

# I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN

## 2022 (SECOND) Regular Session

### VOTING RECORD

| <b>Bill No. 300-36 (LS)</b><br>As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; and further amended on the Floor. | Speaker Antonio R. Unpingco Legislative Session Hall<br>Guam Congress Building<br>June 2, 2022 |     |                          |                         |        |         |
|--|--|-----|--------------------------|-------------------------|--------|---------|
| NAME   | Aye  | Nay | Not Voting/<br>Abstained | Out During<br>Roll Call | Absent | Excused |
| Senator V. Anthony Ada   | ✓  |     |                          |                         |        |         |
| Senator Frank Blas Jr.   | ✓  |     |                          |                         |        |         |
| Senator Joanne Brown   | ✓  |     |                          |                         |        |         |
| Senator Christopher M. Dueñas  | ✓  |     |                          |                         |        |         |
| Senator James C. Moylan  | ✓  |     |                          |                         |        |         |
| Vice Speaker Tina Rose Muña Barnes   | ✓  |     |                          |                         |        |         |
| Senator Telena Cruz Nelson   | ✓  |     |                          |                         |        |         |
| Senator Sabina Flores Perez  | ✓  |     |                          |                         |        |         |
| Senator Clynton E. Ridgell   |  |     |                          |                         | ✓      | ✓       |
| Senator Joe S. San Agustin   | ✓  |     |                          |                         |        |         |
| Senator Amanda L. Shelton  |  |     |                          |                         | ✓      | ✓       |
| Senator Telo T. Taitague   | ✓  |     |                          |                         |        |         |
| Senator Jose "Pedo" Terlaje  |  |     |                          |                         | ✓      | ✓       |
| Speaker Therese M. Terlaje   | ✓  |     |                          |                         |        |         |
| Senator Mary Camacho Torres  |  |     |                          |                         | ✓      | ✓       |

**TOTAL**

**11**

**0**

**4**

**4**

Aye

Nay

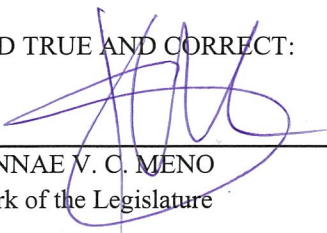
Not Voting/  
Abstained

Out During  
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:

  
 \_\_\_\_\_  
 RENNAE V. C. MENO  
 Clerk of the Legislature

I = Pass

***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.**

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that 5 GCA § 5213, as first enacted in Public Law 16-124, allowed the Policy Office  
4 to establish, by regulation, the threshold amount and “small purchase procedures.”

1 Currently, that statute specifies that “any procurement not exceeding Twenty-five  
2 Thousand Dollars (\$25,000) for supplies or services, and not exceeding One  
3 Hundred Thousand Dollars (\$100,000) for construction, may be made in accordance  
4 with small purchase procedures promulgated by the Policy Office.” Regulations  
5 adopted by the Executive Branch have provided for two (2) specific competitive  
6 source selection procedures: (1) solicitation of goods and services and construction  
7 by informal (not advertised) Requests for Quotations (RFQs) (2 GAR § 3111); and,  
8 (2) Blanket Purchase Agreements (BPAs) (2 GAR § 3112.1). 2 GAR §3111  
9 emphasizes that small purchases of goods and services must have competitive  
10 features [see, § 3111(c) through (f)]. But if “the supply, service, or construction item  
11 is available from only one business, the sole source procurement method set forth in  
12 § 3112 (Sole Source Procurement) of these regulations shall be used even if the  
13 procurement is a small purchase....” [2 GAR § 3111(b)(4)].

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

26 *I Liheslatura* finds that procurement without public competition by informal  
27 Requests for Quotations (RFQs) of small purchases may be abused by the

1 acquisition of a vague “no quote quotation” requirement in regulation 2 GAR §  
2 3111(c)(1), and by a purchasing agency’s obligation to obtain “no less than three  
3 positive written quotations from businesses”, and due to failure of purchasing  
4 agencies to keep procurement records that create an audit trail which would reveal,  
5 among other matters: how many and which vendors were actually solicited by an  
6 RFQ; how were the chosen recipients selected; and which recipients of an RFQ  
7 returned a price quote. *I Liheslatura* has not noticed any evidence that small  
8 purchases by the sole source method have received any of the treatment required by  
9 5 GCA § 5214 or 2 GAR § 3112 to provide competition, frugality, transparency, and  
10 accountability under the formal sole source method of procurement.

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

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

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

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

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

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

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

9 **Section 3. Promulgation of Rules and Regulations for Small Purchases.**

10 The Procurement Policy Office, pursuant to 5 GCA § 5130(a), shall promulgate rules  
11 and regulations for small purchases consistent with 5 GCA § 5213, no later than  
12 ninety (90) calendar days after the enactment of this Act.

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

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