

CHAPTER 5
PROCUREMENT OF CONSTRUCTION ARCHITECT-ENGINEER
AND LAND SURVEYING SERVICES

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§5101. Reserved.

§5102. Responsibility for Selection of Methods of Construction Contracting Management. (1) Application of Regulation and General Policy.

(a) **Application.** This Section contains provisions applicable to the selection of the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.

(b) **Flexibility.** It is intended that the Director of Public Works or the head of the Purchasing Agency, acting through the Procurement Officer, have sufficient flexibility in formulating the project delivery approach in a particular project to fulfill the territory's needs. In each instance, consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving those purposes set forth in this Section are not to be construed as an exclusive list.

(c) **Selecting the method of Construction Contracting.** In selecting the construction contracting method, the Director of Public Works or the head of the Purchasing Agency should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill territorial requirements.

(d) **Use of Regulation.** This Regulation is intended to guide territory personnel in selecting the appropriate contracting method. It is not intended to create any third party rights.

(2) **Lease, Buy, or Building.** Before initiating a construction project, consideration shall be given to leasing or buying existing building space as well as to constructing new space. As appropriate the Director of Public Works and the head of the Using Agency should participate in deciding whether to lease, buy, or build. Factors to consider when choosing between these three alternatives include, but are not limited to:

- (a) whether the territory's requirements will be continuing or temporary;
- (b) the need for territorial control over the building;
- (c) the adequacy of available space to fit territorial needs;
- (d) to the extent they are reasonably known or ascertainable, the life-cycle costs associated with leasing, buying, or building;
- (e) which method can most timely meet and continue to meet territorial requirements;
- (f) the need to physically separate and distinguish territory facilities from private facilities;
- (g) the dislocation of existing tenants, both commercial and residential, that may result; and
- (h) environmental affects.

(3) **General Description.**

(a) **Use of Descriptions.** The following descriptions are to provide a common vocabulary for use in the context of this regulation and for general discussion concerning the construction contracting activities of this territory. The methods described are not all mutually exclusive and often may be combined on one project. These descriptions are not intended to be fixed in respect to all construction projects of the territory. In each project these descriptions may be adapted to fit the circumstances of that project. However, the Procurement Officer should endeavor to ensure that these terms are described adequately in appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the descriptions provided in these Regulations should be explicitly noted.

(b) **Single Prime Contractor.** The single prime contractor method of contracting is typified by one business (general contractor) contracting with the territory to timely complete an entire construction project in accordance with plans and specifications

provided by the territory. Often these plans and specifications are prepared by a private architectural firm under contract to the territory. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) **Multiple Prime Contractors.** Under the multiple prime contractor method, the territory or the territory's agent contracts directly with a number of specialty contractors to complete portions of the project in accordance with territory plans and specifications. The territory or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.

(d) **Design Build or Turnkey.** In a design-build or turnkey project, a business contracts directly with the territory to meet the territory's requirements as described in a set of performance specifications by constructing a facility to its own plans and specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) **Construction Manager.** A construction manager is a person experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and ability to coordinate the design and construction of the project, including the administration of change orders. The territory contracts with a qualified construction manager to act for the territory in the construction project as specified in the construction management contract. At times, the construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. At such times, the construction manager will become responsible, just as any single prime contractor, to complete the project at or below the specified price.

(f) **Sequential Design and Construction.** Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.

(g) **Phased Design and Construction.** Phased

design and construction denotes a method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as "fast-track construction".

(4) Criteria for Selecting Construction contracting Methods.

(a) **Territory Requirements.** Before choosing the construction contracting method to use, a careful assessment must be made by the Director of Public Works or the head of an Agency, of requirements the project must satisfy and those other characteristics that would be desirable. In addition to those set forth in Subsections 5102(4)(b) and 5102(4)(c) of this Section, some of the factors to consider are:

- (1) when the project must be ready to be occupied;
- (2) the type of project - for example, housing, offices, or heavy or specialized construction such as highway or water treatment;
- (3) the extent to which the territory's requirements and the ways in which they are to be met are known;
- (4) the location of the project and whether a contractor's site may be used; and
- (5) the size, scope, complexity, and economics of the project.

(b) Territory Resources.

(1) The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including:

- (i) whether the budget is fixed or flexible;
- (ii) what the source of funding is, for example, general or special appropriation, federal assistance monies, public improvement bonds, or general obligation bonds.

(2) Proper selection of a contracting method depends upon a realistic appraisal of the availability, qualifications, and experienced territorial personnel can bring to the project and, of equal importance, how much time such personnel can devote to the project.

(3) When examining resources for a proposed construction project, the availability of outside consultants may be considered. Such consultants

may be able to handle tasks and supply valuable expertise otherwise unavailable to the territory.

(c) **Prospective Contractors.** Choice of the proper construction contracting method entails not only the internal examination described in Subsection 5102(4)(a) and 5102(4)(b) of this Section, but must take into account the characteristics, experience, and availability of the contractors who can work on the project. The design firms the territory may contract with to prepare the plans and specifications must be evaluated as a group to determine whether they can efficiently divide the work into specialty packages if multiple prime contractor are to be used, or design the project in phases appropriate to use of phased design and construction. Prospective construction contractors must also be appraised as a group to determine whether they have the capability and willingness to bid on the construction project as designed and as required by the contracting method chosen. Similarly, if the contracting method involves use of consultants, an evaluation of the availability of qualified consultants should also be made. If the design-build method or some variation of it is considered, availability of firms capable of both designing and constructing the facility must be ascertained. In respect to all of the potential contractors, it is important to consider the amount of competition current in the market for the particular type of territory contract and whether a price can be obtained that is fair and reasonable when considered together with the benefit to the territory potentially obtainable from such a contract.

(d) **Chief Engineer's Determination.** The Chief Engineer shall make a written determination that must be approved by the Director of Public Works or the head of an agency. The determination shall describe the construction contracting method chosen and set forth the facts and conclusions which led to the selection of that method. This determination need only support the contracting method selected. It shall, however, demonstrate that the territory's requirements, its resources, and the various groups of potential contractors were all considered in making the selection.

(5) **Single Prime Contractor.**

(a) **Use with Sequential Design and Construction.** When sequential design and construction is used with a single prime contractor, comprehensive plans and

specifications that are precise enough to allow prospective prime (general) contractors to submit a competitive sealed bid should be prepared. The contractor awarded the contract takes responsibility for the coordination of the specialty subcontractors and timely completion of the project at the price specified in the contract. The architect-engineer, the territory project manager, and if used, the construction manager shall monitor the progress of the project and otherwise represent the territory's interest all as set forth in the pertinent contracts.

(b) **Advantages.** The primary advantage of the single prime contractor method is that the territory can look to one prime contractor who has principal responsibility for completing the project. The single prime contractor method may also give the territory contractual insulation from many subcontractor claims. Also, when sequential design and construction is used, the territory is given a fixed price for completion of the entire project before the construction has begun.

(c) **Disadvantages.** The single prime contractor method removes specialty contractors from direct territory control. This method is likely to entail including in the cost of the total project the prime contractor's potential markup on each specialty contract. On the other hand, the prime contractor's services in managing these contractors may well offset any possible markup by eliminating the need for a construction manager.

(d) **Use with Phased Design and Construction.** A single prime contractor may also be used with phased design and construction through the letting by the territory of the early construction phases to specialty contractors, and the letting of a portion of the project to a prime contractor when the plans and specifications are sufficiently complete to allow bids to be made. If found advantageous after letting the prime contract, the territory may transfer or assign to the contractor the administration of the specialty contracts it let earlier, as provided in the contract.

(e) **Advantages and Disadvantages of Use with Phased Design and Construction.** Using a single prime contractor with phased design and construction has the advantages of having a single prime contractor responsible for the entire job and also allowing construction to begin before all of the design is completed. The disadvantages are that the territory or its

construction manager must supervise and coordinate the work of the early specialty contractors, and the prime contractor will not be able to choose those early specialty contractors and may have to work with someone the prime contractor would not have chosen. As a consequence, the territory may be exposed to more claims based upon assertions of mismanagement, and the prime contractor bids may be proportionately higher than they would have been otherwise.

(f) **Contractual Provisions.** The rights, duties, and responsibilities of the territory representatives, the architect-engineer, the general prime contractor, and, if applicable, the construction manager and any specialty contractors who contract with the territory must be carefully detailed. If phased design and construction is used, administration of on-going specialty contracts let before the prime contract will have to be transferred or assigned to the prime contractor. The terms of this assignment or transfer (including the duties of the territory to ensure that the specialty contractors are at a certain point of completion at the time of assignment), what liability to the specialty contractors remains with the territory after assignment, if any, and what duties and responsibilities the general prime contractor has with respect to the assigned specialty contractors must all be set forth in the specialty contracts and the contract with the prime contractor.

(6) Multiple Prime Contractors.

(a) **Use.** Multiple prime contractors may be used with sequential design and construction by splitting the plans and specifications into packages pertinent to recognized trade specialties. The territory may undertake to manage and coordinate their work or contract with a construction manager to do so. The contracts may provide that responsibility for successful completion of the entire project rests with the territory, the territory's agent, or one of the multiple prime contractors. The contracts shall specify where this responsibility shall rest. Multiple prime contractors may be used effectively with phased design and construction only if the architect-engineer's work is closely coordinated with the specialty contractors' work. The specialty contractors may either contract directly with the territory or with its construction manager.

(b) **Advantages.** The multiple prime contractors method can lessen the prime contractor's markup, if any,

on the specialty contractors' contracts and gives the territory much greater control over the contractors doing the work. It permits the territory to be more involved in the selection of specialty contractors, allows the territory to prescribe how they will compete for the contract, and give the territory more flexibility in deciding when to enter the construction market and with what size contracts.

(c) **Disadvantages.** The multiple prime contractor method places all the risks of managing and coordinating the construction work with the territory. The territory or its representatives must actively and aggressively supervise the project to ensure timely and successful completion. A contract that merely requires specialty contractors to cooperate and to coordinate their work is insufficient. To undertake this responsibility successfully requires vesting clear authority in a territory representative to quickly make decisions essential to the continuation of the project.

(d) **Contractual Provisions.** Whenever multiple prime contractors are used, the contract between the territory and each prime contractor must clearly state the scope of each contractor's responsibility, when the portions of its work are to be completed, and provide a system of timely reports on progress of the contractor's work and problems encountered. The contract should also specify that each contractor is liable for damages caused other contractors and the territory whether because of delay or otherwise. Such clauses should not, however, attempt to relieve the territory of liability where it fails to properly coordinate and manage the project. Further, the duties and authority of the territory representative, the architect-engineer, and, if one is employed, the construction manager with respect to the specialty contractors should be clearly delineated in all the parties' contracts.

(7) Design Build or Turnkey.

(a) **Use.** The design-build or turnkey method gives the contractor maximum control of the construction project consistent with territory needs. The territory prepares a set of performance specifications including functional criteria, any life-cycle cost considerations, and other evaluation factors. The territory shall also specify the degree of detail necessary in a design proposal. The contractor is selected on the basis of its design proposal, proposed price, and other stated

evaluation criteria. It may be appropriate to use a multi-step process to lessen the number of firms submitting final design proposals to reduce administrative burden and to keep preparation costs down. In appropriate circumstances, it may be advantageous to provide in the solicitation for payment to all or any of the firms of proposal preparation costs or a stipulated stipend to ensure adequate continuing competition. After award, the contractor completes the design, subject to review by the territory or its architect-engineer as set forth in the contract, and constructs the project. The contractor chooses whether to phase the project. Upon completion, the territory either accepts or rejects the project depending on how well the contractor has met the specifications.

(b) **Advantages.** In the design-build method, a fixed price for the project is established early. Another advantage is that the contractor designs and builds the project with its own forces. Consequently, the duty and risk of proper management of project design and construction lies with the contractor. It also allows the contractor to design and perform in a manner best suited to its operations and experience. It may give the territory earlier definition of the project. This method is most appropriate when the territory will not need to be deeply involved in the project's design and construction.

(c) **Disadvantages.** Less control over the design and construction process is one of the disadvantages in design-build. The contract is awarded on the basis of a design proposal, not a complete set of plans and specifications. The territory's needs may not be met if the specifications are deficient, if the contractor's design proposals are not carefully evaluated, and if the design and construction process is not carefully monitored to ensure that both the specifications and the design proposals are being followed.

(d) **Contractual Provisions.** Careful preparation of the specifications evaluation criteria is crucial to successful use of the design-build method. The contract documents should also delineate clearly the territory's rights to inspect plans and specifications and the construction work in progress. They should also indicate precisely what constitutes completion of the project by the contractor.

(8) Construction Manager.

(a) **Use in Planning and Design Phases.** A

construction manager may bring valuable practical construction perspective to the territory in both the planning and design phases of the project. For purposes of this Section, the planning phase encompasses the activities involved in determining territory requirements, selecting the construction contracting management method, selecting an architect-engineer, and establishing progress schedules. During design, the construction manager reviews plans and makes suggestions to cut construction costs that may relate to the practicality of construction, market conditions in the construction industry, and items which should be ordered early. A construction manager would also assist in phasing the design and construction process.

(b) **Use in Construction Phase.** Once construction commences the construction manager's role may be limited to monitoring construction progress, and inspecting and otherwise representing the territory's interest if sequential design and construction with a single prime contractor is used. If the project is constructed by the phased design construction method or the multiple prime contractors method, the construction manager will be responsible for the supervision and management of their work and may let contracts to the specialty contractors pursuant to the management contract with the territory. In a project using phased design, the construction manager may also give the territory a guaranteed maximum price for completion of the project prior to completion of all the drawings and specifications. To the extent the construction manager is the territory's representative, the manager may assist in the final inspection and acceptance of the project by the territory.

(c) **Advantages.** The construction manager adds construction expertise to the territory's team. Several benefits of this are:

(1) the selection of the construction contract management technique, project design, and other crucial decisions in the early phases of the project can be made with a better understanding of their impact upon construction;

(2) the construction manager can manage the work of the various construction contractors as the territory's representative instead of using a single prime contractor whose interests may not coincide with those of the territory. In this way, the territory

may gain more control of the actual construction project.

(d) **Disadvantages.** The construction manager's fee is added cost to the construction project. On smaller construction projects of less than \$3 million, construction management may not be cost effective.

(e) **Contractual provisions.** It is imperative that the construction management contract clearly set forth the duties and authority of the construction manager in respect to all the participants in the project. The contract should also attempt to define the possible liability of the territory and the construction manager for failure to properly coordinate the specialty contractors' work.

(9) Sequential Design and Construction.

(a) **Use.** The initial step in using sequential design and construction is to gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. This team may include a construction manager who, in addition to reviewing the plans as they develop, may assist in separating them into packets if multiple prime contractors are to be used. Except for redesign necessitated by changes in territory requirements or problems encountered during construction, design is complete at the time construction has begun.

(b) **Advantages.** A project using sequential design and construction proceeds in clearly defined steps which may aid in financing and gaining any necessary approvals as well as aiding in managing the entire project. Complex or unique projects can be completely thought through and planned before construction has begun. Also, before any construction has begun, a fixed price for the project can be established.

(c) **Disadvantages.** Sequential design and construction requires a longer time to complete the project than phased design and construction. The complete package of drawings and specifications also freezes design decisions months or years before occupancy which will reduce flexibility.

(10) Phased Design and Construction.

(a) **Use.** Phased design and construction may be used when the architect-engineer, working with the construction manager, if one is used, can settle on the major design decisions and then do the detail design work in the sequence necessary to construct the project.

This design process then allows construction to begin before design is complete for the entire project (of course, design is complete on those portions being constructed). Construction should only be begun after the territory's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. (It may be possible to start site preparation prior to this stage). A construction manager is often necessary to assist in packaging the various specialty contracts and to manage the work under these contracts.

(b) **Advantages.** Phased design and construction can result in reduced project completion time. It can also allow reduction in the scope of the project if prices on early portions indicate the project may exceed the budget. In a sequential project such redesign might delay the entire project. It also gives the territory added flexibility in deciding when to let the various specialty contracts to take advantage of market conditions.

(c) **Disadvantages.** In phased design and construction, portions of the project are begun before later portions are completely designed. Major changes in these later portions may necessitate costly changes in the early portions and result in costly delays to many other specialty contractors. The territory bears the risks both for at least some coordination of specialty contractors and for ensuring that design of later portions does not adversely affect earlier ones. Neither of these risks need be assumed by the territory in sequential design and construction.

(d) **Contractual Provisions.** The contract must clearly establish the architect-engineer's duty to design to allow phasing, and the contracts with the specialty contractors must clearly delineate their scope of work and duties to other contractors and the territory. Further, the management's rights of the territory and its construction manager, if one is used, must be set forth.

§5103. Bid Security (Requirement). (1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Director of Public Works to exceed \$25,000. Bid security shall be a bond provided by a surety company authorized to do business in this territory, or the equivalent in cash, or otherwise supplied in a form satisfactory to the territory. Nothing herein prevents the requirement of such

bonds on construction contracts under \$25,000 when the circumstances warrant (5 GCA §5303 of the Guam Procurement Act).

(2) **Withdrawal of Bids.** After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids, except as provided in 5 GCA §5211(f) of the Guam Procurement Act, (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

(3) Bid Security (General)

(a) **General.** Invitation for Bids on territory construction contracts shall require the submission of bid security in an amount equal to at least 15% of the amount of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, in accordance with §3109(n)(2) (Bid Evaluation and Award, Responsibility and Responsiveness) of these Regulations except as provided by Subsection 5103(a)(3) of this Section.

(b) **Purpose.** Bid security protects the territory against the failure or refusal of the low bidder to supply the necessary performance and payment bonds, as required, and to proceed with performance under the contract.

(c) **Acceptable Bid Security.** Acceptable bid security shall be limited to:

(1) an annual or one-time bid bond in a form satisfactory to the territory underwritten by a company licensed to issue bid bonds in this territory; or

(2) a bank certified check or cash.

(d) **Nonsubstantial Failure to Comply.** If a bid does not comply with the security requirements of this Section, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director of Public Works, the head of a Purchasing Agency, or the designee of such officer to be nonsubstantial where:

(1) only one bid is received, and there is not sufficient time to rebid the contract;

(2) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher

acceptable bid; or

(3) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with §3109(m) (Mistakes in Bids) of these Regulations, if the bidder increases the amount of guarantee to required limits within forty-eight (48) hours after the bid opening.

§5104. Contract Performance and Payment Bonds. (1)
Performance Bonds.

(a) **General.** A performance bond satisfactory to the territory, executed by a surety company authorized to do business in this territory or otherwise secured in a manner satisfactory to the territory, is required for all contracts in excess of \$25,000 in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the territory at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with §3109(n)(2) (Bid Evaluation and Award, Responsibility and Responsiveness) of these Regulations.

(b) **Purpose.** A performance bond indemnifies the territory against loss resulting from the failure of the contractor to perform a construction contract in accordance with the plans and specifications.

(c) **Reduction of Amount Prior to Solicitation.** The Director of Public Works or the head of a Purchasing Agency may reduce the amount of the performance bond required prior to solicitation to not less than 50% of the contract price if, after completing appropriate analysis, it is determined in writing by the Director of Public Works or the head of a Purchasing Agency to be less costly or more advantageous to the territory to self-insure a part of the performance of the contractor. An analysis may be made for groups of contracts, for example, contracts in excess of \$10 million, or may be made on particular contracts, as the Director of Public Works or the head of a Purchasing Agency chooses. A copy of the analysis shall be available for public inspection.

(d) **Reduction of Amount During Performance.** If permitted by the contract and solicitation, the Director of Public Works or the head of a Purchasing Agency may reduce the amount of the performance bond as work is

completed if such officer determines in writing that such reduction is in the best interest of the territory.

(2) Payment Bonds.

(a) **General.** A payment bond satisfactory to the territory, executed by a surety company authorized to do business in this territory or otherwise secured in a manner satisfactory to the territory is required for all construction contracts in excess of \$25,000, in the amount of 100% of the contract price. The payment bond shall be delivered by the contractor to the territory at the same time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with §3109(n)(2) (Bid Evaluation and Award, Responsibility and Responsiveness) of these Regulations.

(b) **Purpose.** A payment bond guarantees payment and protection for those furnishing labor and materials to the contractor or its subcontractors for the work bonded.

(c) **Reduction of Amount Prior to Solicitation.** Prior to solicitation the Director of Public Works or the head of a Purchasing Agency may reduce the amount of the payment bond to not less than 50% of the contract price if a written determination is made that it is in the best interest of the territory to do so. Factors to be considered in order to make such a determination include, but are not limited to:

- (1) the value and number of subcontracts to be awarded by the contractor; and
- (2) the value of the contract.

(d) **Reduction of Amount During Performance.** During performance, the Director of Public Works or the head of a Purchasing Agency may reduce the required coverage of the payment bond as payments are made by the contractor.

§5105. Bond Forms and Copies.

(1) Forms.

(a) **Bid Bond.** The required bid bond shall be in substantially the following form:

BID BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal, hereinafter called the Principal, and Bonding Company, a corporation duly organized under the laws of the Territory of Guam, as Surety, hereinafter

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called the Surety, are held and firmly bound unto the Territory of Guam for the sum of _____ Dollars (\$_____), for payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Territory of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect. Signed and sealed this ____ day of _____, 19__.

(Principal) (Seal)

(Witness)

(Title)

(Witness)

(Surety) (Seal)

(Title)

BY: _____
(Attorney-in-Fact)

(b) Performance Bond. The required performance bond shall be in substantially the following form:

PERFORMANCE BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) as Principal, hereinafter called Contractor, and (Bonding Company), a corporation duly organized under the laws of the Territory of Guam as Surety, hereinafter called Surety, are held and firmly

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bound unto the Territory of Guam as Obligee, in the amount of (Full Amount) Dollars (\$_____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators; successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 19___, entered into a contract with the Territory of Guam for (describe project and insert project number) in accordance with drawings and specifications prepared by (here insert full name and address or legal title of architect) which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be and is declared by the Territory of Guam to be in default under the Contract, the Territory of Guam having performed territorial obligations thereunder, the Surety may promptly remedy the default or shall promptly:

1) Complete the Contract in accordance with its terms and conditions; or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Territory of Guam and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the Territory of Guam, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph shall mean the total amount payable by the Territory of Guam to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Territory of Guam to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Territory of Guam or successors of the Territory of Guam.

Signed and sealed this ____ day of _____, 19__.

(Principal) (Seal)

(Witness)

(Title)

(Witness)

(Bonding Company)

(Title)

BY: _____

(Attorney-in-Fact)

(c) Payment Bond. The required payment bond shall be in substantially the following form:

LABOR AND MATERIAL PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) as Principal, hereinafter called Principal, and (Bonding Company), a corporation duly organized under the laws of the Territory of Guam, as Surety, hereinafter called Surety, are held and firmly bound unto the Territory of Guam as Obligee, hereinafter called Territory, for the use and benefit of claimants as herein below defined, in the amount of (Full Amount) Dollars (\$_____) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____, 19__, entered into a contract with the Territory for (describe project and insert project number) in accordance with drawings and specifications prepared by (here insert full name and address or legal title of Architect) which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1) A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.

2) The above-named Principal and Surety hereby jointly and severally agree with the territory that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may

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sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Territory shall not be liable for the payment of any costs or expenses of any such suit.

3) No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the territory, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place the Principal maintains an office or conducts its business.

b) After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.

c) Other than in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this ____ day of _____, 19__.

(Principal) (Seal)

(Witness)

(Title)

(Witness)

(Bonding Company)

(Title)

BY: _____
(Attorney-in-Fact)

(2) Certified Copies of Bonds. Any person may request

and obtain from the territory a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original (5 GCA §5305(b) of the Guam Procurement Act).

§5106. Contract Clauses and Their Administration. (1) Introduction. The contract clauses presented in this Section are promulgated for use in construction contracts in accordance with 5 GCA §5306 (Contract Clauses and Their Administration) of the Guam Procurement Act. Alternative clauses are provided in one instance to permit accommodation of differing contract situations.

(2) **Revisions to Contract Clauses.** The clauses set forth in this Section may be varied for use in a particular contract when, pursuant to the provisions of 5 GCA §5306(d) (Contract Clauses and Their Administration, Modification of Required Clauses) of the Guam Procurement Act, the Director of Public Works or the head of a Purchasing Agency makes a written determination describing the circumstances justifying the variation or variations.

Any material variations from these clauses shall be described in the solicitation documents in substantially the following form:

"Clause No. _____, entitled _____, is not a part of the general terms and conditions of this contract, and has been replaced by Special Clause No. _____, entitled _____. Your attention is specifically directed to this clause."

(3) changes Clauses *Changes*.

(a) **Change Order.** The Director of Public Works or the head of a Purchasing Agency, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

(1) changes in the work within the scope of the contract; and

(2) changes in the time for performance of the contract that do not alter the scope of the contract.

(b) **Adjustments of Price or Time for Performance.** If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this

contract.

Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the territory promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(c) **Written Certification.** The contractor shall not perform any change order in excess of \$5,000 unless it bears, or the contractor has separately received, a written certification, signed by appropriate fiscal officer or other responsible official that funds are available therefor; and, if acting in good faith, the contractor may rely upon the validity of such certification.

(d) **Time Period for Claim.** Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Director of Public Works or the head of the Purchasing Agency in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the territory is prejudiced by the delay in notification.

(e) **Claim Barred After Final Payment.** No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

(f) **Claims Not Barred.** In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim arising under the contract, if pursued in accordance with the clause entitled "Claims Based on a Director of Public Work's or the Head of a Purchasing Agency's Actions or Omissions Clause' or for breach of contract."

(4) **Variations in Estimated quantities Clause.** The following clause shall be inserted only in those construction contracts which contain estimated quantity items:

"VARIATIONS IN ESTIMATED QUANTITIES

(1) Variations Requiring Adjustments. Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based

upon any increase or decrease in costs due solely to the variation above 115% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Director of Public Works or the head of the Purchasing Agency shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Director of Public Works or the head of the Purchasing Agency the findings justified.

(2) Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

(5) Suspension of Work Clause.

"SUSPENSION OF WORK

(a) **Suspension for Convenience.** The Director of Public Works or the head of the Purchasing Agency may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Director of Public Works or the head of the Purchasing Agency may determine to be appropriate for the convenience of the territory.

(b) **Adjustment of Cost.** If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Director of Public Works or the head of the Purchasing Agency in the administration of this contract, or by the failure of the Director of Public Works or the head of the Purchasing Agency to act within the time specified in this contract (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

(1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or

(2) for which an adjustment is provided for or excluded under any other provision of this contract.

(c) **Time Restriction on Claim.** No claim under this clause shall be allowed:

(1) for any costs incurred more than twenty (20) days before the contractor shall have notified the

Director of Public Works or the head of the Purchasing Agency in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

(d) **Adjustments of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

(6) **Differing Site Conditions Clause.** Set forth below are alternative differing site conditions clauses to be used as appropriate.

(ALTERNATIVE A)

"DIFFERING SITE CONDITIONS: PRICE ADJUSTMENTS

(1) **Notice.** The contractor shall promptly, and before such conditions are disturbed, notify the Director of Public Works or the head of a Purchasing Agency of:

(a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) **Adjustments of Price or Time for Performance.** After receipt of such notice, the Director of Public Works or the head of a Purchasing Agency shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

(3) **Timeliness of Claim.** No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time prescribed therefor may be extended by the Director of Public Works or the head of

a Purchasing Agency in writing.

(4) **No Claim After Final Payment.** No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.

(5) **Knowledge.** Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids.”

(END OF ALTERNATIVE A)

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(ALTERNATIVE B)

“SITE CONDITIONS CONTRACTOR'S RESPONSIBILITY

The contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this contract to the contrary notwithstanding.”

(END OF ALTERNATIVE B)

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(7) **Price Adjustment Clause.**

PRICE ADJUSTMENT

(1) **Price Adjustment Methods.** Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or

(e) in the absence of an agreement between the parties, by a unilateral determination by the Director of Public Works or the head of the Purchasing Agency of costs attributable to the event or situation covered by the clause, plus

appropriate profit or fee, all as computed by the Director of Public Works or the head of the Purchasing Agency in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Act.

(2) **Submission of Cost or Pricing Data.** The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations."

(8) Claims Based on the Director of Public Works or the Head of the Purchasing Agency's Actions or Omissions Clause.

"CLAIMS BASED ON THE DIRECTOR OF PUBLIC WORK'S OR THE HEAD OF A PURCHASING AGENCY'S ACTIONS OR OMISSIONS

(1) **Notice of Claim.** If any action or omission on the part of the Director of Public Works or the head of the Purchasing Agency, or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(a) the contractor shall have given written notice to the Director of Public Works, the head of the Purchasing Agency, or designee of such officer:

(i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

(ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the

commencement of the work; or

(iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(c) the contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) **Limitations of Clause.** Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any territorial officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) **Adjustments of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

(9) **Default - Delay - Time Extensions Clause.** The conditions contained in the following subsections do not apply to supply and other types of contracts where notice of liquidated damages will apply immediately upon notification of breach or default of the contract is provided in the bid terms or conditions; or in the purchase order itself. Instead, these conditions apply to construction contracts.

SOURCE: Paragraph added to clarify use of this subsection.
(1/1/1999)

"TERMINATION FOR DEFAULT FOR

NONPERFORMANCE OR DELAY - DAMAGES FOR
DELAY - TIME EXTENSIONS

(1) **Default.** If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within fourteen (14) days after receipt of written notice from the Procurement Officer to commence and continue correction of such refusal or failure with diligence and promptness, the Procurement Officer may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the territory may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the territory resulting from the contractor's refusal or failure to complete the work within the specified time.

(2) **Liquidated Damages upon Termination.** If fixed and agreed liquidated damages are provided in the contract, and if the territory so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

(3) **Liquidated Damages in Absence of Termination.** If fixed and agreed liquidated damages are provided in the contract, and if the territory does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(4) **Time Extension.** The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

(a) the delay in the completion of the work

arises from causes such as: acts of God; acts of the public enemy; acts of the territory, and any other territorial entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the territory; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnished to the Procurement Officer proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

(b) the contractor, within ten days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Office in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

(5) **Erroneous Termination for Default.** If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the territory, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstance, this contract does not contain a clause

providing for termination for convenience of the territory, the contract shall be adjusted to compensate for such termination and the contract modified accordingly.

(6) **Additional Rights and Remedies.** The rights and remedies of the territory provided in this clause are in addition to any other rights and remedies provided by law or under this contract."

(10) **Liquidated Damages Clause.** The following clause may be used in construction contracts when it is difficult to determine with reasonable accuracy damage to the territory due to delays caused by late contractor performance or nonperformance.

"LIQUIDATED DAMAGES

When the contractor fails to complete the work or any portion of the work within the time or times fixed in the contract or any extension thereof, the contractor shall pay to the territory \$50 for contracts less than \$100,000 and \$100 for contracts \$100,000 and over per calendar day of delay pursuant to the clause of this contract entitle, "Termination for Default for Nonperformance or Delay - Damages for Delay - Time Extension."

(11) **Termination for Convenience Clause.**

"TERMINATION FOR CONVENIENCE

(1) **Termination.** The Procurement Officer may, when the interests of this territory so require, terminate this contract in whole or in part, for the convenience of the territory. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(2) **Contractor's Obligations.** The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. the Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the territory. The contractor must still complete the work not

terminated by the notice of termination and may incur obligations as necessary to do so.

(3) **Right to Construction and Supplies.** The Procurement Officer may require the contractor to transfer title and deliver to the territory in the manner and to the extent directed by the Procurement Officer:

(a) any completed construction; and

(b) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawing, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall protect and preserve property in the possession of the contractor in which the territory has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of 14 GCA §2706 (UCC). (See end of Subsection 6101(10)(d) for code quotation.) This in no way implies that the territory has breached the contract by exercise of the Termination for Convenience Clause.

(4) **Compensation.**

(a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required by §3118 (Cost or Pricing Data) of the

Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the territory, the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this Paragraph:

(i) with respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

(A) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(i)(A) of this Paragraph.

(C) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and

for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this Paragraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.”

(12) Remedies Clause.

”REMEDIES

Any dispute arising under or out of this contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.”

§5107. Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract with the territory in excess of \$5,000 shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or total contract budget. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the Director of Public Works or the head of a Purchasing Agency shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is

feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section (5 GCA §5307 of the Guam Procurement Act).

§5108. Architect-Engineer and Land Surveying Services. (1) **Application.** The provision of these Regulations applies to every procurement of services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of this territory, except as authorized by §3111 (Small Purchases), §3112 (Sole Source Procurement), and §3113 (Emergency Procurement) of the Guam Procurement Regulations.

(2) **Policy.** It is the policy of this territory to:

(a) give public notice of all requirements for architect-engineer and land surveying services; and

(b) negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

(c) **Source Selection.** For the purpose of acquiring the services, described in this Chapter the provisions of §3114 (Competitive Selection Procedures for Services, specified in §2112) of this Guam Procurement Regulations shall be followed.