

I Mina'Trentai Kuåttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
134-34 (COR)	Thomas C. Ada	AN ACT TO AMEND SUBSECTIONS (c) AND (d) OF § 58D103; AND REPEAL SUBSECTION (k) OF § 58D103; AND AMEND SUBSECTION (l) OF § 58D103; AND AMEND § 58D105; AND AMEND § 58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, AS AMENDED BY PUBLIC LAW 34-19, RELATIVE TO PROVIDING AUTHORITY FOR THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ACT AS CONTRACTOR IN CONNECTION WITH THE RENOVATION AND CONSTRUCTION OF AN EDUCATION FACILITY FOR SIMON SANCHEZ HIGH SCHOOL AND TO ISSUE BONDS TO FINANCE THE SAME.	6/26/17 8:44 a.m.						

I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 134-34(COR)

Introduced by:

Thomas C. Ada

AN ACT TO *AMEND* SUBSECTIONS (c) AND (d) OF § 58D103; AND *REPEAL* SUBSECTION (k) OF § 58D103; AND *AMEND* SUBSECTION (l) OF § 58D103; AND *AMEND* § 58D105; AND *AMEND* § 58D108, ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, AS AMENDED BY PUBLIC LAW 34-19, RELATIVE TO PROVIDING AUTHORITY FOR THE GUAM ECONOMIC DEVELOPMENT AUTHORITY TO ACT AS CONTRACTOR IN CONNECTION WITH THE RENOVATION AND CONSTRUCTION OF AN EDUCATION FACILITY FOR SIMON SANCHEZ HIGH SCHOOL AND TO ISSUE BONDS TO FINANCE THE SAME.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Subsections (c) and (d) of § 58D103, Chapter 58D, Title 5, Guam Code Annotated, as amended by Public Law 34-19, are *amended* to read as follows:

“(c) *Contract shall* mean the various design, renovation or construction and financing agreements entered into by and between the education agency and the contractor following an award pursuant to a procurement solicitation authorized in this Act.”

1 “(d) Contractor *shall* mean the ~~authorized entity~~ Guam
2 Economic Development Authority (GEDA), which *shall* be the
3 signatory on the Contract and *shall* be fully responsible for carrying out
4 the design, renovation or construction, financing and maintenance of
5 the education facility. The contractor may cooperate with another entity
6 or entities in any manner the contractor deems appropriate to provide
7 for the financing, design, renovation, construction or maintenance of
8 the education facility envisioned by this Act.”

9 **Section 2.** Subsection (k) of § 58D103, Chapter 58D, Title 5, Guam
10 Code Annotated, as added by Public Law 34-19, is *repealed* as follows:

11 ~~“(k) Responsible offeror shall mean a person or entity who has~~
12 ~~the capability in all respects to perform fully the contract requirements,~~
13 ~~and the integrity and reliability that will assure good faith~~
14 ~~performance.”~~

15 **Section 3.** Subsection (l) of § 58D103, Chapter 58D, Title 5, Guam
16 Code Annotated, as added by Public Law 34-19, is *amended* as follows:

17 “(l) ~~Responsive offer~~ bid *shall* mean an offer that conforms, at
18 bid opening, in all material respects to the solicitation. A responsive
19 offer is an offer that unconditionally undertakes to provide the
20 education facility the government intends to acquire as specified in the
21 solicitation, and only on contract terms and conditions as are materially
22 consistent with those specified in the solicitation, ~~and that includes a~~
23 ~~complete breakdown of the project cost to include, at a minimum: (1)~~
24 ~~hard construction costs; (2) soft costs including management,~~
25 ~~development, and other related project fees; and (3) the annual lease~~
26 ~~payment schedule identifying any financing, insurance, and~~
27 ~~maintenance costs and terms.~~

1 **Section 4.** § 58D105 Chapter 58D, Title 5, Guam Code Annotated, as
2 amended by Public Law 34-19, is *amended* to read as follows:

3 **“§ 58D105. Procurement.**

4 ~~The government of Guam or an education agency shall solicit~~
5 ~~through the Department of Public Works~~ Guam Economic
6 ~~Development Authority (GEDA) shall solicit, in compliance with~~
7 ~~pursuant to the Guam procurement law, for the renovation or~~
8 ~~construction of the education facility under a thirty (30) year lease-back~~
9 ~~arrangement, together with insurance and maintenance of the education~~
10 ~~facility over the lease-back period, according to the needs of the~~
11 ~~education agency and consistent with this Chapter. The solicitation~~
12 ~~shall specifically state the minimum specifications that will be required~~
13 ~~for a submitted proposal to be considered. The determination of~~
14 ~~responsible offerors and responsive offers shall be made by a selection~~
15 ~~committee comprised of the Superintendent of the Department of~~
16 ~~Education, serving as Chairman, and including the Director of the~~
17 ~~Department of Public Works or Deputy Director, the Director of the~~
18 ~~Department of Land Management or Deputy Director, the~~
19 ~~Administrator of the Guam Environmental Protection Agency or~~
20 ~~Deputy Administrator, and the Administrator of the Guam Economic~~
21 ~~Development Authority GEDA or Deputy Administrator. The~~
22 ~~committee shall evaluate offerors and offers received based on the~~
23 ~~requirements set forth in the solicitation for renovation or construction~~
24 ~~of the education facility.~~

25 ~~The award of the contract shall be based upon a responsive offer~~
26 ~~submitted by a responsible offeror that is responsive to the solicitation~~

1 and offers the lowest annual leaseback rate to the government of Guam
2 for a fixed thirty (30) year term.

3 The solicitation ~~shall be issued within thirty (30) days of~~
4 ~~enactment of this Act~~ for the renovation or construction of a new Simon
5 Sanchez High School on the existing site, which may include
6 demolition of such portions of the existing facility as necessary, shall
7 be issued within thirty (30) days of completion of the architectural and
8 engineering design for the new Simon Sanchez High School.

9 Notwithstanding any other provision of law, the solicitation for
10 the renovation or construction of the education facility to be located on
11 the existing site of Simon Sanchez High School, ~~together with~~
12 ~~insurance and maintenance of the education facility over the lease-back~~
13 ~~period,~~ *shall not* be combined with other procurement pursuant to
14 Public Law 32-121 (the repair and maintenance of 35 other schools).

15 GEDA shall serve as the purchasing agency and may solicit one
16 or more entities to perform one or more of the responsibilities required
17 by the contractor described in this Act, including, but not limited to,
18 those described in §§ 58D103, 58D106, 58D111 and 58D112 of this
19 Act, in accordance with Guam procurement law. The GEDA
20 Administrator shall serve as the procurement officer.”

21 **Section 5.** § 58D108 of Chapter 58D, Title 5, Guam Code Annotated,
22 as amended by Public Law 34-19, is *amended* to read as follows:

23 **“§ 58D108. Financing.**

24 To minimize the financing cost to the government of Guam,
25 ~~financing utilized by the contractor~~ to fund the design, renovation, or
26 construction of an education facility ~~may be~~ through tax-exempt
27 obligations or other financial instruments, ~~provided, such financing is~~

1 ~~available at interest rates determined by the Guam Economic~~
2 ~~Development Authority (GEDA) to be reasonable and competitive. *I*~~
3 ~~*Liheslaturan Guåhan*, pursuant to 12 GCA § 50103(k), hereby~~
4 ~~approves the issuance and sale by the Guam Economic Development~~
5 ~~Authority (GEDA) of one or more series of tax-exempt and/or taxable~~
6 ~~Lease Revenue Bonds, as provided in this Section, for one or more of~~
7 ~~the following purposes: (1) financing the design, renovation or~~
8 ~~construction and maintenance of an education facility, (2) financing~~
9 ~~any capitalized interest relating to the bonds, (3) funding a reserve fund~~
10 ~~with respect to the bonds, and (4) paying expenses relating to the~~
11 ~~authorization, sale and issuance of the bonds, including without~~
12 ~~limitation, printing costs, costs of reproducing documents, credit~~
13 ~~enhancement fees, underwriting, legal, feasibility, financial advisory~~
14 ~~and accounting fees and charges, fees paid to banks or other financial~~
15 ~~institutions providing credit enhancement, costs of credit ratings and~~
16 ~~other costs, charges and fees in connection with the issuance, sale and~~
17 ~~delivery of the bonds, subject to the following additional conditions:~~

18 (a) ~~The terms and conditions of the bonds *shall* be as~~
19 ~~determined by *I Maga'lahren Guåhan* by the execution of a~~
20 ~~certificate or indenture authorizing the issuance of the bonds;~~
21 ~~provided, however, that the bonds *shall* mature *not later than*~~
22 ~~thirty (30) years after their date of issuance, *shall* bear interest at~~
23 ~~such rates and be sold for such price or prices as *shall* result in a~~
24 ~~yield to the bondholders that does not exceed seven and one-half~~
25 ~~percent (7.5%) per annum;~~

26 (b) ~~Any such pledge or reservation authorized hereunder~~
27 ~~*shall* be valid and binding from the time the pledge or reservation~~

1 is made and shall be limited to Five Million Fifty-one Thousand,
2 Nine Hundred Seventy-Seven Dollars and Ninety-eight cents
3 (\$5,051,977.98) per year during the Lease-Back Period; and

4 (c) The bonds shall not be “public indebtedness,” as that
5 term is defined in 48 USC § 1423a.

6 Such bonds may be supported by a leases-back authorized by §
7 58D104 including, but limited to, a lease-back between the government
8 of Guam or an education agency and GEDA.

9 In addition, I Maga'lahaen Guåhan shall undertake his best
10 efforts to cause a portion of any bonds issued pursuant to this Section to
11 be offered for sale in Guam, as well as in other jurisdictions, if and to
12 the extent that such offer and any sales resulting from such offer do not
13 increase the cost to the government of Guam of issuing and repaying
14 such bonds.

15 ~~Alternatively, the contractor~~ GEDA ~~may use an alternative~~
16 ~~method of financing, including, but not limited to, a short term debt,~~
17 ~~mortgage, loan, federally guaranteed loan, or loan by an instrumentality~~
18 ~~of the United States of America, if such financing will better serve the~~
19 ~~needs of the people of Guam, as determined by the procurement officer.~~
20 ~~Such alternative financing shall be approved by I Liheslaturan Guåhan.~~
21 The purpose for ~~the requirements of~~ this Section is to assure the
22 government of Guam pays the lowest possible interest rate so that the
23 cost to the government of Guam of financing the design, renovation or
24 construction of an education facility, amortized through the lease-back
25 payments from the government of Guam to the contractor, will be
26 lower than regular commercial rates.”

1 **Section 6. Severability.** If a provision of this act or its application to
2 any person or circumstance is held invalid, the invalidity does not affect other
3 provisions or applications of the act that can be given effect without the
4 invalid provision or application, and to this end the provisions of this act are
5 severable.