

I Mina'trentai Siette 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
45-37 (COR)	Sabina Flores Perez	AN ACT TO AMEND § 5230 OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING THE PROCESS FOR THE DETERMINATION OF RESPONSIBILITY OF BIDDERS AND OFFERORS IN PROCUREMENT.	2/14/23 12:54 p.m.						

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 45-37 (COR)

Introduced by:

Sabina Flores Perez *SFP*

**AN ACT TO *AMEND* § 5230 OF CHAPTER 5, TITLE 5,
GUAM CODE ANNOTATED, RELATIVE TO
CLARIFYING THE PROCESS FOR THE
DETERMINATION OF RESPONSIBILITY OF BIDDERS
AND OFFERORS IN PROCUREMENT.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.**

3 *I Liheslaturan Guåhan* finds determination of responsibility of the prospective
4 contractor is necessary to meeting the needs of the government for goods, services,
5 and construction in a timely fashion. Responsibility involves the question of
6 determining the capability and integrity of the contractor in performing as it has
7 promised.

8 *I Liheslatura* further finds that factors to be considered whether the standards
9 for responsibility has been met include whether a prospective contractor has
10 available the appropriate financial, material, equipment, facility and personnel
11 resources and expertise, or the ability to obtain them; a satisfactory record of
12 performance; a satisfactory record of integrity; has supplied all necessary
13 information with the inquiry concerning responsibility; and is qualified legally to
14 contract with the territory (2 GAR § 3116(b)(2)).

15 *I Liheslatura* also finds that lack of clarification if specialty licenses are
16 necessary to meet one of the requirements for demonstrating responsibility. This lack

1 of clarification has resulted in protests that are costly and that delay the procurement
2 of much needed supplies, services, or construction that serve our community and
3 island.

4 *I Liheslaturan Guåhan* intends to update current statutes by clarifying
5 standards and processes in making a determination of responsibility by providing
6 for specialty requirements with the assistance with experts, as is necessary for
7 successful completion of a contract and that applies to all bidders and offerors,

8 **Section 2.** § 5230 of Chapter 5, Title 5, Guam Code Annotated, is hereby
9 amended to read as follows:

10 **“§ 5230. Responsibility of Bidders and Offerors.**

11 (a) Determination of Nonresponsibility. A written determination of
12 nonresponsibility of a bidder or offeror shall be made and served on a bidder
13 or offeror prior to award, and shall be determined in accordance with
14 regulations promulgated by the Policy Office. A finding of nonresponsibility
15 in any particular instance does not require a finding of nonresponsibility in
16 any dissimilar solicitation. The unreasonable failure of a bidder or offeror to
17 promptly supply information in connection with an inquiry with respect to
18 responsibility may be grounds for a determination of nonresponsibility with
19 respect to such bidder or offeror.

20 (b) Special Standards of Responsibility. When necessary, the Chief
21 Procurement Officer, Director of Public Works, head of the purchasing
22 agency, or designated procurement officer, referred as “procurement
23 authority” for the purposes of this Section, shall consult with the Guam
24 Contractor’s Licensing Board to determine if specific licenses or certification,
25 or specialized facilities are needed for adequate contract performance, referred
26 as “special standards of responsibility”. The special standards of responsibility
27 shall be set forth in the solicitation and shall apply to all bidders or offerors.

28 (bc) Right of Nondisclosure. Trade secrets or confidential proprietary

1 Information furnished and identified as such by a bidder or offeror regarding
2 responsibility pursuant to this Section, and confirmed as such by the
3 “procurement authority” is not public information as defined by Chapter 8, 5
4 GCA and shall not be disclosed outside of the General Services Agency, the
5 Department of Public Works or the purchasing agency without prior written
6 consent by the bidder or offeror, but may be disclosed to the Attorney General
7 at any time.”

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

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