



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

September 4, 2014

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

RE: Testimony in Support of Revised Version of Substitute Bill 224-32 (COR) An Act to Amend Article 9 And Article 12, of Chapter 5, Title 5 of the Guam Code Annotated relative to Clarifying Legal and Contractual Remedies in Guam Procurement Law

Hafa Adai Senators

The Public Auditor thanks the Committee on General Government Operations and Cultural Affairs for the continued dialogue on Substitute Bill 224-32 (COR). I applaud the 32nd Guam Legislature's activism in updating and improving Guam's Procurement Laws. Guam's Procurement Laws are supported by Guam's Procurement Regulations which state, in greater specificity, how the laws are to be carried out. If enacted into law, Substitute Bill 224-32 (COR) would be the most substantive change to Guam's Procurement Laws made in many years and the integrity of Guam's Procurement System would be seriously threatened if the procurement regulations did not accurately reflect the changes to the many statutes being amended. Thus, the most necessary revision to Substitute Bill 224-32 (COR) is the inclusion of the regulations for the statutes being amended so that they correctly reflected the statutory changes.

The second necessary revision concerns the need to ensure that protestors appealing a procurement action follow the correct review procedures by appealing the agency's procurement action to the Office of Public Accountability. Recently, at least three protestors used loopholes in the Guam Procurement Statutes to attempt to appeal agency procurement actions directly to

the Superior Court of Guam to bypass the administrative review of the agency's procurement action by the Office of Public Accountability. Although the Superior Court subsequently ordered those parties to bring their appeals to the Office of Public Accountability first, these actions caused untoward delay in obtaining administrative and then judicial review of the agency procurement actions. This delay is especially damaging in cases that are subject to the Automatic Stay, which prevents an agency from proceeding with the solicitation or award of a contract until final resolution of an appeal, because the People of Guam are unnecessarily left without the goods and services that our Government desperately requires to provide for their many needs. The language of Substitute Bill 224-32 (COR) should be strengthened to close those loopholes and ensure that the appeals concerning agency procurement actions be heard by the Office of Public Accountability first and only after it makes a final administrative decision on such appeals can the appeal proceed to the Superior Court of Guam for judicial review.

The third necessary revision concerns unifying the time standards to make an appeal to the Office of Public Accountability and to file a petition to the Superior Court of Guam for judicial review of a final administrative decision concerning a procurement action. Currently, Guam's Procurement Laws and Regulations have different time standards for the appeal of agency decisions for procurement protests, debarment or suspension, and breach of contract or contract controversy issues. These differing time standards, make it more difficult for lay people to navigate the appeals process and also cause unnecessary delay in obtaining a final resolution of an appeal of an agency procurement action. To correct this deficiency, the Office of Public Accountability recommends that a uniform time standard of fifteen (15) days be imposed for a person or entity being adversely affected by an agency's procurement action to appeal such action to the Office of Public Accountability, and fourteen (14) day time standard be imposed for

to file a petition for a judicial review of a final administrative decision from the Office of Public Accountability with the Superior Court of Guam. These are the current time standards for procurement protests. If made the standard for appeals concerning the other agency procurement actions, they will greatly enhance ease of understanding for parties that are not represented by attorneys and expedite the final resolution of procurement appeals.

The fourth necessary revision concerns streamlining the appeals process by preventing any actions of the appealing party and the government from obstructing or delaying the administrative review of agency's procurement action. In principle the Office of Public Accountability agrees with some of the bills' provisions for encouraging the parties to come to a mutual agreement regarding an agency's procurement action. However, this principle should not be elevated or encouraged to the extent that it causes a delay in obtaining a final administrative decision of a procurement appeal. Indeed, there is no guarantee that delaying an appeal to allow the parties to engage in protracted settlement discussions will bear fruit. In contrast, allowing the appeals process to proceed unhindered despite these discussions will result in a final administrative decision.

The Office of Public Accountability would support the passage of an amended Substitute Bill 224-32 (COR) which incorporates these revisions. Thank you.

Senseramente,



Doris Flores Brooks, CPA, CGFM
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