

I Mina'trentai Sais 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
300-36 (LS)	Sabina F. Perez	AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.	4/28/22 2:44 p.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 300-36 (LS)

Introduced by:

Sabina Flores Perez /SFP

**AN ACT TO REPEAL AND REENACT § 5213 OF
SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5,
GUAM CODE ANNOTATED, RELATIVE TO
STRENGTHENING THE REQUIREMENTS OF SMALL
PURCHASES.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that 5 GCA § 5213, as first enacted in Public Law 16-124, allowed the Policy Office to establish, by regulation, the threshold amount and “small purchase procedures.” Currently, that statute specifies that “any procurement not exceeding Twenty-five Thousand Dollars (\$25,000) for supplies or services, and not exceeding One Hundred Thousand Dollars (\$100,000) for construction, may be made in accordance with small purchase procedures promulgated by the Policy Office.” Regulations adopted by the Executive Branch have provided for two (2) specific competitive source selection procedures: (1) solicitation of goods and services and construction by informal (not advertised) Requests for Quotations (RFQs) (2 GAR § 3111); and, (2) Blanket Purchase Agreements (BPAs) (2 GAR § 3112.1). 2 GAR §3111 emphasizes that small purchases of goods and services must have competitive features [see, § 3111(c) through (f)]. But if “the supply, service, or construction item

1 is available from only one business, the sole source procurement method set forth in
2 § 3112 (Sole Source Procurement) of these regulations shall be used even if the
3 procurement is a small purchase....” [2 GAR § 3111(b)(4)].

4 *I Liheslatura* further finds that the fundamental purposes and policies
5 underlying the Procurement Act, as expressed in 5 GCA § 5001(b), include
6 underlying principles which “(3) provide for increased public confidence in the
7 procedures followed in public procurement; (4) ensure the fair and equitable
8 treatment of all persons who deal with the procurement system of this Territory; (5)
9 provide increased economy in territorial activities and to maximize to the fullest
10 extent practicable the purchasing value of public funds; and, (6) foster effective
11 broad-based competition.” § 5001(a) expresses the command that the entirety of the
12 procurement law “shall be construed and applied [to the facts and circumstances] to
13 promote its underlying purposes and policies.” The government is obliged to
14 promote its underlying purposes and policies generally, and to foster competition in
15 particular.

16 *I Liheslatura* finds that procurement without public competition by informal
17 Requests for Quotations (RFQs) of small purchases may be abused by the
18 acquirement of a vague “no quote quotation” requirement in regulation 2 GAR §
19 3111(c)(1), and by a purchasing agency’s obligation to obtain “no less than three
20 positive written quotations from businesses”, and due to failure of purchasing
21 agencies to keep procurement records that create an audit trail which would reveal,
22 among other matters: how many and which vendors were actually solicited by an
23 RFQ; how were the chosen recipients selected; and which recipients of an RFQ
24 returned a price quote. *I Liheslatura* has not noticed any evidence that small
25 purchases by the sole source method have received any of the treatment required by
26 5 GCA § 5214 or 2 GAR § 3112 to provide competition, frugality, transparency, and
27 accountability under the formal sole source method of procurement.

1 Inasmuch as they are meant to share the same monetary thresholds, *I*
2 *Liheslaturan Guåhan* intends to clarify that the small purchase method of source
3 selection is intended to apply to the regulations applicable to Requests for Quotations
4 (RFQs) as contemplated in 2 GAR § 3111 as well as to Blanket Purchase
5 Agreements (BPAs) which the Executive Branch has adopted as 2 GAR § 3112.1,
6 which is found within the context of 2 GAR § 3112 (Sole Source Procurement, a
7 non-competitive procedure). *I Liheslatura* further intends to increase transparency
8 and foster competition in the use of small purchases with more thorough and
9 transparent reporting by all agencies of cumulative purchases of similar goods and
10 services to give teeth to the mandate of the procurement law that “procurement
11 requirements shall not be artificially divided so as to constitute a small purchase” (5
12 GCA § 5213). By bringing both small purchase procedures under the umbrella of 5
13 GCA § 5213, and out from under the company of sole source purchases, it is intended
14 that the Procurement Policy Office will take note of the more demanding
15 transparency and accounting attention given to BPAs and apply those standards to
16 RFQs.

17 **Section 2.** § 5213 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code
18 Annotated, is hereby *repealed* and *reenacted* to read:

19 ~~“§ 5213. Small Purchases.~~

20 ~~Any procurement not exceeding Twenty-five Thousand Dollars~~
21 ~~(\$25,000) for supplies or services, and not exceeding One Hundred Thousand~~
22 ~~Dollars (\$100,000) for construction, may be made in accordance with small purchase~~
23 ~~procedures promulgated by the Policy Office; provided, however, that procurement~~
24 ~~requirements shall not be artificially divided so as to constitute a small purchase~~
25 ~~under this Section. The Chief Procurement Officer, the Director of the Department~~
26 ~~of Public Works, or the head of an agency utilizing this Section, shall submit a report~~
27 ~~to the Speaker of *I Liheslaturan Guåhan* monthly as to procurement exceeding~~

1 ~~Fifteen Thousand Dollars (\$15,000) for supplies and services, or exceeding Fifty~~
2 ~~Thousand Dollars (\$50,000) for construction, pursuant to this Section.”~~

3 **“§ 5213. Small Purchases.**

4 Any procurement not exceeding Twenty-five Thousand Dollars
5 (\$25,000) for supplies or services, and not exceeding One Hundred Thousand
6 Dollars (\$100,000) for construction, may be made in accordance with small purchase
7 regulations promulgated by the Policy Office, which shall include the requirements,
8 in a Request for Quotes (RFQ) small purchase solicitation, to solicit and obtain, to
9 the maximum extent practicable, no less than three (3) positive written quotations
10 from qualified sources shall be part of the procurement record. A “no quote”
11 response will not be considered a positive quotation but shall be part of the
12 procurement record, which shall further include a written record or memorandum of
13 all solicitations and responses thereto, negative or positive, orally or in writing. In
14 the event the agency obtains less than three (3) positive quotations and provides the
15 attestation required by this section, the agency may proceed with the small purchase
16 procurement. The purchasing agency shall include in the procurement record of a
17 small purchase solicitation made by RFQ, regardless of whether it was concluded,
18 an attestation containing the following:

19 (a) a record of those particular businesses that were contacted, and
20 those who, contacted or not, submitted a “no quote,” or did not respond to the
21 solicitation, as well as those that submitted positive written quotations;

22 (b) a statement documenting the solicitation efforts to obtain
23 quotations from qualified sources other than those which responded, and
24 GSA’s list of all qualified vendors for the item(s) or service(s) being procured.

25 Small purchase requirements shall not be artificially divided so as to constitute
26 a small purchase under this Section. The Chief Procurement Officer, the Director of
27 the Department of Public Works, the head of an agency, or designee at or above the

1 level of Procurement Officer utilizing this Section for procurement, shall submit
2 quarterly a report of all small purchases to the Speaker of *I Liheslaturan Guåhan*.”

3 **Section 3. Effective Date.** This Act shall be effective upon enactment.

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