



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

September 18, 2015

The Honorable Thomas C. Ada
Senator and Chairman Committee on Transportation, Infrastructure, Lands, Border
Protection, Veterans' Affairs, and Procurement
33RD Guam Legislature
155 Hesler St.
Hagatna, Guam 96910

Re: Bill No. 162-33 An Act to Amend Articles...Relative to Legal and Contractual
Remedies in Guam Procurement Law.

Dear Senator Ada and Committee Members:

The Office of Public Accountability (OPA) welcomes the continuing efforts of
Chairman Ada's and the Committee Members to improve Guam's Procurement
Laws. As I have suggested in previous testimonies on similar procurement bills,
amending procurement laws and regulations should be a collaborative effort
wherein all of Guam's procurement stakeholders, including representatives from the
private and public sectors, provide input, negotiate, compromise, and express their
agreement for a bill that would give our island a more efficient, transparent, and fair
procurement system.

As OPA has reviewed the various procurement bills introduced in past legislatures,
we have been in support of the bills with modifications and amendments. Bill 162 is
no different. We are in support of Bill 162 with amendments. Attorney Anthony R.
Camacho, OPA hearing officer, will also submit testimony on the bill with suggested
amendments. In addition we have additional comments on the bill.

Throughout the bill, it makes reference to the Policy Office and the regulations
promulgated by the Policy Office. For clarity, who is the Policy Office and does this
Office have the staffing and expertise to promulgate rules and regulations for this
bill?

Section 5. A new solicitation method has been introduced entitled Request for
Competitive Sealed Proposals (RFCP) where price is an evaluating factor not to
exceed 50% of all relevant factors. This is a solicitation method that in principle we

support and is needed. Here again the Policy Office shall specify such other conditions and procedures as deemed appropriate by regulation.

Section 6. Sole Source Procurement unfortunately is a method of solicitation that has been too often misused and abused. Adding a requirement that a public announcement must be made, at least on line, would help avoid such misuse.

Section 11. We applaud the new requirement to post solicitations on the procuring agency website and General Services Administration and/or the Department of Public Works website and to not charge a fee for the download. OPA has been practicing this procedure for many years. To assist us we have added the requirement on the website of providing name, title, company, and email information prior to being able to download. This is so we have the necessary contact information of anyone who downloads any bid. This has proven to be most helpful in our procurement review.

This information requirement is quite common on the Internet, where a research paper or other information is made available with the proviso that you provide information as to who is obtaining the paper.

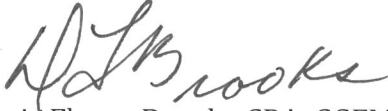
Section 12. We are not in favor of Bridge Contracts. Bridge contracts tend to foster poor procurement planning. With proper advanced procurement planning there is no need for Bridge Contracts. While there maybe extenuating circumstances that may warrant a temporary extension, such extensions should be rare and the law should not give an escape valve.

Section 19. Just as there maybe reasonable times the Government may want to inspect a plant or business, so too there may be reasonable times the Government may want to and should have the "Right to Audit". However we have not researched the matter to give some suggested guidance as to when and how the "Right to Audit" clause should be invoked.

Section 26 (g). I am not in favor of the Presiding Judge of the Superior Court appointing the Hearing Officer in the instance of the disqualification of the Public Auditor. Recall from past procurement bills this matter has been discussed but with no final agreement or consensus reached. For your information this matter was resolved in 2009 through updated OPA regulations regarding Procurement Appeals. The regulations now state that the Public Auditor shall designate a member of his or her staff or the appointed Hearing Officer for procurement appeals to preside over the matter. The relevant documents are attached and are also posted on OPA's website www.opaguam.org.

The foregoing are some of the general amendments suggested to Bill 162-33. As mentioned previously OPA Hearing Officer Anthony Camacho will provide more detailed suggestions.

Thank you and Senseramente

A handwritten signature in cursive script that reads "Dorís Flores Brooks". The signature is written in black ink and is positioned above the printed name.

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Attachment: OPA Procurement Regulations Updated as of 2009