

CHAPTER 11
ETHICS IN PUBLIC CONTRACTING

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§11101. Definitions of Terms Used in this Chapter. (a)
Definitions.

(1) *Bona Fide Employee* means employed by a prospective contractor and subject to the prospective contractor's supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain territorial contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:

- (a) whether the employment is continuous;
- (b) whether the person is subject to the supervision and control of the prospective contractor;
- (c) whether the size of any contingent fee is reasonable in relation to the services performed;
- (d) whether the method of payment of the contingent fee is customary in the trade; and
- (e) whether the person is employed solely by the prospective contractor.

(2) *Bona Fide Established Commercial Selling Agency* means a business that neither exerts nor proposes to exert improper influence to solicit or obtain territorial contracts. In determining whether a business is a bona fide established commercial selling business, the following factors should be considered:

(a) whether the business is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such;

(b) whether the business uses its own name and is characterized by the customary indicia of the conduct of a regular business;

(c) the degree to which the business's activities are directed toward the solicitation of contracts of the territory;

(d) whether the size of any contingent fee is reasonable in relation to the services performed; and

(e) whether the method of payment to the contingent fee is customary in the trade.

(3) *Business Employee* as defined means a person, whether compensated or not, who performs personal services for a business.

(4) *Employee*, as defined in 5 GCA §5030(j), (Definitions, Employee), of the Guam Procurement Act is hereinafter referred to as *government employee*.

As used throughout this Chapter, the term *government employee* shall include:

(a) a person elected to territorial office;

(b) a non-elected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the territory; and

(c) a non-compensated or minimally compensated person who is performing personal services for the territory.

The term *government employee* does not include a person who, as an independent contractor, performs professional, scientific, technical, or advisory service for a territorial agency and who receives a fee, honorarium, or similar consideration for the services performed.

(5) *Financial Interest*. (RESERVED). (See 5 GCA §5601(e) of the Guam Procurement Act.)

(6) *Gratuity*, as defined in 5 GCA §5601(f), (Definitions, Gratuity) of the Guam Procurement Act, 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. In this Chapter, a gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment.

Nominal value, as used in 5 GCA §5601(f) of the Guam Procurement Act, means actual worth or actual cost, whichever is greater, which does not exceed \$25 individually or cumulatively.

(7) *Immediate Family*. (RESERVED). (See 5 GCA §5601(g) of the Guam Procurement Act.)

§11102. Standards of Conduct. This Regulation prescribes the standards of conduct for government employees in general, and establishes specific standards of conduct for non-government employees. Regulations governing standards of conduct for government employees are made a part of this Guam Procurement Regulations as Appendix A, as promulgated by the Civil Service Commission.

(a) **Statement of Policy.** Public employment is a public trust. It is the policy of the territory to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the territory. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the territorial procurement organization.

To achieve the purpose of this Chapter, it is essential that those doing business with the territory also observe the ethical standards prescribed herein. (5 GCA §5626 of the Guam Procurement Act.)

§11103. General Standards of Ethical Conduct. General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and 5 GCA §5628 through §5633 of the Guam Procurement Act is also a breach of ethical standards. (5 GCA §5625 of the Guam Procurement Act.)

(a) Required Compliance with Ethical standards as a Condition of Employment: Notice and Acknowledgement Procedures. (Reserved).

(b) Clause Regarding Government Employee and Former Government Employee Ethical Standards. The following clause shall be conspicuously set forth in every contract and solicitation therefor:

“REPRESENTATION REGARDING ETHICAL

STANDARDS FOR GOVERNMENT EMPLOYEES
AND FORMER GOVERNMENT EMPLOYEES

The bidder, offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations."

§11104. Criminal Sanctions. To the extent that violations of the ethical standards of conduct set forth in this Chapter constitute violations of Title 9 GCA (Crimes and Corrections), they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Chapter. (5 GCA §5627 of the Guam Procurement Act.)

§11105 Conflict of Interest. (a) Employee Conflict of Interest.

(1) **Conflict of Interest.** It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(i) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(ii) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

(iii) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(2) **Financial Interest in a Blind Trust.** Where an employee or any number of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Civil Service Commission.

(3) **Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.** Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same

time, apply to the Civil Service Commission in accordance with 5 GCA §5676(b) for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(4) **Notice.** Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission. (5 GCA §5628 of the Guam Procurement Act.)

(b) **Definitional Cross-References.** The following terms used in this Subsection are defined in the following Sections of this Guam Procurement Regulations which are quoted in Section 1106 of these Regulations:

(1) *financial interest*, as defined in §1106(40), (Definitions, Financial Interest);

(2) *immediate family*, as defined in §1106(42), (Definitions, Immediate Family).

(c) Disclosure of a Blind Trust. (Reserved).

(d) Civil Service Commission Ruling on a Blind Trust. (Reserved).

(e) Application for a Waiver of Prohibition Against Conflict of Interest.

(1) Application for Waiver. (Reserved).

(2) Grant or Denial of Waiver. Under 5 GCA §5676(c) (Ethics Commission Waiver) of the Guam Procurement Act, the Civil Service Commission may grant an employee or the Policy Officer may grant a contractor the waiver of the conflict of interest prohibition where the interest of the territory so require or when the ethical conflict is insubstantial or remote.

Prior to granting or denying a waiver, the Civil Service Commission with regard to employees and the Policy Office with regard to a contractor, shall make such investigation as it may deem appropriate and which is not in violation of the government employee's or the contractor's rights, privileges, and immunities. Factors to be considered by the Civil Service Commission or the Policy Office when determining whether to grant a waiver shall include:

(A) the degree of involvement of the government employee or a contractor in the particular procurement;

(B) the size and character of the financial interest of the government employee or a member of such employee's immediate family or a contractor which relates to the particular procurement;

(C) the likelihood of the appearance of impropriety;

(D) the availability of suppliers or contractors, if any, with which a contract would not present a conflict; and

(E) the extent to which the territory's interest will be affected by a waiver.

§11106. Disclosure of Benefit from Contract. (a) Employee Disclosure Requirements. (Reserved).

(1) *Definitional Cross-Reference.* The term *Financial Interest* is defined in §1106(40) (Definitions), of the Guam Procurement Regulations.

(2) *Benefit Defined.* (Reserved).

(3) *Disclosure Requirement.* (Reserved).

§11107. Gratuities and Kickbacks. (1) **Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

(3) **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

(4) **Favors to the Government of Guam.** For purposes of this subsection, a favor is anything, including raffle tickets, or more than *de minimis* value and whether intended for the personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to

offer, give or agree to give any employee or agent of the government of Guam or for any employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any matter related to procurement, including contract performance warranty periods.

SOURCE: Subsection (4) added to comply with 5 GCA §5630(d). This Section is quoted from 5 GCA §5630 of the Guam Procurement Act.

(a) **Definitional Cross-Reference.** The following terms used in this Section are defined in the following Sections of the Guam Procurement Regulations which are quoted in §1106 of these Regulations:

(1) *gratuity*, as defined in §1106(41) (Definitions, Gratuity); and

(2) *purchase request*, as defined in §1106(44) (Definitions, Purchase Request).

(b) **Gratuities Prohibition.**

(1) **Breach.** It is a breach of §11206(1) (Gratuities and Kickbacks, Gratuities) of these Regulations:

(a) for any person to offer, give, or agree to give any government employee or former government employee a gratuity of offer of employment; or

(b) for any government employee or former employee to solicit, demand, accept, or agree to accept a gratuity or an offer of employment; provided that the gratuity or offer of employment is in relation to a particular matter in accordance with 11206(b)(2) of these regulations, and pertains to any programs requirement, contract, subcontract, or solicitation or proposal therefor.

(b) **Relationship of Gratuity.** In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:

(a) decision;

(b) approval;

(c) disapproval;

(d) recommendation;

(e) preparation of any part of a program requirement or a purchase request;

(f) action to influence the content of any specifications or procurement standard;

- (g) rendering of advice;
- (h) investigation;
- (i) auditing; or
- (j) other advisory capacity.

(3) **Family.** This prohibition extends to the giving of gratuities to anyone on the government employee's or former government employee's behalf such as a member of the employee's immediate family.

(c) **When Prohibition Against Gratuities not Applicable.** Section 11206(1) (Gratuities and Kickbacks, Gratuities) of these regulations does not prohibit:

(1) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the territory and is based upon a personal or family relationship;

(2) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;

(3) acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of government employees, such as home mortgage loans; or

(4) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value as described in §11101(a)(6) (Definitions, Gratuity) of this Chapter.

(d) **Payment of a Kickback.** The prohibition against kickbacks set forth in §11206(2) (Gratuities and Kickbacks, Kickbacks) of these Regulations applies whether a kickback is made prior to or after the award of a territorial contract or order.

(e) **Contract Clause.** The following clause shall be conspicuously set forth in every contract and solicitation therefor:

"REPRESENTATION REGARDING
GRATUITIES AND KICKBACKS

The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11206 (Gratuities and

Kickbacks) of the Guam Procurement Regulations.”

§11108. Contingent Fees. (a) Prohibition Against Contingent Fees.

(1) **Contingent Fees.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(2) **Representation of Contractor.** Every person, before being awarded a territorial contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitute a breach of ethical standards.

(3) **Contract Clause.** The representation prescribed in Subsection (2) of this Section shall be conspicuously set forth in every contract and solicitation therefor.

This Section is quoted from 5 GCA §5631 of the Guam Procurement Act.

(b) **Definitional Cross-References.** The following terms used in this Section are defined in §11101 of these Regulations.

(1) *bona fide employee*, as defined in §11101(a)(1) (Definitions, Bona Fide Employee);

(2) *bona fide established commercial selling agency*, as defined in §11101(a)(2) (Definitions, Bona Fide Established Commercial Selling Agency); and

(3) *business employee*, as defined in §11101(a)(3) (Definitions, Business Employee).

(c) **Influence Peddling.** The prohibition in §11207(a) (Prohibition Against Contingent Fees, Contingent Fees) of these Regulations covers influence peddling and particularly that which might occur when a former government official is hired on contingent basis by a business seeking territorial contracts.

(d) **Relationship of Commercial Selling Business to the Prospective Contractor.** The relationship between a bona fide established commercial selling business and the prospective contractor should be characterized by the following:

(1) the fees charged by the business are commensurate with the nature and extent of the business's services actually rendered to the prospective contractor;

(2) the business has adequate knowledge of the supply, service, or construction item of the prospective

contractor which it represents to judge whether the item may be able to meet the territory's requirements; and

(3) the relationship between the business and the prospective contractor is or is contemplated to be continuing.

(e) **Improper Influence.** A business employee or commercial selling business should be conclusively presumed not to be bona fide if the Policy Office determines that improper influence has been or is being used to secure a territorial contract.

(f) **Solicitation Clause.** Every solicitation for a supply, service, or construction item shall conspicuously set forth the following provision to be completed and submitted with every prospective contractor's bid or proposal:

"PROSPECTIVE CONTRACTOR'S REPRESENTATION
REGARDING CONTINGENT FEES

The Prospective Contractor represents as a part of such contractor's bid or proposal that such contractor has/has not (circle applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract."

(g) **Information on Contingent Fees.** Any prospective contractor who has completed the clause set forth in §11207(f) (Solicitation Clause) in the affirmative and is the apparently successful bidder or offeror shall submit the following information:

(1) the full name and business address of the business or person retained, and the type of business organization;

(2) the relationship of the business or person to the prospective contractor;

(3) the terms of the retention agreement or copy of such agreement;

(4) if such person is a business employee:

(i) the duration of employment;

(ii) whether that employee is on the contractor's payroll for purposes of social security and federal or local income tax withholding;

(iii) whether that employee represents other businesses and, if so, the names and addresses of such businesses;

(5) whether the business or person represents the prospective contractor on:

(i) both government and commercial business;

(ii) only government business; or

(iii) only the present contract;

(6) the extent of the duties of the business or person;
and

(7) the duration the business or person has been engaged in a particular type of work and has performed this type of work for the contractor.

(h) **Contract Clause.** The following clause shall be conspicuously set forth in every contract and solicitation therefor:

“REPRESENTATION REGARDING CONTINGENT FEES

The contractor represents that it has not retained a person to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.”

§11109. Employment Prohibitions and Restrictions. (a) Restrictions on Employment of Present and Former Employees.

(1) Restrictions on Former Employees in Matters Connected with Their Former Duties.

(a) **Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.** It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the territory, in connection with any:

(i) judicial or other proceeding, application, request for ruling, or other determination;

(ii) contract;

(iii) claim; or

(iv) charge or controversy; in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the territory is a party or has a direct and substantial interest.

(b) One year representation restriction regarding matters for which a former employee was officially responsible. It shall be a breach of ethical standards for any former employee, within after cessation of the former employee's official responsibility, knowingly to act as principal, or as an agent for anyone other than the territory, in connection with any:

(i) judicial or other proceeding, application, request for a ruling, or other determination;

(ii) contract;

(iii) claim; or

(iv) charge or controversy; in matters which were within the former employee's official responsibility, where the territory is a party or has a direct or substantial interest.

(2) **Disqualification of Business When an Employee has a Financial Interest.** It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the territory, in connection with any:

(a) judicial or other proceeding, application, request for a ruling, or other determination;

(b) contract;

(c) claim; or

(d) charge or controversy;

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the territory is a party or has a direct and substantial interest.

(3) **Selling to the Territory After Termination of Employment is Prohibited.** It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed \$12,000, to engage in selling or attempting to sell supplies, services other than personal services, or construction to the territory for ninety (90) days following the date employment ceased.

The term *Sell* as used herein 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; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this territory nor shall a former employee be precluded from serving

as a consultant to this territory.

This Section is quoted from 5 GCA §5632 of the Guam Procurement Act.

(b) Contemporaneous Employment Prohibition.
(Reserved).

(c) Permanent Disqualification of Former Government Employee.

(1) **Personal and Substantial Participation.** For the government employee to have “participated personally and substantially” in a matter, such employee's involvement must have been more than merely ministerial in nature. Factors to be considered in determining personal and substantial participation of a former government employee while a government employee shall include but are not limited to:

(a) the former government employee's degree of involvement in the particular matter;

(b) the degree of involvement of the former employee with a subordinate who had substantial participation in the matter;

(c) the effect or appearance of the involvement of the former government employee; and

(d) the relative time spent on the particular matter by the former government employee.

(2) **Matter must be a Particular Matter Involving Identifiable Parties.** The activities listed in §11208(b)(1) (Restrictions on Employment of Present and Former Employees, Permanent Disqualification of Former Employee Personally Involved in a Particular Matter) of these Regulations generally describe matters in which issues are defined and parties are identified, such as specific proceedings affecting the legal rights of parties, or isolated transactions or related sets of transactions between identifiable parties.

Matters of general application, such as regulation and policy formulation, are not intended to be covered under those activities listed under §11208(b)(1). Therefore, only a particular matter involving an identifiable party or parties is subject to the permanent prohibition set forth under §11208(b)(1).

(3) The Same particular matter must be involved. The prohibition set forth in §11208(b)(1) (Restrictions of Employment of Present and Former Employees, Disqualification of Former Employee Personally Involved in a Particular Matter) of these Regulations applies only with regard to those same particular matters in which the former government employee

participated personally and substantially while a government employee. In determining whether two particular matters are the same, the following factors should be considered:

- (a) the factual basis of the matters;
 - (b) the relationship of the issues involved in each matter;
 - (c) the identity of the parties involved in each matter; and
 - (d) the continued existence of an important territory interest.
- (d) One year restriction for a former government employee.

(1) Official responsibility.

(a) **Definitions.** 5 GCA §5601 (Definitions, Official Responsibility) of the Guam Procurement Act, which defines *official responsibility* is quoted in §1106(43) (Definitions) of these regulations.

(b) **Scope.** The scope of a government employee's official responsibility is determined by the territory's statutes, regulations, executive orders, case law, or job descriptions, or may result from the lawful delegation of another government employee's duties.

(c) **Requirement That Matters Have Been Actually Pending.** In order for a matter to have been within a former government employee's official responsibility, it must have in fact been assigned to or under consideration by persons under the former government employee's official responsibility.

(2) **One year restriction.** The one year restriction set forth in §11208(b)(2) (Restrictions on Employment of Present and Former Employees, Restrictions on Former Employees in Matters Connected with Their Former Duties) of the Guam Procurement Regulations is measured from the time the former government employee's official responsibility ended in a particular matter.

(e) Disqualification of a Business.

(1) **Personal and Substantial Participation.** *Personal and substantial participation* is discussed in §11208(b)(1) (Permanent Disqualification of Former Government Employee, Personal and Substantial Participation) of this Chapter.

(2) **Official responsibility.** 5 GCA §5601(h) (Definitions, Official Responsibility) of the Guam

Procurement Act, which defines *official responsibility*, is quoted in §1106(43) (Definitions) and is discussed in §11208(d)(1) (One Year Restriction for a Former Government Employee, Official Responsibility) of this Chapter.

(3) **Determination of Business Knowledge.** In ascertaining whether a business has knowledge that a government employee has a financial interest in that business for the purpose of applying the prohibition in §11208(b) (Restrictions on Employment of Present and Former Employees, Disqualification of a Business When an Employee Has a Financial Interest) of these Regulations, the factors to be considered should include the following:

- (a) the size of the business;
- (b) the percentage of ownership in the business by the government employee;
- (c) the nature of the dealings of the government employee with the business regarding such employee's financial interest; and
- (d) such other evidence as may be relevant and material.

(f) Prohibition Against Selling to the Territory.

(1) **Prohibition; Applicability.** Section 11208(3) (Restrictions on Employment of Present and Former Employees, Selling to the Territory After Termination of Employment is Prohibited) of these Regulations, prohibits a former government employee whose annual salary exceeded \$12,000 from selling or attempting to sell to any governmental body of the territory within ninety days following the date employment ceases. This prohibition applies with regard to any territorial employee who used to be employed.

(2) **Sell Defined.** Section 11208(3) (Restrictions on Employment of Present and Former Employees, Selling to the Territory After Termination of Employment is Prohibited) of these Regulations, defines *sell* for the purpose of prohibiting selling to the territory to mean:

- (a) signing a bid, proposal, or contract;
- (b) negotiating a contract;
- (c) contracting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract;
- (d) settling disputes concerning performance of a contract; and
- (e) 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.

Requests for information are not included within the term *Sell*.

(g) **Employment with a Territorial Contractor.** The ninety (90) days prohibition against selling contained in §11208(4) of these Regulations shall not prohibit a former government employee from obtaining employment with a contractor, but such employee shall not sell to the territory as defined in §11208(f)(2) (Prohibition Against Selling to the Territory *Sell* Defined.)

§11110. Use of Confidential Information. It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person (quoted from 5 GCA §5633 of the Guam Procurement Act).

§11111. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards. (Reserved).

§11112. Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards. (1) **Existing Remedies Not Impaired.** Civil and administrative remedies against non-employees which are in existence on the effective date of this Act shall not be impaired.

(2) **Supplemental Remedies.** In addition to existing remedies for breach of the ethical standards of this Chapter or regulations promulgated hereunder, the Procurement Policy Office, in connection with non employees, may impose any one or more of the following:

- (a) written warnings or reprimands;
- (b) termination of transactions; and
- (c) debarment or suspension from being a contractor or subcontractor under territorial contracts.

(3) **Right to Recover From Non-Employee Value Transferred in Breach of Ethical Standards.** The value of anything transferred in breach of the ethical standards of this Chapter or regulations promulgated hereunder by a non-employed shall be recovered by the territory as provided in 5 GCA §5652 (Recover of Value Transferred or Received in Breach of Ethical Standards) of the Guam Procurement Act as quoted on §11303 of these Regulations.

(4) **Right of the Territory to Debar or Suspend.** Debarment or suspension may be imposed by the Procurement Policy Office in accordance with the procedures set forth in 5 GCA §5426 (Authority to Debar or Suspend) for breach of the ethical standards of this Chapter, provided that

such action may not be taken without the concurrence of the Attorney General.

(5) **Due Process.** All procedures under this Section shall be in accordance with the Administrative Adjudication Law.

This §11112 is quoted from 5 GCA §5651(e) the Guam Procurement Act.

§11113. Recovery of Value Transferred or Received in Breach of Ethical Standards. (1) **General Provisions.** The value of anything transferred or received in breach of the ethical standards of this Chapter or regulations promulgated hereunder by an employee or non-employed may be recovered from both the employee and non-employed.

(2) **Recovery of Kickbacks By The Territory.** Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the territory and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

This §11113 is quoted from 5 GCA §5652(b) the Guam Procurement Act.

§11114. Ethics Enforcement. (a) **Ethics: Non employees.** In addition to the authority and duties of the Policy Office under 5 GCA §5101 of the Guam Procurement Act, such office is hereby given the functions required under this Chapter with regard to non employees and the Civil Service Commission is hereby given the functions required with regard to employees.

This §11114 is quoted from 5 GCA §5675 of the Guam Procurement Act.

(1) Ethics Commission.

(a) **Regulations.** The Civil Service Commission shall promulgate regulations to implement this Chapter with regard to employees. The Procurement Policy Office shall promulgate regulations to implement this Chapter with regard to non employees, contractors and subcontractors and the Procurement Policy Office shall do so in accordance with the applicable provisions of the Administrative Adjudication Law of this territory.

(b) **Advisory Opinions.** On written request of employees, the Civil Service Commission may render written advisory opinions regarding the

appropriateness of the course of conduct to be followed in proposed transactions. The Policy Office may render such opinions to contractors regarding the appropriateness of the course of conduct to be followed by the contractors in proposed transactions. Such requests and advisory opinions must be duly published in the manner in which regulations of this territory are published. Compliance with requirements of a duly promulgated advisory opinion of the Civil Service Commission or Policy Office shall be deemed to constitute compliance with the ethical standards of this Chapter.

(c) **Waiver.** On written request of an employee, the Civil Service Commission may grant an employee, or the Policy Office may grant a contractor, a written waiver from the application of 5 GCA §5628 (Guam Procurement Act) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the territory so require or when the ethical conflict is insubstantial or remote.

This Section 11114 is quoted from 5 GCA §5675 of the Guam Procurement Act.

(2) Appeal of Decisions.

(a) **General.** Except as provided under Subsections (b) and (c) of this Section, a decision of the Policy Office under 5 GCA §5651 (coded as Section 11112 of these Regulations) of the Guam Procurement Act shall be reviewable in accordance with the Administrative Adjudication Law of this territory. The opinions of the Civil Service Commission shall be reviewable in the same manner, but only in connection with their duty to render opinions.

(b) **Debarment or Suspension.** A decision of the Policy Office regarding debarment or suspension under 5 GCA §5651(b) of this Chapter (coded as §11112 of these Regulations) shall be reviewable as provided in 5 GCA §5481(b) of the Procurement Act (coded as §9109 of these Regulations)

(c) An appeal from the decision of the Civil Service Commission under 5 GCA §5650 of the Procurement Act (coded as §11111 of these

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Regulations) shall be taken before members, either permanent or pro tempore, who had no part in the decision being appealed from in accordance with the rules of the Civil Service Commission governing adverse actions in general. Further, reviewed by the Superior Court, where permitted, shall be pursuant to the provisions of Title 4 GCA.

[This §11114 is quoted from 5 GCA §5675, §5676, and §5677 of the Guam Procurement Act.]

-----End of Regulations-----