

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
52-36 (COR)	Sabina Flores Perez	AN ACT TO AMEND § 5233 OF SUBARTICLE D, ARTICLE 3, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO DISCLOSURE OF OWNERSHIP, FINANCIAL AND CONFLICT OF INTERESTS.	2/2/21 2:14 p.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session

Bill No. 52-36 (COR)

Introduced by:

Sabina Flores Perez /SFP

**AN ACT TO *AMEND* § 5233 OF SUBARTICLE D,
ARTICLE 3, CHAPTER 5 OF TITLE 5, GUAM CODE
ANNOTATED, RELATIVE TO DISCLOSURE OF
OWNERSHIP, FINANCIAL AND CONFLICT OF
INTERESTS.**

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

2 **Section 1.** § 5233 of Subarticle D, Article 3, Chapter 5 of Title 5, Guam Code
3 Annotated, is *amended* to read:

4 **“§ 5233. Disclosure of ~~Major Shareholders~~ Ownership, Financial and**
5 **Conflict of Interests.**

6 (a) Purpose: The disclosures required by this section are intended to
7 reveal information bearing on the responsibility of a bidder, and can be
8 obtained by an inquiry regarding responsibility prior to award.

9 (b) Definitions.

10 (1) As used herein, the term “person” shall be interpreted
11 liberally to include the definition found in Title 1, Chapter 7, Section
12 715, Guam Code Annotated, and in § 5030(n) of this Chapter, and
13 includes a natural person as well as every entity of whatever form or
14 composition (an “artificial person”) recognized under the laws of Guam
15 other than a natural person.

16 (c) Public Disclosure of Ownership:

1 (1) The ownership interests to be disclosed under this section
2 includes the interests of a natural or artificial person who owns all or
3 any part of a prospective contractor, whether as proprietor, a partner,
4 limited or otherwise, a shareholder of any class (in which case the
5 percentage ownership interest test shall be based on each class), a
6 member of an association or company, limited or otherwise, and any
7 person owning a beneficial legal interest in any trust, and any other
8 person having the power to control the performance of the contract or
9 the prospective contractor.

10 (2) Prior to award, Every person who is a prospective
11 contractor of a contract to be acquired under any method of source
12 selection authorized by this Chapter shall submit, a Disclosure
13 Statement, executed as an affidavit under oath, disclosing the name of
14 each person who currently or has owned an ownership interest in the
15 prospective contractor, greater than ten percent (10%), at any time
16 during the twelve (12) month period immediately preceding the date of
17 the solicitation (the “relevant disclosure period”). If a prospective
18 contractor is an artificial person, the Disclosure Statement shall disclose
19 the name of each person who has owned an ownership interest in such
20 artificial person (a “second tier owner”), greater than twenty-five
21 percent (25%), at any time during the relevant disclosure period. If any
22 such second tier owner is also an artificial person, the Disclosure
23 Statement shall disclose the name of each person who has owned an
24 ownership interest in such second tier owner (a “third tier owner”) of
25 forty-nine percent (49%) or more during the relevant disclosure period.
26 If the name of no natural person has been identified as an owner, or a
27 second or third tier owner of the prospective contractor, the Disclosure
28 Statement shall identify the name, position, address, and contact

1 information of the natural person having the authority and
2 responsibility for the performance of the prospective contract, and the
3 name of any natural person who has the authority and power to remove
4 and replace the designated responsible person or otherwise control the
5 performance of the prospective contract.

6 (d) Disclosure of Financial Interest. A prospective contractor shall
7 disclose any person who has received or is entitled to receive a commission,
8 gratuity, contingent fee or other compensation to solicit or secure or assist in
9 obtaining business related to the solicitation by means of a Disclosure
10 Statement, executed as an affidavit under oath, disclosing such interest and
11 shall also contain the amounts of any such commission, gratuity or other
12 compensation.

13 (e) Disclosure of Conflict of Interest. A prospective contractor shall
14 disclose any person who directly or indirectly participates in any solicitation
15 if such person is an employee of the Government of Guam, or of the
16 Government of the United States if federal funds are used in payment of the
17 contract.

18 (f) Every disclosure of an ownership or financial interest of any
19 person required to be identified by this Section, shall name the person required
20 to be disclosed, the street address of the residence or principle place of
21 business, and, in the case of an artificial person, a Taxpayer Identification
22 Number shall be provided. All information disclosed or meant to be disclosed
23 under this Section is public procurement data and shall be kept as part of the
24 public record of each procurement.

25 (g) Continuing duty of disclosure. Notwithstanding any other
26 provision of this Chapter, the duty to disclose the information required to be
27 disclosed by this Section shall be, after award, a continuing duty of a
28 contractor of every contract subject to this Chapter, and all such information,

1 on the day of award, shall become part of the procurement record required by
2 § 5249 of this Chapter. Throughout the term of a contract subject to the terms
3 of this Chapter, the contractor shall promptly come forward and disclose any
4 disclosures not made and. changes in the identities or other required
5 information, interests or conflicts of the persons required to be disclosed
6 herein, and failure to do so will be a material breach of contract.

7 ~~As a condition of bidding, any partnership, sole proprietorship or corporation~~
8 ~~doing business with the government of Guam shall submit an affidavit executed~~
9 ~~under oath that lists the name and address of any person who has held more than ten~~
10 ~~percent (10%) of the outstanding interest or shares in said partnership, sole~~
11 ~~proprietorship or corporation at any time during the twelve (12) month period~~
12 ~~immediately preceding the submission of a bid. The affidavit shall contain the~~
13 ~~number of shares or the percentage of all assets of such partnership, sole~~
14 ~~proprietorship or corporation which have held by each such person during the twelve~~
15 ~~(12) month period. In addition, the affidavit shall contain the name and address of~~
16 ~~any person who has received or is entitled to receive a commission, gratuity or other~~
17 ~~compensation for procuring or assisting in obtaining business related to the bid for~~
18 ~~the bidder and shall also contain the amounts of any such commission, gratuity or~~
19 ~~other compensation. The affidavit shall be open and available to the public for~~
20 ~~inspection and copying.~~

21 **Section 2. Severability.** If any provision of this Act or its application to
22 any person or circumstance is found to be invalid or contrary to law, such invalidity
23 *shall not* affect other provisions or applications of this Act that can be given effect
24 without the invalid provision or application, and to this end the provisions of this
25 Act are severable.