

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
300-36 (LS)	Sabina F. Perez	AN ACT TO <i>REPEAL</i> AND <i>REENACT</i> § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.	4/28/22 2:44 p.m.	4/29/22	Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	5/11/22 9:00 a.m.	5/17/22 4:21 p.m.  As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning.	Request: 4/29/22  Waiver: 5/6/22	



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan* • 36<sup>th</sup> Guam Legislature

May 13, 2022

**The Honorable Therese M. Terlaje**

Speaker

*I Mina'trentai Sais Na Liheslaturan Guåhan*

163 Chalan Santo Papa

*Hagåtña*, Guam 96910

**VIA: The Honorable Vice Speaker Tina Rose Muña Barnes**

Chairperson, Committee on Rules

**RE: Committee Report on Bill No. 300-36 (LS), As Amended**

*Håfa adai* Speaker Terlaje,

Transmitted herewith is the Committee Report on **Bill No. 300-36 (LS), As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning** – Sabina Flores Perez – “AN ACT TO *REPEAL* AND *REENACT* § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.”

Committee votes are as follows:

\_\_\_4\_\_\_ TO DO PASS

\_\_\_0\_\_\_ TO NOT PASS

\_\_\_0\_\_\_ TO REPORT OUT ONLY

\_\_\_0\_\_\_ TO ABSTAIN

\_\_\_0\_\_\_ TO PLACE IN INACTIVE FILE

**COMMITTEE ON RULES**

**RECEIVED:**

May 13, 2022

4:57 P.M.

*Si Yu'os ma'åse',*

Sabina Flores Perez

Senator, *I Mina'trentai Sais Na Liheslaturan Guåhan*



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan • 36<sup>th</sup> Guam Legislature*

## **COMMITTEE REPORT**

**Bill No. 300-36 (LS)**

**As amended by the Committee on  
Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and  
Planning**

**Introduced by: Sabina Flores Perez**

**“AN ACT TO REPEAL AND REENACT § 5213  
OF SUBARTICLE B, ARTICLE 3, CHAPTER 5,  
TITLE 5, GUAM CODE ANNOTATED,  
RELATIVE TO STRENGTHENING THE  
REQUIREMENTS OF SMALL PURCHASES”**



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan • 36<sup>th</sup> Guam Legislature*

May 13, 2022

MEMORANDUM

To: **All Members**  
Committee on Environment, Revenue and Taxation, Labor, Procurement, and  
Statistics, Research, and Planning

From: **Senator Sabina Flores Perez** *SFP*  
Committee Chairperson

Subject: **Committee Report on Bill No. 300-36 (LS), As amended by the Committee on  
Environment, Revenue and Taxation, Labor, Procurement, and Statistics,  
Research, and Planning**

*Håfa Adai,*

Transmitted herewith for your consideration is the Committee Report on **Bill No. 300-36 (LS)**, As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning – Sabina Flores Perez – **AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.**

This report includes the following:

- COR Referral of Bill No. 300-36 (LS)
- Notices of Public Hearing
- Public Hearing Agenda
- Public Hearing Sign-in Sheet
- Submitted Testimonies and Supporting Documents
- Committee Report Digest
- Bill No. 300-36 (LS)
- Bill No. 300-36 (LS), As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning
- Amended Markup Version
- Fiscal Note Waiver from the Bureau of Budget Management & Research
- Committee Vote Sheet

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.



Vice Speaker

**TINA ROSE MUÑA BARNES**

**CHAIRPERSON, COMMITTEE ON RULES**

*I Mina'trentai Sais Na Liheslaturan Guåhan*

GUAM CONGRESS BUILDING

163 CHALAN SANTO PAPA

HAGÅTÑA, GUAM 96910

TEL 671-472-2461

COR@GUAMLEGISLATURE.ORG

April 29, 2022

## MEMO

**To:** **Rennae Meno**  
Clerk of the Legislature

**Legal Bureau**

**From:** **Vice Speaker Tina Rose Muña Barnes**  
Chairperson, Committee on Rules

**Re:** **Referral of Bill No. 300-36 (LS)**

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*Håfa Adai,*

As per my authority as Chairperson of the Committee on Rules and subject to §6.01(d), Rule VI of our Standing Rules, I am forwarding the referral of Bill No. 300-36 (LS) – Sabina Flores Perez – “AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.”

Please ensure that the subject bill is referred to the **Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning**, chaired by Senator Sabina Flores Perez.

I also request that the same be forwarded to the prime sponsor of the subject bill.

If you have any questions or concerns, please feel free to contact Mary Maravilla, Committee on Rules Director at 472-2461.

Thank you for your attention to this important matter.

Respectfully,

**Vice Speaker Tina Rose Muña Barnes**  
Chairperson, Committee on Rules





Office of Senator Sabina Perez &lt;office@senatorperez.org&gt;

**1st Notice of Virtual Public Hearing: Wednesday, May 11, 2022, at 9:00 a.m.**

1 message

**Evan San Nicolas** <evan@senatorperez.org>

Tue, May 3, 2022 at 8:00 AM

Cc: phnotice@guamlegislature.org, "Camarine Ann S. Hopkins" &lt;ag@oagguam.org&gt;, mis@guamlegislature.org, Geri Leon Guerrero &lt;geri@senatorperez.org&gt;, Audio / Video &lt;av@guamlegislature.org&gt;

May 3, 2022

**MEMORANDUM**

To: All Senators, Stakeholders and Media

Fr: Senator Sabina Flores Perez, Chairperson  
Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and PlanningSubject: **1<sup>st</sup> Notice of Virtual Public Hearing: Wednesday, May 11, 2022, at 9:00 a.m.**

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research and Planning will be conducting a virtual public hearing on **Wednesday, May 11, 2022, at 9:00 a.m.** This virtual public hearing will take place via Zoom Video Conference platform. The agenda is as follows:

**9:00 a.m.****Executive Appointment of Mrs. Lola E. Leon Guerrero to serve as the Director of the Bureau of Statistics and Plans.****Bill No. 300-36 (LS) - Sabina F. Perez** - AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.**Bill No. 284-36 (LS) -Sabina Flores Perez / Telo T. Taitague / Jose “Pedo” Terlaje / Tina Rose MuñaBarnes** - AN ACT TO AMEND ARTICLE 3 OF CHAPTER 51, TITLE 10, GUAM CODE ANNOTATED, AND AMEND ARTICLE 3 OF CHAPTER 24, DIVISION 4, TITLE 22, GUAM RULES AND REGULATIONS, RELATIVE TO PROMOTING RECYCLING AND ZERO WASTE INITIATIVES.**Bill No. 297-36 (LS) -Tina Rose Muña Barnes / Mary Camacho Torres / Amanda L. Shelton / Jose “Pedo” Terlaje** - AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 3 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO ELIMINATING DISCRIMINATION AND PROMOTING WOMEN’S HEALTH AND ECONOMIC SECURITY BY ENSURING REASONABLE WORKPLACE ACCOMMODATIONS FOR WORKERS WHOSE ABILITY TO PERFORM THE FUNCTIONS OF A JOB ARE LIMITED BY PREGNANCY, CHILDBIRTH, OR A RELATED MEDICAL CONDITION AND TO CITE THIS ACT AS “THE PREGNANT WORKERS FAIRNESS ACT.”

Those interested in participating, please confirm your attendance by contacting the Office of Senator Sabina Flores Perez via email at [office@senatorperez.org](mailto:office@senatorperez.org) or via phone at 989-2968, no later than May 9, 2022, for further guidance.

Testimonies should be addressed to Senator Sabina Flores Perez, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Guam Congress Building at **163 Chalan Santo Papa, Hagåtña**, Guam 96910, or via email to [office@senatorperez.org](mailto:office@senatorperez.org), no later than 4pm May 16, 2022. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Sabina Flores Perez at 989-2968. The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 112-4, and stream online via *I Liheslaturan Guåhan*’s live feed on YouTube. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. We look forward to your participation!

--  
*Saina Ma'åse',*



**Evan C. San Nicolas**  
**Committee Director**

Office of Senator Sabina Flores Perez

36th Guam Legislature • *I Mina'Trentai Seis na Liheslaturan Guåhan*

Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics,  
Research, and Planning

Tel: (671) 989-2968

Location: 194 Hernan Cortes Ave. Terlaje Professional Bldg. Suite 101 1st Floor Hagåtña,  
Guam 96910

Email: [evan@senatorperez.org](mailto:evan@senatorperez.org)

Website: [www.senatorperez.org](http://www.senatorperez.org)

Facebook: [Senator Sabina Flores Perez](https://www.facebook.com/SenatorSabinaFloresPerez)

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**5 attachments**



**1st Public Notice - Memo.pdf**  
288K



**Bill No. 300-36 (LS).pdf**  
914K



**Bill No. 284-36 (LS) - Intro.pdf**  
1168K



**Bill No. 297-36 (LS).pdf**  
526K



**Doc. No. 36GL-22-1923.pdf**  
7024K



## OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guahan* • 36<sup>th</sup> Guam Legislature

May 3, 2022

### **MEMORANDUM**

To: All Senators, Stakeholders and Media

Fr: Senator Sabina Flores Perez, Chairperson *SFP*  
Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning

Subject: **1<sup>st</sup> Notice of Virtual Public Hearing: Wednesday, May 11, 2022, at 9:00 a.m.**

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#### **9:00 a.m.**

**Executive Appointment of Mrs. Lola E. Leon Guerrero to serve as the Director of Bureau of Statistics and Plans.**

**Bill No. 300-36 (LS) - Sabina F. Perez** - AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.

**Bill No. 284-36 (LS) - Sabina Flores Perez / Telo T. Taitague / Jose "Pedro" Terlaje / Tina Rose Muña Barnes** - AN ACT TO AMEND ARTICLE 3 OF CHAPTER 51, TITLE 10, GUAM CODE ANNOTATED, AND AMEND ARTICLE 3 OF CHAPTER 24, DIVISION 4, TITLE 22, GUAM RULES AND REGULATIONS, RELATIVE TO PROMOTING RECYCLING AND ZERO WASTE INITIATIVES.

**Bill No. 297-36 (LS) - Tina Rose Muña Barnes / Mary Camacho Torres / Amanda L. Shelton / Jose "Pedro" Terlaje** - AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 3 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO ELIMINATING DISCRIMINATION AND PROMOTING WOMEN'S HEALTH AND ECONOMIC SECURITY BY ENSURING REASONABLE WORKPLACE ACCOMMODATIONS FOR WORKERS WHOSE ABILITY TO PERFORM THE FUNCTIONS OF A JOB ARE LIMITED BY PREGNANCY, CHILDBIRTH, OR A RELATED MEDICAL CONDITION AND TO CITE THIS ACT AS "THE PREGNANT WORKERS FAIRNESS ACT."

Those interested in participating, please confirm your attendance by contacting the Office of Senator Sabina Flores Perez via email at [office@senatorperez.org](mailto:office@senatorperez.org) or via phone at 989-2968, no later than May 9, 2022, for further guidance.

Testimonies should be addressed to Senator Sabina Flores Perez, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Guam Congress Building at 163 *Chalan Santo Papa, Hagåtña*, Guam 96910, or via email to [office@senatorperez.org](mailto:office@senatorperez.org), no later than 4pm May 16, 2022. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Sabina Flores Perez at 989-2968. The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 112-4, and stream online via *I Liheslaturan Guahan*'s live feed on YouTube. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. We look forward to your participation!

Terlaje Professional Building 194 Hernan Cortes Avenue, 1<sup>st</sup> Floor, *Hagåtña*, GU 96910  
671.989.2968•[office@senatorperez.org](mailto:office@senatorperez.org)•





Evan San Nicolas &lt;evan@senatorperez.org&gt;

**Public Hearing Invitation - Wednesday, May 11, 2022 at 9:00 a.m.**

1 message

**Evan San Nicolas** <evan@senatorperez.org>

Tue, May 3, 2022 at 1:27 PM

To: edward.birn@doa.guam.gov

*Håfa Adai* Director Birn,

Attached is a letter from Senator Sabina Flores Perez. We kindly request a receipt of confirmation.

--

*Saina Ma'åse',***Evan C. San Nicolas**  
**Committee Director**

Office of Senator Sabina Flores Perez

36th Guam Legislature • *I Mina'Trentai Seis na Liheslaturan Guåhan*Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics,  
Research, and Planning

Tel: (671) 989-2968

Location: 194 Hernan Cortes Ave. Terlaje Professional Bldg. Suite 101 1st Floor Hagåtña,  
Guam 96910Email: [evan@senatorperez.org](mailto:evan@senatorperez.org)Website: [www.senatorperez.org](http://www.senatorperez.org)Facebook: [Senator Sabina Flores Perez](#)**3 attachments****Public Hearing Letter - DOA (300) .pdf**  
707K**1st Public Notice - Memo.pdf**  
288K**Bill No. 300-36 (LS).pdf**  
914K



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, Labor, Procurement,  
and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan • 36<sup>th</sup> Guam Legislature*

May 3, 2022

**Transmitted via electronic mail**

[edward.birn@doa.guam.gov](mailto:edward.birn@doa.guam.gov)

Edward Birn  
Director  
Department of Administration  
P.O. Box 884  
*Hagåtña, Guam 96932*

**RE: Notice of Virtual Public Hearing on Bill No. 300-36 (LS)**

*Håfa Adai* Director Birn,

This is to notify you that the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research and Planning has scheduled a virtual public hearing on Bill No. 300-36 (LS) – relative to strengthening the requirements of small purchases.

The Virtual Public Hearing is scheduled for Wednesday, May 11<sup>th</sup>, 2022, at 9:00 a.m. via Zoom Video Conference.

The Committee requests that you attend the virtual public hearing to present testimony on the bill, and you are welcome to invite other members of your team who will provide valuable input on the intent of the bill. Please contact the Office of Senator Sabina Flores Perez via email at [office@senatorperez.org](mailto:office@senatorperez.org) or via phone at (671) 989-2968, for further guidance.

Testimonies may be submitted via [office@senatorperez.org](mailto:office@senatorperez.org). Should you have any questions or concerns, please call our office at (671) 989-2968.

*Si Yu'os Ma'åse,*

*Sabina Flores Perez*

Sabina Flores Perez  
Senator, 36<sup>th</sup>, Guam Legislature

Attachments (2):      Public Hearing Notice  
                                 Bill No. 300-36 (LS)



Evan San Nicolas &lt;evan@senatorperez.org&gt;

**Public Hearing Invitation - Wednesday, May 11, 2022 at 9:00 a.m.**

3 messages

**Evan San Nicolas** <evan@senatorperez.org>

Tue, May 3, 2022 at 1:28 PM

To: claudia.acfalle@gsadoa.guam.gov

Cc: edward.birn@doa.guam.gov, robert.kono@gsa.guam.gov

*Håfa Adai* Chief Procurement Officer Acfalle,

Attached is a letter from Senator Sabina Flores Perez. We kindly request a receipt of confirmation.

--

*Saina Ma'åse',***Evan C. San Nicolas**  
**Committee Director**

Office of Senator Sabina Flores Perez

36th Guam Legislature • *I Mina'Trentai Seis na Liheslaturan Guåhan*Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics,  
Research, and Planning

Tel: (671) 989-2968

Location: 194 Hernan Cortes Ave. Terlaje Professional Bldg. Suite 101 1st Floor Hagåtña,  
Guam 96910Email: [evan@senatorperez.org](mailto:evan@senatorperez.org)Website: [www.senatorperez.org](http://www.senatorperez.org)Facebook: [Senator Sabina Flores Perez](#)**3 attachments****Public Hearing Letter - GSA (300) .pdf**  
332K**1st Public Notice - Memo.pdf**  
288K**Bill No. 300-36 (LS).pdf**  
914K**Evan San Nicolas** <evan@senatorperez.org>

Mon, May 9, 2022 at 9:37 AM

To: ovita.nauta@gsadoa.guam.gov

Cc: Sabina Perez &lt;sabina@senatorperez.org&gt;

*Buenas Ovi,*

Thank you so much for taking my call this morning. We greatly appreciate the communications that both Ms. Acfalle and Att. Kono is out on leave and will be unable to attend this Wednesday's Public Hearing. Take care!

*Saina Ma'åse,*

[Quoted text hidden]

**3 attachments****Public Hearing Letter - GSA (300) .pdf**  
332K**1st Public Notice - Memo.pdf**  
288K



**Bill No. 300-36 (LS).pdf**  
914K

**Ovita A. Nauta** <Ovita.Nauta@gsadoa.guam.gov>

Mon, May 9, 2022 at 9:48 AM

To: Evan San Nicolas <evan@senatorperez.org>

Cc: Sabina Perez <sabina@senatorperez.org>

Hafa Adai Evan. This is to acknowledge receipt of your email and the letter from Senator Sabina Perez. Thank you for your follow up phone call and yes, Ms. Claudia Acfalle is still on personal leave and Attorney Kono as well.

Si Yu'os Ma'ase'



*Ovita A. Nauta*

*Administrative Services Officer*

**GENERAL SERVICES AGENCY (GSA)**

*Tel: (671) 475-1720; Fax: (671) 472-4217*

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[Quoted text hidden]



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, Labor, Procurement,  
and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guahan • 36<sup>th</sup> Guam Legislature*

May 3, 2022

**Transmitted via electronic mail**

[claudia.acfalle@gsadoa.guam.gov](mailto:claudia.acfalle@gsadoa.guam.gov)

Claudia S. Acfalle  
Chief Procurement Officer  
General Services Agency  
148 Route 1 Marine Corps Drive  
Piti, Guam 96915

**RE: Notice of Virtual Public Hearing on Bill No. 300-36 (LS)**

*Håfa Adai* Chief Procurement Officer Acfalle,

This is to notify you that the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research and Planning has scheduled a virtual public hearing on Bill No. 300-36 (LS) – relative to strengthening the requirements of small purchases.

The Virtual Public Hearing is scheduled for Wednesday, May 11<sup>th</sup>, 2022, at 9:00 a.m. via Zoom Video Conference.

The Committee requests that you attend the virtual public hearing to present testimony on the bill, and you are welcome to invite other members of your team who will provide valuable input on the intent of the bill. Please contact the Office of Senator Sabina Flores Perez via email at [office@senatorperez.org](mailto:office@senatorperez.org) or via phone at (671) 989-2968, for further guidance.

Testimonies may be submitted via [office@senatorperez.org](mailto:office@senatorperez.org). Should you have any questions or concerns, please call our office at (671) 989-2968.

*Si Yu'os Ma'åse,*

*Sabina Flores Perez*

Sabina Flores Perez  
Senator, 36<sup>th</sup>, Guam Legislature

Attachments (2):      Public Hearing Notice  
                                 Bill No. 300-36 (LS)



Evan San Nicolas &lt;evan@senatorperez.org&gt;

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**Public Hearing Invitation - Wednesday, May 11, 2022 at 9:00 a.m.**

2 messages

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**Evan San Nicolas** <evan@senatorperez.org>  
To: BJ Cruz <bjcruz@guamopa.com>

Tue, May 3, 2022 at 1:29 PM

Håfa Adai Public Auditor Cruz,

Attached is a letter from Senator Sabina Flores Perez. We kindly request a receipt of confirmation.

--

*Saina Ma'åse',*

**Evan C. San Nicolas**  
**Committee Director**

Office of Senator Sabina Flores Perez

36th Guam Legislature • *I Mina'Trentai Seis na Liheslaturan Guåhan*Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics,  
Research, and Planning

Tel: (671) 989-2968

Location: 194 Hernan Cortes Ave. Terlaje Professional Bldg. Suite 101 1st Floor Hagåtña,  
Guam 96910Email: [evan@senatorperez.org](mailto:evan@senatorperez.org)Website: [www.senatorperez.org](http://www.senatorperez.org)Facebook: [Senator Sabina Flores Perez](#)

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**Public Hearing Letter - OPA (300) .pdf**  
334K

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**Evan San Nicolas** <evan@senatorperez.org>  
To: BJ Cruz <bjcruz@guamopa.com>

Tue, May 3, 2022 at 1:30 PM

[Quoted text hidden]

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**2 attachments****1st Public Notice - Memo.pdf**  
288K**Bill No. 300-36 (LS).pdf**  
914K



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, Labor, Procurement,  
and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan • 36<sup>th</sup> Guam Legislature*

May 3, 2022

**Transmitted via electronic mail**

[bjcruz@guamopa.com](mailto:bjcruz@guamopa.com)

Benjamin J.F. Cruz  
Public Auditor  
Office of Public Accountability  
Suite 401 DNA Building  
Hagåtña, Guam 96910

**RE: Notice of Virtual Public Hearing on Bill No. 300-36 (LS)**

*Håfa Adai* Public Auditor Cruz,

This is to notify you that the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research and Planning has scheduled a virtual public hearing on Bill No. 300-36 (LS) – relative to strengthening the requirements of small purchases.

The Virtual Public Hearing is scheduled for Wednesday, May 11<sup>th</sup>, 2022, at 9:00 a.m. via Zoom Video Conference.

The Committee requests that you attend the virtual public hearing to present testimony on the bill, and you are welcome to invite other members of your team who will provide valuable input on the intent of the bill. Please contact the Office of Senator Sabina Flores Perez via email at [office@senatorperez.org](mailto:office@senatorperez.org) or via phone at (671) 989-2968, for further guidance.

Testimonies may be submitted via [office@senatorperez.org](mailto:office@senatorperez.org). Should you have any questions or concerns, please call our office at (671) 989-2968.

*Si Yu'os Ma'åse,*

*Sabina Flores Perez*

Sabina Flores Perez  
Senator, 36<sup>th</sup>, Guam Legislature

Attachments (2):      Public Hearing Notice  
                                 Bill No. 300-36 (LS)



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PO Box 1306 Hagatna, Guam 96932 | ffc\_agana@yahoo.com

**SENATOR SABINA FLORES PEREZ**  
Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

**Virtual Public Hearing (Zoom Video Conference)**  
Wednesday, May 11, 2022, at 9:00 a.m.  
9:00 A.M.

**Executive Appointment of Mrs. Lola E. Leon Guerrero** to serve as the **Director, Bureau of Statistics and Plans.**

**Bill No. 300-36 (LS) - Sabina Flores Perez** - AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.

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**Bill No. 297-36 (LS) - Tina Rose Muña Barnes / Mary Camacho Torres / Amanda L. Shelton / Jose "Pedro" Terlaje** - AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 3 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO ELIMINATING DISCRIMINATION AND PROMOTING WOMEN'S HEALTH AND ECONOMIC SECURITY BY ENSURING REASONABLE WORKPLACE, ACCOMMODATIONS FOR WORKERS WHOSE ABILITY TO PERFORM THE FUNCTIONS OF A JOB ARE LIMITED BY PREGNANCY, CHILDBIRTH, OR A RELATED MEDICAL CONDITION AND TO CITE THIS ACT AS "THE PREGNANT WORKERS FAIRNESS ACT".

Those interested in participating, please confirm your attendance by contacting the Office of Senator Sabina Flores Perez via email at office@senatorperez.org or via phone at 969-2988, no later than May 9, 2022, for further guidance.

Testimonies should be addressed to Senator Sabina Flores Perez, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Guam Congress Building at 163 Chalan Santa Rosa, Hagatna, Guam 96901, or via email to office@senatorperez.org, no later than April 28, 2022. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Sabina Flores Perez at 969-2988. The hearing will be broadcast on local television, GMA Channel 21, Docomo Channel.

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Office of Senator Sabina Perez &lt;office@senatorperez.org&gt;

**2nd Notice of Virtual Public Hearing: Wednesday, May 11, 2022, at 9:00 a.m.**

1 message

**Evan San Nicolas** <evan@senatorperez.org>

Mon, May 9, 2022 at 8:00 AM

Cc: phnotice@guamlegislature.org, "Camarine Ann S. Hopkins" &lt;ag@oagguam.org&gt;, mis@guamlegislature.org, Geri Leon Guerrero &lt;geri@senatorperez.org&gt;, Audio / Video &lt;av@guamlegislature.org&gt;

May 9, 2022

**MEMORANDUM**

To: All Senators, Stakeholders and Media

Fr: Senator Sabina Flores Perez, Chairperson  
Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and PlanningSubject: **2<sup>nd</sup> Notice of Virtual Public Hearing: Wednesday, May 11, 2022, at 9:00 a.m.**

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research and Planning will be conducting a virtual public hearing on **Wednesday, May 11, 2022, at 9:00 a.m.** This virtual public hearing will take place via Zoom Video Conference platform. The agenda is as follows:

**9:00 a.m.****Executive Appointment of Mrs. Lola E. Leon Guerrero to serve as the Director of Bureau of Statistics and Plans.****Bill No. 300-36 (LS) -Sabina F. Perez** - AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.**Bill No. 284-36 (LS) -Sabina Flores Perez / Telo T. Taitague / Jose "Pedo" Terlaje / Tina Rose MuñaBarnes** - AN ACT TO AMEND ARTICLE 3 OF CHAPTER 51, TITLE 10, GUAM CODE ANNOTATED, AND AMEND ARTICLE 3 OF CHAPTER 24, DIVISION 4, TITLE 22, GUAM RULES AND REGULATIONS, RELATIVE TO PROMOTING RECYCLING AND ZERO WASTE INITIATIVES.**Bill No. 297-36 (LS) -Tina Rose Muña Barnes / Mary Camacho Torres / Amanda L. Shelton / Jose "Pedo"Terlaje** - AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 3 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO ELIMINATING DISCRIMINATION AND PROMOTING WOMEN'S HEALTH AND ECONOMIC SECURITY BY ENSURING REASONABLE WORKPLACE ACCOMMODATIONS FOR WORKERS WHOSE ABILITY TO PERFORM THE FUNCTIONS OF A JOB ARE LIMITED BY PREGNANCY, CHILDBIRTH, OR A RELATED MEDICAL CONDITION AND TO CITE THIS ACT AS "THE PREGNANT WORKERS FAIRNESS ACT."

Those interested in participating, please confirm your attendance by contacting the Office of Senator Sabina Flores Perez via email at [office@senatorperez.org](mailto:office@senatorperez.org) or via phone at 989-2968, no later than May 9, 2022, for further guidance.

Testimonies should be addressed to Senator Sabina Flores Perez, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Guam Congress Building at **163 Chalan Santo Papa, Hagåtña**, Guam 96910, or via email to [office@senatorperez.org](mailto:office@senatorperez.org), no later than 4pm May 16, 2022. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Sabina Flores Perez at 989-2968. The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 112-4, and stream online via *Liheslaturan Guåhan's* live feed on YouTube. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. We look forward to your participation!

--  
*Saina Ma'åse',*



**Evan C. San Nicolas**  
**Committee Director**

Office of Senator Sabina Flores Perez

36th Guam Legislature • *I Mina'Trentai Seis na Liheslaturan Guåhan*

Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics,  
Research, and Planning

Tel: (671) 989-2968

Location: 194 Hernan Cortes Ave. Terlaje Professional Bldg. Suite 101 1st Floor Hagåtña,  
Guam 96910

Email: [evan@senatorperez.org](mailto:evan@senatorperez.org)

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## OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guahan* • 36<sup>th</sup> Guam Legislature

May 9, 2022

### **MEMORANDUM**

To: All Senators, Stakeholders and Media

Fr: Senator Sabina Flores Perez, Chairperson  
Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning

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Terlaje Professional Building 194 Hernan Cortes Avenue, 1<sup>st</sup> Floor, *Hagåtña*, GU 96910  
671.989.2968•[office@senatorperez.org](mailto:office@senatorperez.org)•

# Conflict counsel services sought in case of disagreement over transgender athlete

By Jolene Toves  
jolene@postguam.com

Whether or not a transgender girl rugby player should be allowed to continue to play is uncharted territory for the Guam Department of Education.

"This is an emerging issue, it's a complex issue. Many sports associations and states and school districts are dealing with it currently and it's not decided one way or another. But again the issue is here on Guam and we have to face it," said GDOE Superintendent Jon Fernandez.

For an hour and a half, GDOE and the Guam Board of Education discussed the controversial issue and although the board did not take a position on the matter, it indicated that legal representation has been sought.

The GEB Safe and Healthy Schools committee addressed the concerns Wednesday during a work session following publicity over the matter after the superintendent issued his determination.

GEB committee chairwoman Maria Gutierrez made it clear from the start that no deliberations would be made, while she cautioned education officials about their impending input.

"The conduct of this work session as board members, I caution you that we are not going to deliberate or offer your opinion on what side you are taking. This is a work session I want to make that clear," Gutierrez said. "We are not

here to discuss your opinion."

Because the issue is sensitive, GEB Chairman Mark Mendiola contacted the attorney general's office for additional services.

"I requested the AG to add conflict counsel, in the event we have a disagreement with the superintendent on a position or items that we will discuss. This was mentioned to us at a previous board that if there's an issue that arises out of conflict that the AG would represent the board. I penned a letter to him exercising that request," Mendiola said.

A response from the AG has yet to be received. Although Fernandez noted that his determination was based on legal counsel's advice, he indicated having the additional input is a proactive measure.

"Because I rely on legal counsel's advice and guidance on this issue, and if the board is not satisfied with the guidance and action taken and is seeking affirmation of that legal advice, the recommendation of course, is to go to the attorney general for review," Fernandez said.

## Independent review

The review would be independent and separate from GDOE's legal counsel.

"I am trying to make sure that we have the top cover for the board in the sense that if we have a disagree-

ment with certain positions that were stated out in public as contrary to the superintendent's position. I want to make sure that everyone on this board is afforded its legal guidance ... it's as simple as that," Mendiola said.

The addition is also "about meeting legal muster," according to Fernandez.

"You're probably going to want to have that legal affirmation that your action is proper," he said. "I think what this is doing is being proactive so that in the event there's any disagreement especially on legal grounds there is a mechanism to resolve that legal difference, looking to the AG to make that decision."

Under local law, according to Gutierrez, the board "has no authority to establish interscholastic policy," noting the superintendent has issued an "operational" decision.

At the time the board directed the superintendent to establish the bylaws and constitution that was adopted and approved, Nov. 13, 2019.

"Every board member that was sitting was given a copy of the bylaws and constitution to review if they have any input. Therefore, if the board wants to establish policy that's not the discussion today," Gutierrez said. "The discussion is we want to hear from Fernandez. He issued his statement out based on that. We are not questioning his authority because this is a work session."

Fernandez used his time before the committee to clarify the matter for the board, to allow the board to determine how they'd like to proceed on the issue.

Prior to the start of this year's season there were no policies or rules governing transgender participation in interscholastic rugby.

"In our bylaws when it comes to rugby we do require that the rugby union submit its rules for the season prior to the commencement of the first game. The first matches were held on April 9, this year," Fernandez said. "We did subsequently receive a memo from Guam Rugby referencing the World Rugby guidelines but that came after the start of the season so that presents a separate challenge."

Without guidelines in place, Fernandez took action based on his presiding authority over the Interscholastic Sports Association in addressing the question.

"While this question does involve policies in general, there were no policies in place at the time. The question was based on what we did have. Did the bylaws prohibit or allow transgender participation in rugby, specifically

transgender female participation in girl's rugby? And that was the question I had to decide in order to take action in the midst of an ongoing season," Fernandez said.

## Concerns addressed

One concern being the competitive advantage for Guam High School, the team the transgender player is on.

"Based on our review I believe Guam High has lost two of its three competitions. There wasn't any clear basis or

argument for competitive advantage coming from those weekend matches," Fernandez said.

Another concern raised was the safety of the players.

"Tiyon High School did raise the concerns about three athletes injured by the transgender female in the first weekend of

competition. Upon looking at these matters and speaking to the high school administrator for Guam Rugby, Paul Claros, there wasn't any indication that these injuries were anywhere beyond what would normally occur in a rugby match," Fernandez said.

He noted that subsequent matches that did not involve the transgender player also resulted in injuries.

"I am aware of students who have received broken ankles, broken collar bones as a result of rugby competition. This certainly wasn't the case for the three injured athletes. Based on the evidence on hand we were not able to determine whether there is an immediate safety concern," Fernandez said.

Fernandez said he met with Guam Rugby officials who determined that they would follow the World Rugby regulations which bans transgender participation.

"Our response to them was that they are required as our vendor to abide by our directive and follow that directive in operating our rugby league," Fernandez said. "We are looking into this weekend's matches; we haven't received a definitive response yet but we understand that the athlete in question did not participate in their match."

Fernandez said they are working to determine if the athlete's nonparticipation was a result of an action by the Guam Rugby Union.

"Upon review of that matter we will determine if any further action by the department is needed relative to the girls' rugby league. In taking action in this matter I did consult with legal counsel to work through the legal issues involved," Fernandez said.



Jon Fernandez



Maria Gutierrez



Mark Mendiola



## SENATOR SABINA FLORES PEREZ

Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning

Virtual Public Hearing (Zoom Video Conference)  
Wednesday, May 11, 2022, at 9:00 a.m.

9:00 A.M.

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**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan • 36<sup>th</sup> Guam Legislature*

**AGENDA**  
**VIRTUAL PUBLIC HEARING**  
**Wednesday, May 11, 2022**  
***Zoom Video Conference***

The agenda is as follows:

**9:00 a.m.**

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**OFFICE OF SENATOR SABINA FLORES PEREZ**

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NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT INFORMATION
Edward Birn	DOA, Director	✓				
Att. John Thos. Brown	Attorney-At-Law	✓	✓			

# JOHN THOS. BROWN

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May 09, 2022

Hon. Sabrina Flores Perez  
Committee on the Environment, Revenue & Taxation, Labor, Procurement,  
and Statistics, Research, and Planning  
36th Guam Legislature  
Via eMail

RE: Hearing on Bill 300-36 (LS)  
Relative to Strengthening the Requirements of Small Purchases

Dear Madam Chair, Committee Members, Sponsors and others,

I support this Bill and Commend the Committee for bringing it forward. As will be seen, Small Purchases have received little attention to the Purposes, Policies and principles mandated in the Procurement Law, 5 GCA Chapter 5, by § 5001. Consequently, with the cat quiescent, the mice have been free to flex their muscles, or not, according to lore and convenience.

Guam got its Small Purchase method of source selection, and much more in P.L. 16-124<sup>1</sup> (enacted at the end of 1982, effective nine months later on October 1, 1983, that was Guam's first comprehensive Procurement Law) borrowing wholesale from the ABA Model Procurement Code ("MPC"), specifically here, MPC § 3-204 (Small Purchases). Official Comment to MPC § 3-204 instructed:

"Streamlined procedures, to be set forth in regulations, will make small purchases *administratively simpler* to complete **and yet ensure competition**. ... **Care must be taken** to ensure that purchase requirements are not fragmented in order to fall within the authority contained in this Section, thus **circumventing** the source selection procedures required by [ ] Section 3-202 (Competitive Sealed Bidding)...."<sup>2</sup>  
(All emphasis added.)

The scheme of Guam's current small purchase process has tracked the MPC closely in that, up to a specified dollar threshold, such purchases are made by Executive Branch Regulation, not by a Statute enacted by the Legislature – subject, for most of its history, to

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<sup>1</sup> The Compiler's Session Laws for the Sixteenth Guam Legislature expressly cited MPC § 3-204 as the Source for the Small Purchase method in the Guam Procurement Law, enacted by P.L. 16-124.

<sup>2</sup> MPC §3-302 also references a Competitive Sealed Proposal method of source selection (the scheme of which most states and the federal government rely on as the "negotiated contract" method), which had been contained in P.L. 16-124 as originally enacted and codified at GC § 6959.2, but was repealed by P.L. 18-08:8 (by Legislative override); it briefly reads, without reason or justification: "Section 8. Section 6959. 2 of the Government Code is repealed. This Section 8 shall take effect retroactively as of April 1, 1985."

only one statutory imperative:

"that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section."

Guam Regulations came to particularly describe two processes by which small purchases can be pursued: (1) Requests for Proposals ("RFQs") (2 GAR § 3111), and (2) Blanket Purchase Agreements ("BPAs") (2 GAR 3111.2). § 3111 says "**this Section** is established for procurement [under the small purchase threshold]" § 3111 expressly directs procurements under the small purchase threshold by an Request For Quotations process. But the regulations put BPAs under the awning of the Sole Source regulations described in 2 GAR § 3112, and the BPA regulations are codified as 2 GAR § 3112.1 This may be a fault line allowing BPAs to be used without any threshold.

But the present scheme gets much worse. The Sole Source method is a separate method governed by the law, 5 GCA § 5214, and described by regulation in 2 GAR § 3112. But it is also an available alternative under small purchase regulation 2 GAR § 3111(b)(4):

If the desired procurement "is available from only one business, **the sole source method set forth in § 3112** [] of these regulations shall be used even if the procurement is a small purchase....".

But, even if a court was willing to re-order the codification puzzle presented by § 3111(b)(4), this language also has turned out to be a small purchase mirage inasmuch as sole source regulation is tied to the source method authorized by statute (5 GCA § 5214). And sole source methodology was the subject of major changes in P.L. 36-070:2, with new guardrails against abuse seen previously under the old sole source regime.

These changes are, however, inconsistent with the existing small purchase regulation, effectively repealing the use of sole source under existing regulation 2 GAR § 3112. This does not stop sole source purchases under the law because laws always have authority over any inconsistent regulation. (See, *Guam Imaging Consultants, Inc. v. GMHA*, 2004 Guam 15 ¶41) Therefore, with the prophylactic changes made by P.L. 36-070-2, it may yet be reasonable to allow the government to sole source procure under the more accountable provisions of that law (5 GCA § 5214) when, after following the accountability requirements of this Bill 300-36, there is only one available source and a new regulation is promulgated disentangling sole source and small purchase regulations.

If and when the sole source regulations required by P.L. 36-070:3 are duly promulgated, they will offer up a more prophylactic version of both the sole source regulation and the small purchase one, to the extent the exception in 2 GAR § 3111(b)(4) remains and is inconsistent. If it does get incorporated in a revised § 3111, those guardrails and the requirements of sole source procurements should provide more transparency and fidelity to the purposes and policies of the procurement law.

With the problems and ambiguities of the existing imbroglio aired, let's return to the



discussion of the RFQ method. As practiced, the RFQ does not necessarily foster<sup>3</sup> any competition, and the "fragmentation" or "artificial division" of procurements is not easily discovered – and corrected – until after the deed is done<sup>4</sup>. To the extent there is *any* solicitation of RFQs, it is not done publicly, as are IFBs. RFQs have no *specific requirements* "fostering **effective**" competition. For instance, 2 GAR § 3111(c) dealing with Competition for Small Purchases, allows as how:

"(1) Procedure. *Insofar as it is **practical** for small purchases [below the threshold], no less than three positive written quotations from businesses shall be *solicited*...."*  
(Emphasis added)

There is no public solicitation required, nor any market research mandated to identify sources in advance – a particularly good idea to do inasmuch as small purchases tend to be of commodities used frequently and from the same familiar faces, and exemplified by BPAs.

By comparison to the lax accounting of RFQs, BPAs are straightjackets worn in a sweat shop:

2 GAR § 3112.13(d) Purchases Under BPAs.

"(d) If there is an insufficient number of BPAs *to ensure maximum practicable competition* for a particular purchase, the Chief Procurement Officer, the Director of Public Works, or the purchasing agent shall –

(1) *solicit information from other sources* and make the purchases as appropriate; and

(2) *Establish additional BPAs to facilitate future purchases* if –

(i) *Recurring requirements for the same or similar items or services seem likely,*

(ii) Qualified sources are willing to accept BPAs, and

(iii) It is otherwise practical to do so."

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<sup>3</sup> One of the "underlying purposes and policies" intended to be promoted and applied by the Procurement law is "to foster *effective* broad-based competition...." 5 GCA § 5001(b)(6). (Emphasis added)

<sup>4</sup> See [OPA Report No. 04-05 General Services Agency Small Purchases Procurement Function](#). "The objective of our audit was to determine whether small purchases of \$15,000 and below were awarded to vendors based on fair and open competition. \*\*\* Our audit findings indicate that GSA did not consistently comply with Guam Procurement Laws and Regulations, which ensure that fair, open and equitable competition exists in the government procurement process. In this audit, we found lack of planning, possible artificial division of purchases, lack of competition, possible preferential selection of vendors and missing procurement documentation."

On February 28, 2020, sixteen years *after* OPA Report No. 04-05, the Public Auditor broadcast [a Press Release and a "reminder"](#) to all GovGuam executive departments of a new law (P.L. 34-35) "that procurement requirements must not be artificially divided so as to qualify for "small purchase" procedures ..." under the increased thresholds enacted in that law. "To control the risk of artificial small purchases, P.L. 34-35 added a reporting requirement ... [requiring] the Chief Procurement Office, the Department of Public Works Director, or the agency head making small purchases [to] submit **monthly** report [of small purchases] to the Speaker.... \*\*\* It has come to my attention that only three agencies have replied to this reporting requirement since it was signed into law on August 7, 2017...." (Emphasis in original)

2 GAR §3112.14. Review Procedures.

"(a) The Chief Procurement Officer, the Director of Public Works, or the Purchasing Agency, shall *review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.*

(b) The Chief Procurement Officer, the Director of Public Works, or the Purchasing Agency, that entered into the BPA for the Government shall –

(i) *Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time, and*

(ii) *Maintain awareness of changes in market conditions, sources of supply, and any other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements."*

2 GAR § 3112.12 Establishing BPAs.

d. *BPAs should be made with firms from which numerous individual purchases will likely be made in the given period.* For example, if past experience has shown that certain firms are dependable *and have prices considerably lower than other firm as dealing in the same commodities, and if numerous purchases at or below the small purchase amount limitations are usually made from such suppliers,* it would be advantageous to establish BPAs with those firms.

e. *All competitive sources should be **given an equal opportunity** to furnish supplies or services under BPAs. Therefore, if not impossible, then to the extent practical, BPAs for items of the same type should be placed concurrently with at least three separate suppliers to assure equal opportunity.*

Similar safeguards are illustrated in the sole source method reformed by P.L. 36-07.

GSA, (and other agencies delegated GSA's authority (2 GAR § 3111(b)(2))), or otherwise clothed with authority to procure<sup>5</sup>, are left to their own determination of what is "practical"; i.e., "[i]nsofar as it is practical for small purchases ... no less than three positive written quotations from business shall be solicited...." § 3111(c)(1). Why should BPAs be treated with more care, competition and accountability than RFQs? \$25,000 is not chump change, especially when it disguises an artificially divided Indefinite Quantity contract<sup>6</sup> procurable under a competitively noticed IFB.

This Bill beefs up the reporting requirement added in Public Law 34-35 in 2017. But as we see in footnote 4, *supra*, even that has not garnered the attentive cooperation of the agencies with the Public Auditor.

If we are to achieve any success at promoting and applying the purpose of acquiring small

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<sup>5</sup> See, Administrative Adjudication Act: 5 GCA §§ 9300 and 9303(a).

<sup>6</sup> See, 2 GAR § 2 GAR §3119(i)(2).

purchases by RFQ, we need to look closely at the requirements and safeguards applied to BPAs and sole source purchases and adapt them to the RFQ method. Otherwise, we'll still be where we were on October 1, 1983.

As alluded to above, it has been the case that sole source was an alternative to an RFQ if there was only one source available. With the reform of sole source in P.L. 36-07, more examples of improving the transparency, accountability and fidelity of purchasing by RFQ are provided. The expressed intent of that law is to make improvements by improved market research, and stronger justification for choices made, and where there is reasonable doubt as to the justification of a particular procurement, a competitive method must be used.

The reform here and in other recent methods such as sole source is that we are actually applying the principles demanded of us in 5 GCA § 5001 to the acts performed in meeting the needs of government in a prudent and democratic way:

- simplifying while modernizing the law under more uniform principles,
- providing increased public confidence in the procedures followed in public procurement,
- ensuring fair and equitable treatment of all persons who deal with the procurement system,
- providing increased economy and maximizing to the fullest extent practicable the purchasing value of public funds,
- fostering effective broad-based competition,
- providing safeguards for the maintenance of a procurement system of quality and integrity,
- providing transparency through public access to all aspects of procurement consistent with the IFB process and the integrity of the procurement system.

Small purchases do not mean that the government does not spend much on them, or doesn't have that much to lose. When any procurement method is abused, it costs money and trust in the integrity of the government, and the private sector participants, too.

This will tighten us up and save us money.

Finally, taking a clue from P.L. 36-07:3, I would suggest this Bill should also require that the Policy Office expedite the promulgation of regulations for this subject matter, and further, require the Policy Office to take note of and be guided by the safeguards provided in Sole Source and BPA law and regulation. Primary purposes and policies of the Procurement Law are to "provide for increased public confidence in the procedures followed", and to "provided safeguards for the maintenance of a procurement system of quality and integrity".

The rationale of small purchase methods of procurement are to make small purchases administratively simpler to complete and yet ensure competition. Competition is a priority

to simplicity. Care must be taken to ensure that the safeguards of the Invitation for Bids method (5 GCA § 5211) are not circumvented.<sup>7</sup>

Some elaboration should be provided in regulations, for instance, as to what is meant by what is “practical”: it should require, and should be practical, that data on prior similar solicitations by all agencies of the similar items sought regardless of method of source selection (as a means of identifying sources) be taken into account<sup>8</sup>, and that the timing allowed for submissions of Quotes should not be subject to “urgency” conditions except as defined and allowed under the Emergency method of source selection in 5 GCA § 5215. We don’t want to look back three years from now and find that agencies are, by an large, ignoring this reform, too. (See [OPA Press Release and Reminder](#) 02/28/2020, footnote 4, *supra*.)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Thos. Brown", is centered within a light gray rectangular box.

John Thos. Brown

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<sup>7</sup> See, at the beginning of this testimony, Official Comment to MPC § 3-204.

<sup>8</sup> The Chief Procurement Officer and Director of Public Works “serve as the central procurement officer of the Territory” with respect to their respective jurisdictions. It is *the duty* of the CPO and the Director of Public Works to ***supervise*** the procurement of all supplies, services and construction of the Territory, under their respective jurisdictions, as well as to “*exercise general supervision and control over all inventories*”, and to “establish and maintain programs for the inspection, testing and acceptance of all supplies and services”. 5 GCA § 5113(c).



## OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan • 36<sup>th</sup> Guam Legislature*

### **COMMITTEE REPORT DIGEST**

#### **I. OVERVIEW**

Bill No. 300-36 (LS) was introduced on April 28, 2022, by Senator Sabina Flores Perez and was subsequently referred by the Committee on Rules to the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning on April 29, 2022.

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning convened a virtual public hearing on Bill No. 300-36 (LS) on Wednesday, May 11, 2022, at 9:00 a.m. via Zoom Video Conference Platform.

#### **Public Notice Requirements**

Public Hearing notices were disseminated via email to all Senators and all main media broadcasting outlets on May 3, 2022 and again on May 9, 2022, fulfilling the 5-Day Notice and 48 Hour Notice of the Open Government Law requirements respectively.

#### **Senators Present**

Senator Sabina Flores Perez

*Committee Chairperson*

Vice Speaker Tina Rose Muña Barnes

*Committee Member*

Senator Telo T. Taitague

*Committee Member*

Senator Joanne Brown

*Legislative Member*

#### **II. SUMMARY OF TESTIMONY AND DISCUSSION**

The public hearing was Called-to-Order at 9:05am.

**Chairperson Perez:** *Buenas and Håfa Adai.* The Committee on Environment, Revenue and Taxation, Labor, Procurement, Statistics, Research and Planning is calling this virtual public hearing to order. The time is now 9:45 am Wednesday, May 11, 2022. Notice of this morning's virtual hearing was provided via email to Senators, stakeholder, and local media on May 3, 2022, for the 5-day notice and May 9, 2022 for the 48-hour notice, thus meeting the requirements of the Open Government Law. I'd like to acknowledge my colleagues that have joined me here today. Senator Telo Taitague, Senator Joanne Brown, Vice Speaker Tina Rose Muña Barnes, and Senator James Moylan.

The purpose of this virtual public hearing is to receive testimony on Bill No. 300-36 (LS), relative to strengthening the requirements of small purchases. The Committee will receive written testimony until 4:00 p.m. Monday, May 16, 2022. Please address testimony to Senator Sabina Flores Perez, Chairperson on the Committee on Environment, Revenue and Taxation, Labor,

Procurement, Statistics, Research and Planning. It can be dropped off at the mailboxes of the Guam Congress Building or emailed to [office@senatorperez.org](mailto:office@senatorperez.org).

To begin we're going to start with the rules of conduct, which is as follows: the host of the hearing will mute all participants until called upon by the Chair. Virtual backgrounds should not be utilized during the hearing and the participant's face must be visible at all times. When called to speak, please ensure that you are unmuted and that you are speaking into your microphone. Individuals testifying shall first be recognized by the Chair before speaking, and they shall state their names for record-keeping purposes. The order of questioning will begin with the Chairperson followed by the Vice chair and then by Senators. Questions and testimony shall be confined to the substance and nature of the agenda. Personal inference as to character or motive of any Senator or any individual testifying is not permitted.

So now we're going to hear testimony on Bill No. 300-36 (LS) sponsored by myself. It is an act to repeal and reenact § 5213 of subarticle B, article 3, chapter 5, title 5, Guam Code Annotated relative to strengthening the requirements of small purchases. Again, I like to acknowledge my colleagues that are here today Vice Speaker Tina Rose Muña Barnes, Senator Joanne Brown, and Senator Telo Taitague.

Upon the veto of bill 236-36, Bill No. 300-36 was created in response to the concerns in Bill No. 236-36 that was passed by the body. The concern was that should three positive quotes not be obtained, the language of "maximum extent practicable" was unclear if that would prohibit the use of small purchases. In the previous legislature, this same language was added to emergency procurement to address that very concern. Bill No. 300-36 was created in close collaboration with GSA to ensure that the concerns were addressed.

The intent of Bill No. 300-36 remains the same as previous Bill No. 236-36, which is to increase accountability and transparency in the procurement of small purchases by the Government of Guam. The small purchase procurement method allows for practicality for agencies to move quickly on supplies, services and construction meeting the required monetary threshold. Current statute sets small purchase thresholds at \$25,000 for supplies and services and \$100,000 for construction. It requires that procurement shall not be artificially divided in order to not exceed these thresholds and that the Chief Procurement Office, Director of the Department of Public Works, and the head of a purchasing agency send monthly reports to the legislature regarding small purchases exceeding \$15,000 for supplies and services and those exceeding \$50,000 for construction.

Current regulations do not require the level of transparency for other methods of procurement, no requirements for advertisement that can signal to prospective qualified contractors who can submit quotes, thus increasing the competitive pool and fostering effective competition and best value for the government.

In 2004, the OPA reported several findings regarding small purchases during a twenty-one-month period from October 1<sup>st</sup>, 2001, to June 30<sup>th</sup>, 2003. Small purchases accounted for 95% out of the ten-thousand purchase orders valued at twenty-five million dollars. Evidence indicated at the time that multiple purchases were possibly, artificially divided to pose as small purchases in attempt to

circumvent procurement regulations by not obtaining three telephonic or written quotations for purchases of five hundred dollars or less or obtaining competitive sealed bids for purchases above fifteen thousand dollars. In effect, over time such practices resulted in large purchases that should have required competitive sealed bidding. Evidence was also found at the time of possible preferential selection of vendors with the top twenty vendors receiving 4.9 million dollars in FY2002 alone.

Some of the recommendations to GSA were to cease the issuance of multiple POs to the same vendor in one day and ensure that purchases are publicized and competitively bid and that GSA should assist agencies in identifying and developing a list of recurring goods and services needed to operate the agency throughout the year such as office and computer supplies, medical supplies, food and medical supplies for Department of Corrections, and obtain at least three written quotations and maintain a complete procurement record. GSA's Procurement Officer and Department of Administration, Director, generally concurred with the findings and recommendations.

In 2020, the Office of the Public Accountability's press release highlighted that only three of the government agencies submitted monthly reports regarding small purchases to the legislature as required by law and since the 2003 audit the current influx of federal pandemic relief money warrants greater transparency and attention on practices of small purchases with the intention of fostering competition through positive quotations ensuring that small purchases are not artificially subdivided to meet the threshold limits and in those cases require the use of competitive bidding for large purchases in order to ultimately obtain the best value in the expenditure of vital public funds.

Bill 300-36 aims to reform current statute by the increasing transparency and accountability by the following:

Requiring of three positive quotes from qualified sources to maximum extent practicable; the purchasing agency shall include in the procurement record of a small purchase solicitation by request for quotations, regardless of whether it was concluded, an attestation containing the following: 1) a record of those particular business that were contacted, those that who, contacted or not, submitted a no quote or did not respond to the solicitation, as well as those that submitted positive quotes. 2) a statement documenting a solicitation effort to obtain quotations from qualified sources other than those which responded, 3) GSA's list of qualified vendors for the item or service is being procured.

We did receive a fiscal note waiver for Bill 300-36 from BBMR, stating that the bill is administrative in nature and poses no fiscal impact to the Government of Guam. We did receive one written testimony from Attorney John Thos. Brown, who's currently here for also oral testimony. I'd like to offer this opportunity for those that come here to provide testimony. Director Birn, thank you for your patience and for being here today. You're recognized.

**Edward M. Birn**, *Director, Department of Administration*: Thank you, Senator, and thank you for allowing me the opportunity to address this bill. Procurement is difficult. In reminding this Committee that I've spent most of my career in the private sector, I can say that it is as difficult in

the private sector as it is in the public sector. We spend a lot of our effort in trying to get procurement right and when we don't, the result is we and certainly, Senator, we spoke about the large number of federal funding that's available to us now, all procurements are under scrutiny of the single audit and might well be selected for audit under that particular requirement of OMB. We had last year for 2021, which the single audit was published last May, where two-thirds of the comments were about procurement. Because there are large number of federal programs in this current year that's currently under audit, the fact there are like three times the number of federal programs that are subject to audit, I'm sure will be more comments that come out of that particular exercise. The effort that goes into procurement is significant, and I will be the last person to suggest that it should not be subject to every requirement to be transparent and open and clear to both the vendor and to the government and to the public as to what is trying to be achieved. In the circumstance that this is trying to address, we don't get a quote, one has to wonder why. There are a number of reasons I would suggest why we don't get a quote. At this particular time, and this might be peculiar to the present time, with the supply chains that we have, I think we're all familiar with the shelves in some of our stores. There are empty shelves in the stores on the mainland too. So everybody is having a hard time getting supplies through to their customers and that might be one of the reasons why at this time no quotes happen. We also need to make sure that our vendors understand that providing goods and services to the government is no more difficult than providing goods and services to any of their other customers. We have several requirements, because we are subject to all these rules and regulations, both local and federal. We don't want to put too many barriers, because that will result in the no quote coming. If you have a scarcity of goods and it's easier to sell to "Private Person A" than "Government B" that will be their choice. We need to bear in mind really the reasons behind this. GSA (General Services Agency) at the moment, under my guidance, we're trying to do some good research into why there should be. Another reason might be if you make the quote "overly-specific" then you might as well limit your vendor base. Again, there's a balance between the agency needing some something specific or having to consider that a more generic type of product may well do that same job. We encourage agencies not to order, just for example, pencils that are colored yellow because they've always had yellow pencils. If pencils colored green do the same job, they should certainly consider that product too. So, there are many practicalities, and this is the big message I want to get over to this committee, if I may be permitted. There are many practicalities involved with this. I'm fully in favor of publishing everything. In fact, I would be quite content with publishing every purchase order if that were to encourage public confidence in what we do. So, on this bill, I have no problem with the process. I just want to make sure that we don't have to use the words in this bill that we have a climate in which we get perhaps more than three positive quotations that would encourage competition and of course, we would generally assume that competition would drive down prices and that's in the favor of the public person. One last thing I would like to add that, the limits for small purchases and other limits in procurement law have been frozen in time. We all know that the cost of goods and services at this moment are increasing. It's certainly our hope that we will get inflation under control. But with this protection in mind, I would certainly recommend that we increase the limit for small purchases to \$50,000 for supplies and services and maybe \$150,000 for construction, and actually, that would deal with all but the biggest construction. relying lying upon the safeguards which are contained in this in this proposed legislation. I think those are the two main points that I hope to convey to the to this committee and I look forward to receiving any questions committing have upon my remarks.



**Chairperson Perez:** Thank you so much, Director Birn. Can you stay on for a little bit or do you have to leave at a certain time?

**Director Birn:** I'll stay because this is important.

**Chairperson Perez:** I just wanted to allow Attorney Brown for his testimony. So welcome, Attorney Brown. You're recognized. And thank you again, for being here, and taking the time.

**Attorney John Thos. Brown, Attorney-At-Law:** Madam Chairperson and committee members and others, Director Birn for his input. He is always enlightening to me. I have written testimony, so I will try to skip through it, but I do support this bill and commend the Committee for bringing it forward. As will be seen, small purchases have received little attention for the purposes, policies and principles mandated by the procurement law. One of the biggest reasons is because of that phrase, "If it's practical" that there is there are no guardrails built around that, and it's left up to agencies who find it more practical to do it one way than the other without consideration of the principles that were supposed to be stuck with. This this provision, this law that we have now is basically unchanged except for a couple of years ago they did change the thresholds. It is basically unchanged since the original writing of the law, which was taken from the American Bar Association Model Procurement Code (MPC). They're almost identical word for word and the model the MPC, Model Procurement Code, has commentary like some of our statutes do as well. The official commentary for this particular section says streamlined procedures to be set forth in regulations will make small purchases administratively simpler to complete and yet ensure competition. Care must be taken to ensure that purchase requirements are not fragmented in order to fall within the authority contained in this small purchase provision and thereby circumventing the prophylactic provisions of the IFB process. So that care is not being taken. We don't pretend to have the kind of competitive requirements in this process as the IFB. So you have to take some care in what we're doing here, I agree with Director Birn, that you can over regulate the stuff that you don't get anything. That certainly is not in any of this language that that's being promoted here. There is nothing new in it, I should say, and where that is exposed is in the fact that there are two different methods to acquire things under the small business provisions that we have that we've used. One is the small purchase one that we all know about getting quotes RFQ's. The other is a blanket purchase agreement, and it has wonderfully constructed provisions making sure that the principles, the primary ones, competition, transparency, and accountability are satisfied in that small purchase provision. So why can't we use that as a guideline for regulations, if not law, with the small purchase provisions. The confusion has also been with the sole source. I think that's one reason a lot of people wanted to do it, but they'll find out that although there aren't any regulations that I've seen drafted yet, there was the bill last year that revised the sole source to have a lot more the guardrails that we expect out of that kind of freedom to act without a lot of real time review in the sole source. So that's being jacked up; that there aren't any regulations yet, and of course we all know that the legislature can't write regulations. So, but you can right law and if you write a law, it overrides anything that's inconsistent in the regulation. So, it's not out of your hands to do something, but the laws are harder to change than regulations, presumably.

Changes, however that have been made, are inconsistent with existing small purchase regulations and until those regulations are completed, we're stuck with the regulations or until we provide the law that, again Director Birn's mindfulness in that regard about putting too many things in the law,

strikes me as salient. If and when the sole sourced regulations are duly promulgated, there would be more prophylactic provisions provided by that. Because, technically, although it's not part of the body of the regulation for small purchases, it is the fall back specifically pointed to by the regulations. If you end up after not being able to get three quotes, you can only get one quote, and then you can go through the sole source method. That's what the small purchase provision says. That's not the fright that it used to be, though, because that method is has got a lot of guardrails put around it recently. As practiced, the RFQ does not necessarily foster any competition and the fragmentation or artificial division of procurements is not easily discovered until after the deed is done. To the extent that there is any solicitation of RFQs, it's is not viewed publicly as are IFBs, which we were cautioned not to lose that kind of, not necessarily to the same extent, but that focus on having transparency and competition. RFQs have no specific requirements that foster effective competition. We don't track who is being solicited and by whom and for what. And really, are there any other provisions, but when you compare it to the blanket purchase agreements that we have, they have great guard rails. Same overriding law, different regulation. If there's an insufficient number of BPAs to ensure maximum practicable competition for particular purchase, this is from the regulation, it's CPO, the Director of Public Works or a purchasing agent shall solicit information from other sources, and make the purchases appropriate, establish additional BPAs to facilitate future purchases if recurring requirements for the same or similar items that seem likely. I have a suspicion, Director Birn could speak better than I, but I have a suspicion that most of the small purchases are recurring items, and you should be able to have some sense of where those sources are by this time just by going out and getting the same thing again. A qualified sources need to be willing to accept BPA, and sometimes that's the problem. But it's the same way with getting quotes. If you have to go out and get them, there is a procedure required for BPAs in § 3112.14, which by the way, Small Purchases are under § 3111 of the GARR. That's what they say. § 3112 is a subsection of sole source. So, the regulations don't really know where they're supposed to fit. The Chief Procurement Officer, the agency shall review a sufficient random sample of BPA files at least annually to ensure that authorized the procedures are being followed. Boy, that would be handy to have in with the small purchase ones. You should sample test and make sure that we're following what we want you to do. It's also to ensure that the agencies maintain awareness of changes in market conditions and sources of supply and any other pertinent factors that may warrant making new arrangements with new people. We don't keep up with that. In establishing BPAs, BPA should be made with firms which from which numerous individual purchases will likely be made in the given particular period. You got to know what the market is if you are planning to get, if you're in private sector business and Director Birn also spoke to that, it's difficult, but your market, if you are out there meeting with them all the time and they're calling you. They think they can't do that if they're going to try to hide what they're doing, they certainly wouldn't want to call you and raise the question of come do business with me. And finally, one of the ones that in the BPA guardrails is, I think very important, all competitive sources should be given an equal opportunity to furnish supplies and services. Therefore, if not impossible, it's not impracticable. If it is not impossible then to the extent practicable, BPAs for items of the same type should be placed concurrently with at least three separate suppliers. We should be doing that with RFQ's, but it's not a provision that we have that provision under that method, and we don't apply it to the one that is most susceptible to gamesmanship, which is the RFQ method. We could also get into some of the discussions about what is practical. By having a provision like we had in sole source, it says the Policy Office shall right regulations within 90 days of passage of the bill. In that you can say in writing these regular regulations you bear in mind. the safeguards that are

given in small purchase provisions of the BPAs and apply those to RFQs and see how they come up with that and if they still don't get it right, a legislature can write it into the law that that overrides the regulations. The small purchases did not mean that the government does not spend much money. They did spend a lot that OPA audit in 2004, long time ago, it doesn't seem to have changed any. Finally, taking the clue from, talking about that and the regulation to expedite promulgation, which was in the sole source provisions. So, the rationale is small purchase methods procurement are to make small purchases administratively simpler, to complete but ensure competition. Competition is a priority to simplicity. In practice, it's done exactly the opposite. Care must be taken to ensure that safeguards are not circumvented. Some elaboration should be provided in regulations, for instance, as to what is meant by what is practical. It should require and should be practical on data on similar solicitations by all agencies. If one agency is getting yellow pencils and another one is getting green pencils and they're paying different prices and getting different results, there should be a source, one single source for that. You should know what that is so that you can get the benefit of scales of economy. What I have experienced with some of the bids that I've seen, things that Jones and Guerrero gets involved with, small purchases are often done at the last minute. You pick up the phone, you call somebody. We need it next week. There are no needs assessments in any of the small purchase provisions, as they are required for IFBs. So if they're using particularly, they're using the same thing over and over again why you don't they have a paper in the file some places and this is what we're going to need. This is what we've been getting the last three years. We know we're going to get in the next three years. This is what we have. and if you're going to need it, you're going to need it, you can use that there is also. No point in trying to get around the dollar limitations and do a small purchase if you go through the IFB process, you can get it an indefinite quantity purchase contract by IFB. So that if the agency has that need, they already have a source teed up to give it to him. It's up to the agency whether they have asked for that extra quantity, so there are other ways to skin this cat besides the easy one of just calling for quotes and not calling for both from people you don't want to have and that sort of thing. Thank you very much for letting me harangue, and I'll take any questions.

**Chairperson Perez:** Thank you so much, Attorney Brown. Yes, a couple questions. So maybe what I'm hearing you say is that there needs to be more guard rails or maybe perhaps weaning off the use of small purchases and to use procurement methods that have more guardrails.

**Attorney Brown:** Well, sort of. If the genuine small purchase should be made simpler and if we can arrange a way to do that without getting rid of the major guard rails for competition and transparency and accountability, then do it. But if they are trying to circumvent the IFB method by doing a fragmentation of a bid they don't need to do that. They can go through the IFB process as an indefinite quantity contract. It's done all the time. The federal government does most of this contract. So, , the agency needs to say to themselves, can we do this with an IFB and do it the same results and don't get charged with being lazy and try to game the system.

**Chairperson Perez:** Thank you, and we did reform sole source procurement, so there's more guardrails. So should there be one positive quote using small purchases, I think that they can still use small purchases procurement method and not sole source.

**Attorney Brown:** But they would have to go through the sole source method which has many more guardrails than this, so that would kind of diminish the enthusiasm for sole source, I mean, the small purchase.

**Chairperson Perez:** The question that was raised that should an agency only get one quote, can they can still move forward with a small purchase.

**Attorney Brown:** Yes, but the small purchase requires that they do that through the sole source. This is in 3111(b)(4): “if the supply, services, construction item is available from only one source or one business, the sole source procurement methods set forth in § 3112 shall be used”, so you don't go back to the small purchase provision when you go to provision to that, and as a just another footnote, that § 3112 is a regulation, not a law. So, you're not pointing here to the law. You're pointing to the regulation, and the regulation is written for the existing small purchase provision, and it's totally inconsistent with the reinvented sole source law that was passed last year. And so, there is an inconsistency between the law and this regulation. In which case, you can't even follow this regulation at this point, until they start sort it all out so it.

**Chairperson Perez:** If this law becomes enacted, that will then override the regulation? Is that correct or a new regulation have to be created?

**Attorney Brown:** As this right now, it says you can go use sole source that there's only one bid. But if you go to sole source, you have to use the sole source law because the full source regulation is incompatible with the new sole force law. So that's what I'm saying is that the law they would take over until they rewrite these regulations, so they don't, that's the law, would still hold.

**Chairperson Perez:** Thanks. So Director Birn, in the sole source bill that became enacted, there was a timeline to create regulations. What timeline would you need to update these regulations so that they are consistent with the laws?

**Director Birn:** Thank you. Yes, we need to update the regulations, because the Attorney Brown was quite right, there is a conflict between the law and the current regulations. If I could answer it in a slightly circular way, some of the points that were made about alternative ways of looking at this, and I want to try and actually address this issue with the blanket purchase agreement. I agree that's a good way to go, but it has issues with it, and we're trying to address those issues and that's one of the reasons that I set up this new unit at DOA to try and gather together information so that we can properly commission blanket purchase agreements. At the moment the blanket purchase agreements really are confined to one agency or maybe two, and then there's a separate blanket purchase agreement that might cover other agencies, and that's really not the intention at all. So, we're trying to do all this, but try and answer your question about timelines, the procurement Policy Office needs to undertake this task. The Procurement Policy Office has been kind of trying to catch up with some other issues, and we issued five different regulations we've over the last two years, but we will give priority, if this law is passed, to updating, certainly, we have to update the sole source one. We would also make efforts to update this particular requirement under this legislation, if enacted, and, I guess, it would take us about three months to get to that point.

**Chairperson Perez:** I appreciate that response, but going back to what you were saying earlier about blanket purchase agreements. You were thinking that it can encompass more than one agency?

**Director Birn:** Yes, just to go back to my simple example of a pencil, right, more than one agency buys pencils. And at the moment, many of our blanket purchase agreements are like we've because, as Mr. Brown said, we try and give the opportunity to three bidders to have a blanket purchase agreement. So, we've got a \$3,000 for example, a \$3,000 requirement split between three suppliers. So they so there's a \$1,000 blanket purchase agreement goes to each of those suppliers and the agency doesn't know until they come to actually order the product, whether the purchase order under Supplier "A" has been exhausted and they need to go to supplier "B", Or if there's still availability under "A". So, there's many issues that we need to work through in practicality to make blanket purchase agreements work.

**Chairperson Perez:** Thank you for that response. Another question I had, so you were talking earlier in your testimony about maybe even requiring more than three positive quotations. Did I hear that correctly?

**Director Birn:** No, I said. I'm sorry to interrupt, please finish.

**Chairperson Perez:** We want more responses than limiting it to just three. We just kept three, because that was currently in the regulations. The Chief Procurement Officer sometimes ask the agencies to go back and ask for more vendors to respond. So, you're saying no, that wasn't what you were saying earlier about requiring more than three quotes.

**Director Birn:** I meant to convey the sense that, if we create the climate in which we can stimulate more responses, it would be nice to get more than three quotations, but I don't think we should arbitrarily either say, well, in this particular case we need six. But in the procurement, that's sitting on a file on the same desk, we need three. I think we have to be consistent about what we do.

**Chairperson Perez:** In regard to increasing the threshold, this subject has been brought up before. When was the last time it was increased?

**Attorney Brown:** I believe it was in the 34th legislature. No, no further back than that.

**Chairperson Perez:** I think \$100,000 is actually quite a lot for a small purchase. I would rather much prefer it go through a bidding process. The \$25,000 for supplies and services, I don't know if inflation really created a problem where we can't purchase things, but I think there are a lot of things that can fall within that range. So that's something to think about for supplies and services, especially services perhaps. Again, there's other types of procurement that use more competitive methods. So, I need to think about the increasing threshold.

**Director Birn:** Senator, if I may, I was suggesting \$50,000 for supply and goods, and I think \$150,000 for construction. In saying that, please bear in mind that the federal limit for small purchases is \$250,000.

**Chairperson Perez:** And that's for everything?

**Director Birn:** Almost everything.

**Chairperson Perez:** So definitely would give it some thought. The phrase “maximum extent practicable” is that language needed, or should I just remove that. Will the bill have the same effect?

**Attorney Brown:** I think having it in there is just a smokescreen. If you take it out, I don't think behaviors will change at all. Particularly if you say you should have three if you can get them. You can't get them, less, but not practical.

**Chairperson Perez:** I appreciate it. I think those are my questions. I'd like to also recognize Senator Moylan who was here earlier and Senator Telena Nelson, who's here. So, I'd like to open the floor to my colleagues for any questions. Vice Speaker.

**Vice Speaker Barnes:** *Si Yu'os ma'åse*, Madam Chair and thank you to Attorney Brown, and of course, Director Ed Birn, for being here for this bill. I just want to personally say that when we look at Bill 300-36, the intent for this is to safeguard the competitive process by requiring a purchasing agent of the government to provide that they solicit written quotations from businesses for small purchases, and if we look at the who, what, where, when and why, I mean, the what is required proof that a purchasing agency tried to solicit competitively on purchases before proceeding to the small purchase procedures, one the next one is purchasing agencies must attempt to get at least three positive RFQ's, small purchase solicitation responses, and then it then it goes on to say that a no quote called is not considered a positive quotation and is part of the procurement record, and if three quotes cannot be ascertained, then the purchasing agency can continue small purchase procedures through that sole source purchasing that you guys spoke about. But for me the “why” of course, is to put on public record, to put on public record attempts of a purchasing agency to solicit purchases competitively and, as I appreciate the comments of Director Ed Birn, both Attorney Brown, I don't know, for me, if the increasing the threshold up to \$50,000 is right at this time, Because I think in the past I mean, I've been in government for 40 years and I thought we were trying to decrease that so that that taking advantages of just trying to either go through the sole source or all that might be in question. But that's neither here or there, that's the recommendation of the agency and we're going to look at the federal guidelines also coming up with a compromise might be, not might be a bad idea. But I shared with you Madam Chair, that I supported your efforts in this attempt, and I know as we look at the rules and regulations that are in place, and things that need to be amended or updated and or repealed, that may not be useful now, I think, this is, at least for this effort, is to show that we are making attempts and we are trying to put those guardrails up. So, I told you that I will support you on these efforts and then look at the recommendations as shared or the concerns that have been shared and maybe we can look at it together. So, I'm hoping that if we get this bill out again through this version, addressing GSA's concerns that that it at least we're having this protocol in place to make sure that we put on public record the attempts of a purchasing agency to solicit purchases competitively and making sure that we get that opportunity up there. So, thank you, Madam Chair, that's just my two cents on this, and I appreciate you giving me the time.

**Chairperson Perez:** *Si Yu'os ma'åse*, Vice Speaker, for your comments and support. I appreciate that.

**Attorney Brown:** If I can make an observation to that, and that is that first of all, the federal government \$250,000 is a blip in their budget. \$25,000 is not a blip in our budget. It is significant matter. People go crazy for \$25,000, I would. So, the other thing is that the processes of small purchases doesn't require any publishing. And in publishing things get expensive. And so, if you start raising it up to \$50,000, well, you're spending an awful lot of money. If you're going to be spending that kind of money, you can put an ad to paper and have it be an IFB. And as I said there, the IFB has the beauty of being able of to get quantities under indefinite quantity bid.

**Director Birn:** Senator, may I just this practicality language, because I wanted to pick up those words. From an administrative point of view, I obviously want everything to be practical. There are circumstances which make certain actions impractical, so the I guess it would be our preference to retain that language simply for flexibility, but I understand that it also viewed from the other side may be considered something of a hole. That would be certainly my recommendation.

**Chairperson Perez:** I appreciate it. Thank you, Director Birn and Attorney Brown. So now I like to open the floor to Senator Joanne Brown for any questions.

**Senator Brown:** Thank you very much, Madam Chair. I know we had previously discussed the issue with regards to procurement and the challenge and yes, the process of procurement in government. Unfortunately, it's cumbersome, it's how we strike the balance between our ability to procure the services and products that we need and at the same time still operate because when you have an operation that needs supplies and equipment and things of that nature to execute the mandate of an agency. It's very difficult when you're having to wait for the things you need. I remembered at DPW, we had to procure tires for the school buses, and for whatever reason, it is decision was, oh well, we're going to tie all procurement of all the tires in the government in Guam to one purchase, one vendor, and so, we're sitting waiting to get tires for school buses, because there's not that one contract that has gone out to determine who's going to be the vendor that is going to supply us tires, and so, because that doesn't happen, a key operation in in DPW is left behind or having to wait or having to drive other buses and we're down more tires and not be ahead in getting with what was needed at the time it was needed. We want to do these bold purchase orders thinking somehow that's giving us a better price. But in terms of the efficiency, to execute the mission of an agency, it can be brought to a standstill. So, it's very cumbersome in doing it. At the same time, we have the other problem in government and that's sometimes the misuse of procurement. In sometimes is it because some people are just not wanting to put the extra effort in or laziness in some cases of, just wanting to get it from or relationship does not kid ourselves from a certain vendor and that's the vendor that's going to be supplying a certain supply and that's who they want to go to.

So, I wanted to ask because we're looking at right now this \$25,000 for supplies or services or \$100,000 for construction. How do we facilitate that? I remember Director Birn had mentioned when we were at the legislature in session previously that the smaller purchases now have been authorized to the GovGuam agencies. Could you elaborate on that on what up to the amounts that a department or agency can do procurement without having to go through GSA and does that apply

to all line agencies and autonomous agencies in the government just to give us a clear idea of where we're at with regards to that now?

**Director Birn:** Thank you, Senator, for that question. The current regulation is that purchases of \$15,000 or under do not require the GSA input. It's not to say they don't go through GSA because the process is as follow: The agency will go through the normal process that they would go through, they would obtain the three quotations. If that is the process that applies in that case, and then they would create a purchase order, but that so far as GSA is concerned that purchase order isn't issued until it's reviewed by GSA with all the supporting documentation that should be in the system to support that. So it's not entirely free from the existing GSA process, and it is reviewed by GSA. That in itself sometimes creates a hold up. And I actually look every day at the number of POs that are in the system but not yet issued, and it has been a high number and actually we're working on whittling that down as quickly as we can because the agency thinks everything is taken care of. But then there's a time period where nobody knows exactly where everything is.

**Senator Brown:** Well, don't you think that's the challenge when you have operation to address, I mean looking at the staffing pattern of what's left at GSA, there's really not that many personnel and your Chief Procurement Officer to my understanding is on leave for the last few months. So, that becomes from an operational standpoint a bottleneck in some cases, because you physically have only so many people there. It looked like the last time we were in session, only a small handful of personnel down there and you still have another employee that's not even supposed to legally be assigned to GSA, doing the work of GSA. How can we facilitate a better way to assure also accountability and transparency in the procurement, because we've also seen in past how some have, they just do it in bits and pieces, but they go to the same vendor for something and then they keep, they just do a separate one, and a separate one then you end up finding it add up. So, all to the same vendor that far exceeds even the legal amounts that are placed. Wouldn't it be now with the fact, and I guess maybe I can also ask Attorney Brown because of the training that you do with regards to the modules, could we get for these smaller purchases to a certain amount within these agencies? There's no reason why they can't have their key procurement personnel go through the proper training and the modules passed to those classes and be certified to do procurement at this level so that we can facilitate and then through the audit process also make sure that they're properly procuring I understand the big-ticket items, all the hundreds of thousands and millions of dollars. Of course, that's very important how that money is spent. But isn't there a way to do this so that we can have the level of transparency and accountability but yet also allow agencies and departments to actually execute and get the things they need, so they can operate. The government is always criticized with comments like "you're slow" or "you're unresponsive," "You're this" "You're that." And yet the ability to procure is so complicated and you may or may not get, as you mentioned, Director Birn, sometimes there's a period of time where nobody knows and some departments, they submit their paperwork, and then you end up finding out maybe they didn't submit all the proper documentation that was needed, and it is sitting there and the department's thinking, oh we already put it in, and GSA is thinking, oh, wait a minute we finally got it but you're missing all these things. So, we can't move it forward until you go back and properly submit, and here we are months later, and there's no progress being made. So, I'm definitely all for accounting for everything, down to the penny of how money's being spent, but is there a better way to facilitate them? We have now because that bottleneck at GSA, you're at the mercy of GSA, assuming they are not responsive to you or are facilitating just by virtue of the numbers. They have obviously



have issues with keeping personnel, wanting buyers stay at the GSA at least I've seen that over the last few years. You get them, you train them and, goodness, the moment they got an opportunity to go elsewhere, they're ready. And I don't, I don't blame them. People always looking for better opportunity and better working environments. So, if you could ask that, I know I asked a number of questions, Director Birn, but I think you understand what I'm saying and also for Attorney Brown, if you could elaborate. Is that possible? Because obviously you were there firsthand and hands-on providing training to our personnel and the government on procurement. Is that another option that can be looked at to help facilitate?

**Director Birn:** If I may go first, Senator, I don't disagree. I think there is an opportunity for more delegation, responsible delegation of purchasing authorities to the agencies. I mean the agencies are run, for the most part, every agency has a responsible person in charge of that agency and every agency director has responsibilities. They cover a number of issues. It covers personnel, it covers the legal obligations, and it covers procurement too. So, at some point, with the proper safeguards, which I may, if I weren't just speak about in a couple of minutes with the proper safeguards, I actually would be in favor of more delegation of purchasing authority to agencies provided the safeguards are one is that they should not be able to make their own terms and conditions. There should be standard terms and conditions to which they have to adhere, or else then it has to go back to a more seasoned procurement person or a stricter procurement process to make sure that those kinds of regulations aren't transgressed. But in general, yes, I would be in favor of that. So that GSA, which is the professional purchasing agency, can concentrate on the more tricky things, which we've actually touched on today. Of course, we're talking about small purchases, but I think all Senators know there are bigger problems in the bigger purchases and that's that should be what they should be concentrating on not the day to day transactions with the appropriate regulation of risk.

**Senator Brown:** Yeah, I appreciate your response to that. Attorney Brown.

**Attorney Brown:** Yes, on delegation, the CPO has by law the authority to delegate to any agency, any kind of procurement authority. In other words, they can limit it for everything, or you can limit it to certain things. But you also have to understand is that the power to procure, your authority to procure is a specific power. It's not a general power, and so if you have a general provision in your enabling act that says that like we do it, we can do anything generally, general and appropriate to running our operation, that doesn't cover procurement, because procurement is a whole other subset of that whole power, and so the legislature can give an agency who has proven itself capable of handling these, and all procurement has to be covered by the same set of rules as the law exists now. If an agency is delegated the power to procure from the CPO, for instance, the CPO can only delegate the power that the CPO has, and that is to do it by the book. So, they can't delegate that power to somebody and let them go off and create their own book. Delegation should be given to the good hands. You don't give the keys to the car to your 3-year-old kid. There's got to be a much better control over the wheel than that. So, it can be done. You can do it, and it's done frequently, and it's surprising who doesn't have procurement authority. GDOE doesn't have procurement authority. GMHA doesn't have vast, unbridled procurement authority. You can find that in their enabling statute what they can do. So those things can be done, they just have to be handled right.

**Senator Brown:** No, I appreciate your input. Of course, we want to make sure it's standardized, that every department agency has these procedures. But, I understand we, I want accountability for how the money spent, but I think that might be something certainly legislative really, we have the authority to change the laws, be amended to maybe this smaller procurement processes here can be delegated to the department and agency. Of course, maybe we can put a requirement place as to making sure that, of course, they have to have the training. They have to complete it successfully, and maybe looking at the track records of these different government agencies, maybe, to start the process. I certainly would be happy to work with our Chairperson Sabina Perez, with regards to that, because I think there's a need for it, but again, at the same time we want to make sure they're properly spending. I'm even hearing some departments are raising up their petty cash. For example, we're not discussing that. That's even a smaller amount than a small purchase orders. But petty cash amounts up to \$500 and above and people might think, oh, that's really nothing. But after a while \$500 plus \$500 plus \$500 and all these other agencies follow, making sure that they properly used are they making, not using it to go around the procurement process, especially as mentioned earlier, there's some certain products and services that are regularly procured every year that's always needed. So, we need to look at that and then make sure they're properly audited, and if they're abusing it, it can be taken away, but, I think, the centralization and a bottleneck that exists really limits the government. When you actually run an operation that has to deliver and not just shuffle paper it, it's very challenging to operate when you're dealing with those type of conditions, and, I think, we have to have a better way of accounting for the money, but also better way of allowing government agencies to actually function with what they need to do, because so far, this centralized authority that exists at GSA to me doesn't help facilitate what's needed, and there's no reason we can't have these key personnel in these government agencies as the training is made available. We've mandated it by law to make sure that these modules are taken, and they have to, depending on their level of work that they do, have to pass all these courses in order to perform the work, but, I think, we need to start looking at that at the same time, hand in hand with that, making sure there's accountability for those that have this authority to make sure they're properly spending the money because they abuse can happen at any level can happen at individual department designated or can happen with the centralization of all this power at GSA and I just think we've got to find a better way of doing it so that we can meet our desired objectives of actually properly operating government. So with that, thank you for answering my questions and, Madam Chair, thank you for the opportunity to ask these questions.

**Chairperson Perez:** Thank you very much, Senator Brown. Senator Taitague. Do you have any questions?

**Senator Taitague:** Well, thank you so much again and a lot of the questions I had were asked and answered, but the one question I want to make sure, and this is to Director Birn, is the legislation compared to what we passed and just recently vetoed by the Governor, bill 236-36, which was vetoed, and then in a footnote on that veto message, it indicated in the event the legislature proceeds with a corrective bill, I suggest legislature provide clear instructions to GSA regarding its obligation to compile a list of qualified vendors to the extent. So based on that comment made and now that this bill, bill 300-36, does this meet any kind of concerns that the veto message from the governor meets?

**Director Birn:** Thank you, Senator. Yes, I believe it does. It places a number of actions and activities that have to be done like you just mentioned the list of qualified vendors, and that's something that I will have a joint action between GSA and the Division we've got here to make sure that we do have a list of qualified vendors, because I don't think there is an updated list of qualified vendors for the purchases that we make currently, because purchasers obviously change over a period and we need to make sure that we have that that list up to date. Obviously, the goal my goal would be to have as many qualified vendors as possible, because again, there falls in with the stimulation of competition that both I and Attorney Brown are advocating, are at the bottom of this process.

**Senator Taitague:** Thank you Director Birn. Do you think you'll have that list?

**Director Birn:** That's the question I can't answer because we really haven't started to do that, but, if we get, if we're going to spend the next three months dealing with the with the regulations, it's probably going to be another three months after that, before we can get our heads down to do that. So, it's probably about six months. We have made progress, right, with vendors. At one time selling to the government was a risky process, because you didn't know when you were going to get paid. Now we have committed so to pay within 30 days of an invoice arriving at DOA. So that makes it much easier for vendors to want to be.

**Senator Taitague:** Yeah, that's probably one of the biggest complaints that I get as far as constituents or business owners, who don't want to deal with the government of Guam because of not being paid in a timely manner. So, I know you're making great strides toward that to provide it. In the OPA report for DOA, your buddy, former Speaker BJ Cruz, that you deal a lot with, he's made recommendations and in his report to DOA, and that is I'm just finding out, what actions have been taken by the Office of Technology to establish those recommendations for IT controls so that small purchase orders exceeding authorized amounts are automatically rejected.

**Director Birn:** Yes, but you've heard me talk about the practicalities of this automatic rejection, and that happens, and I see it happen yesterday, with GSA immediately puts up a barrier. Does the agency that began the process doesn't necessarily, instantly and sometimes it takes awhile then to understand why it was rejected and the rejecting agency, and GSA unfortunately, it's charged with both providing the service and initiating compliance, and that's not a terribly good, any agency has a hard time doing that, and sometimes they don't explain it as fully as they need for the situation to be corrected. So, I do recognize that. We are we are looking at that too, because the goal is not to reject something but to actually process it.

**Senator Taitague:** Well and you're working with the IT, I mean, your Office of Technology to create that, and so the question was how far along are you in integrating that type of technology? So, it makes it more efficient. We're talking about efficient and anything that's logged in can automatically make that rejection. I know you don't like to use that, but that word, make that call with regards to whether it's exceeding any authorized amount.

**Director Birn:** Yeah, it's really something that we're trying to put into the new system when we have the new system commissioned. We are working with it with it, because it came up, but I don't

want to spend a whole lot of time and effort with a system that we're going to replace with a new system, but that is a feature that will be in the new system.

**Senator Taitague:** Okay, and that's a whole conversation itself on the new system, but I'll stick to this particular legislation. Has GSA established any credit or buying relationship with any other federal agencies other than, well, basically, it's more for affordable and supplying orders to obtain lower prices, such as medication or other critical supplies? Have you worked with any federal agencies?

**Director Birn:** Well, medication comes under the special rule, where we are supposed to get medication at the, it proximates to the Medicare prices. For the most part, for instance, the community health centers do have contracts that do that. It's not a federal agency so much as it's a regulation put out by the Department of Health and Human Services. I and the Procurement Policy Office encourage GSA and indeed other purchasing agencies to consider the federal, there's a federal GSA website, in which the prices are actually all set out on there, and they're encouraged to consider those as the equivalent of a quotation. It hasn't been done a lot in the past, because you had to actually send a fax to the federal GSA and wait for an answer, but nowadays with websites, it's an instant response, and we're encouraging certainly GSA to do that.

**Senator Taitague:** Okay, well I hope so and that's encouraging to know. Well, thank you, Madam Chair, for the opportunity to ask a few questions and, Attorney Brown, it's always a pleasure to see you here putting your two cents in and, of course, it has a lot of merit to it as well. So, greatly appreciate it and Madam Chair as always. The bill that was vetoed had my name on it, and I'm glad to see that you've addressed this as quickly and asked that I be again a co-sponsor of this legislation and appreciate your continued work on this too, Madam Chair. Thank you so much.

**Chairperson Perez:** *Si Yu'os ma'åse*, Senator Taitague. Yes, absolutely. You will be added as a co-sponsor as well as any colleagues that would like to co-sponsor as well. I think everyone here if there's no objection to it. But again, thank you to Director Birn, Attorney Brown for your participation and fielding all our questions and enlightening us on the laws and the conditions of procurement in government. I appreciate your insight into how we can continually improve procurement for the government and for the community. Being that there are no other testimonies on Bill 300-36 (LS), the Committee will continue to receive written testimony until 4:00 PM Monday, May 16, 2022, please address testimony to Senator Sabina Flores Perez. It can be dropped off at the Guam Congress Building or emailed to [office@senatorperez.org](mailto:office@senatorperez.org). *Si Yu'os ma'åse* for your participation and have a great day.

Chairperson Perez adjourned the public hearing for Bill No. 300-36 (LS) at 12:34pm.

#### **Written Testimonies:**

- Attorney John Thos. Brown

### **III. FINDINGS AND RECOMMENDATION**

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning received the following testimony for Bill No. 300-36 (LS) at the public hearing:

- Department of Administration Director Birn is in support of the bill to promote the principles of transparency and openness. Director Birn stated that the efforts that go into procurement are significant, and that the government needs to foster a climate where prospective vendors would view doing business with the government as similar to doing business with the private sector, in light of the government's procurement regulations and safeguards. DOA has made strides in making payments within 30 days which has been one of the obstacles hindering competition. Other practices need to be improved, such as, writing specifications to meet the minimum needs of the government to allow for greater competition, in which the yellow and green pencil analogy was used. Additionally, Director Birn made further recommendations for the Committee to increase small purchase thresholds for goods and services from \$25,000 to \$50, 000 and for construction from \$100,000 to \$150,000 due to the significant rise in inflation. Director Birn estimated that it would take 90 days to promulgate regulations for small purchases and another 90 days to develop a qualified vendor list.
- Attorney John Thos. Brown is in support of Bill 300-36 and recommends the promulgation of accompanying regulations that are similar to the blanket purchase agreement regulations that provide more safeguards to foster quality and integrity. Additionally, the current small purchase regulations allow for the use of sole source procurement in the case when only one quote is obtained through the small purchase method, which is inconsistent with the recent change in sole source procurement law. He recommends the IFB process, such as IDIQ, especially for recurring small purchases, that has greater transparency.

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning hereby reports out Bill No. 300-36 (COR), **As Amended by the Committee**, "AN ACT TO *REPEAL* AND *REENACT* § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES." with the recommendation **TO DO PASS**.

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

**Bill No. 300-36 (LS)**

Introduced by:

Sabina Flores Perez /SFP

**AN ACT TO *REPEAL* AND *REENACT* § 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

1 is available from only one business, the sole source procurement method set forth in  
2 § 3112 (Sole Source Procurement) of these regulations shall be used even if the  
3 procurement is a small purchase....” [2 GAR § 3111(b)(4)].

4 *I Liheslatura* further finds that the fundamental purposes and policies  
5 underlying the Procurement Act, as expressed in 5 GCA § 5001(b), include  
6 underlying principles which “(3) provide for increased public confidence in the  
7 procedures followed in public procurement; (4) ensure the fair and equitable  
8 treatment of all persons who deal with the procurement system of this Territory; (5)  
9 provide increased economy in territorial activities and to maximize to the fullest  
10 extent practicable the purchasing value of public funds; and, (6) foster effective  
11 broad-based competition.” § 5001(a) expresses the command that the entirety of the  
12 procurement law “shall be construed and applied [to the facts and circumstances] to  
13 promote its underlying purposes and policies.” The government is obliged to  
14 promote its underlying purposes and policies generally, and to foster competition in  
15 particular.

16 *I Liheslatura* finds that procurement without public competition by informal  
17 Requests for Quotations (RFQs) of small purchases may be abused by the  
18 acquirement of a vague “no quote quotation” requirement in regulation 2 GAR §  
19 3111(c)(1), and by a purchasing agency’s obligation to obtain “no less than three  
20 positive written quotations from businesses”, and due to failure of purchasing  
21 agencies to keep procurement records that create an audit trail which would reveal,  
22 among other matters: how many and which vendors were actually solicited by an  
23 RFQ; how were the chosen recipients selected; and which recipients of an RFQ  
24 returned a price quote. *I Liheslatura* has not noticed any evidence that small  
25 purchases by the sole source method have received any of the treatment required by  
26 5 GCA § 5214 or 2 GAR § 3112 to provide competition, frugality, transparency, and  
27 accountability under the formal sole source method of procurement.

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

17 **Section 2.** § 5213 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code  
18 Annotated, is hereby *repealed* and *reenacted* to read:

19 **~~“§ 5213. Small Purchases.~~**

20 ~~Any procurement not exceeding Twenty-five Thousand Dollars~~  
21 ~~(\$25,000) for supplies or services, and not exceeding One Hundred Thousand~~  
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25 ~~under this Section. The Chief Procurement Officer, the Director of the Department~~  
26 ~~of Public Works, or the head of an agency utilizing this Section, shall submit a report~~  
27 ~~to the Speaker of I Liheslaturan Guåhan monthly as to procurement exceeding~~



1 ~~Fifteen Thousand Dollars (\$15,000) for supplies and services, or exceeding Fifty~~  
2 ~~Thousand Dollars (\$50,000) for construction, pursuant to this Section.”~~

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8 in a Request for Quotes (RFQ) small purchase solicitation, to solicit and obtain, to  
9 the maximum extent practicable, no less than three (3) positive written quotations  
10 from qualified sources shall be part of the procurement record. A “no quote”  
11 response will not be considered a positive quotation but *shall* be part of the  
12 procurement record, which shall further include a written record or memorandum of  
13 all solicitations and responses thereto, negative or positive, orally or in writing. In  
14 the event the agency obtains less than three (3) positive quotations and provides the  
15 attestation required by this section, the agency may proceed with the small purchase  
16 procurement. The purchasing agency *shall* include in the procurement record of a  
17 small purchase solicitation made by RFQ, regardless of whether it was concluded,  
18 an attestation containing the following:

19 (a) a record of those particular businesses that were contacted, and  
20 those who, contacted or not, submitted a “no quote,” or did not respond to the  
21 solicitation, as well as those that submitted positive written quotations;

22 (b) a statement documenting the solicitation efforts to obtain  
23 quotations from qualified sources other than those which responded, and  
24 GSA’s list of all qualified vendors for the item(s) or service(s) being procured.

25 Small purchase requirements shall not be artificially divided so as to constitute  
26 a small purchase under this Section. The Chief Procurement Officer, the Director of  
27 the Department of Public Works, the head of an agency, or designee at or above the

1 level of Procurement Officer utilizing this Section for procurement, shall submit  
2 quarterly a report of all small purchases to the Speaker of *I Liheslaturan Guåhan*.”

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

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

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

**Bill No. 300-36 (LS)**

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

Introduced by:

Sabina Flores Perez

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1 emphasizes that small purchases of goods and services must have competitive  
2 features [see, § 3111(c) through (f)]. But if “the supply, service, or construction item  
3 is available from only one business, the sole source procurement method set forth in  
4 § 3112 (Sole Source Procurement) of these regulations shall be used even if the  
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6 *I Liheslatura* further finds that the fundamental purposes and policies  
7 underlying the Procurement Act, as expressed in 5 GCA § 5001(b), include  
8 underlying principles which “(3) provide for increased public confidence in the  
9 procedures followed in public procurement; (4) ensure the fair and equitable  
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25 RFQ; how were the chosen recipients selected; and which recipients of an RFQ  
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2 accountability under the formal sole source method of procurement.

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14 GCA § 5213). By bringing both small purchase procedures under the umbrella of 5  
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17 transparency and accounting attention given to BPAs and apply those standards to  
18 RFQs.

19 **Section 2.** § 5213 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code  
20 Annotated, is hereby *repealed* and *reenacted* to read:

21 **~~“§ 5213. Small Purchases.~~**

22 ~~Any procurement not exceeding Twenty-five Thousand Dollars~~  
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3 the Department of Public Works, the head of an agency, or designee at or above the  
4 level of Procurement Officer utilizing this Section for procurement, shall submit  
5 quarterly a report of all small purchases to the Speaker of *I Liheslaturan Guåhan*.”

6        **Section 3. Promulgation of Rules and Regulations for Small Purchases.**

7        The Procurement Policy Office, Pursuant to 5 GCA § 5130(a), shall promulgate rules  
8 and regulations for small purchases consistent with 5 GCA § 5213, no later than  
9 ninety (90) calendar days after the enactment of this Act.

10       **Section 3 4. Effective Date.** This Act shall be effective upon enactment.

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

## COMMITTEE MARKUP

### *I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN*

2022 (SECOND) Regular Session

#### **Bill No. 300-36 (LS)**

As amended by the Committee on Environment,  
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Introduced by:

Sabina Flores Perez

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~~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; provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section. The Chief Procurement Officer, the Director of the Department~~

1 ~~of Public Works, or the head of an agency utilizing this Section, shall submit a report~~  
2 ~~to the Speaker of I Liheslaturan Guåhan monthly as to procurement exceeding~~  
3 ~~Fifteen Thousand Dollars (\$15,000) for supplies and services, or exceeding Fifty~~  
4 ~~Thousand Dollars (\$50,000) for construction, pursuant to this Section.”~~

5 **“§ 5213. Small Purchases.**

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

21 (a) a record of those particular businesses that were contacted, and  
22 those who, contacted or not, submitted a “no quote,” or did not respond to the  
23 solicitation, as well as those that submitted positive written quotations;

24 (b) a statement documenting the solicitation efforts to obtain  
25 quotations from qualified sources other than those which responded, and,

26 (c) GSA’s list of all qualified vendors for the item(s) or service(s)  
27 being procured.

Deleted:

1 Small purchase requirements shall not be artificially divided so as to constitute  
2 a small purchase under this Section. The Chief Procurement Officer, the Director of  
3 the Department of Public Works, the head of an agency, or designee at or above the  
4 level of Procurement Officer utilizing this Section for procurement, shall submit  
5 quarterly a report of all small purchases to the Speaker of *I Liheslaturan Guåhan*.”

6 **Section 3. Promulgation of Rules and Regulations for Small Purchases.**

7 The Procurement Policy Office, Pursuant to 5 GCA § 5130(a), shall promulgate rules  
8 and regulations for small purchases consistent with 5 GCA § 5213, no later than  
9 ninety (90) calendar days after the enactment of this Act.

10 **Section 3.4. Effective Date.** This Act shall be effective upon enactment.

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

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Moved down [1]: Effective Date. This Act shall be effective upon enactment

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## OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, Labor,  
Procurement, and Statistics, Research, and Planning

*I Mina'trentai Sais Na Liheslaturan Guåhan* • 36<sup>th</sup> Guam Legislature

### COMMITTEE VOTE SHEET

**Bill No. 300-36 (LS), As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning – AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES.**

COMMITTEE MEMBERS	SIGNATURE AND DATE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
<b>SENATOR SABINA FLORES PEREZ</b> Chairperson	<i>SFP</i> 5/13/2022	✓				
<b>SENATOR THERESE M. TERLAJE</b> Vice Chairperson	E-Vote 5/13/2022	✓				
<b>VICE SPEAKER TINA ROSE MUÑA BARNES</b> Member	E-Vote 5/13/2022	✓				
<b>SENATOR TELENA CRUZ NELSON</b> Member						
<b>SENATOR JOE S. SAN AGUSTIN</b> Member						
<b>SENATOR TELO T. TAITAGUE</b> Member	E-Vote 5/13/2022	✓				
<b>SENATOR JAMES C. MOYLAN</b> Member						

**Request for E-VOTE: ABill No. 300-36 (LS)**

4 messages

**Evan San Nicolas** <evan@senatorperez.org>

Fri, May 13, 2022 at 4:07 PM

To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>, Vice Speaker Tina Rose Muña Barnes <senatormunabarnes@guamlegislature.org>, Office of Vice Speaker Telena Cruz Nelson <senatortcnelson@guamlegislature.org>, "Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Telo Taitague <senatortelot@gmail.com>, Office of Senator Moylan Guam Legislature <officeofsenatormoylan@guamlegislature.org>  
Cc: Sabina Perez <sabina@senatorperez.org>

*Håfa Adai* Committee Members,

Please see attached Committee Report for **ABill No. 300-36 (LS), As amended** by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning – Sabina Flores Perez – "AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES."

Please indicate your preferred action, based on the following options:

- To Do Pass;
- To Not Pass;
- To Report Out Only;
- To Abstain; or
- To Place in Inactive File.

Please submit your response as soon as possible. Your responses will be logged into the Committee Report Vote Sheet for ABill No. 300-36 (LS), as amended by the Committee, which will be filed with the Committee on Rules.

--  
*Saina Ma'åse',*

**Evan C. San Nicolas****Committee Director**

Office of Senator Sabina Flores Perez

36th Guam Legislature • *I Mina'Trentai Seis na Liheslaturan Guåhan*Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics,  
Research, and Planning

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Location: 194 Hernan Cortes Ave. Terlaje Professional Bldg. Suite 101 1st Floor Hagåtña, Guam  
96910Email: [evan@senatorperez.org](mailto:evan@senatorperez.org)Website: [www.senatorperez.org](http://www.senatorperez.org)

Facebook: Senator Sabina Flores Perez

 **Committee Report - Bill No. 300-36 (LS) -2.pdf**  
5745K**Vice Speaker Tina Rose Muña Barnes** <senatormunabarnes@guamlegislature.org>

Fri, May 13, 2022 at 4:14 PM

To: Evan San Nicolas &lt;evan@senatorperez.org&gt;

Cc: Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;, Office of Vice Speaker Telena Cruz Nelson &lt;senatortcnelson@guamlegislature.org&gt;, "Joe S. San Agustin" &lt;senatorjoessanagustin@gmail.com&gt;, Senator Telo Taitague

<senatortelot@gmail.com>, Office of Senator Moylan Guam Legislature <officeofsenatormoylan@guamlegislature.org>, Sabina Perez <sabina@senatorperez.org>

To do pass.



*Sinseru yan Minagâhet,*

**Office of the Vice Speaker • Tina Rose Muña Barnes**

Committee on Rules

Committee on Public Accountability, Human Resource, Guam Buildup, Hagåtña Revitalization, Regional Affairs, Public Library, Telecommunications, and Technology

36th Guam Legislature

I Mina'trentai Sais na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagåtña, GU 96910

senatormunabarnes@guamlegislature.org

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Gumai pribilehu yan konfedensia este siha na mensâhi. Solo espesiâtmente para hâgu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespâtcha. Yanggen lachi rinisibu-mu nu este na mensâhi, put fabot ago' guatu gi I numa'huyong gi as senatormunabarnes@guamlegislature.org yan despues destrosa todû siha I kopian mensâhi. Si Yu'os ma'âse'.

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**Speaker Therese M. Terlaje** <senatorterlajegum@gmail.com>

Fri, May 13, 2022 at 4:28 PM

To: Vice Speaker Tina Rose Muña Barnes <senatormunabarnes@guamlegislature.org>

Cc: Evan San Nicolas <evan@senatorperez.org>, Office of Vice Speaker Telen Cruz Nelson

<senatortcnelson@guamlegislature.org>, "Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Telo Taitague

<senatortelot@gmail.com>, Office of Senator Moylan Guam Legislature <officeofsenatormoylan@guamlegislature.org>,

Sabina Perez <sabina@senatorperez.org>

To do pass.

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**Senator Telo Taitague** <senatortelot@gmail.com>

Fri, May 13, 2022 at 4:51 PM

To: Evan San Nicolas <evan@senatorperez.org>

To do pass.

***Si Yu'os Ma'âse,***

***Create a Great Day!***

*Senator Telo T. Taitague*

36th Guam Legislature

Suite 309 DNA Building

238 Archbishop Flores St.

Hagatna, Guam 96910

Tel: (671) 989-8356

Email: senatortelot@gmail.com

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