

**CHAPTER 2**  
**PROCUREMENT ORGANIZATION**

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**§2101. Creation and Membership of the Procurement Policy Office.** (a) **Policy- Office Created.** The Procurement Policy Office was created as a part of the Office of the Governor and is referred to in these Regulations as the Policy Office.

(b) **Membership of the Policy Office.** The Policy Office shall consist of three(3) officers or, employees of the government of Guam appointed by the Governor; the Director-of Public Works and the Director of Administration, who shall serve as the chairperson. None of the three persons appointed by the Governor shall act concurrently as Procurement Officer nor shall any of such members [be] subordinates, unless such members are directors of agencies or instrumentalities, [or] act as procurement officers.

(C) **Administrative Support.** The Governor's Office provides such services as the Policy Office may request, including office space and administrative assistance.

**SOURCE:** Modified to comply with 5 GCA §5101. (1/1/1999)

**§2102. Duties and Responsibilities.**

1. Advise the Governor on policies, regulations, and procedures concerning procurement administration matters.

2. Establish regulations, consistent with the Guam Procurement Act, governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by the territory.

3. Consider and decide matters of policy within the provisions of the Guam Procurement Act, and those referred to it by the Chief Procurement Officer or Director of Public Works.

4. Audit and monitor the implementation of its regulations and the requirements of the Guam Procurement Act.

5. Be prohibited from exercising authority over the award or administration of any particular contract or over any dispute, claim, or litigation.

6. Promulgate regulations pertaining to the delegation of authority by the Chief Procurement Officer or the Director of Public Works to its designees.

7. Promulgate regulations for the purpose of procuring services of accountants, physicians, lawyers, dentists and other professionals.

8. Conforms its regulations to the provisions of the Administrative Adjudication Law. The Policy Office is prohibited from delegating its power to promulgate its regulations.

9. Promulgate regulations providing for as many alternative methods of construction management, as it may determine feasible.

10. Provide determination concerning non-substantial manner in non-compliance with bid security requirements.

11. Promulgate regulations pertaining to form of bonds and reduction of bond amounts.

12. Promulgate regulations requiring the inclusion in territorial construction contracts of clauses providing for adjustment in prices, time of performance or other contract provisions, as appropriate.

13. Promulgate regulations requiring the inclusion in territorial construction contracts of clauses providing for appropriate remedies and covering the following subjects:

- a. liquidated damages as appropriate;
- b. specified excuses for delayed performance;
- c. termination of the contract for default;
- d. termination of the contract in whole or in part for the convenience of the territory.

14. Promulgate regulations putting forth cost principles.

15. Shall promulgate regulations governing the:

- a. management of supplies during their entire life cycle;

- b. sale, lease or disposal of surplus supplies by public auction, competitive sealed bidding or other appropriate method designated by regulation, provided that no employee of the owning agency or disposing agency shall be entitled to purchase any such supplies;
- c. transfer of excess supplies.

16. Promulgate regulations to debar or suspend a person.

**§2103. Creation of the General Services Agency.** The centralized procurement of the Government is placed within an existing department, the Department of Administration, in the same position as is the Supply Management Division, but with expanded responsibilities.

However, the Chief Procurement Officer is a part of the Department of Administration, the Guam Procurement Act places procurement responsibilities with the Chief Procurement Officer, rather than with the Director of Administration, who still remains his superior. Nonetheless, the Chief Procurement Officer must make the decisions and, to this end, it is he, not the Director of Administration, who must have the qualifications in the specialized area of public procurement.

**§2104. Authority of the Chief Procurement Officer and the Director of Public Works.** (a) **Principal Contracting Officers of the Territory.** The Chief Procurement Officer of the General Services Agency, shall serve as the central procurement officer of the territory with respect to supplies and services. The Director of Public Works shall serve as the central procurement officer of the territory with respect to construction.

(b) **Power to Adopt Operational Procedures.** Consistent with the provisions of the Guam Procurement Act and the Guam Procurement Regulations, the Chief Procurement Officer and the Director of Public Works may adopt operational procedures governing the internal functions of their procurement operations, a copy shall be provided to the Policy Office.

(c) **Duties.**

(1) Except as otherwise specifically provided in the Guam Procurement Act, the Chief Procurement Officer shall, in accordance with regulations promulgated by the Policy Office:

- (i) procure or supervise the procurement of all supplies and services needed by the territory;
- (ii) exercise general supervision and control over all inventories of supplies belonging to the territory; and

(iii) establish and maintain programs for the inspection, testing and acceptance of supplies and services.

(2) Except as otherwise specifically provided in the Guam Procurement Act, the Director of Public Works shall, in accordance with regulations promulgated by the Policy Office:

(i) procure or supervise the procurement of all construction needed by the territory; and

(ii) establish and maintain programs for the inspection, testing and acceptance of construction.

**§2105. Delegation of Authority by the Chief Procurement Officer and the Director of Public Works.**

**Application.** The Chief Procurement Officer or the Director of Public Works may delegate authority to designees or to any governmental body or official.

**Decision to Delegate.** The Chief Procurement Officer or the Director of Public Works may delegate authority or may revoke authority such officer has delegated. Factors to consider in making the decision to delegate include:

(a) the expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;

(b) the past experience of the potential delegate in exercising similar authority;

(c) the degree of economy and efficiency to be achieved in meeting the territory's requirements if authority is delegated;

(d) the available resources of the Office of the Chief Procurement Officer to exercise the authority if it is not delegated; and

(e) the consistency of delegation under similar circumstances.

**Compliance with the Guam Procurement Act.** Any designee of the Chief Procurement Officer, or the Director of Public Works, shall exercise delegated authority in accordance with the Guam Procurement Act and these Regulations.

**§2106. Delegation of Authority to Officials in Other Departments and Agencies.** The Chief Procurement Officer or the Director of Public Works may delegate in writing such authority as may be deemed appropriate to the head of any department or independent agency of this territory. Such delegation shall be in writing and shall specify:

(a) the activity or function authorized;

(b) any limits or restrictions on the exercise of the delegated authority;

- (c) whether the authority may be further delegated;
- and
- (d) the duration of the delegation.

**§2107. Exceptions to Delegation.** The authority conferred on the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency in the following sections of the Guam Procurement Regulations shall not be delegated:

- (a) Section 5104 (Contract Performance and Payment Bonds, Reduction of Bond Amounts);
- (b) Section 5106 (Contract Clauses and Their Administration, Modification of Required Clauses);
- (c) Section 6101 (Contract Clauses and Their Administration, Modification of Clauses);
- (d) Section 9101 (Authority to Resolve Protested Solicitations and Awards, Stay of Procurement During Protests); and
- (e) Section 9102 (Authority to Debar or Suspend, Authority).

**§2108. Limitations on Delegation.** (a) Under Section 3109 (Competitive Sealed Bidding, Award) of the Guam Procurement Regulations, the Director of Public Works, or the head of a Purchasing Agency may delegate the authority to negotiate an adjustment of the bid price for a construction project, provided that no contract may be awarded pursuant to such negotiations without the approval of the Director of Public Works, or the head of a Purchasing Agency.

(b) Under Section 9102 (Authority to Debar or Suspend, Authority) of the Guam Procurement Regulations, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency may appoint a hearing officer to receive evidence and make a written report containing findings of fact and conclusions of the case. Thereafter, oral argument may be heard before the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, who shall issue a written decision pursuant to Section 9102, (Authority to Debar or Suspend, Decision), of the Guam Procurement Regulations.

**§2109. Revolving Fund.** The *Inventory Revolving Fund* is created and shall be maintained separate and apart from other government funds. The Chief Procurement Officer shall be the certifying officer of the Inventory Revolving Fund. The Fund shall be used for the purchase and replenishment of items to be carried in the supplies inventory to be maintained in the warehouse operated by the General Services Agency.

The Fund shall be reimbursed by governmental agencies obtaining supplies from the General Services Agency.

**§2110. Centralization of Procurement Authority.** Except as otherwise provided in this Chapter, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing of supplies, services, and construction now vested in, or exercised by, any governmental body under the several statutes relating thereto are hereby transferred to the Policy Office and the Chief Procurement Officer and the Director of Public Works, as provided in the Guam Procurement Act §5120 of Title 5.

**§2111. Coordination, Training and Education; Collection of Data Concerning Public Procurement.** The Chief Procurement Officer shall cooperate with the Bureau of Budget and Management Research and the Territorial Auditor, or any successor agency, in the preparation of statistical data concerning the procurement, usage and disposition of all supplies and services, and employ such trained personnel as may be necessary to carry out this function. All using agencies shall furnish such reports as the Chief Procurement Officer may require concerning usage, needs and stocks on hand, and the Chief Procurement Officer shall have authority to prescribe forms to be used by the using agencies in requisitioning, ordering and reporting of supplies and services, (Guam Procurement Act §5140 of Title 5).

**§2112. Authority to Contract for Certain Services and Approval of Contracts (Guam Procurement Act §5121 of Title 5).** (a) **General Authority.** For the purpose of procuring the services of accountants, physicians, lawyers, dentists and other professionals, any governmental body of this territory may act as a purchasing agency and contract on its own behalf for such services, subject to the provisions of the Guam Procurement Act, and these Regulations, but this subsection shall not authorize the procuring of such services where any given governmental body is otherwise prohibited from procuring such services.

(b) **Approval of Contracts for Legal Services.** No contract for the services of legal counsel in the Executive Branch shall be executed without the approval of the Attorney General. Nothing in this Section or the Guam Procurement Act shall preclude the Attorney General or his designee from participating in negotiations for any contract upon the request of the government officer or agency primarily responsible for such negotiations.

(c) **Approval of Contracts Generally.** The Chief Procurement Officer, or his designee, or a procurement officer of an agency authorized to procure the services or supplies in question, as established in these Regulations, shall execute all contracts for the Government of Guam. The Chief Procurement Officer may approve standard form contracts or purchase orders and once such approval of the standard form is given, contracts or purchase orders made on such form may be executed without the further approval of the Chief Procurement Officer unless he has reserved such power of approval pursuant to the applicable Section of these Regulations.

**§2113. Duties of the Attorney General.** The Attorney General, the Deputy Attorney General or such Assistant Attorneys General as the Attorney General may designate, shall serve as legal counsel and provide necessary legal services to the Policy Office and the General Services Agency. The Attorney General shall, in addition, when he approves contracts, determine not only the correctness of their form, but their legality. In making such determination of legality, he may require any or all agencies involved in the contract to supply him with evidence that the required procedures precedent to executing the contract were carried out. He may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of legality, (Guam Procurement Act §5150 of Title 5).