

FILED

2012 DEC 31 PM 3: 32

SUPREME COURT  
OF GUAM

**IN THE SUPREME COURT OF GUAM**

**TOWN HOUSE DEPARTMENT STORES, INC.,  
dba ISLAND BUSINESS SYSTEMS & SUPPLIES,**  
Appellant,

v.

**DEPARTMENT OF EDUCATION, GOVERNMENT OF GUAM**  
Appellee,

**XEROX CORPORATION,**  
Party-in-Interest/Respondent,

**OFFICE OF PUBLIC ACCOUNTABILITY,**  
Respondent.

Supreme Court Case No. CVA12-021  
Superior Court Case No. SP0050-11

**OPINION**

**Cite as: 2012 Guam 25**

Appeal from the Superior Court of Guam  
Argued and submitted October 22, 2012  
Hagåtña, Guam

ORIGINAL

Appearing for Appellant:

James Maher, *Esq.*  
Maher & Thompson, P.C.  
140 Aspinall Ave., Ste 201  
Hagatna, GU 96910

Appearing for Appellee:

Christina M. Pederson, *Esq.*  
Guam Department of Education  
P.O. Box DE  
Hagatna, GU 96932

Appearing for Party-in-Interest/Respondent:

Elyze McDonald Iriarte, *Esq.*  
Carlsmith Ball LLP  
Bank of Hawaii Bldg.,  
134 W. Soledad Ave., Ste. 401  
Hagatna, GU 96910

Appearing for Respondent

Office of Public Accountability:

Anthony R. Camacho, *Esq.*  
GCIC Bldg.  
414 W. Soledad Ave.  
Hagatna, GU 96910

---

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

**CARBULLIDO, C.J.:**

[1] Appellant Town House Department Stores, Inc., dba Island Business Systems & Supplies (“IBSS”), placed a bid to provide the Guam Department of Education (“DOE”) with copy machines and support services. When DOE failed to award the contract promptly, IBSS appealed to the Office of Public Accountability (“OPA”). The OPA remanded the case for DOE to make an acceptability evaluation. IBSS appealed the OPA’s decision to the Superior Court. In its Decision and Order, the Superior Court dismissed the appeal for lack of jurisdiction, and IBSS now appeals that decision. For the reasons stated herein, the Superior Court’s dismissal is affirmed.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] On May 3, 2010, DOE issued an Invitation for Bids (“IFB”), No. 006-2010. DOE issued the IFB to solicit bids for 94 small multifunction copiers, software specifications, and Network Device Management Software. IBSS and Xerox submitted the only bids.

[3] On September 2, 2010, IBSS submitted a protest to DOE, arguing that DOE failed to award the contract promptly, violating 5 GCA § 5211(g). DOE did not rule on the protest. Instead, on September 10, 2010, DOE issued a second IFB for similar services as the first IFB. On October 18, 2010, IBSS appealed to the OPA, challenging DOE’s failure to rule on the protest. The OPA found that DOE was required to rule on the protest. On November 23, 2010, DOE denied the protest and IBSS appealed that decision to the OPA. During those proceedings before the OPA, Xerox made an appearance as an interested party.

---

[4] On March 7, 2011, the OPA issued a ruling on the appeal and found that DOE did not award the contract with reasonable promptness, as required by law. However, the OPA disagreed with IBSS's argument that DOE should immediately award the contract to IBSS with respect to the copiers as the lowest bidder. Instead, the OPA ordered DOE to conduct an acceptability evaluation to determine if the bids were in compliance with the requirements set forth in the IFB, pursuant to DOE's regulations. The OPA further stated that when this was complete, "the contract shall be awarded to the lowest responsible bidder whose bid meets the requirements and criteria set forth" in the IFB. Record on Appeal ("RA"), tab 6, Ex. A at 6 (Dec. & Order, Mar. 21, 2011).

[5] IBSS then filed a Verified Complaint in the Superior Court, appealing the OPA's decision, designating the case a "Special Proceeding" styled *In the Appeal of Town House Department Stores, Inc., dba Island Business Systems & Supplies*. RA, tab 3 at 1 (Compl. and Appeal of Dec. by OPA; Verification; Ex. A-I, Mar. 21, 2011). The complaint did not name any party as a defendant and stated that jurisdiction existed pursuant to 5 GCA §§ 5425(f), 5480(a), and 5707, as an appeal from an OPA decision on a dispute between IBSS and DOE. IBSS asked the Superior Court to reverse the decision of the OPA insofar as it ordered DOE to conduct an acceptability evaluation, and instead order DOE to award IBSS the contract. IBSS also opposed the decision to include Xerox in the case.

[6] On April 3, 2012, the Superior Court dismissed the case without prejudice for lack of jurisdiction. Specifically, the court stated that it was "not entirely convinced" that DOE was subject to Guam's Procurement Law, 5 GCA §§ 5001-5908, in its entirety, and in particular Article 9, which covers protests, because DOE was an agency which was explicitly not a "governmental body" under that law. RA, tab 40, at 6, 3-4 (Dec. & Order, Apr. 3, 2012).

---

Absent coverage by the Procurement Law, DOE's regulations would apply. Because DOE regulations did not mention an appeal to the OPA, the court stated that the proper method for seeking relief would have been to file a civil action in court immediately following DOE's denial of IBSS' protest, "with no involvement of the Public Auditor." *Id.* at 6. However, the Superior Court ultimately declined to make any findings as to whether appealing to the OPA was appropriate, as it was not essential to its decision. *Id.* at 17.

[7] The court found that IBSS did not meet the "jurisdictional prerequisites to obtain judicial review." *Id.* at 7. The court further held that the statutes relied on by IBSS--5 GCA §§ 5480(a) and 5707(a)--provided a specific method of seeking review from protests of procurement decisions: filing an appeal of the agency's decision with the Superior Court, seeking monetary or declaratory relief in a civil action against the Territory of Guam. *Id.* at 7-9. Only by doing so can the appellant waive the government's sovereign immunity, as outlined in 5 GCA § 5480(a). Further, section 5480(a) required that the appeal be in the form of a civil action with the Territory of Guam as a defendant, not as a special proceeding initiated by filing a writ without a named defendant. The Superior Court determined that IBSS failed to properly comply with these procedural requirements.

[8] The court noted that there was a possible conflict, or at least some confusion, regarding the interaction of: (1) 5 GCA § 5480(f), which requires that judicial review as sought under the Procurement Law be conducted "as provided in" the Government Claims Act; (2) our holding in *Carlson v. Perez*, 2007 Guam 6, which ordered strict compliance with an agency's "specific legislation directing judicial review"; and (3) our holding in *Pacific Rock Corp. v. Dep't of Education*, 2000 Guam 19 ("*Pacific Rock I*"), stating that a party seeking review of a decision under the Procurement Law should *not* seek relief under the Government Claims Act ("Claims

Act”). *Id.* at 12. The court reconciled them by discussing our holding in *Pacific Rock I* and noting that while we renounced a requirement for filing under the Claims Act in order to challenge a procurement protest, the case also occurred in a somewhat different context than the present proceeding, and thus did not control. Further, the court found that section 5480(f) only required the proceedings to be conducted “as” provided under the Claims Act, and this meant that the procedural aspects would be the same, not that the appellant must formally proceed under that law. *Id.* at 14. Accordingly, the Superior Court concluded that in order to exercise jurisdiction, IBSS needed to file a regular civil action against the Territory of Guam. Because IBSS failed to do so, the court dismissed the case without prejudice to allow IBSS to file a new civil suit as described by the court, “if this is still possible.” *Id.* at 17.

[9] IBSS filed a timely notice of appeal.

## II. JURISDICTION

[10] We have jurisdiction over an appeal from a final judgment of the Superior Court of Guam pursuant to 48 U.S.C.A. § 1424–1(a)(2) (West, Westlaw through Pub. L. 112–207 (2012)), 7 GCA §§ 3107(b), 3108(a) (2005).

## III. STANDARD OF REVIEW

[11] We review issues involving statutory interpretation *de novo*. *Mendiola v. Bell*, 2009 Guam 15 ¶ 11. Jurisdictional issues are reviewed *de novo*. *Core Tech Int’l Corp. v. Hanil Eng’g & Const. Co., Ltd.*, 2010 Guam 13 ¶ 16 (citing *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 9. A question involving waiver of sovereign immunity is reviewed *de novo*. *See, e.g., Sumitomo Constr., Co., Ltd. v. Gov’t of Guam*, 2001 Guam 23 ¶ 7.

---

#### IV. ANALYSIS

[12] IBSS argues that the trial court erred by finding that it lacked jurisdiction over the appeal. IBSS contends that the Procurement Law applies to DOE without exception, DOE's regulations do not apply to the present proceedings, and accordingly any analysis should proceed under the Procurement Law. Appellant's Br. at 8-9 (Aug. 17, 2012). IBSS argues that naming the Territory as a defendant was not a jurisdictional prerequisite because the statute does not require it, the relevant agencies had notice of the proceeding, review was sought of the OPA's decision, rendering it the party-at-interest, and in the alternative that failure to name a defendant is ordinarily subject to amendment rather than dismissal. *Id.* at 13-17. IBSS also argues that naming the Territory of Guam as a defendant in a civil action was not necessary to waive the government's sovereign immunity as outlined in 5 GCA § 5480(a) because the relevant agencies had notice. *Id.* at 17-23. IBSS further claims that section 5480(f), requiring procurement actions to be conducted as provided by the Government Claims Act, has been repealed by implication. Finally, IBSS argues that it lacked an adequate remedy at law, necessitating its filing of a writ initiating a special proceeding in the Superior Court, and that section 5480(a) does not explicitly demand that any appeal from an agency's protest decision be in the form of a civil action. *Id.* at 23-26. We address each in turn, but not necessarily in the order presented.

##### A. Whether the Procurement Law or DOE Regulations Govern the Appeals Process

[13] As an initial matter, we must determine whether an appeal from a decision by the OPA, in turn reviewing a ruling on a protest by DOE, is governed by the Procurement Law or DOE's regulations.

[14] Guam's Procurement Law, codified at 5 GCA §§ 5001-5908, provides a comprehensive regime for the government of Guam and its agencies to purchase goods and services. Article 9

of Title 5 also includes provisions for resolution of disputes. DOE has its own regulations on procurement, including a section concerning protests and appeals. DOE Procurement Regulations, Chapter 9, Legal and Contractual Remedies, Aug. 19, 1994.

[15] Pursuant to 5 GCA § 5004(b), the Procurement Law covers any expenditure of public funds by the “Territory, acting through a governmental body as defined herein.” 5 GCA § 5004(b) (2005). A “governmental body” is defined in the law as:

[A]ny Department, Commission, Council, Board, Bureau, Committee, Institution, Agency, Government Corporation, Authority or other establishment or establishment or official of the Executive Branch of the government of Guam, *except for* the Government of Guam Retirement Fund, Guam Community College, the University of Guam, *the Department of Education*, and the Guam Memorial Hospital Authority.

Guam Gov't Code § 6952 (as amended by Guam Pub. L. 17-43:2, Jan. 18, 1984)<sup>1</sup> (emphasis added). Thus, section 5030(k) excluded DOE from the Procurement Law.

[16] Subsequently, the Procurement Law was amended as follows:

Every governmental body which is in the purview of the Executive Branch, and including . . . the Department of Education, . . . *shall* be governed by Articles 1, 3, 6, 7, 10, 11 and 12 of this Chapter, *except* to the extent that any such governmental body *or* other above-named body may be exempted from the centralized procurement regime of Article 2 of this Chapter, in which event the Director of each such governmental body *or* other above named body *shall* be substituted wherever there is reference to the Public Policy Office, Chief Procurement Officer or Director of Public Works in Articles 4, 5, 8 and 9 of Chapter 5 of Title 5 of the Guam Code Annotated.

It is the intent of *I Liheslaturan Guåhan* [the Legislature] to require all Executive Branch governmental bodies, including autonomous agencies, and other above-named bodies, to be governed to the maximum extent practicable by Chapter 5 of Title 5 of the Guam Code Annotated. This provision requires any governmental body, and each above-named body, to conduct their procurement activities pursuant to Chapter 5 of Title 5 of the Guam Code Annotated, *except*

---

<sup>1</sup> This section was numbered as 5 GCA § 5030(k) (as amended by Guam Pub. L. 29-109:10, Aug. 26, 2008).

---

insofar as said Chapter establishes and effects a system of centralized procurement.

Guam Gov't Code § 6954.11 (added by Guam Pub. L. 18-044:28, Nov. 14, 1986).<sup>2</sup>

[17] Article 2 of Title 5 covers the creation of the centralized Procurement Policy Officer. 5 GCA § 5101 (2005). Article 9 governs protests and dispute resolutions. 5 GCA §§ 5425-85 (2005). Article 12 governs appeals to the OPA. 5 GCA §§ 5701-09 (2005).

[18] DOE is not a governmental body as it is defined in the Procurement Law, and thus is not, by those terms, covered by it. 5 GCA § 5030(k). However, the subsequent adoption of 5 GCA § 5125 brought DOE back under the law in part. DOE is now governed directly by Articles 1, 3, 6, 7, 10, 11, and 12 of the Procurement Law. 5 GCA § 5125 (2005). Further, Articles 4, 5, 8, and 9 also apply, except that DOE is governed by substitution, meaning that the Director of DOE stands in for Public Policy Office, Chief Procurement Officer or Director of Public Works. *Id.* If the plain language of the statute were not enough, the law also states that the Legislature's intent is that "all Executive Branch governmental bodies, including autonomous agencies, and other above-named bodies, to be governed to the *maximum extent practicable.*" *Id.* (emphasis added).

[19] In addition, 5 GCA § 5707(a), in Article 12, mandates that any appeal from an OPA decision is as provided in "Article(sic) D of Chapter(sic) 9"<sup>3</sup> of the Guam Procurement Law. Thus, even if Article 9 did not apply by substitution, Article 12, which does apply in its entirety to DOE, mandates that the appeals process proceed as governed by Part D of Article 9.

---

<sup>2</sup> The current version can be found at 5 GCA § 5125 (2005) (as amended by Guam Pub. L. 29-113:VI:21, Sept. 30, 2008).

<sup>3</sup> That section presumably intends to reference Article 9, Part D.

[20] Accordingly, while DOE is partially exempted from the Procurement Law, it is governed directly by Article 12, and by substitution by Article 9. Because the present case turns on the rules for appealing a procurement protest and OPA decision, we look to those Articles, and thus the Procurement Law, and not DOE regulations.<sup>4</sup>

### **B. Application of Procurement Law**

[21] Under the Procurement Law, a bidder may file a protest to the Chief Procurement Officer, or, if the agency is exempted from other portions of the centralized procurement regime, the director of the exempted agency. 5 GCA §§ 5125, 5425(a). If the protest is not resolved to the party's satisfaction, the party may appeal to the Public Auditor (OPA). 5 GCA § 5425(e). "A decision of the Public Auditor is final unless a person adversely affected by the decision commences an action in the Superior Court in accordance with Subsection (a) of §5480 of this Chapter." 5 GCA § 5425(f). Similarly, Article 12 provides for an appeal from an OPA decision "to the Superior Court of Guam as provided in" 5 GCA § 5480. 5 GCA § 5707(a) (2005).

[22] In turn, 5 GCA § 5480(a) provides for waiver of Guam's sovereign immunity, and grants the Superior Court jurisdiction over:

[A]n action between the Territory and a bidder, offeror, or contractor, either actual or prospective, to determine whether a solicitation or award of a contract is in accordance with the statutes, regulations, and the terms and conditions of the solicitation. The Superior Court shall have such jurisdiction in actions at law or in equity, and whether the actions are for monetary damages or for declaratory, or other equitable relief.

5 GCA § 5480(a) (2005). It further states that "[a]ll actions permitted by this Article shall be conducted as provided in the Government Claims Act." 5 GCA § 5480(f).

---

<sup>4</sup> Because the Procurement Law applies, we have no occasion to consider whether DOE had authority to promulgate its own regulations. The issue was not raised below, and there is not an adequate record or briefing to decide the issue in the first instance. Finally, to the extent that the regulations and statute are in conflict, the statute controls. *See Guerrero v. Santo Thomas* [sic], 2010 Guam 11 ¶ 36; *Fleet Serv., Inc. v. Dep't of Admin., Gov't of Guam*, 2006 Guam 6 ¶ 15.

[23] The Superior Court dismissed the appeal by analyzing the requirements of section 5480(a). Because the case is an appeal following a decision by the OPA on a protest ruling by DOE, that section controls. *See* 5 GCA §§ 5425(f) & 5707. We now analyze the jurisdictional significance of that law.

**1. Form of the Appeal**

[24] The law mandates that the dissatisfied bidder, offeror, or contractor bring “an action” in order to give the Superior Court jurisdiction. 5 GCA § 5480(a). The parties dispute whether this strictly means a civil action, or whether it is broad enough to encompass special proceedings initiated via writs.

[25] Guam’s laws distinguish between civil actions and special proceedings. A civil action, governed by 7 GCA Division 2, is commenced by the filing of a complaint, naming one or more parties as a defendant, with a summons issued to the adverse parties. *See* 7 GCA §§ 10102, 14101, 14105 (2005). A special proceeding, governed by 7 GCA Division 3, may be initiated by the filing of a writ, such as a writ of review seeking to challenge an administrative decision, and the court may issue an order disposing of the writ without notice to any adverse parties. *See* 7 GCA §§ 31101, 31103 (2005). Significantly, 7 GCA § 31102, which specifies when a writ of review may be granted, states:

A writ of review may be granted by any court, when an inferior tribunal, board, or officer, exercising judicial functions, has exceed[ed] the jurisdiction of such tribunal, board, or officer, and *there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.*

7 GCA § 31102 (2005) (emphasis added). Further, a writ of review “must be served in the same manner as a summons in [a] civil action, except when otherwise expressly directed by the court.”

7 GCA § 31107 (2005). While the requirement is similar to a civil action, the fact that the rule

distinguishes it from a civil action (“same manner *as* a civil action”) indicates that the procedures, rules, and nature of the case are distinct.

[26] In *Duque v. Superior Court of Guam*, 2007 Guam 15, the petitioners sought a writ of prohibition to disqualify the presiding judge in the underlying class action civil suit. We held that because the petitioners opted to join an ongoing class action presided over by the judge in question, instead of filing their own action for relief under 5 GCA § 7103, they already had a “plain, speedy, and adequate” remedy, and so the writ could not be sustained. *Duque*, 2007 Guam 15 ¶ 12. We also noted that the petitioners bear the burden of establishing that they lack a plain, speedy, and adequate remedy. *Id.*

[27] In *Carlson v. Perez*, the petitioners filed a writ of mandate seeking to have their employer reinstate them. We ruled against the petitioners in part because they directed the writ against their employer, when they should have directed it against the Civil Service Commission (“CSC”), seeking review of the CSC’s decision regarding their termination. *Carlson*, 2007 Guam 6 ¶ 72. In *Carlson*, we noted that the petitioners “did not even vaguely reference that the Superior Court should review the decision of the CSC,” that there was “no visible intention on the part of [the petitioners] to seek Superior Court review of the decision of the CSC” and that “[t]he face of the Petition does not indicate or even suggest an appeal of the CSC’s decision.” *Id.* ¶ 56. We clarified by stating that “if the Petition had named the CSC as a party and requested review of the CSC decisions, we would have treated it as an appropriate Petition for Judicial Review notwithstanding its label as a Petition for a Writ of Mandate.” *Id.* ¶ 67 n.24. In *DCK Pacific Guam LLC v. Morrison*, we stated that “[t]he formal title of the writ, therefore, is not determinative of its propriety as much as its contents and the prayer for relief.” 2010 Guam 16 ¶

14 (discussing *Carlson*). We also noted that the law is flexible in treating a writ of review as a writ of mandamus. *Id.* ¶ 15.

[28] We hold that the term “action” in 5 GCA § 5480(a) means a “civil action.” 5 GCA § 5480(a). The law in Guam distinguishes between civil actions and special proceedings, providing different procedures and rules for each. *Compare* 7 GCA Div. 2, *with* 7 GCA Div. 3. Because the type of appeal gives rise to different rules and procedures, and because the Legislature specifically called for “an action” under these circumstances, we determine that it means a “civil action.” 5 GCA § 5480(a).

[29] A writ initiating a special proceeding is not appropriate in this case. IBSS had a plain, speedy, and adequate remedy by bringing a civil action under the terms of 5 GCA § 5480(a), and where such a remedy exists, a writ is not an appropriate substitute. *See Duque*, 2007 Guam 15 ¶ 12. Further, while we may in certain circumstances reclassify one type of writ as another, there is no authority for reclassifying a writ initiating a special proceeding as a civil complaint. *Carlson*, 2007 Guam 6 ¶ 67 n.24; *DCK Pacific*, 2010 Guam 16 ¶ 15. Here, despite being titled a “Verified Complaint,” IBSS did not list any defendants and instead started a special proceeding. It therefore does not fall within the demands 5 GCA § 5480(a) that the party bring “an action,” and this error deprived the Superior Court of jurisdiction. 5 GCA § 5480(a).

## 2. Naming a Defendant

[30] In addition to requiring a bidder, offeror, or contractor, either actual or prospective, to bring “an action,” 5 GCA § 5480(a) requires that it be “between” the Territory of Guam and the dissatisfied bidder, offeror, or contractor. 5 GCA § 5480(a). We hold that this requires a party proceeding under this statute to name a party as a defendant. As discussed above, the party must bring a civil action, rather than a special proceeding. In a civil action, there is but one form for a

civil action, and the complaining party is the plaintiff, and “the adverse party is known as the defendant.” 7 GCA §§ 10101-10102 (2005). IBSS did not file a civil action, but even if the filing were so construed, it did not name a party as a defendant. Accordingly, IBSS improperly failed to name any party as a defendant, and doing so deprived the court of jurisdiction.

### 3. Sovereign Immunity

[31] “[T]he doctrine of sovereign immunity applies to Guam.” *Guam Econ. Dev. Auth. and Guam Visitors Bureau v. Island Equip. Co.*, 1998 Guam 7 ¶ 6. We stated that a “waiver of sovereign immunity is jurisdictional in nature so that if the action is barred, the Court lacks subject matter jurisdiction over plaintiff’s claim.” *Pacific Rock Corp. v. Dep’t of Educ.*, 2001 Guam 21 ¶ 18 (“*Pacific Rock II*”). The waiver must be express. *Id.* ¶ 20.

[32] Under the Procurement Law, a party, as a bidder, offeror, or contractor, either actual or prospective, invokes a waiver of Guam’s sovereign immunity when the party brings an action against “the Territory of Guam.” 5 GCA § 5480(a). In *Pacific Rock I*, we held, in a case involving a contract dispute under the Procurement Law, that “[s]ince the Legislature saw fit to waive immunity from suit for actions . . . pursuant to the Procurement Law, it is the statute which, upon compliance with procedure, satisfies the jurisdictional prerequisite to commencing an action against the Government of Guam . . . .” *Pacific Rock I*, 2000 Guam 19 ¶ 26.

[33] We hold that in order to invoke the waiver of sovereign immunity, the bidder, offeror, or contractor, either actual or prospective, must sue the Territory of Guam, by naming either the Territory of Guam or the relevant agency or government entity from which it seeks relief. 5 GCA § 5480(a). Further, Guam Rules of Civil Procedure Rule 4(i) also requires parties suing an agency or corporation of the government of Guam to serve the Attorney General and send a copy

by registered mail to the agency or corporation. Guam R. Civ. P. 4(i)(1)-(2). Thus, if the party names the Territory of Guam, it must serve the relevant agency or entity as provided by law. *Id.*

[34] The requirement of section 5480(f) that all actions permitted under Article 5 of the Guam Procurement Law shall be conducted as provided in the Government Claims Act has also not been implicitly repealed. Repeal of law by implication is disfavored. *Univ. of Guam v. Guam Civil Serv. Comm'n*, 2002 Guam 4 ¶ 13. The Procurement Law specifically states, “[N]o part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.” 5 GCA § 5006 (2005). Finally, to the extent that 5 GCA § 5480(f) refers to the Claims Act, it is consistent to read it as requiring procedural similarities, rather than actually requiring a party to file under both the Government Claims Act and Guam’s Procurement Law, a requirement which we have expressly disavowed. *Pacific Rock I*, 2000 Guam 19 ¶ 19 (noting that a party seeking relief under the Procurement Law should not also do so under the Claims Act). In any event, even if we read section 5480(f) as being impliedly repealed, IBSS must still overcome the validity of section 5480(a), addressing the waiver of sovereign immunity.

[35] Naming a government agency is a requirement to waiving the government’s sovereign immunity. *See Pacific Rock II*, 2001 Guam 21 ¶¶ 18, 20 (treating waiver as a jurisdictional prerequisite and requiring that it be explicit). Accordingly, failure to name DOE--or any other government agency--as a defendant resulted in leaving Guam’s sovereign immunity intact, and thus precluded the Superior Court from considering the case on the merits.

## V. CONCLUSION

[36] Guam’s Procurement Law applies to all relevant issues in the present case. We do not therefore address any argument concerning the validity or meaning of DOE’s regulations. The

---

Superior Court was correct to dismiss the case because (1) IBSS failed to bring a civil action; (2) it did not name any defendants; and (3) it failed to properly invoke the statutory waiver of the sovereign immunity by naming the Territory of Guam or the agency being sued as a defendant. Accordingly, the Superior Court's decision is **AFFIRMED**.

**Original Signed: Robert J. Torres**  
By

---

ROBERT J. TORRES  
Associate Justice

**Original Signed: Katherine A. Maraman**  
By

---

KATHERINE A. MARAMAN  
Associate Justice

**Original Signed: F. Philip Carbullido**  
By

---

F. PHILIP CARBULLIDO  
Chief Justice