

CHAPTER 1 GENERAL PROVISIONS

NOTE: Guam Procurement Regulations authorized by 5 Guam Code Annotated Chapter 5 (Guam Procurement Act)

- §1101. Purpose.
- §1102. Policy.
- §1103. Advance Payments Prohibited.
- §1104. Local Procurement Preference.
- §1105. Requirement of Good Faith.
- §1106. Definitions.

§1101. Purpose. The purpose of the Guam Procurement Regulations, hereinafter referred to as the Regulations, is to provide standard policies and procedures governing the procurement, management, control, and disposal of supplies, services, and construction for the territory in conformity with 5 GCA Chapter 5, hereinafter referred to as the Guam Procurement Act.

§1102. Policy. It is the policy of this territory to promote economy, efficiency, and effectiveness in the procurement of supplies, services and construction by:

- (1) continuously developing sound procurement policies and practices;
- (2) providing for increased public confidence in the procedure followed in public purchasing;
- (3) exercising fair and equitable treatment of all persons who deal with the procurement system of this territory;
- (4) providing for increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;
- (5) fostering effective broad-based competition within the free enterprise system;
- (6) providing safeguards for the maintenance of a procurement system of quality and integrity.
- (7) providing for public access to all aspects of procurement consistent with the *sealed bid* procedure and the integrity of the procurement process.

SOURCE: Item (7) was added by the GSA to comply with 5 GCA §5001(b)(8). (1/1/1999)

§1102.01 Sheltered or Disabled Persons The Chief Procurement Officer, the Director of Public Works or the head of the Purchasing Agency shall, to the extent practicable, purchase supplies and services offered by non-profit corporation employing sheltered or disabled workers, or by a government of Guam entity employing sheltered or disabled workers if the supply or service is available within the period required by the requesting agency or department. Purchases shall be made based on the prices offered by such entities.

SOURCE: Added to comply with 5 GCA 5001(d). (1/1/1999)

§1102.02 Biodegradable, Reusable, Recyclable or Recycled Material or Any Combination. The Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency shall, whenever possible, procure products that are biodegradable, reusable, recyclable, or made of recycled material, or any of these in any combination. The cost (prior to any adjustments for local vendors) of appropriate biodegradable, reusable, recyclable, or recycled products may be as much as ten percent (10%) greater than the cost of the non-biodegradable, non-reusable, non-recyclable, or non-recycled products they are replacing.

The Chief Procurement Officer, the Director of Public Works or the head of a Purchasing Agency shall determine the authenticity of any statement that a product is recyclable or biodegradable. If the bidder qualifies for the ten percent (10%) preference under this section, then the bidder must be given this preference. The ten percent adjusted cost authorized under this section may be combined with the fifteen percent adjusted cost for local vendors as authorized under Section 1104 of this regulation with a possible combined adjustment of twenty-five percent (25%) of the bid submission price.

SOURCE: Added to comply with P.L. 21-22. (1/1/1999)

§1102.03 Planned Procurement. All procurement of supplies and services shall, where possible, be made sufficiently in advance of need for delivery or performance to promote maximum competition and good management of resources. Publication of bids and requests for proposals shall not be manipulated so as to place potential-bidders at an unnecessary competitive disadvantage. Except in emergency situations, lower bids are generally preferred to shorter

delivery or performance bids. Delivery time may be considered as a factor in making an award to a responsible bidder only if his average delivery time as contained in the bid is delivery, or if performance does not exceed one hundred five percent (105%) of the lower priced bidder.

SOURCE: Added to comply with 5 GCA §5010. (1/1/1999)

§1103. Advance Payments Prohibited. No procurement shall be made which shall require advance payment unless authorized by law.

§1104. Local Procurement Preference. All procurement of supplies, and procurement of services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

(a) a licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, using workers who are U.S. citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands; or

(b) a business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the supply items to be procured; or

(c) a business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars (\$150,000) whichever is less, of supplies and items of a similar nature to those being sought; or

(d) a service business actually in business doing a substantial portion of its business on Guam, and hiring at least ninety-five percent (95%) U.S. citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off-Guam may be made if no business for such supplies or services may

be found on Guam or if the total cost of F.O.B. job site, unloaded, or procurement from off-Guam is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference.

SOURCE: Modified to comply with 5 GCA §5008. (1/1/1999)

§1105. Requirement of Good Faith. These Regulations require all parties involved in the negotiation, performance, or administration of territorial contracts to act in good faith.

§1106. Definitions. Terms used in these Regulations have the following meaning ascribed to them unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular chapter in the Regulations.

1. *Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

2. *Change Order* means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

3. *Chief Procurement Officer* means the person holding the position created in §5114 of the Guam Procurement Act, as the head of the central procurement office of Guam.

4. *Contract* means all types of territorial agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

5. *Contract Modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

6. *Contractor* means any person having a contract with a governmental body.

7. *Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public

improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

8. *Data* means recorded information, regardless of form or characteristic.

9. *Designee* means a duly authorized representative of a person holding a superior position.

10. *Employee* means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.

11. *Governmental Body* means any department, commission, council, board, bureau, committee, institution, agency, government corporation, authority or other establishment or official of the Executive Branch of the Government of Guam, except for Guam Community College, the University of Guam, the Department of Education, and the Guam Memorial Hospital Authority.

12. *Grant* means the furnishing by the territory or federal government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant but a procurement contract.

13. *May* denotes the permissive.

14. *Person* means any business, individual, union, committee, club, other organization or group of individuals.

15. *Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

16. *Procurement Officer* means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The

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term also includes an authorized representative acting within the limits of authority.

17. *Purchasing Agency* means any governmental body other than the Chief Procurement Officer or the Director of Public Works which is authorized by the Guam Procurement Act or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts.

18. *Regulation* shall have the meaning given in the Administrative Adjudication Law.

19. *Services* means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include any form of employment relationship with the government or collective bargaining agreements. Services also includes printing and processing for printing finished products, such as books, reports, and other items which are, when delivered, in finished form and are not to be further processed by the using agency.

20. *Shall* denotes the imperative.

21. *Supplies* means all property, including but not limited to equipment, materials, printing of forms, stationery and the like which are designed for further use or processing by the using agency, insurance and leases of real property, excluding land and a permanent interest in land.

22. *Using Agency* means any governmental body of the territory which utilizes any supplies, services or construction procured under the Guam Procurement Act.

23. *Cost-Reimbursement Contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the Guam Procurement Act, and a fee, if any.

24. *Established Catalogue Price* means the price included in a catalogue, price list, schedule or other form that:

(a) is regularly maintained by a manufacturer or contractor;

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(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

25. *Invitation for Bids* means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

26. *Purchase Description* means the words used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

27. *Responsible Bidder or Offeror* means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

28. *Responsive Bidder* means a person who has submitted a bid which conforms in all material respects to the Invitation to Bids.

29. *Specification* means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

30. *Architect-Engineer and Land Surveying Services* are those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of Guam.

31. *Excess Supplies* means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

32. *Expendable Supplies* means all tangible supplies other than nonexpendable supplies.

33. *Nonexpendable Supplies* means all tangible supplies having an original acquisition cost of over One Hundred Dollars (\$100) per unit and a probable useful life of more than one (1) year.

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34. *Supplies* means supplies owned by the territory. (See also §1106.21 of these Regulations).

35. *Surplus Supplies* means any supplies other than expendable supplies no longer having any use to the territory.

36. *Blind Trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

37. *Confidential Information* means any information which is available to an employee only because of the employee's status as an employee of this territory and is not a matter of public knowledge or available to the public on request.

38. *Conspicuously* means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.

39. *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

40. *Financial Interest* means:

(a) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than Two Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent;

(b) ownership or such interest in any property or any business as may be specified by the Ethics Commission; or

(c) a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

41. *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless

consideration of substantially equal or greater value is received.

42. *Immediate Family* means a spouse, children, parents, brothers and sisters.

43. *Official Responsibility* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct territorial action.

44. *Purchase Request* means that document whereby a using agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Guam Procurement Act.

45. *Sell* as used means signing a bid, proposal, or contract; negotiating a contract, contracting any employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract, therefore, is subsequently negotiated by another person.

46. *Entity* means any department, agency, board commission, instrumentality, public corporation, or branch of the Government of Guam and any corporation or persons expending funds appropriated from the Government of Guam.

47. *Emergency* means a condition posing an imminent threat to public health, welfare, or safety which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection.

SOURCE: Subsections (46) and (47) added to comply with 5 GCA 5030(w) and (x). (1/1/1999)