

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

Bill No. *411-37 (COR)*

Introduced by:

T. C. Ada 

**AN ACT TO AMEND § 58D105, § 58D106, § 58D108 OF
CHAPTER 58D OF 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.**

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent.

I Liheslaturan Guáhan finds that Simon Sanchez High School faces the combined challenges of deteriorating conditions, obsolescence, and overcrowding.

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

I Liheslaturan Guahan finds that P.L. 32-120 mandates the use of the Request For Proposal (RFP) source selection method for the procurement of a “...new education facility...” And the Government of Guam “...will amortize, as lease payments to the contractor, the cost of the financing, design,

1 *I Liheslaturan Guahan* intends to amend P.L. 32-120 to remove the
2 restriction on the source selection method and allow for the use of the Multi-Step
3 Bid source selection method, pursuant to §5211(h) of 5 GCA and §3109 Chapter 3
4 of 2GAR, which is deemed to be more objective in the selection of a responsible
5 bidder whose bid is responsive and is the lowest annual leaseback cost to the
6 Government of Guam.

7 When low price is desired to be a determining factor for award to the bidder
8 of an acceptable product, e.g. an education facility but it is considered preferable
9 to evolve or test the adequacy of a purchase description's market feasibility, an
10 Invitation for Bids may be issued and conducted in two phases, the first
11 requesting the submission of unpriced technical offers, which may involve
12 description of service qualifications and performance, in one or more rounds in
13 which discussions may be conducted to supplement or amend technical offers or
14 bid specifications or both, to be followed by a second phase in which the unsealed
15 price bids of those bidders whose offers have been or become qualified as
16 acceptable under the criteria set forth in the first phase are requested and then
17 opened as in a normal competitive sealed bid process.

18 **Section 2.** A new § 58D103(k), (l), and (m) are added to Chapter 58D of
19 Title 5, Guam Code Annotated, to read as follows:

20 “(k) *Responsible Bidder* or *Offeror* means a person who has the
21 capability in all respects to perform fully the contract requirements, and
22 the integrity and reliability which will assure good faith performance.

23 (l) *Responsive Bid* means a bid which conforms, at bid opening, in
24 all material respects to the Invitation for Bids. A responsive bid is an offer
25 by the bidder which unconditionally undertakes to provide the supply,
26 service or construction the government intends to acquire as specified in

1 the IFB, and only on contract terms and conditions as are materially
2 consistent with those specified in the IFB.

3 (m) Responsive means conforming in all material respects to the
4 purchase description and contract terms contained in the Invitation for Bids
5 or Request for Proposal or Request for Quotes or other solicitation. A
6 nonconforming bid is nonresponsive if it contains a material noncompliant
7 term or condition that is in any respect prejudicial to other bidders, that is,
8 the effect of such noncompliant term or condition on price, quantity,
9 quality, delivery, or contractual terms specified in the IFB is more than
10 negligible.”

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

13 **“§ 58D105. Procurement.** ~~Subject to the approval of *I Liheslaturan*~~
14 ~~*Guåhan,*~~ ~~†~~The government of Guam or an education agency *shall* solicit
15 Requests for Proposals (RFP) or Multi-Step Competitive Sealed Bid pursuant
16 to §5211(h) of 5 GCA and §3109 Chapter 3 of 2GAR, using whichever
17 procurement method is deemed more appropriate, through the Department of
18 Public Works, in compliance with the Guam procurement law, for the
19 development of the comprehensive capital improvement plan, and the
20 financing, design, renovation or construction of the education facility,
21 together with insurance and maintenance of the education facility over the
22 lease-back period, according to the needs of the education agency and
23 consistent with this Chapter. The choice of the contractor *shall* be made by a
24 selection committee comprised of the Superintendent of the Department of
25 Education, serving as Chairman, and including the Director of the Department
26 of Public Works or Deputy Director, the Director of the Department of Land
27 Management or Deputy Director, the Administrator of the Guam

1 Environmental Protection Agency or Deputy Administrator, and the
2 Administrator of the Guam Economic Development Authority or Deputy
3 Administrator. The committee ~~shall access~~ assess the prior performance of the
4 contractor on similar projects and may disqualify any Contractor that does not
5 have a successful record of project completion on Guam.

6 The selection of a responsible bidder contractor ~~shall~~ be based upon the
7 bid that is responsive in meeting the objectives of the education agency
8 proposal and is the lowest annual leaseback cost to the Government of Guam
9 ~~that delivers the best value for Guam.~~

10 The RFP or Multi-Step Competitive Sealed Bid ~~shall~~ be issued within
11 thirty (30) days of enactment of this Act for the renovation or construction of
12 a new Simon Sanchez High School on the existing site, which may include
13 demolition of such portions of the existing facility as necessary.”

14 **Section 3.** § 58D106 of Chapter 58D of Title 5, Guam Code Annotated, is
15 amended to read as follows:

16 **“§ 58D106. Responsibilities of Contractor.** The contract ~~shall~~
17 require that the contractor will work with GDOE to develop the
18 comprehensive capital improvement plan in connection with the design of a
19 renovated or construction of a new Simon Sanchez High School. Further, the
20 contractor ~~shall~~ be responsible for all costs, expenses and fees of any kind or
21 nature, associated with the design, civil improvements, on-site and off-
22 site infrastructure, construction, permits, and financing associated
23 with the completion of an education facility, including the financing of
24 furniture and equipment for the education facility, as, and to the extent,
25 provided by the education agency in the Request for Proposals or Multi-
26 Step Bid Competitive Sealed Bid. The contract will also require that all
27 major subcontracts be covered by a performance bond; and further, that

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

18 **Section 4.** § 58D108 of Chapter 58D of Title 5, Guam Code Annotated, is
19 amended to read as follows:

20 **“§ 58D108. Use of Tax-Exempt Bonds for Financing.** To minimize
21 the financing cost to the education agency, financing utilized by the
22 contractor to fund the design, renovation or construction of an education
23 facility *shall may* be through tax-exempt obligations or other financial
24 instruments, provided, such financing is available at interest rates determined
25 by the education agency to be reasonable and competitive. Alternatively, the
26 contractor may use an alternative method of financing, including, but *not*
27 limited to, a short term debt, mortgage, loan, federally guaranteed loan or

1 loan by an instrumentality of the United States of America, if such
2 financing will better serve the needs of the people of Guam. ~~Such~~
3 ~~alternative financing shall be approved by I-Liheslaturan-Guahan.~~ The
4 purpose for the requirements of this Section is to assure the education
5 agency pays the lowest possible interest rate so that the cost to the education
6 agency of financing the design, renovation or construction of an
7 education facility, amortized through the lease-back payments from
8 the education agency to the contractor, will be lower than regular
9 commercial rates.”

10 **Section 5. Severability.** *If* any provision of this Act or its application to
11 any person or circumstance is found to be invalid or contrary to law, such invalidity
12 *shall not* affect other provisions or applications of this Act which can be given effect
13 without the invalid provisions or application, and to this end the provisions of this
14 Act are severable.”