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) As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; and further amended on the Floor	Sabina F. Perez Therese M. Terlaje Telo T. Taitague Tina Rose Muña Barnes Joanne Brown Frank Blas Jr. V. Anthony Ada Christopher M. Dueñas James C. Moylan Telena Cruz Nelson Clynton E. Ridgell Joe S. San Agustin Amanda L. Shelton Jose "Pedo" Terlaje Mary Camacho Torres	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.	4/29/22	Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	5/11/22 9:00 a.m.	5/17/22 4:21 p.m. As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning.	Request: 4/29/22 Waiver: 5/6/22	

SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	NOTES
5/27/22	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.	6/2/22	6/3/22	6/15/22	

COPY

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
Thirty-Sixth Guam Legislature

June 3, 2022

The Honorable Lourdes A. Leon Guerrero
I Maga'hågan Guåhan
Ufisinan I Maga'håga
Hagåtña, Guam 96910

Dear *Maga'håga* Leon Guerrero:

Transmitted herewith are **Bill Nos. 242-36 (LS), 243-36 (LS), 244-36 (LS), 300-36 (LS),** and **301-36 (LS)** which were passed by *I Mina'trentai Sais Na Liheslaturan Guåhan* on June 2, 2022.

Sincerely,

AMANDA L. SHELTON
Legislative Secretary

Enclosure (5)

RCVD AT CENTRAL FILES
JUN 3 '22 PM3:19

Elaine Tajalle

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

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

This is to certify that **Bill No. 300-36 (LS), "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,"** was on the 2nd day of June 2022, duly and regularly passed.

Therese M. Terlaje

Therese M. Terlaje
Speaker

Attested:

Amanda L. Shelton

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 3rd day of June, 2022, at 3:19 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date:_____

Public Law No._____

RCVD AT CENTRAL FILES
JUN 3 '22 PM3:19

Elaine Tajalle

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

Bill No. 300-36 (LS)
As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; and further amended on the Floor.

Introduced by: Sabina Flores Perez
Therese M. Terlaje
Telo T. Taitague
Tina Rose Muña Barnes
Joanne Brown
Frank Blas Jr.
V. Anthony Ada
Christopher M. Dueñas
James C. Moylan
Telena Cruz Nelson
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Jose "Pedo" Terlaje
Mary Camacho Torres

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

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

I Liheslatura finds that procurement without public competition by informal Requests for Quotations (RFQs) of small purchases may be abused by the acquirement of a vague "no quote quotation" requirement in regulation 2 GAR §

3111(c)(1), and by a purchasing agency's obligation to obtain "no less than three positive written quotations from businesses", and due to failure of purchasing agencies to keep procurement records that create an audit trail which would reveal, among other matters: how many and which vendors were actually solicited by an RFQ; how were the chosen recipients selected; and which recipients of an RFQ returned a price quote. *I Liheslatura* has not noticed any evidence that small purchases by the sole source method have received any of the treatment required by 5 GCA § 5214 or 2 GAR § 3112 to provide competition, frugality, transparency, and accountability under the formal sole source method of procurement.

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

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

"**§ 5213. Small Purchases.**

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 regulations promulgated by the Policy Office, which shall include the requirements, in a Request for Quotes (RFQ) small purchase solicitation, to solicit and obtain, to the maximum extent practicable, no less than three (3) positive written quotations from qualified sources that shall be part of the procurement record. A "no quote" response will not be considered a positive quotation but shall be part of the procurement record, which shall further include a written record or memorandum of all solicitations and responses thereto, negative or positive, orally or in writing. In the event the agency obtains less than three (3) positive quotations and provides the attestation required by this Section, the agency may proceed with the small purchase procurement. The purchasing agency shall include in the procurement record of a small purchase solicitation made by RFQ, regardless of whether it was concluded, an attestation containing the following:

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

(b) a statement documenting the solicitation efforts to obtain quotations from qualified sources other than those which responded; and

(c) GSA's list of all qualified vendors for the item(s) or service(s) being procured.

Small purchase requirements shall not be artificially divided so as to constitute a small purchase under this Section. The Chief Procurement Officer, the Director of the Department of Public Works, the head of an agency, or designee at or above the level of the Procurement Officer utilizing this Section for procurement, shall submit a quarterly report of all small purchases to the Speaker of *I Liheslaturan Guåhan*."

Section 3. Promulgation of Rules and Regulations for Small Purchases. The Procurement Policy Office, pursuant to 5 GCA § 5130(a), shall promulgate rules and regulations for small purchases consistent with 5 GCA § 5213, no later than ninety (90) calendar days after the enactment of this Act.

Section 4. Effective Date. This Act shall be effective upon enactment.

Section 5. Severability. If any provision of this Act 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 Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.