

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
236-36 (COR) As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; and substituted and further amended on the Floor.	Sabina Flores Perez Therese M. Terlaje Joanne Brown Telena Cruz Nelson James C. Moylan Joe S. San Agustin Clynton E. Ridgell Telo T. Taitague Tina Rose Muña Barnes	AN ACT TO AMEND § 5213 OF SUBARTICLE B, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.	12/27/21 12:38 p.m.	12/27/21	Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	1/18/22 9:00 a.m.	2/14/22 4:15 p.m. As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	Request: 12/28/21 Waiver: 12/30/21	
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	VETOED	NOTES		
	3/25/22	AN ACT TO AMEND § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.	4/1/22	4/1/22	4/13/22	4/11/22	Received: 4/12/22 Mess and Comm. Doc. No. 36GL-22-1909		



UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

April 11, 2022

Doc Type: 36GL-22-1909
OFFICE OF THE SPEAKER
THERESE M. TERLAJE

HONORABLE THERESE M. TERLAJE, *Speaker*
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

04-12-2022

Time: 11:31 a.m.
Received: [Signature]

Re: SUBSTITUTE BILL NO. 236-36 (COR) – AN ACT TO AMEND § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES

Hafa Adai Madame Speaker,

Substitute Bill No. 236-36 seeks to improve competition for small purchases made under Guam Procurement Law by requiring procuring agencies to submit requests for quotations (RFQs) to businesses for supplies or services, and to require procuring agencies to include in the procurement record an attestation documenting the agency's efforts to obtain quotations; a list of qualified vendors for the item or service¹; and a record of businesses contacted, businesses that responded, businesses that did not respond, and/or businesses that otherwise submitted a positive written quotation. The testimony received by the Legislature on Substitute Bill No. 236-36 was generally positive, with agencies and experts alike collaborating on revisions.

However, the bill the Legislature ultimately passed contains a defect that would affect the ability of our procuring agencies to utilize the small purchase mechanism as intended. Specifically, the bill requires that a procuring agency not only solicit but *obtain* three (3) positive quotes, to the maximum extent practicable. The bill gives no guidance regarding the action a procuring agency may take in the event the agency receives only two positive quotes. It appears from both the Legislature's discussion during the hearing, and from the original language of the bill, that the Legislature's intent was perhaps to require an attestation documenting the agency's efforts to foster competition for a small purchase procurement in the event the agency is unable to obtain three (3) positive quotes. However, the ultimate engrossed bill nullified this alternative, leaving agencies with no clear path towards completing a small purchase procurement in the event three (3) positive quotes are not obtained.

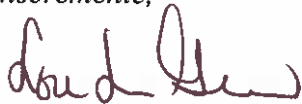
¹ In the event the Legislature proceeds with a corrective bill, I suggest the Legislature provide clear instruction to the GSA regarding its obligation to compile a list of qualified vendors, to the extent the Legislature shall require submission of such a list along with the attestation.

To: Speaker Terlaje
Fr: Governor of Guam
Date: April 11, 2022
Re: Substitute Bill No. 236-36 (COR)

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I trust that the Legislature will act expeditiously to correct this error, with input from affected agencies and stakeholders. Accordingly, ***Substitute Bill No. 236-36 is vetoed.***

Senseremente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan

Governor of Guam

Enclosure: VETOED Substitute Bill No. 236-36 (COR)

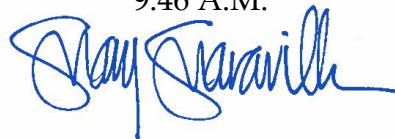
cc via email: *Honorable Joshua F. Tenorio, Sigundo Maga'låhen Guåhan*
Compiler of Laws

COMMITTEE ON RULES

RECEIVED:

April 13, 2022

9:46 A.M.




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

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

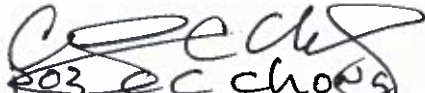
This is to certify that **Substitute Bill No. 236-36 (COR), "AN ACT TO AMEND § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES,"** was on the 1st day of April 2022, duly and regularly passed.


Therese M. Terlaje
Speaker

Attested:


Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 1 day of April,
2022, at 9:39 o'clock P.M.


Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 4 | 11 | 2022

Public Law No. _____

RCVD AT CENTRAL FILES
APR 4 '22 AM 8:58
2022-16194
Evelyn Fejeran

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

Bill No. 236-36 (COR)

As amended by the Committee on Environment, Revenue
and Taxation, Labor, Procurement, and Statistics,
Research, and Planning; and substituted and further amended on the Floor.

Introduced by:

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

**AN ACT TO AMEND § 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

1 positive written quotations from businesses”, and due to failure of purchasing
2 agencies to keep procurement records that create an audit trail which would reveal,
3 among other matters: how many and which vendors were actually solicited by an
4 RFQ; how were the chosen recipients selected; and which recipients of an RFQ
5 returned a price quote. *I Liheslatura* has not noticed any evidence that small
6 purchases by the sole source method have received any of the treatment required by
7 5 GCA § 5214 or 2 GAR § 3112 to provide competition, frugality, transparency, and
8 accountability under the formal sole source method of procurement.

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

25 **Section 2.** § 5213 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code
26 Annotated, is hereby *amended* to read as follows:

27 “§ 5213. **Small Purchases.**

1 Any procurement not exceeding Twenty-five Thousand Dollars
2 (\$25,000) for supplies or services, and not exceeding One Hundred Thousand
3 Dollars (\$100,000) for construction, may be made in accordance with small
4 purchase regulations, promulgated by the Policy Office, which shall include
5 the requirement, in a Request for Quotes (RFQ) small purchase solicitation,
6 to solicit and obtain, to the maximum extent practicable, no less than three (3)
7 positive written quotations from qualified sources and which shall be part of
8 the procurement record. A "no quote" response will not be considered a
9 positive quotation but shall be part of the procurement record, which shall
10 further include a written record or memorandum of all solicitations and
11 responses thereto, negative or positive, orally or in writing. The purchasing
12 agency shall include in the procurement record of a small purchase solicitation
13 made by RFQ, regardless of whether it was concluded, an attestation
14 containing the following:

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

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

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

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

1 **Section 3. Effective Date.** This Act shall be effective upon enactment.

2 **Section 4. Severability.** If any provision of this Act or its application to any
3 person or circumstance is found to be invalid or contrary to law, such invalidity shall
4 not affect other provisions or applications of this Act that can be given effect without
5 the invalid provision or application, and to this end the provisions of this Act are
6 severable.