) Regular Session

Bill No. 353-38 (COR)

Introduced by:

Sabina Flores Perez *SFP*
Therese M. Terlaje *TMT*
Chris Barnett *CB*

AN ACT TO *AMEND* §5020 OF SUBARTICLE B, ARTICLE 1, TO *ADD* A NEW §5249(f) TO SUBARTICLE G, ARTICLE 3, AND *AMEND* § 5425 OF SUBARTICLE A, OF ARTICLE 9, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO INCORPORATING TIMELINES AND CLARIFYING WRITTEN DETERMINATIONS WITHIN GOVERNMENT PROCUREMENT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that protests serve an invaluable role in the procurement process by promoting accountability, bidder confidence, and agency compliance. Protests may also highlight gaps in laws, which, in turn, can initiate reforms in order to ensure vital public funds are properly spent in meeting the needs of our community.

I Liheslatura further finds that a lack of timelines for an agency's response to protest can unnecessarily delay a protest, its resolution, and ultimately the procurement of goods, services, or construction. The delay may also lead to the inability for Government agencies to maximize to the fullest extent practicable the purchasing value of public funds of the Government, as required by Guam

1 Procurement Law, 5 GCA § 5001(b)(5), to expend funds within required grant
2 deadlines, or to undergo needed capital improvements.

3 *I Liheslatura* finds standardizing best practices that includes providing written
4 determinations and its inclusion of in the procurement record can increase public
5 confidence in government procurement.

6 *I Liheslaturan Guåhan* intends to require timelines for an agency to respond
7 to a protest and to strengthen written determination requirements and ensure they
8 are included in the procurement record in order to increase public confidence in
9 government procurement and to maximize the purchasing value of public funds in
10 meeting the needs of our community.

11 **Section 2.** §5020 of Subarticle B, Article 1, Chapter 5, Title 5, Guam Code
12 Annotated is hereby *amended* to read:

13 **“§ 5020. Determinations.**

14 Written determinations required by this Chapter shall be retained ~~in the~~
15 ~~appropriate official file of the Chief Procurement Officer or the purchasing agency~~
16 as required by Article 3, Subarticle G of this Chapter. A written determination
17 shall be signed by the officer responsible for making the determination.”

18 **Section 3.** To *add* a new §5249(f) to Subarticle G, Article 3, Chapter 5,
19 Title 5, Guam Code Annotated to read:

20 **“(f) Any written determination required by this Chapter.”**

21 **Section 4.** To *amend* § 5425 of Subarticle A, Article 9, Chapter 5, Title 5,
22 Guam Code Annotated to read as follows:

23 **“§ 5425. Authority to Resolve Protested Solicitations and Awards.**

24 (a) Right to Protest. Any actual or prospective bidder, offeror, or contractor
25 who may be aggrieved in connection with the method of source selection,
26 solicitation or award of a contract, may protest to the Chief Procurement Officer,
27 the Director of Public Works, or the head of a purchasing agency. The protest shall

1 be submitted in writing within fourteen (14) days after such aggrieved person
2 knows or should ~~know~~ have known of the facts giving rise thereto.

3 (b) Authority to Resolve Protests. The Chief Procurement Officer, the
4 Director of Public Works, the head of a purchasing agency, or a designee of one of
5 these officers shall have the authority, prior to the commencement of an appeal to
6 the Public Auditor or an action in court concerning the controversy, to settle and
7 resolve a protest of an aggrieved bidder, offeror, or contractor, actual or
8 prospective, concerning the solicitation or award of a contract. This authority shall
9 be exercised in accordance with regulations promulgated by the Policy Office.

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

14 (1) state the reasons for the action taken; and

15 (2) inform the protestant of its right to administrative and judicial appeal.

16 (d) Notice of Decision. A copy of the decision under Subsection (c) of this
17 Section shall be mailed electronically or otherwise furnished immediately to the
18 protestant and any other party intervening.

19 (e) Failure to Render Timely Decision. If the protestant *does not* receive
20 a decision on the protest as required under Subsection (c) of this Section within
21 twenty (20) business days from the date of the protest, the protestant may submit a
22 written request for a decision on the protest to the office where the protest was
23 made. If no decision as required under Subsection (c) of this Section is made and
24 served upon the protestant within five (5) business days after receipt of such
25 written request for a decision, then the protest *shall* be deemed denied. On an
26 appeal of a denial, the appellant *shall* bear the burden of establishing that there was
27 good and sufficient reason for the purchasing agency to sustain the protest based

1 on evidence that was known to it or should have been known to it at the time the
2 protest was rejected.

3 ~~(e)~~ (f) Appeal. A decision under Subsection (c) of this Section including a
4 decision ~~there under~~ thereunder regarding entitlement to costs as provided by
5 Subsection ~~(h)~~ (i) of this Section, may be appealed by the protestant to the Public
6 Auditor;

7 (1) within fifteen (15) days after receipt by the protestant of the notice
8 of decision to deny the protest; or

9 (2) within fifteen (15) days after the date the protest is deemed denied
10 as provided in Subsection (e) of this Section.

11 ~~(f)~~ (g) Finality. A decision of the Public Auditor is final unless a person
12 adversely affected by the decision commences an action in the Superior Court in
13 accordance with Subsection (a) of § 5480 of this Chapter.

14 ~~(g)~~ (h) Automatic Stay. In the event of a timely protest under Subsection (a)
15 of this Section or under Subsection (a) of § 5480 of this Chapter, Guam shall not
16 proceed further with the solicitation or with the award of the contract prior to final
17 resolution of such protest, and any such further action is void, unless:

18 (1) The Chief Procurement Officer or the Director of Public Works
19 after consultation with and written concurrence of the head of the using or
20 purchasing agency and the Attorney General or designated Deputy Attorney
21 General, makes a written determination that the award of the contract
22 without delay is necessary to protect substantial interests of Guam; and

23 (2) Absent a declaration of emergency by *I Maga'håga/Maga'låhi*, the
24 protestant has been given at least two (2) days notice (exclusive of Guam
25 holidays); and

26 (3) If the protest is pending before the Public Auditor or the Court, the
27 Public Auditor or Court has confirmed such determination, or if no such

1 protest is pending, no protest to the Public Auditor of such determination is
2 filed prior to expiration of the two (2) day period specified in Item (2) of
3 Subsection ~~(g)~~ (h) of this Section.

4 ~~(h)~~ (i) Entitlement to Costs. In addition to any other relief or remedy
5 granted under Subsection (c) or ~~(e)~~ (f) of this Section or under Subsection (a)
6 of § 5480 of this Chapter, including the remedies provided by Subarticle B
7 of Article 9 of this Chapter, when a protest is sustained, the protestant shall
8 be entitled to the reasonable costs incurred in connection with the
9 solicitation and protest, including bid preparation costs, excluding attorney's
10 fees, if:

11 (1) the protestant should have been awarded the contract under the
12 solicitation but was not; or

13 (2) there is a reasonable likelihood that the protestant may have been
14 awarded the contract but for the breach of any ethical obligation imposed by
15 Subarticle B of Article 11 of this Chapter or the willful or reckless violation
16 of any applicable procurement law or regulation. The Public Auditor shall
17 have the power to assess reasonable costs including reasonable attorney fees
18 incurred by the government, including its autonomous agencies and public
19 corporations, against a protestant upon its finding that the protest was made
20 fraudulently, frivolously or solely to disrupt the procurement process.”

21 **Section 5. Severability.** If any provision of this Act or its
22 application to any person or circumstance is found to be invalid or inorganic, such
23 invalidity shall not affect other provisions or applications of this Act that can be
24 given effect without the invalid provision or application, and to this end the
25 provisions of this Act are severable.

26 **Section 6. Enactment Date.** This Act shall be effective upon enactment.