

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
182-36 (LS) As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning; and substituted on the Floor.	Sabina Flores Perez Joanne Brown James C. Moylan Joe S. San Agustin Telo T. Taitague	AN ACT TO AMEND § 5214 OF ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO IMPROVING SOLE SOURCE PROCUREMENT.	8/24/21 2:00 p.m.	9/3/21	Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	9/16/21 9:00 a.m.	10/19/21 10:38 a.m. As amended by the Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning.	Request: 9/7/21 Waiver: 9/14/21	
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
	12/6/21	AN ACT TO AMEND § 5214 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO IMPROVING SOLE SOURCE PROCUREMENT AND REQUIRING THE PROMULGATION OF RULES AND REGULATIONS FOR THE SAME.	12/15/21	12/15/21	12/27/21	36-70	12/27/21	Received: 12/28/21 Mess and Comm. Doc. No. 36GL-21-1459	

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HĀGAN GUĀHAN
OFFICE OF THE GOVERNOR OF GUAM

December 27, 2021

HONORABLE THERESE M. TERLAJE

Speaker

I Mina'trentai Sais Na Liheslaturan Guåhan

36th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

Re: SUBSTITUTE BILL NO. 182-36 (LS) – An Act to *Amend* § 5214 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code Annotated, Relative to Improving Sole Source Procurement and Requiring the Promulgation of Rules and Regulations for the Same

Dear Madame Speaker,

Substitute Bill No. 182-36, now known as *Public Law No. 36-70*, is the latest effort to update Guam law to reflect current best practices in government procurement. This law specifically addresses longstanding gaps in sole source procurement practices, which notably includes requiring a written determination that the contract price involved in the procurement is fair and reasonable, based on relevant cost and price information for the supply or service. The amendments to the sole source processes reflected in this law bolster transparency, accountability, and ultimately public confidence in our procurement processes as a whole. It will enable our affected agencies to implement stronger practices and make sound decisions based on available pricing data, which will in turn lead to the procurement of better services and supplies for our agencies and the people we serve, and instill a greater degree of trust and confidence in our government.

Senseremente,

A handwritten signature in black ink, appearing to read "Lourdes A. Leon Guerrero".

LOURDES A. LEON GUERRERO

Maga'hågan Guåhan

Governor of Guam

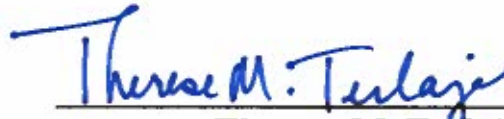
Enclosure: Substitute Bill No. 182-36 (LS) *nka* P.L. No. 36-70

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

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

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

This is to certify that **Substitute Bill No. 182-36 (LS), "AN ACT TO AMEND § 5214 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO IMPROVING SOLE SOURCE PROCUREMENT AND REQUIRING THE PROMULGATION OF RULES AND REGULATIONS FOR THE SAME,"** was on the 15th day of December 2021, duly and regularly passed.



Therese M. Terlaje
Speaker

Attested:



Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 15th day of December
2021, at 6:50 o'clock P.M.



Assistant Staff Officer
Maga'hågan's Office

APPROVED:



Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 12/27/2021

Public Law No. 36-70

2021-15264
RCUD AT CENTRAL FILE
DEC 16 '21 AM 9:29

Elaine Tajalle

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

Bill No. 182-36 (LS)

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

Introduced by:

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

**AN ACT TO AMEND § 5214 OF SUBARTICLE B,
ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE
ANNOTATED, RELATIVE TO IMPROVING SOLE
SOURCE PROCUREMENT AND REQUIRING THE
PROMULGATION OF RULES AND REGULATIONS
FOR THE SAME.**

- 1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**
- 2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
- 3 that sole source procurement creates a greater temptation to use the sole business

1 contracted by the Government of Guam and increases vulnerability and risk of
2 interruption of supplies or services.

3 *I Liheslaturan Guåhan* also finds that the method of sole source selection may
4 not be understood and often misused. If competition is at all reasonably possible, or
5 where there is reasonable doubt that only a sole source exists, a competitive method
6 of source selection must be used.

7 Therefore, *I Liheslaturan Guåhan* intends to improve the sole source selection
8 method by limiting the term of the contract and requiring market research and
9 justification for using said method. If a similar supply or service is available, the
10 specifications justifying a sole source contract must be scrutinized, and where there
11 is reasonable doubt that the minimum needs of the Government were not specified,
12 the sole source contract shall be terminated and a competitive method of source
13 selection shall be used.

14 **Section 2.** § 5214 of Subarticle B, Article 3, Chapter 5, Title 5, Guam Code
15 Annotated, is hereby *amended* to read as follows:

16 **“§ 5214. Sole Source Procurement.**

17 (a) A contract may be awarded for a supply, service, or construction
18 item without competition when, prior to commencing negotiations:

19 (1) the Chief Procurement Officer, the Director of Public
20 Works, the head of a purchasing agency, or a designee of either officer
21 above the level of the Procurement Officer, determines in writing that
22 there is only one (1) source for the required supply, service, or
23 construction item; and

24 (2) the Chief Procurement Officer, the Director of Public
25 Works, the head of a purchasing agency, or a designee of either officer
26 above the level of the Procurement Officer, prepares a package to
27 market and present to prospective vendors or service providers, which

1 shall be based on the determination of need and market research, and
2 contain a purchase description, evaluation factors, delivery or
3 performance schedule, inspection and acceptance requirements, the
4 contract terms and conditions, and any warranty, bond, or other security
5 requirement of the sole source contract.

6 (b) A sole source contract shall not exceed a term greater than one
7 (1) year, with four (4) successive annual options to renew. Any option to
8 renew a contract under this Section shall not exceed a term greater than one
9 (1) year. An option to renew may be exercised only by the government when,
10 at the time to be exercised, the Chief Procurement Officer, the Director of
11 Public Works, the head of a purchasing agency, or a designee of either officer
12 above the level of the Procurement Officer, determines in writing that there is
13 only one (1) source for the required supply, service, or construction item.

14 (c) Prior to and as a condition of making any determination in
15 writing required under Subsections (a)(1) or (b) of this Section, the purchasing
16 agency shall prepare a written report for the person making such
17 determination, which shall include a detailed analysis of the minimum needs
18 of the government upon which the contract is based, findings from thorough
19 market research, and a conclusion that will certify accurate and complete
20 necessary data to support their recommendation that there is no other source
21 that will satisfy the minimum needs of the government. The report must be
22 signed by the person or persons conducting the market research and analysis,
23 and shall be made part of the procurement record.

24 (d) A sole source contract shall not be awarded or executed unless
25 and until the Chief Procurement Officer, the Director of Public Works, the
26 head of a purchasing agency, or a designee of either officer above the level of
27 the Procurement Officer, has determined in writing that the contract price is

1 fair and reasonable and consistent with applicable regulations. Such
2 determination shall include relevant cost and price information from the sole
3 source and comparable or substitute supplies, services, or construction items.

4 (e) The purchasing agency shall publish a notice in a newspaper of
5 general circulation on Guam, and on its website, within fourteen (14) calendar
6 days of awarding any contract under this Section, in excess of Fifty Thousand
7 Dollars (\$50,000). The notice shall include the names of the purchasing
8 agency and awardee(s), the contract award amount, term, and the nature of the
9 contract.”

10 **Section 3. Promulgation of Rules and Regulations for Sole Source**
11 **Procurement.** The Procurement Policy Office, pursuant to 5 GCA § 5130(a), shall
12 promulgate rules and regulations for sole source procurement consistent with 5 GCA
13 § 5214, no later than ninety (90) calendar days after enactment of this Act.

14 **Section 4. Effective Date.** This Act shall be effective ninety (90) calendar
15 days after enactment.

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