



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-23-002 in re Appeal of JMI (GIAA)

William B Brennan <wbrennan@arriolafirm.com>

Fri, Oct 27, 2023 at 8:59 AM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "R. Marsil Johnson" <rmarsjohnson@bsjmlaw.com>

Hafa Adai,

Please see the attached submission of exhibit related to the Supplement Brief filed yesterday.

Best,

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**OPA PA-23-002 Submission of Exhibit to Supp'l Brief.pdf**

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Guam International Airport Authority

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of

Johndel International, Inc. dba. JMI-Edison,

Appellant.

APPEAL CASE NO.: OPA-PA-23-002
GIAA 2021 Emergency Procurement

**SUBMISSION OF EXHIBIT TO
SUPPLEMENTAL BRIEF**

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

COMES NOW the A.B. Won Pat Guam International Airport Authority (“GIAA”), through the undersigned counsel, to submit the attached copy of Public Law 35-109, which was referenced as attached to its Supplemental Brief filed on October 26, 2023 but was inadvertently omitted from the efiled copy.

Dated: October 27, 2023.

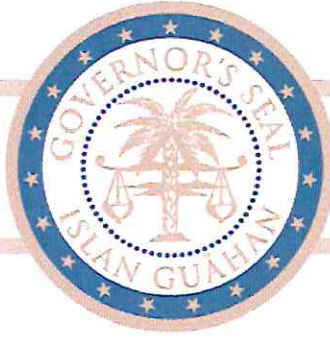
Respectfully submitted,
ARRIOLA LAW FIRM

By: 
WILLIAM B. BRENNAN

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
90-35 (COR) As substituted; amended by the Committee on Environment, Revenue and Taxation, and Procurement; further substituted; and amended on the Floor	Sabina Flores Perez Kelly Marsh (Taitano), PhD Amanda L. Shelton	AN ACT TO REPEAL AND REENACT § 5215 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR EMERGENCY PROCUREMENT FOR THREATS TO THE ENVIRONMENT, INCREASING TRANSPARENCY AND OTHERWISE IMPROVING EMERGENCY PROCUREMENT.	4/12/19 4:46 p.m.	5/2/19	Committee on Environment, Revenue and Taxation, and Procurement	6/5/19 9:00 a.m.	2/26/20 1:10 p.m.	Waiver: 4/24/19	9/4/19 5:57 p.m. As substituted by the Committee on Environment, Revenue and Taxation, and Procurement
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
10/12/20	AN ACT TO REPEAL AND REENACT § 5215 OF SUBARTICLE B, ARTICLE 3; AND AMEND § 5030(x) OF SUBARTICLE C, ARTICLE 1, BOTH OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR EMERGENCY PROCUREMENT FOR THREATS TO THE ENVIRONMENT, INCREASING TRANSPARENCY, AND OTHERWISE IMPROVING EMERGENCY PROCUREMENT.	10/19/20	10/19/20	10/30/20	35-109	10/30/20	Received: 10/30/20 Mess and Comm. Doc. No. 35GL-20-2396.		

LOURDES A. LEON GUERRERO
MACA'HAGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MACA'LÁHI • LIEUTENANT GOVERNOR

October 30, 2020

HONORABLE TINA ROSE MUÑA BARNES

Speaker

I Mina'trentai Singko Na Liheslaturan Guåhan

35th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

35GL-20-2396

Speaker Tina Rose Muña Barnes

OCT 30 2020

Time 6:41 (AM/PM)

Received By:

Re: Substitute Bill No. 90-35 (COR) - An Act to Repeal and Reenact § 5215 of Subarticle B, Article 3, and Amend § 5030(x) of Subarticle C, Article 1, Both of Chapter 5, Title 5, Guam Code Annotated, Relative to Providing for Emergency Procurement for Threats to the Environment, Increasing Transparency, and Otherwise Improving Emergency Procurement

Dear Madame Speaker:

Emergencies come in many forms. As a community, we understand well how to prepare and recover from emergencies presented when typhoons sweep through our region. While our existing procurement laws appeared sufficient to address such emergencies, it is appropriate to study, and, when necessary, refine even well-established and entrenched mechanisms in the law to adjust to new realities. Substitute Bill No. 90-35 recognizes that environmental threats can create an urgent need to procure services and supplies in the same way that threats to public health, welfare, and safety can. It also recognizes procurement in thirty (30) day time frames will not always be sufficient to respond adequately to such emergencies. Certainly, these are welcome changes to our procurement law which will assist our employees in best responding to and mitigating against emergent issues. As we have seen while addressing the public health emergency that we are in today, emergency circumstances do not care that our procurement laws draw arbitrary lines in the sand for expiration.

However, Substitute Bill No. 90-35 also imposes additional requirements on the processing of such emergency procurement which have the potential to slow what must be, by their very nature, quick responses. These requirements are cloaked in the language of “transparency,” but really serve to create additional, unnecessary steps.

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To: Speaker Barnes
Fr: Governor of Guam
Dated: October 30, 2020
Re: Substitute Bill No. 90-35 (COR) *nka P.L. 35-109*

Page 2 of 2

Nonetheless, and on balance, the benefits of Substitute Bill No. 90-35 outweigh the drawbacks. And it is for this reason that I am signing it into law as ***Public Law No. 35-109***.

Senseramente,



LOURDES A. LEON GUERRERO

I Maga'hågan Guåhan

Governor of Guam

Enclosure: Substitute Bill No. 90-35 (COR) *nka P.L. 35-109*

cc via email: *Sigundo Maga'låhen Guåhan*
Compiler of Laws

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Substitute Bill No. 90-35 (COR), "AN ACT TO REPEAL AND REENACT § 5215 OF SUBARTICLE B, ARTICLE 3; AND AMEND § 5030(x) OF SUBARTICLE C, ARTICLE 1, BOTH OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR EMERGENCY PROCUREMENT FOR THREATS TO THE ENVIRONMENT, INCREASING TRANSPARENCY, AND OTHERWISE IMPROVING EMERGENCY PROCUREMENT,"** was on the 19th day of October 2020, duly and regularly passed.



Tina Rose Muña Barnes
Speaker

Attested:




Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 19th day of October,
2020, at 5:45 o'clock P.M.



Assistant Staff Officer
Maga'håga's Office

APPROVED:



Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 10/30/2020

Public Law No. 35-109

Jessica Cruz

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 90-35 (COR)

As substituted; amended by the Committee on Environment,
Revenue and Taxation, and Procurement;
further substituted; and amended on the Floor.

Introduced by:

Sabina Flores Perez
Kelly Marsh (Taitano), PhD
Amanda L. Shelton
William M. Castro
Régine Biscoe Lee
James C. Moylan
Louise B. Muña
Tina Rose Muña Barnes
Telena Cruz Nelson
Clynton E. Ridgell
Joe S. San Agustin
Telo T. Taitague
Jose “Pedo” Terlaje
Therese M. Terlaje
Mary Camacho Torres

**AN ACT TO *REPEAL* AND *REENACT* § 5215 OF
SUBARTICLE B, ARTICLE 3; AND *AMEND* § 5030(x) OF
SUBARTICLE C, ARTICLE 1, BOTH OF CHAPTER 5,
TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO
PROVIDING FOR EMERGENCY PROCUREMENT FOR
THREATS TO THE ENVIRONMENT, INCREASING
TRANSPARENCY, AND OTHERWISE IMPROVING
EMERGENCY PROCUREMENT.**

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

2 **Section 1.** § 5215 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code

3 Annotated, is *repealed* and *reenacted* to read:

1 **“§ 5215. Emergency Procurements.**

2 (a) Emergency Procurements. Notwithstanding any other provision
3 of this Chapter, the Chief Procurement Officer, the Director of Public Works,
4 the head of a purchasing agency, or a designee of either officer, provided the
5 designee of any such officer is subject to § 5114(b) of this Chapter, may make
6 or authorize others to make emergency procurements of supplies, services, or
7 emergency construction works in the manner specified in this Section when
8 there exists a threat to public health, welfare, or safety, or the health and safety
9 of the environment, in the event of an emergency as defined in § 5030(x) of
10 this Chapter and defined in regulations promulgated by the Policy Office.
11 *Emergency construction works* means the emergency operation, or demolition
12 of existing structures and real property improvements, as well as building or
13 assembly of temporary structures, necessary to address, within the time limits
14 of emergency procurement specified in Subsection (e) of this Section, the
15 imminent threat and nature of a particular event of emergency as described by
16 a Determination of Need for an Emergency Procurement required in
17 Subsection (c) of this Section.

18 (b) Necessity of a Declaration of Emergency, or Certificate of
19 Emergency. No emergency procurement shall be made except after, and
20 consistent with, a Declaration of Emergency made by the Governor, or a
21 Certificate of Emergency made by the Chief Procurement Officer, the
22 Director of Public Works, the head of a purchasing agency, or a designee of
23 either officer.

24 (1) A Declaration of Emergency shall be made by Executive
25 Order duly issued by the Governor, and expressly authorizing
26 emergency procurement of supplies, services, or emergency
27 construction works as authorized by this Section, and pursuant to a

1 Determination of Need for Emergency Procurement, which shall be
2 appended thereto.

3 (2) A Certificate of Emergency shall be made, under penalty
4 of perjury, by the Chief Procurement Officer, or Director of Public
5 Works, or by the head of a purchasing agency, or a designee of either
6 officer having requisite authority to procure supplies, services, or
7 emergency construction works. The Certificate of Emergency shall
8 have appended thereto a complete and true and correct copy of the
9 Determination of Need for Emergency Procurement, and contain the
10 following:

11 (A) a statement expressly incorporating by reference the
12 entire unaltered contents of the appended Determination of Need
13 for Emergency Procurement; and

14 (B) an affirmation that the contents of the
15 Determination of Need for Emergency Procurement are true,
16 correct, and complete to the best, informed knowledge, and good
17 faith belief of the person making the Certificate of Emergency.

18 (3) Certified copies of the Certificate of Emergency by the
19 Chief Procurement Officer, the Director of Public Works, the head of
20 the purchasing agency, or a designee of either officer shall be
21 submitted, prior to award, to the Governor and the Speaker of the
22 Legislature. Any contract awarded under a Certificate of Emergency
23 pursuant to Subsection (b)(2) of this Section shall be null and void
24 unless and until the Governor approves such Certificate of Emergency
25 in writing.

1 (c) Determination of Need for Emergency Procurement. No
2 emergency procurement shall be solicited or awarded without a Determination
3 of Need for Emergency Procurement, which shall:

4 (1) state the date of its execution, and be signed under penalty
5 of perjury by the Chief Procurement Officer, the Director of Public
6 Works, the head of a purchasing agency, or a designee of either officer,
7 conducting the emergency procurement of supplies, services, or
8 emergency construction works;

9 (2) describe with factual particularity, the nature and apparent
10 cause of the condition posing an imminent threat to public health,
11 welfare, or safety, or the health and safety of the environment, which
12 could not have been foreseen through the use of reasonable and prudent
13 management procedures, and which cannot be addressed by other
14 procurement methods of source selection;

15 (3) state that the threat is imminent, and that the emergency
16 procurement authorized by this Section is necessary, without delay, to
17 protect the public health, welfare, or safety, or the health and safety of
18 the environment;

19 (4) affirm solemnly that the emergency procurement of
20 supplies, services, or emergency construction works, in the face of the
21 emergency described, is not being used and will not be used, directly or
22 indirectly, to avoid other methods of source selection or the purposes
23 and policies of this Chapter;

24 (5) be copied and appended to its respective Declaration of
25 Emergency or Certificate of Emergency, as described in Subsection (b)
26 of this Section, and further attached to and made a part of any contract,
27 or Notice of Award made or given; and

1 (6) be a material part of the procurement record required in
2 this Chapter.

3 (d) How Conducted. To the extent practicable and except as
4 otherwise allowed under this Section, an emergency procurement shall be
5 made and conducted with competition and utilize competitive procedures used
6 in this Chapter as is practicable under the circumstances, in the good faith
7 discretion of the person authorized to make such emergency procurement. A
8 record shall be kept of all determinations and statements required by this §
9 5215, as well as all other matters required to be made a part of the procurement
10 record by this Chapter. At the conclusion of a solicitation whether by award
11 or cancellation, the Chief Procurement Officer, the Director of Public Works,
12 the head of a purchasing agency, or the authorized designee of either officer;
13 provided, the designee of any such officer is subject to § 5114(b) of this
14 Chapter, shall make, date, and sign a written statement describing: the
15 circumstances of the event of the emergency procurement; the solicitation
16 process used; the names of potential bidders or offerors contacted; and the
17 justification for the selection of the awardee. The solicitation and competition
18 for an award of an emergency procurement contract should include:

19 (1) sending a Notice of Request for Interest to contractors on
20 a qualified bidders list, and others known to the government, who have
21 provided responsive supplies, services, or emergency construction
22 works to the government, within the preceding twelve (12) months, of
23 the type needed to meet the particular emergency;

24 (2) a request for prompt expression of interest;

25 (3) at least three (3) Positive Written Quotations, which shall
26 be solicited, recorded, and placed in the procurement file, for the
27 acquisition of supplies, services, or emergency construction works

1 needed, unrestricted by the qualified bidders list; provided, that all
2 quotations are not required to be positive if accompanied by written
3 certification that to the maximum extent practicable, such positive
4 quotations could not be obtained from known or potential vendors; and

5 (4) an award of a contract or purchase order as expeditiously
6 as the circumstances and prudent competition may allow for, to the
7 responsible contractor shown to provide the lowest price and most
8 expeditious delivery time, in accordance with § 5010 of this Chapter.

9 (e) Limitations on Numbers, Time, and Amount of Emergency
10 Procurement. There shall be no limit on the number of emergency
11 procurements of supplies, services, and emergency construction works, but no
12 emergency procurement shall be made for an amount or construction greater
13 than the amount of such supplies, services, or emergency construction works
14 that are necessary to address the emergency for a ninety (90) day period
15 immediately following the date of the Determination of Need for Emergency
16 Procurement, as described in Subsection (c) of this Section. During said ninety
17 (90) day period, the Chief Procurement Officer, the Director of Public Works,
18 the head of a purchasing agency, or a designee of either officer shall promptly
19 and expeditiously take all necessary steps to determine if there will be ongoing
20 needs arising from the event of emergency beyond the ninety (90) day period,
21 and plan for the solicitation of supplies, services, and emergency construction
22 works for such ongoing needs under a method of procurement other than the
23 emergency procurement authorized in this Chapter. The emergency
24 procurement may be extended beyond ninety (90) days if the Chief
25 Procurement Officer, the Director of Public Works, the head of a purchasing
26 agency, or a designee of either officer determines additional time is necessary
27 and the contract scope and duration are limited to the emergency. Thirty (30)

1 days prior to execution of the extension, a public hearing shall be held by the
2 procuring agency, at which any person may present testimony. Notice of
3 intent to extend an emergency contract shall be published in a newspaper of
4 general circulation at least five (5) days prior to a public hearing. Notice shall
5 include at least a description of the need for the emergency extension, the
6 vendor, and the date, time, and location of the public hearing. A record of such
7 plan shall be made and kept as a part of the procurement record as required by
8 § 5249 of this Chapter.

9 **Section 2.** § 5030(x) of Subarticle C, Article 1, Chapter 5, Title 5, Guam
10 Code Annotated, is *amended* to read:

11 “(x) Emergency means a condition posing an imminent threat to
12 public health, welfare, or safety, or the health and safety of the environment,
13 which could not have been foreseen through the use of reasonable and prudent
14 management procedures, and which cannot be addressed by other
15 procurement methods of source selection.”

16 **Section 3. Effective Date.** This Act shall be effective ninety (90) days after
17 enactment.

18 **Section 4. Severability.** If any provision of this Act or its application to any
19 person or circumstance is found to be invalid or contrary to law, such invalidity shall
20 not affect other provisions or applications of this Act that can be given effect without
21 the invalid provision or application, and to this end the provisions of this Act are
22 severable.