


**I MINA'TRENTI UNU NA LIHESLATURAN GUÅHAN**  
**2011 (FIRST) Regular Session**

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Bill No 48-316 DR

Introduced by:

J. T. Won Pat, Ed.D. 

**AN ACT TO ADD § 5213A, 5220, AND 5425A TO TITLE 5  
GUAM CODE ANNOTATED RELATIVE TO  
PROVIDING TEMPORARY EXPEDITED  
PROCUREMENT PROCEDURES TO ASSIST WITH  
THE DISBURSEMENT OF STIMULUS FUNDS UNDER  
THE "2009 AMERICAN RECOVERY AND REINVEST  
ACT".**

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds that the government of Guam has been granted closed to \$240 million in federal stimulus funding under the historic 2009 American Recovery and Reinvestment Act (ARRA), U. S. Public Law 111-5, which provides states with funding for infrastructure projects to create jobs in the near term and to lay the foundation for long term economic growth. Many of ARRA's provisions include stringent "use it or lose it" deadlines that require states to use the federal stimulus funds quickly or the funding will be reallocated to other states. It is reported that an approximate balance of \$150 million plus in federal stimulus funding including about over \$80 million for the Department of Education remains to be obligated and or expended on or before September 30, 2011.

*I Liheslaturan Guahan* finds that, in order to mobilize economic recovery

1 and so as not to lose federal stimulus funds, many states passed laws in 2009  
2 specifically intended to reap the maximum benefits of ARRA, including methods  
3 to comply with its deadlines. Among those many states are Colorado and Hawaii,  
4 both of which have procurement laws patterned after the American Bar  
5 Association's Model Procurement Law, like Guam, and both of which made  
6 changes to their procurement law specifically to accommodate the quick use of  
7 ARRA funds. Colorado added a new section to its procurement law to permit a  
8 waiver of one or more provisions of their procurement code to the extent the  
9 waiver was necessary to expedite the use of ARRA funds if strict adherence to the  
10 code would substantially impede the state's ability to expend the moneys in a  
11 manner or within the time required by ARRA. Hawaii streamlined the  
12 procurement process and protest process for ARRA funded procurements, and  
13 raised the threshold for all small purchases, regardless of source of funds, to sunset  
14 in 2012.

15 *I Liheslaturan Guahan* finds that many of the deadlines for Guam to use its  
16 ARRA funds are now fast approaching, and the government of Guam has not yet  
17 been able to encumber or expend much of it. *I Liheslaturan Guahan* intends for  
18 the government of Guam to maximize the ARRA funds, and finds that in order to  
19 facilitate compliance with the deadlines and other ARRA requirements, the  
20 government of Guam needs temporary relief from the Guam Procurement Law in  
21 the form of expedited procurement procedures including protest procedures,  
22 similar to those taken by the states of Colorado and Hawaii in 2009. It is not the  
23 intent of *I Liheslaturan Guahan* to provide permanent exemptions or permanent  
24 relief to the Guam Procurement Law, and this Act shall be applied only to expedite  
25 the expenditure of federal stimulus funds authorized by ARRA, or to expend the  
26 matching state funds, if any, required to access the federal stimulus funds.

27 *I Liheslaturan Guahan* finds that ARRA has specific accountability and

1 transparency provisions to prevent fraud, waste, and abuse, to ensure against poor  
2 contracting or grant management, and to ensure the use of competitive procedures.  
3 ARRA provides the federal government with expansive investigatory and auditing  
4 powers to monitor, oversee, and ensure that the ARRA funds are used for their  
5 intended purposes. Therefore, *I Liheslaturan Guahan* intends this Act to provide a  
6 proper balance between the expedited procurement procedures and the necessary  
7 accountability and transparency requirements.

8 **Section 2.** A new §5213A is added to Title 5 of the Guam Code Annotated  
9 to read:

10 **§5213A. Small Purchase Limits for Procurement Funded with**  
11 **2009 American Recovery and Reinvestment Act Moneys.**

12 Notwithstanding any rule created pursuant to §5213 setting threshold  
13 amounts for small purchases, whenever an acquisition is funded, in whole or  
14 in part, by the 2009 American Recovery and Reinvestment Act, the  
15 threshold limits to use the small purchases procedure shall be increased to  
16 the following limits instead:

17 (a) For the acquisition of goods and services, the acquisition  
18 may not exceed \$100,000; and

19 (b) For the acquisition of construction, the acquisition may  
20 not exceed \$250,000.

21 All other procedures for small purchases as established by this  
22 Chapter or by applicable rules shall be followed. This section is repealed  
23 effective September 30, 2012, unless the federal grantor agency authorizes  
24 an extension of time for the obligation or expenditure of ARRA funds, in  
25 which case this section shall be repealed at the end of the extension period.

26 **Section 3.** A new § 5220 is added to Title 5 of the Guam Code Annotated  
27 to read:

1           **§ 5220. Waiver of Procurement Code Requirements for**  
2           **Acquisitions Funded with 2009 American Recovery and Reinvestment**  
3           **Act Moneys.** Notwithstanding any other provision of this Chapter and any  
4           rules promulgated therefore, if funding for a procurement, whether in whole  
5           or in part, includes moneys received pursuant to the 2009 American  
6           Recovery and Reinvestment Act (ARRA) or any amendments thereto, the  
7           Chief Procurement Officer, the Director of Public Works, or the head of a  
8           purchasing agency may request in writing a waiver of one or more  
9           provisions of this Chapter to the extent the waiver is necessary to expedite  
10          the use of the ARRA moneys in a transparent and accountable manner  
11          consistent with the goals and purposes of ARRA or to the extent strict  
12          adherence to this Chapter would substantially impede the ability of the  
13          government to expend the moneys in the manner or within the time required  
14          by ARRA or any other applicable federal law. A waiver shall be granted  
15          upon the written approval of the Governor and the Public Auditor, or their  
16          designees, confirming that the requested waiver meets the criteria set forth in  
17          this section. A written determination of the basis for and the scope of the  
18          waiver, including but not limited to the specific code provision being waived  
19          and the alternative selection process to be used, shall be signed by the  
20          requesting party, and the Governor and the Public Auditor, or their  
21          respective designees if applicable, and shall be included in the contract file,  
22          and made publicly available by posting on the Governor's or Public  
23          Auditor's web site. Determinations made pursuant to this section are not  
24          subject to protest. This section is repealed effective September 30, 2012,  
25          unless the federal grantor agency authorizes an extension of time for the  
26          obligation or expenditure of ARRA funds, in which case this section shall be  
27          repealed at the end of the extension period.

1       **Section 4.** A new §5425A is added to Title 5 of the Guam Code Annotated  
2 to read:

3               **§5425A. Protest Procedure for Procurement Funded with 2009**  
4       **American Recovery and Reinvestment Act Moneys.** (a) Notwithstanding  
5 any other provision of this Chapter and any rules promulgated therefore, if  
6 an actual or prospective vendor, contractor, or service provider is aggrieved  
7 by an award of a contract funded, in whole or in part, by the 2009 American  
8 Recovery and Reinvestment Act (ARRA), the procedure for protest outlined  
9 in this section shall apply, and shall be the exclusive means available to  
10 resolve the concerns of persons aggrieved in connection with awards or  
11 solicitations involving ARRA funds, in whole or in part. The protest shall  
12 be submitted to the Public Auditor who may settle and resolve a protest by  
13 one or more of the following means:

- 14               (1) amending or canceling the solicitation;  
15               (2) terminating the contract that was awarded;  
16               (3) declaring the contract null and void from the time of its award;  
17               or  
18               (4) affirming the contract award decision.

19               If the protest is not resolved by mutual agreement, the Public Auditor  
20 shall issue a decision in writing within no more than ten working days of  
21 receipt of the protest. The decision shall state the reasons for the action  
22 taken. A copy of the written decision shall be mailed or otherwise furnished  
23 to the vendor, contractor, or service provider who initiated the protest, the  
24 person awarded the contract, and to all other non-selected bidders or  
25 offerors.

26               (b) For purposes of section, the determination of facts and decision  
27 by

1           the Public Auditor for the resolution of protests of ARRA funded  
2           procurements shall be final and conclusive with no right of appeal or judicial  
3           review. The fact that a protest has been filed pursuant to this section shall  
4           not stay the procurement process or award of any contract funded by ARRA  
5           moneys, whether in whole or in part, unless so ordered by the Public  
6           Auditor. A request for reconsideration shall also not stay the award of any  
7           contract funded by ARRA moneys, whether in whole or in part, unless so  
8           ordered by the Public Auditor.

9           (c) This section is applicable retroactively to any procurement  
10          involving ARRA funds, provided the procurement had begun but had not yet  
11          been completed at the time this section became effective, and provided no  
12          protest had yet been filed. A protest pursuant to this section shall be  
13          submitted in writing within fourteen (14) days after such aggrieved person  
14          knows or should have known of the facts giving rise thereto, provided no  
15          protest may be filed more than thirty (30) days after notice of award is given  
16          to a bidder or offeror.

17          (d) This section is repealed effective September 30, 2012, unless  
18          the federal grantor agency authorizes an extension of time for the obligation  
19          or expenditure of ARRA funds, in which case this section shall be repealed  
20          at the end of the extension period.

21          **Section 5.** Rules may be promulgated, if necessary, consistent with this  
22          Act pursuant to the procedures in the Administrative Adjudication Law for  
23          establishing emergency rules through executive order.