



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

September 4, 2014

Committee on General Government Operations and Cultural Affairs
32nd Guam Legislature
155 Hesler Place
Hagåtña, Guam, 96910

**RE: Testimony Supporting the passage of Bill No. 246-32 (COR) with
Amendments**

Hafa Adai Senators,

The Office of Public Accountability (OPA) praises the Guam Legislature's continuous efforts to improve Guam's Procurement Laws. The OPA believes that Bill No. 246-32 (COR) will go far in providing the various departments, agencies, and entities of the Government of Guam with more alternatives in soliciting for contracts. However, there are some facets of the bill that the OPA would like to see amended to ensure that the changes to Guam's Procurement Law proposed by the bill are comprehensive. These amendments are as follows:

1. Guam Procurement Regulations. The proposed amendments to 5 G.C.A. §5201, §5210, §5211, §5212, §5214, §5215, §5216, §5217, §5219, §5220, §5230, §5232, §5233, §5235, §5237, §5240, §5245, §5248, §5249, §5251, and §5252 should be reflected in their respective procurement regulations. If Bill 246-32 is passed into law, such a sweeping change to Guam's Procurement Law must be contemporaneously made to Guam's Procurement Regulations to keep them current.
2. Section 8's proposed amendments to 5 G.C.A. §5215(c), which require the Governor of Guam to approve in writing all authorizations for emergency procurement should be revised to allow the governing boards of autonomous agencies, public corporations, and the Department of Education, the Guam Community College, the University of Guam, and the head of government entities that are independent of the Executive Branch of the Government of Guam, to approve emergency procurements for their respective agencies. This allows these entities to keep the independence they were statutorily granted and to streamline and align the approval process for their emergency procurements with the statutory independence these agencies possess.
3. Section 9's proposed amendments to 5 G.C.A. §5216 should be revised as follows. The proposed amendment to 5 G.C.A. §5216(b) should be deleted, as they are vague and ambiguous because it is not clear whether the statements of qualifications, which are required by RFPs, are only submitted in response to an agency's request for information or could be submitted in response to an RFP. Further, the language is conflicting as it

states that a statement of qualifications should not include prices, but allows the procurement officer to specify a format for the statement of qualifications, which might include an agency's pricing. The original language of subsection (b) should be kept as is. The proposed addition of subsection (f), which requires all professionals submitting a proposal to have errors and omissions insurance prior to award should be deleted in its entirety. Only the largest professional firms on Guam have errors and omissions insurance and subsection (f) would limit competition and award of professional services to these few firms thus stifling broad based competition.

4. Section 10's proposed amendment to 5 G.C.A. §5217 regarding award of contracts to non-profit corporations employing disabled persons without competition should be strengthened by requiring a percentage such as 20% of the work required pursuant to the contract will be performed by disabled persons. Otherwise, as written, a non-profit corporation employing just one person with disabilities could be awarded a contract without competition, and the majority of the work would be performed by persons without disabilities resulting in a great disadvantage to for-profit companies with similar workforces.

5. Section 13's proposed addition of 5 G.C.A. §5221, which allows purchasing agencies to extend existing contracts for nine (9) months should be deleted in its entirety. Such bridge contracts will not promote planned procurement and will likely result in purchasing agencies not commencing a solicitation to replace an expiring contract until the contract is expired.

6. Section 14's proposed amendment to 5 G.C.A. §5230(b) should be amended to permit the disclosure of trade secrets or confidential proprietary information to the OPA as well as the Attorney General. As written, the disclosure outside of the purchasing agency approving the trade secret or confidential proprietary information is limited to the Attorney General.

7. Section 19's proposed amendments to 5 G.C.A. §5237(b) which authorize only the Chief Procurement Officer of the General Services Agency to approve contract terms in excess of five (5) years should be amended to authorize the Director of the Department of Public Works, and the heads of a purchasing agency for autonomous agencies, public corporations, or government entities independent of the oversight of the executive branch to make such authorizations as well.

8. Section 23's proposed amendments to 5 G.C.A. §5249(f) which would require the purchasing agency to keep copies of all bids and proposals should be amended to include the existing exceptions to this rule that already exist. Thus, subsection (f) should begin with, "Unless otherwise allowed by law or regulations,..."

9. Section 24's proposed amendment to 5 G.C.A. §5251 deleting the Public Auditor's authority to promulgate regulations regarding the disclosure of public procurement records should be revised to preserve this existing authority of the Public Auditor.

10. Section 25's amendment to 5 G.C.A. §5252(a) which would remove the Public Auditor's authority to promulgate regulations regarding the public disclosure of procurement records and give this authority to the Procurement Policy Office, should be deleted in its entirety.

11. Section 26's enactment of 5 G.C.A. §5254(a)(1), which would limit the selection of architects, engineers, and land surveyors to the Director of Public Works should be revised to authorize the Chief Procurement Officer, and the heads of purchasing agencies which are autonomous agencies, public corporations, or government entities that are independent of the executive branch, such as the Guam Power Authority, the Guam Waterworks Authority, and the Department of Education, to also select these services. This amendment is necessary to preserve the statutory independence and existing powers that are granted to these agencies.

The OPA would support the passage of Bill 246-32 (COR) if the aforementioned amendments are made to it. Thank you for the opportunity to comment on the bill.

Senseramente

A handwritten signature in blue ink, appearing to read 'Doris Flores Brooks', written in a cursive style.

Doris Flores Brooks, CPA, CGFM
Public Auditor