

**5 GCA GOVERNMENT OPERATIONS
CH. 59 THE PUBLIC SAFETY FACILITIES
CONSTRUCTION INITIATIVE ACT OF 2001**

**CHAPTER 59
THE PUBLIC SAFETY FACILITIES
CONSTRUCTION INITIATIVE ACT OF 2005**

SOURCE: This entire chapter was added by P.L. 28-60:2 (June 30, 2005).

- § 59101. Title.
- § 59102. Definitions.
- § 59103. Authorization to Enter into Long-Term Leases.
- § 59104. Procurement.
- § 59105. Responsibilities of Contractor.
- § 59106. Assignments.
- § 59107. Use of Tax-Exempt Bonds for Financing.
- § 59108. Utilities and Routine Maintenance and Repair.
- § 59109. Contractor Responsible for Capital Maintenance.
- § 50110. Authorization to Enter into an Agreement for a Lease to Purchase of Existing Facilities.
- § 59111. Severability.

§ 59101. Title.

This Act shall be known and shall be cited as ‘*The Public Safety Facilities Construction Initiative Act of 2005.*’

§ 59102. Definitions.

For purposes of this Chapter, unless otherwise specified, the following words and phrases are defined to mean:

(a) ‘*Act*’ means Chapter 59 of Title 5 of the Guam Code Annotated, known as ‘*The Public Safety Facilities Construction Initiative Act of 2005.*’

(b) ‘*Contractor*’ shall mean the authorized entity which shall be the signatory on the Contract and shall be fully responsible for carrying out the design, construction, financing and maintenance of the public safety facility.

(c) ‘*Contract*’ shall mean the design, construction, financing and maintenance contract entered into by and between the government of Guam and the Contractor following negotiations on the response to the Request for Proposal.

(d) ‘*Government*’ shall mean the government of Guam.

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(e) ‘*Public Safety Facility*’ shall mean any structure or structures, together with all ancillary facilities, including parking facilities, utilities, infrastructure and equipment associated with providing the services required by a public safety agency. Public Safety Facility may include an existing facility being converted or rehabilitated by the Contractor.

(f) ‘*Lease*’ shall mean a ground or site lease of the property from the public safety agency, the Chamorro Land Trust Commission, or other government land, as applicable to the Contractor.

(g) ‘*Lease-Back*’ shall mean the lease between the Contractor and the public safety agency over the term of which the costs of the design, construction, financing, and maintenance of a Public Safety Facility are amortized according to the terms agreed to between the government of Guam and the Contractor.

(h) ‘*Property*’ shall mean any property on which a Public Safety Facility is located.

(i) ‘*Public Safety Agency*’ shall mean the Guam Police Department, the Guam Fire Department, the Customs and Quarantine Agency, the Department of Corrections and the Department of Law.

(j) For purposes of this Chapter, the Guam Environmental Protection Agency shall be deemed a public safety agency.

SOURCE: Subsection (j) added by P.L. 28-132:2 (July 11, 2006).

§ 59103. Authorization to Enter into Long-Term Leases.

For the purpose of facilitating the financing of the design, construction and maintenance of a Public Safety Facility encompassed by this Act, the government of Guam or a Public Safety Agency is authorized to lease, *if* required, to the Contractor, *subject* to legislative approval, sufficient government of Guam real property on which to construct, convert or rehabilitate a Public Safety Facility. The location of the property may be at the site of an existing Public Safety Facility under the control of an Agency, which may be demolished and rebuilt under the provisions of this Act.

Any lease of property pursuant to this Act will be for a period

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mutually agreed upon between the government and the Contractor as may be reasonably necessary to amortize over the Lease-Back period of the Contract the costs associated with the financing, design, construction, and maintenance of the Public Safety Facility, and in no event shall such period be *less than* twenty (20) years, or *exceed* thirty (30) years from the date of commencement of the Lease-Back period.

The Contractor shall lease back to the Public Safety Agency the property for the Lease-Back period. Upon the expiration of the Lease and the Lease-Back periods and the fulfillment of the terms and conditions of the Lease-Back by the Public Safety Agency, the property and the Public Safety Facility shall become the property of the government and the Contractor shall have no further right, title or interest in the property or the Public Safety Facility.

§ 59104. Procurement.

Subject to legislative approval, *I Maga'lahi* shall solicit Requests for Proposals ('RFP') through the Department of Public Works, in compliance with the Guam Procurement Law, for the financing, design and construction of the Public Safety Facility, together with maintenance of the Public Safety Facility over the term of the Lease-Back, according to the needs of the Public Safety Agency and consistent with this Chapter.

§ 59105. Responsibilities of Contractor.

The Contract shall require that the Contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the design, civil improvements, infrastructure, construction, permits and financing associated with the completion of a Public Safety Facility.

The Contractor shall also be responsible for the capital maintenance and upkeep of public safety facilities during the Lease-Back term. The costs of the design, construction and financing for a Public Safety Facility shall be paid in periodic installments over the term of the Lease-Back period, which shall be mutually determined by the Public Safety agency and the Contractor, but which shall *not* exceed thirty (30) years. The Lease and Lease-Back may provide that if sufficient funds are not appropriated or otherwise available for the payment of such installments, the Public Safety Agency will have the obligation to vacate the Public Safety Facility, and the Contractor shall have the right of use and

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occupancy of the Public Safety Facility for the remainder of the term of the Lease unless new mutual satisfactory terms are entered into. For this purpose, the Lease may provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the original term of the Lease-Back or such period of time as is necessary to repay in full any financing arranged pursuant to § 59107.

The capital maintenance, repair and upkeep costs shall be paid on a periodic basis as incurred by the Contractor on terms to be agreed to in the Contract for each Public Safety Facility.

§ 59106. Assignments.

To facilitate the purposes of this Chapter and to provide security for the bondholders, the Contractor may assign, without the need of the consent of the Public Safety Agency, the Contract, the Lease and the Lease-Back to any trustee, underwriter or other appropriate party as may be necessary to facilitate the issuance of the tax-exempt bonds or other financial instrument to provide the financing for the Public Safety Facility.

§ 59107. Use of Tax-Exempt Bonds for Financing.

To minimize the financing cost to the government, all financing utilized by the Contractor to fund the design, construction, development and maintenance of a Public Safety Facility shall be through tax-exempt bonds or other financial instruments, *if* a mechanism to do so is available. The purpose for this requirement is to assure the government pays the lowest possible interest rate so that the cost of financing the design, construction, development and maintenance of a Public Safety Facility to the government amortized through the Lease-Back payments from the government to the Contractor, will be lower than regular commercial rates.

§ 59108. Utilities and Routine Maintenance and Repair.

The Public Safety Agency shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone and cable. Capital maintenance and repair shall be performed by the Contractor as provided for in 5 GCA § 59109. Routine maintenance, repair and upkeep shall be the responsibility of the Public Safety Agency and/or the Contractor, as may be provided by the terms of the contract.

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§ 59109. Contractor Responsible for Capital Maintenance.

The Contract with the Contractor, and the Lease-Back, shall provide that *all* capital maintenance and repair of the Public Safety Facility be performed by the Contractor as a separate cost. The Contractor shall be responsible, during the Lease-Back period, for the timely filing of any applicable insurance claims and for the payment of any deductible required to repair a Public Safety Facility covered by an insurance policy on the Public Safety Facility. The terms by which the Contractor is to perform such Capital Maintenance shall be determined as a part of the bid process and shall be part of the conditions of the Contract.

§ 59110. Authorization to Enter into an Agreement for a Lease to Purchase of Existing Facilities.

The government of Guam is authorized to enter into a lease to purchase agreement with a private owner for an existing building or land presently occupied or to be occupied in the future by a public safety agency, as defined by § 59102(i) of Title 5 GCA, provided that the Director of Public Works certifies the building meets the requirements of Guam law for structural integrity. Funds previously appropriated for the lease of such building or land may be used for said lease to purchase agreement. The terms of the lease to purchase agreement authorized by this Section shall comply with Section 59103 of Chapter 59 of Title 5 GCA.

SOURCE: Repealed and reenacted by P.L. 28-132:1 (July 11, 2006).

§ 59111. Severability.

If any provision of this Chapter or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

SOURCE: Added by P.L. 28-132:3 (July 11, 2006).
