



FILE COPY

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
THIRTY-THIRD GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

December 30, 2016

The Honorable Edward J.B. Calvo
I Maga'låhen Guåhan
Ufisinan I Maga'låhi
Hagåtña, Guam

Dear *Maga'låhi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 162-33 (COR), 200-33 (COR), 299-33 (COR), 312-33 (COR), 330-33 (COR), 332-33 (COR), 336-33 (LS), 337-33 (LS), 350-33 (COR), 356-33 (COR), 357-33 (COR), 358-33 (COR), 379-33 (COR), 380-33 (COR), 385-33 (COR), 389-33 (COR), 391-33 (COR), 392-33 (COR), 397-33 (COR), 398-33 (COR), 399-33 (COR), 402-33 (COR), 403-33 (LS), 404-33 (LS), 406-33 (COR), 407-33 (COR), 409-33 (COR) and 411 (COR), which were passed by *I Mina'Trentai Tres Na Liheslaturan Guåhan* on December 30, 2016.

Sincerely,

TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosure (28)

PD3 PG CORP #374
12/30/16
8:50 PM

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LÅHEN GUÅHAN

This is to certify that **Substitute Bill No. 411-33 (COR), "AN ACT TO ADD NEW SUBSECTIONS (k), (l), AND (m) TO § 58D103, AND AMEND §§ 58D105, 58D106, AND 58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE USE OF THE MULTI-STEP BID SOURCE SELECTION METHOD FOR THE RENOVATION OR CONSTRUCTION OF SIMON SANCHEZ HIGH SCHOOL,"** was on the 30th day of December 2016, duly and regularly passed.



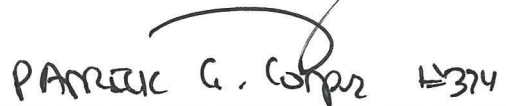
Judith T. Won Pat, Ed.D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 30^m day of Dec,
2016, at 8:50 o'clock P.M.



Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

Bill No. 411-33 (COR)

As amended by the Sponsor; and substituted
and amended on the Floor.

Introduced by:

T. C. Ada
Mary Camacho Torres
B. J.F. Cruz
N. B. Underwood, Ph.D.
V. Anthony Ada
FRANK B. AGUON, JR.
Frank F. Blas, Jr.
James V. Espaldon
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Dennis G. Rodriguez, Jr.
Judith T. Won Pat, Ed.D.

**AN ACT TO *ADD* NEW SUBSECTIONS (k), (l), AND (m)
TO § 58D103, AND *AMEND* §§ 58D105, 58D106, AND
58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE
ANNOTATED, RELATIVE TO AUTHORIZING THE USE
OF THE MULTI-STEP BID SOURCE SELECTION
METHOD FOR THE RENOVATION OR
CONSTRUCTION OF SIMON SANCHEZ HIGH
SCHOOL.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that Simon Sanchez High School faces the combined challenges of deteriorating
4 conditions, obsolescence, and overcrowding.

1 *I Liheslaturan Guåhan* finds that the government of Guam does not have the
2 debt capacity to borrow the capital needed to build and replace the Simon Sanchez
3 High School (SSHS). Hence, the *design, build, and finance approach*; and “*using a*
4 *municipal lease as a vehicle to build new educational facilities*” would be a good
5 alternative.

6 *I Liheslaturan Guåhan* finds that Public Law 32-120 mandates the use of the
7 Request for Proposal (RFP) source selection method for the procurement of a
8 “*...new education facility...*”; and the government of Guam “*...will amortize, as*
9 *lease payments to the contractor, the cost of the financing, design, renovation or*
10 *construction and related expenses of the education facility... for a period not*
11 *to exceed thirty (30) years.*”

12 *I Liheslaturan Guåhan* intends to amend Public Law 32-120 to remove the
13 mandated use of the RFP source selection method and prescribe the use of the Multi-
14 Step Sealed Bid source selection method, pursuant to 5 GCA § 5211(h), and § 3109
15 of Chapter 3, Division 4, 2 GAR, which is deemed to be more objective in the
16 selection of a responsible bidder whose bid is responsive and is the lowest annual
17 leaseback cost to the government of Guam.

18 *I Liheslaturan Guåhan* further finds that when low price is desired to be a
19 determining factor for award to the bidder of an acceptable product, e.g. an education
20 facility, but it is considered preferable to evolve or test the adequacy of a purchase
21 description’s market feasibility, an Invitation for Bids may be issued and conducted
22 in two (2) phases, the first requesting the submission of unpriced technical offers,
23 which may involve description of service qualifications and performance, in one (1)
24 or more rounds in which discussions may be conducted to supplement or amend
25 technical offers or bid specifications or both, to be followed by a second phase in
26 which the unsealed price bids of those bidders whose offers have been or become

1 qualified as acceptable under the criteria set forth in the first phase are requested and
2 then opened as in a normal competitive sealed bid process.

3 **Section 2.** New Subsections (k), (l), and (m) are *added* to § 58D103 of
4 Chapter 58D, Title 5, Guam Code Annotated, to read as follows:

5 “(k) Responsible bidder shall mean a person who has the
6 capability in all respects to perform fully the contract requirements, and
7 the integrity and reliability which will assure good faith performance.

8 (l) Responsive bid shall mean a bid which conforms, at bid
9 opening, in all material respects to the Invitation for Bids. A responsive
10 bid is an offer by the bidder which unconditionally undertakes to provide
11 the supply, service, or construction the government intends to acquire as
12 specified in the IFB, and only on contract terms and conditions as are
13 materially consistent with those specified in the IFB.

14 (m) Responsive shall mean conforming in all material respects to
15 the purchase description and contract terms contained in the Invitation for
16 Bids. A nonconforming bid is nonresponsive if it contains a material
17 noncompliant term or condition that is in any respect prejudicial to other
18 bidders, that is, the effect of such noncompliant term or condition on price,
19 quantity, quality, delivery, or contractual terms specified in the IFB is more
20 than negligible.”

21 **Section 3.** § 58D105 of Chapter 58D, Title 5, Guam Code Annotated, is
22 *amended* to read as follows:

23 “**§ 58D105. Procurement.** The Guam Department of Education, with
24 the Department of Public Works providing support as needed, *shall* issue an
25 Invitation for Multi-Step Competitive Sealed Bids, pursuant to 5 GCA §
26 5211(h) and § 3109 of Chapter 3, Division 4, 2 GAR, for the development of
27 a comprehensive capital improvement plan, the financing, design, renovation,

1 or construction of the education facility, together with insurance and
2 maintenance of the education facility over the lease-back period, according to
3 the needs of the education agency and consistent with this Chapter. The bid
4 invitation shall specifically state the minimum design requirements that will
5 be required for a submitted proposal to be considered. Bidders shall be
6 required to submit a bid bond for the full amount of their bid, with the price
7 bid which will not be opened or disclosed until the price bids are opened. If
8 any bid bond is determined at opening not to meet the requirements of the
9 IFB, that bid shall be deemed non-responsive and not considered further. The
10 government of Guam shall be the named obligee under the bid bond, and the
11 performance and payment bonds. The government of Guam shall have the
12 sole right to call on the bid bond.

13 The determination of responsible bidders and responsive bid(s) *shall* be
14 made by a selection committee comprised of the Superintendent of the
15 Department of Education, serving as Chairman, and including the Director of
16 the Department of Public Works or Deputy Director, the Director of the
17 Department of Land Management or Deputy Director, the Administrator of
18 the Guam Environmental Protection Agency or Deputy Administrator, and the
19 Administrator of the Guam Economic Development Authority or Deputy
20 Administrator. The committee *shall* evaluate bids received based on the
21 requirements set forth in the Invitation for Multi-Step Sealed Bids.

22 The award of the contract *shall* be based upon the bid submitted by a
23 responsible bidder that is responsive to the Invitation for Bids and offers the
24 lowest annual leaseback rate and insurance and maintenance costs to the
25 government of Guam for a fixed thirty (30) year term. Each bidder *shall*
26 submit a complete breakdown of its project cost to include, at a minimum: (1)
27 hard construction costs; (2) soft costs including management, development,

1 and other related project fees; and (3) the annual lease payment schedule
2 identifying any financing, insurance, and maintenance costs and terms.

3 The Invitation for Multi-Step Competitive Sealed Bids for the
4 renovation or construction of a new Simon Sanchez High School on the
5 existing site, which may include demolition of such portions of the existing
6 facility as necessary *shall* be issued within thirty (30) days of enactment of
7 this Act.

8 Notwithstanding any other provision of law, the procurement re-
9 solicitation for the development of a comprehensive capital improvement
10 plan, the financing, design, renovation, or construction of the education
11 facility to be located on the existing site of Simon Sanchez High School,
12 together with insurance and maintenance of the education facility over the
13 lease-back period *shall not* be combined with another procurement such as in
14 Public Law 32-121 (the repair and maintenance of 35 other schools).”

15 **Section 4.** § 58D106 of Chapter 58D, Title 5, Guam Code Annotated, is
16 *amended* to read as follows:

17 “**§ 58D106. Responsibilities of Contractor.** The contract shall
18 require that the contractor will work with GDOE to develop the
19 comprehensive capital improvement plan in connection with the design of a
20 renovated or construction of a new Simon Sanchez High School. Further, the
21 contractor shall be responsible for all costs, expenses, and fees of any kind or
22 nature, associated with the design, civil improvements, on-site and off-
23 site infrastructure, construction, permits, and financing associated
24 with the completion of an education facility, including the financing of
25 furniture and equipment for the education facility, as, and to the extent,
26 provided by the education agency in the Multi-Step Competitive Sealed
27 Bid. The contract will also require that all major subcontracts be covered

1 by a performance bond; and further, that there be a specific delivery date
2 with liquidated damages for failure to deliver the school by the specified
3 date. The contractor shall also be responsible for the capital maintenance
4 of the schools during the lease-back period, but shall not be responsible for
5 the capital maintenance of the furniture and equipment. The lease-back
6 may provide that if sufficient funds are not appropriated or otherwise
7 available for the payment of amounts due under the lease and any
8 maintenance agreement, the education agency will have the obligation to
9 vacate the education facility, and the contractor shall have the right of use
10 and occupancy of the education facility for the remainder of the term of the
11 lease, unless new mutually satisfactory terms are entered into. For this
12 purpose, the lease may provide that its term shall be extended for a period
13 not to exceed the shorter of ten (10) years beyond the original term of
14 the lease-back or such period of time as is necessary to repay in full any
15 financing arranged pursuant to § 58D108. The capital maintenance costs
16 shall be paid by the education agency on a periodic basis as incurred by the
17 contractor on terms to be agreed to in the contract for the education facility.

18 The lease-back agreement *shall* include a provision that no rental
19 payments, reserve, advance or deposit payments, shall be paid by the
20 government of Guam to the successful bidder until and unless the entire
21 education facility has received a full occupancy permit and the government
22 accepts the project.”

23 **Section 5.** § 58D108 of Chapter 58D, Title 5, Guam Code Annotated, is
24 *amended* to read as follows:

25 “§ 58D108. **Use of Tax-Exempt Bonds for Financing.** To minimize
26 the financing cost to the education agency, financing utilized by the
27 contractor to fund the design, renovation, or construction of an education

1 facility may be through tax-exempt obligations or other financial
2 instruments, provided, such financing is available at interest rates determined
3 by the education agency to be reasonable and competitive. Alternatively, the
4 contractor may use an alternative method of financing, including, but *not*
5 limited to, a short term debt, mortgage, loan, federally guaranteed loan, or
6 loan by an instrumentality of the United States of America, if such
7 financing will better serve the needs of the people of Guam. The purpose
8 for the requirements of this Section is to assure the education agency pays
9 the lowest possible interest rate so that the cost to the education agency of
10 financing the design, renovation, or construction of an education
11 facility, amortized through the lease-back payments from the
12 education agency to the contractor, will be lower than regular commercial
13 rates.”

14 **Section 6. 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 provisions or application, and to this end the provisions of this
18 Act are severable.