


I MINA'TRENTAI UNU NA LIHESLATURAN GUAM
2012 (SECOND) Regular Session

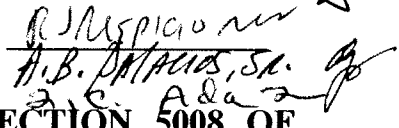

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Bill No. 450-31(LS)

Introduced by:

J.T. Won Pat, Ed.D. 

T.R. Muña Barnes


A.B. MATIAS, Sr. 

AN ACT TO REPEAL AND REENACT SECTION 5008 OF ARTICLE 1, CHAPTER 5 OF TITLE 5 GCA, RELATIVE TO POLICY IN FAVOR OF LOCAL PROCURMENT TO ENSURE THAT TAX DOLLARS REMAIN IN THE LOCAL ECONOMY AND TO PROVIDE A COMPETITIVE ADVANTAGE FOR LOCALLY BASED COMPANIES FOR THE ECONOMIC BENEFIT OF ALL RESIDENTS OF GUAM. THIS ACT SHALL BE KNOWN AS THE "LOCAL BUSINESS FIRST ACT OF 2012"

- 1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**
- 2 Section 5008 of Article 1, Chapter 5 of Title 5, Guam Code Annotated is hereby
- 3 repealed and reenacted to read:
- 4 **"SECTION 5008. LOCAL BUSINESS FIRST ACT**
- 5 §5008.1 - Declaration of policy.
- 6 §5008.2 - Definitions.
- 7 §5008.3 – Local Business First Act—Purchases of personal property.
- 8 §5008.4 - Local Business First Act—Purchases of services.
- 9 §5008.5 - Local Business First Act—Purchases under \$50,000.00.
- 10 §5008.6- Local Business First Act—Responsibilities and enforcement.
- 11 §5008.7 - Local Business First Act—Exceptions.
- 12 §5008.8 - Local Business First Act—Effective date.
- 13 **§5008.1 - Declaration of policy.**
- 14 (a) Every dollar paid to a local business circulates in Guam’s economy 10 times.

1 When our government hires local businesses that provide local jobs with decent
2 wages, the circulation of money will generate tax revenue that will go towards
3 improving our public education, safety, and health care.

4 (b) It is the policy of *I Liheslaturan Guahan* to promote fiscal responsibility and
5 maximize the effectiveness of local tax dollars by ensuring a portion of local tax
6 dollars remain in the local economy for economic benefit of the residents of Guam by
7 utilizing all available legal opportunities to contract with a local businesses.

8 (c) It is the policy of *I Liheslaturan Guahan* to place an affirmative duty on all
9 government branches, departments and agencies to grant a preference to local
10 businesses unless doing so would be clearly contrary to the best interests of the
11 Government of Guam.

12 (d) It is the policy of *I Liheslaturan Guahan* to achieve the policy goals in subsection
13 (a) through (c) above by utilizing all permissible tools.

14 (e) Nothing in this article prohibits the Government of Guam from rejecting all bids.

15 **§5008.2 - Definitions.**

16 The words and phrases defined in this section have the following meanings:

17 *Bid* means any procurement method governed by the Guam Procurement Law,
18 Title 5, Chapter 5, GCA or as it may be amended.

19 *Local area* means all villages and municipalities in and around the Island of
20 Guam.

21 *Local business* means a licensed business entity registered with the Department of
22 Revenue and Taxation with a principal place of business in the local area that meets all of
23 the following criteria:

24 (a) obtained a business license and are in good standing with the Department of
25 Revenue and Taxation for an established period of more than three (3) consecutive
26 years from the effective date of this Act; and

27 (b) the majority of the shareholders in the business entity have filed individual tax
28 returns on Guam for a period of at least five (5) consecutive years; and

29 (c) the entity, if a domestic corporation must have filed corporate income tax on

1 Guam for a period of at least five (5) consecutive years;

2 *Principal place of business* means the business must be headquartered or have an
3 established place or places of business in the incorporated limits of the local area, as
4 applicable, from which thirty five percent (35%) or more of the entity's workforce are
5 regularly based, and from which a substantial role in the entity's performance of a
6 commercially useful function or a substantial part of its operations is conducted. A
7 location utilized solely as a post office box, mail drop or telephone message center,
8 business center or any combination thereof, with no other substantial work function,
9 shall not be construed as a principal place of business.

10 *Government of Guam* means all branches within the government of Guam including
11 the Legislative and Judicial Branches and all the departments and agencies within the
12 Executive Branch to include all autonomous and semi-autonomous agencies including
13 the A. B. Won Pat Guam International Airport Authority, the Guam Power Authority,
14 the Guam Housing & Urban Renewal Authority, the Guam Housing Corporation, the
15 Guam Economic Development Authority, the Guam Memorial Hospital Authority, the
16 University of Guam, the Port Authority of Guam, the Guam Rental Corporation, the
17 Guam Community College, the Guam Water Works Authority, the Government of
18 Guam Retirement Fund, the Guam Mass Transit Authority, the Guam Visitor's
19 Bureau, the Public Defenders Service Corporation, the Guam Educational
20 Telecommunication Corporation, the Guam Election Commission, the Civil Service
21 Commission, the Department of Education, the Guam Environmental Protection
22 Agency and the Guam Vocational Rehabilitation.

23 **§5008.3. – Local Business First Act—purchases of personal property.**

24 (a) *Contracts of one-hundred thousand dollars (\$100,000.00) or more.* In purchasing any
25 personal property that is not affixed to real property, if the government receives one or
26 more bids from a bidder that is a local business and whose bid is within three percent of the
27 lowest bid price received by the government from a bidder who is not from the local area,
28 the government shall, subject to the provisions this Chapter 5, Title 5, GCA, enter into a

1 contract with a value of one-hundred thousand dollars (\$100,000.00) or more with:

2 (1) The lowest bidder; or

3 (2) The bidder that is a local business, as defined in this article.

4 (b) *Contracts under* one-hundred thousand dollars (\$100,000.00). In purchasing any
5 personal property that is not affixed to real property, if the government receives one or
6 more bids from a bidder that is a local business and whose bid is within five percent of the
7 lowest bid price received by a non-local business, the government shall, subject to the
8 provisions of Chapter 5, Title 5, GCA, enter into a contract for an expenditure of less than
9 one-hundred thousand dollars (\$100,000.00) with:

10 (1) The lowest bidder; or

11 (2) The bidder that is a local business, as defined in this article.

12 **§5008.4 – Local Business First Act – Purchases of services.**

13 (a) In procuring services, including construction services, the contracting department
14 shall, subject to the provisions of Title 5, Chapter 5, GCA, grant a preference to a local
15 business. In no event shall a contract for services be granted to a local business that is not
16 within:

17 (1) Five percent (5%) of the lowest bidder for contracts under one-hundred thousand
18 dollars (\$100,000.00); or

19 (2) Three percent (3%) of the lowest bidder for contracts of one-hundred thousand
20 dollars (\$100,000.00) or more.

21 (b) In procuring architectural, engineering or land surveying services under the Guam
22 Procurement Act, Title 5, Chapter 5, GCA, the contracting department shall, when
23 appropriate, consider knowledge of local conditions as part of the qualifications
24 determination.

1 **§5008.5 – Local Business First Act — Purchases under \$50,000.00.**

2 Subject to the provisions under Title 5, Chapter 5, GCA, when procuring goods or services
3 valued at less than fifty thousand dollars (\$50,000.00) that are not the subject of a blanket
4 purchase order or contract, the government shall, subject to the requirements of this
5 chapter, select vendors and services providers with a principal place of business in the local
6 area, provided that any such vendor's bid is no more than five percent (5%) greater than the
7 lowest bid, in the event the lowest bid is from one other than a local business.

8 **§5008.6 - Local Business First Act — Responsibilities and enforcement.**

9 (a) The Director of the Department of Revenue and Taxation shall be responsible for
10 establishing the documentation necessary to establish a principal place of business in the
11 local area. Any entity claiming to be a local business shall submit to the department a form
12 promulgated by the department, attested to by a duly authorized representative of the
13 business. The Director shall make the final determination as to whether a business is a local
14 business as defined in this article.

15 (b) All Agency and Department Directors shall maintain written records of all
16 departmental actions under this program. Departments are charged with primary
17 responsibility for monitoring their contracts for compliance with the program.

18 (c) The contracting or evaluating department shall award additional points to a local
19 business in any bid based on a "best value" evaluation.

20 (d) The General Services Agency ("GSA") and the Department of Revenue and Taxation
21 in consultation with the Attorney General, are directed to provide written guidance,
22 including guidance on best value bids, to all departments and agencies for implementing
23 this article. Such guidance shall include a preference structure that grants the highest
24 number of points to a local business and no points to a business located outside of the local
25 area.

26 (e) The submission of a form pursuant to subsection (a) above found to contain false
27 information is grounds for debarment per Article 9, Chapter 5, GCA.

1 (f) All Executive Branch departments and agencies including autonomous and semi-
2 autonomous agencies including all divisions of the Legislative and Judicial Branches shall
3 produce semi-annual reports, commencing October 1, 2012, summarizing the dollar
4 amount of procurements awarded to local businesses under this program and submit the
5 report to the Speaker of *I Liheslaturan Guahan* and the Guam Public Auditor.

6 **§5008.7- Local Business First Act –Exceptions.**

7 (a) This program does not apply to any contract in which the federal government
8 participates in the form of a grant or loan, or the government acts as a conduit for
9 federal money.

10 (b) This program does not supersede any existing provisions of §5009 through §5012
11 of Title 5, Chapter 5, GCA as it relates to Policy in Favor of Native or Grown-in-
12 Guam Horticultural and Policy in Favor of Service-Disabled Veteran Owned
13 Businesses. These existing programs shall take precedence over any provisions in
14 this act as it relates to advantages for policy in favor of local procurement.

15 (c) This program does not apply to contracts in which the contracting or procurement
16 department has determined that it would unduly interfere with contract needs. In
17 cases of purchases over one-hundred thousand dollars (\$100,000.00), such
18 determination shall be made in writing, expressly approved by the department or
19 agency director, and furnished in advance.

20 **§5008.8- Local Business First Act—Effective date.**

21 This Act shall be effective as to solicitations for procurements published on or after August
22 1, 2012.”