

Article 10

Compliance with Federal Requirements

§161001. Compliance with Federal Requirements.

(a) **Federal Funds.** Where a procurement involves the expenditure of federal assistance or contract funds, or other federal funds as defined by §20 of the Organic Act of Guam, all persons within the Government of Guam shall comply with such federal law and regulations which are applicable and which may be in conflict with or may not be reflected in these Regulations (§5501 of the Guam Procurement Act).

Article 11

Ethics in Public Contracting

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§161101. Definitions. (a) *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 hospital contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:

- (1) whether the employment is continuous;
- (2) whether the person is subject to the supervision and control of the prospective contractor;
- (3) whether the size of any contingent fee is reasonable in relation to the services performed;
- (4) whether method of payment of the contingent fee is customary in trade; and
- (5) whether the person is employed solely by the prospective contractor.

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

(1) 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;

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

(3) the degree to which the businesses' activities are directed toward the solicitation of contracts of the hospital;

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

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

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

(d) *Employee*, as defined in §5030(j) (Definitions, Employee) of the Guam Procurement Act, is hereinafter referred to as *government employee*. All hospital employees are considered government employees.

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

(1) a person elected to territorial office;

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

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

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

(e) *Financial Interest*. [Reserved] (See §5601(e) of the Guam Procurement Act.)

(f) *Gratuity*, as defined in §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 §5601(f) of the Guam Procurement Act means actual worth or actual cost, whichever is greater, which does not exceed \$25 individually or cumulatively.

(g) *Immediate Family*. [Reserved] (See 56010(g) of the Guam Procurement Act.)

§161102. 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 Memorial Hospital Authority 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 hospital to promote and balance the objective of facilitating the recruitment and retention of personnel needed by the hospital. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Hospital 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 hospital procurement organization.

To achieve the purpose of this Chapter, it is essential that those doing business with the hospital also observe the ethical standards prescribed herein (§5605 of the Guam Procurement Act.)

§161103. General Standards of Ethical Conduct. Any effort to influence any hospital employee to breach the standards of ethical conduct set forth in this section and §5628 through §5633 of the Guam Procurement Act is also a breach of ethical standards (§5625 of the Guam Procurement Act).

(a) **Required Compliance with Ethic Standards as a**

Conduction 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 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Article 11 of the Guam Memorial Hospital Authority Procurement Regulations.

§161104. 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 (§5627 of the Guam Procurement Act).

§161105. 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 employee knows that:

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

(B) 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

(C) 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 member 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 §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. (§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 Memorial Hospital Authority Procurement Regulations which are quoted in §16106 of these Regulations:

(1) *financial interest*, as defined in §16106(nn) (Definitions, Financial Interest);

(2) *immediate family*, as defined in §16106(pp) (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 §5676(c) (Ethics Commission Waiver) of the Guam Procurement Act, the Civil Service Commission may grant an employee or the Policy Committee may grant a contractor the waiver of the conflict of interest prohibition where the interest of the hospital so requires 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 Committee 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 Committee when determining whether to grant a waiver shall include:

- (i) the degree of involvement of the government employee or a contractor in the particular procurement;
- (ii) 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;
- (iii) the likelihood of the appearance of impropriety;
- (iv) the availability of suppliers or contractors, if any, with which a contract would not present conflict; and
- (v) the extent to which the hospital's interest will be affected by a waiver.

**§21106. Disclosure of Benefit from Contract. (a)
Employee Disclosure Requirements [Reserved]**

(1) **Definitional Cross-Reference.** The term *Financial Interest* is defined in §16106(nn) (Definitions) of the Guam Procurement Regulations.

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

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

§161107. Gratuities and Kickbacks and Favors.

(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 or 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 kick-backs and favors to the hospital prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

(4) **Favors to the Hospital.** For purposes of this section, a favor is anything, including raffle tickets, of more than the minimum 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 hospital or for any employee or agent of the hospital to solicit or accept from any person or entity or agent thereof, a favor or gratuity on behalf of the hospital whether or not such favor or gratuity may be considered a reimbursable expense of the hospital, during the pendency of any matter related to the procurement including contract performance and warranty periods.

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

(1) *gratuity*, as defined in §16106(oo) (Definitions, Gratuity); and

(2) *purchase request*, as defined in §16106(qq)

(Definitions, Purchase Request).

(b) Gratuities Prohibition.

(1) **Breach.** It is a breach of §161107 (Gratuities and Kickbacks, Gratuities) of these Regulations:

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

(ii) 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 §161107(b)(2) of these Regulations, and pertains to any programs requirement, contract, subcontract, or solicitation or proposal therefor.

(2) **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:

(i) decision;

(ii) approval;

(iii) disapproval;

(iv) recommendation;

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

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

(vii) rendering of advice;

(viii) investigation;

(ix) auditing; or

(x) 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. §161107 (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 hospital 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 or 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, not pads, calendars, and other items under nominal value as described in §161101(a)(6) (Definitions, Gratuity) of this article

(d) **Payment of a Kickback.** The prohibition against kickbacks set forth in §161107. (Gratuities and Kickbacks, Kickbacks) of these Regulations applies whether a kickback is made prior to or after the award of a hospital contract or order.

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

REPRESENTATION REGARDING GRATUITIES,
KICKBACKS AND FAVORS

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 and favors set forth in §161107 (Gratuities and Kickbacks) of the Guam Memorial Hospital Authority Procurement Regulations.

§161108. 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 hospital contract upon 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 hospital contract, shall represent in writing, that such person has not retained anyone in violation of Subsection (1) of this section. Failure to do so constitutes a breach of ethical standards.

(3) **Contract Clause.** The representation prescribed in Subsection (1) of this section shall be conspicuously set forth in every contract and solicitation offer.

This section is quoted from §5631 of the Guam Procurement Act.

(b) **Definitional Cross-References.** The following terms used in this section are defined in §161101 of these Regulations:

(1) *bona fide employee*, as defined in §161101(a)(1) (Definitions, Bona Fide Employee);

(2) *bona fide established commercial selling agency*, as defined in §161101(a)(2) (Definitions, Bona Fide Established Commercial Selling Agency); and

(3) *business employee*, as defined in §161101(a)(3) (Definitions, Business Employee).

(c) **Influence Peddling.** The prohibition in §161101(1) (Prohibition Against Contingent Fees, Contingent Fees) of these Regulations covers influence peddling and particularly that which might occur when a former hospital official is hired on contingent basis by a business seeking hospital 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 hospital'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 Committee determines that improper influence has been or is being used to secure a hospital 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 CONTINENT FEES

The prospective contractor represents as 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 §161108(g) (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; and

(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 hospital 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.

§161109. 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 hospital, 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 hospital 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 one (1) year after cessation of the former employee's official responsibility, knowingly to act as principal, or as an agent for anyone other than the hospital, 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 hospital 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 hospital, 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 hospital is a party or has a direct and substantial interest.

(3) Selling to the Hospital 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 hospital 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 hospital nor shall a former employee be precluded from serving as a consultant to the hospital.

This section is quoted from §5632 of the Guam Procurement Act with modifications as it pertains to the hospital.

(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:

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

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

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

(iv) 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 §161109(a)(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 §161109(a). Therefore, only a particular matter involving an identifiable party or parties is subject to the permanent prohibition set forth under §161109(a).

(c) The Same particular Matter must be Involved. The prohibition set forth in §161109(a)(2) (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:

- (i) the factual basis of the matters;
- (ii) the relationship of the issues involved in each matter;
- (iii) the identity of the parties involved in each matter; and
- (iv) the continued existence of an important hospital interest.

(d) One Year Restriction for a Former Government Employee.

(1) Official Responsibility.

(A) Definitions. Section 5601(h) (Definitions, Official Responsibility) of the Guam Procurement Act, which defines *official responsibility* is quoted

in §16106(qq) (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 §161109(2)(b) (Restrictions on Employment of Present and Former Employees, Restrictions on Former Employees in Matters Connected with Their Former Duties) of the Guam Memorial Hospital Authority 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 §161109(c)(1) (Permanent Disqualification of Former Government Employee, Personal and Substantial Participation) of this Chapter.

(2) **Official Responsibility.** Section 5601(h) (Definitions, Official Responsibility) of the Guam Procurement Act, which defines *official responsibility*, is quoted in §16106(qq) (Definitions) and is discussed in §161109(a) (One Year Restriction for a Former Government Employee, Official Responsibility) of this article.

(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 §161109(C) (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:

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

(f) Prohibition Against Selling to the Territory.

(1) **Prohibition Applicability.** Section 161109(a)(3) (Restrictions on Employment of Present and Former Employees, Selling to the Hospital 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 (90) days following the date employment ceases. This prohibition applies with regard to any hospital employee who used to be employed.

(2) **Sell Defined.** Section 161109(a)(3) (Restrictions on Employment of Present and Former Employees, Selling to the Hospital After Termination of Employment is Prohibited) of these Regulations, defines *sell* for the purpose of prohibiting selling to the hospital to mean:

- (i) signing a bid, proposal or contract;
- (ii) negotiating a contract;
- (iii) contracting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract;
- (iv) settling disputes concerning performance of a contract; and
- (v) any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor 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

§161109(a)(3) of these Regulations shall not prohibit a former government employee from obtaining employment with a contractor, but such employee shall not sell to the hospital as defined in §161109(g)(2) (Prohibition Against Selling to the Hospital, *Sell Defined*).

§161110. 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 §5633 of the Guam Procurement Act).

§161111. Civil and Administrative Remedies Against Employees who Breach Ethical Standards [Reserved]

§161112. Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards.

(a) **Existing Remedies Not Impaired.** Civil and administrative remedies against non-employees which are in existence on the effective date of these Regulations shall not be impaired.

(b) **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:

- (i) written warnings or reprimands;
- (ii) termination of transactions; and
- (iii) debarment or suspension from being a contractor or subcontractor under hospital contracts.

(c) **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-employee shall be recovered by the hospital as provided in §5652 (Recovery of Value Transferred or Received in Breach of Ethical Standards) of the Guam Procurement Act as quoted on §161113 of these Regulations.

(d) **Right of the Hospital to Debar or Suspend.** Debarment or suspension may be imposed by the Procurement Policy Office in accordance with the procedures set forth in §5426 (Authority to Debar or Suspend) of the Guam Procurement Act for breach of the ethical standards of this Chapter, provided that such action

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

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

This §161112 is quoted from §5651 of the Guam Procurement Act, but modified to specify hospital references.

§161113. Recovery of Value Transferred or Received in Breach of Ethical Standards.

(a) **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-employee may be recovered from both the employee and non-employee.

(b) **Recovery of Kickbacks by the Hospital.** 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 hospital 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 §161113 is quoted from §5652 of the Guam Procurement Act with the insertion of hospital for territory.

§161114. Ethics Enforcement. (a) **Ethics: Non Employees.** In addition to the authority and duties of the Policy Office under §6953 of the Guam Procurement Act, such office is hereby given the functions required under this article with regard to non-employees and the Civil Service Commission is hereby given the functions required with regard to employees.

This §161114 is quoted from §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 hospital 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 §5628 of this Chapter (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 hospital so require or when the ethical conflict is insubstantial or remote.

This §161114 is quoted from §5675 of the Guam Procurement Act with specifications to the hospital.

(2) Appeal of Decisions.

(A) **General.** Except as provided under Subsections (b) and (c) of this section, a decision of the Policy Committee under §5651 (coded as §161112 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 §5651(b) of the Guam Procurement Act (coded as §161112 of these Regulations) shall be reviewable as provided in §5481(b) of the Guam Procurement Act (coded as §16909 of these Regulations).

(C) An appeal from the decision of the Civil Service Commission under §5650 of this Chapter (coded as §16111 of these Regulations) shall be taken before members, either permanent or pro tempore, who had no part in the decision 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 §161114 is quoted from §§5675, 5676, and 5677 of the Guam Procurement Act.

APPENDIX

Regulations Governing Government of Guam
Ethnics in Public Contracting as Promulgated
By the Civil Service Commission
Resolution CSC-002-84

BE IT RESOLVED BY THE CIVIL SERVICE COMMISSION:

WHEREAS, Public Law 16-124 created the Guam Procurement Act and established standards for Government of Guam Employees involved in public contracting or the procurement or disposal of supplies, services, or construction; and

WHEREAS, Article 11 of the Guam Procurement Act designates the Civil Service Commission as the Ethics Commission for Government of Guam employees, and mandates the Commission to establish and adopt regulations for enforcement of the ethical standards; and

WHEREAS, the Civil Service Commission, in conjunction with the General Services Agency, conducted a public hearing on the proposed rules and regulations for enforcement of the ethical standards; and

WHEREAS, the Civil Service Commission, in conjunction with the General Services Agency, conducted a public hearing on the proposed regulations on June 13, 1984; and

WHEREAS, the proposed regulations are ready for adoption;

NOW, THEREFORE, BE IT RESOLVED, that the Civil Service Commission hereby duly adopts the attached document entitled, "Government of Guam, Guam Procurement Act, Chapter 11 Ethics Regulations."

DULY AND REGULARLY ADOPTED THIS 19th DAY OF JUNE, 1984.

/s/
VICENTE P. PEREZ
Chairperson

/s/
WILLIS S. CANNON
Commissioner

/s/
FRANK T. LIZAMA
Commissioner

/s/
JUNE S. REGALDO
Vice Chairperson

/s/
E.L. "BILL" GIBSON
Commissioner

/s/
LUCIA A. VALENTIN
Commissioner

**GOVERNMENT OF GUAM
GUAM PROCUREMENT ACT**

**ARTICLE 11
ETHICS REGULATIONS**

REGULATION 11-1. PURPOSE AND SCOPE.

To provide regulations relating to ethical standards for Government of Guam employees involved in public contracting, in accordance with the Guam Procurement Act (P.L. 16-124). These regulations apply to all governmental bodies and employees covered by the Act. Hospital employees are employees of the Government of Guam.

REGULATION 11-2. NOTICE.

The head of any governmental body covered by the Guam Procurement Act shall give notice of this Chapter to all employees within the organization who are involved in the procurement or disposal of supplies, services, or construction; such head should explain and discuss the provisions to covered employees at least annually.

REGULATION 11-2.1. GOVERNMENT EMPLOYEE STATEMENT.

Each covered government employee shall be given a copy of this Chapter by the head of the governmental body by which such employee is employed, and shall be required to sign a statement, supplied by the Civil Service Commission, that such employee is familiar with and will abide by the Guam Procurement Act and this Chapter.

REGULATION 11-2.2. FILING OF GOVERNMENT EMPLOYEE STATEMENTS.

Each government employee statement shall be filed with the Civil Service Commission. As a condition of employment, new government employees shall file such statement within ten (10) days of the first day of such employee's employment. Incumbent employees shall file such statement within ten days of the effective date of this Chapter. This statement shall constitute the notice required by §5628 (Employee Conflict of Interest, and §5632 (Restrictions on Employment of Present and Former Employees, Contemporaneous Employment Prohibited) of the Guam Procurement Act.

REGULATION 11-3. DEFINITIONS

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

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DIV. 2 - GUAM MEMORIAL HOSPITAL

2. *Confidential Information* means any information which is available to an employee only because of the employee's status as an employee of this Territory and is not a matter of public knowledge or available to the public on request.
3. *Conspicuously* means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.
4. *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or any other advisory capacity.
5. *Financial Interest* means:
 - (a) ownership of any interest or involvement in any relationship from which, or as a result of which a person within the past year has received, or is presently or in the future entitled to receive, more than Two Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent;
 - (b) ownership or such interest in any property or any business as may be specified by the Ethics Commission; or
 - (c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
6. *Gratuity* means a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. 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 §5601(f) of the Guam Procurement Act, means actual worth, actual costs, whichever is greater, which does not exceed \$25 individually or cumulatively.
7. *Immediate Family* means a spouse, children, parents, brothers and sisters or other relationships identified by the Civil Service Commission as falling within the term "immediate" family. In deciding whether a relationship is covered by this Chapter, the Commission will consider all relevant factors.
8. *Official Responsibility* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct territorial action.
9. *Purchase Request* means that document whereby a using agency requests that a contract be entered into for a specified need, and may include but is not limited to, the technical description of the

requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Guam Procurement Act.

10. *Employee* means an individual drawing a salary from a government body, whether elected or not, and any non-compensated individual performing personal services for any government body. Employee is synonymous with government employee as used in this Chapter. The terms 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.

11. *Governmental Body* means any department, commission, council, board, bureau, committee, institution, agency, government corporation, authority or other establishment or official of the executive branch of the Government of Guam, except the Guam Community College, the University of Guam, the Department of Education, and other bodies exempted by statute after the effective date of this Chapter.

REGULATION 11-4. STANDARDS OF CONDUCT.

REGULATION 11-4.1 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 regulation, it is essential that those doing business with the Territory also observe the ethical standards prescribed herein.

REGULATION 11-4.2 GENERAL STANDARDS OF ETHICAL CONDUCT.

1. General Ethical Standards for Employees.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust.

In order to fulfill this general prescribed standard, an employee must also meet the specific standards set forth in these Regulations.

REGULATION 11-4.3 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:

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

(b) 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

(c) 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 member 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. Disclosure of a Blind Trust.

Within sixty (60) calendar days of the creation of a blind trust or, if such trust exists on the effective date of the Guam Procurement Act, within sixty (60) calendar days of such effective date, the government employee who has a financial interest in a blind trust shall file a disclosure report with the Civil Service Commission which shall contain the following:

(a) a copy of the trust instrument;

(b) the name and address of the trustee; and

(c) a statement that the government employee does not and will not receive notice of changes in the trust property.

4. Civil Service Commission Ruling on a Blind Trust.

Within thirty (30) days of the receipt of a disclosure report, the Civil Service Commission shall determine in writing whether the particular trust arrangement complies with the policy set forth in §5601(a) (Definitions, Blind Trust) of the Guam Procurement Act. Upon a determination by the Civil Service Commission that the particular trust arrangement does not comply with the policy set forth in §5601(a) of the Guam Procurement Act, such employee may revise the trust arrangement and may submit a new disclosure report to the Civil Service Commission.

5. 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 future participation in the transaction involved. The employee may, at the same time, apply to the Civil Service Commission in accordance with Regulation 11-6 for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

6. Application for Waiver.

When a government employee knows that he or she has an actual or potential conflict of interest or when the Civil Service Commission has determined that an actual conflict of interest exists, such employee shall disqualify himself or herself from the

procurement involved and may apply to the Civil Service Commission for a waiver of the conflict of interest prohibition under the authority of §5628(c) (Employee Conflict of Interest, Discovery of Actual or Potential Conflict of Interest, Disqualification and Waiver) of the Guam Procurement Act.

7. Grant or Denial of Waiver.

Under §5676(c) (Civil Service Commission Waiver) of the Guam Procurement Act, the Civil Service Commission may grant a 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 shall make such investigation as it may deem appropriate and which is not in violation of the government employee's rights, privileges, and immunities.

Factors to be considered by the Civil Service Commission when determining whether to grant a waiver shall include:

(a) the degree of involvement of the government employee 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 which relates to the particular procurement;

(c) the likelihood of the appearance of impropriety;

(d) the availability of suppliers of 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.

8. Negotiating for Employment With Contractor.

Section 5628 (Employee Conflict of Interest) of the Guam Procurement Act covers instances in which a government employee involved in procurement is actively negotiating for employment with a contractor or prospective contractor and applies to the Civil Service Commission for a waiver of the conflict of interest prohibition regarding any further participation in that procurement; offers of employment under certain circumstances may also be gratuities which are prohibited by §5630 (Gratuities and Kickbacks) of the Act.

REGULATION 11-4.4 EMPLOYEE DISCLOSURE REQUIREMENTS.

1. Disclosure of Benefit Received from Contract.

Any employee who has, or obtains any benefit from, any Territorial contract with a business in which the employee has a financial

interest shall report such benefit to the Civil Service Commission; provided, however, that this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

2. Failure to Disclose Benefit Received.

An employee who knows or should have known of such benefit, and fails to report such benefit to the Civil Service Commission is in breach of the ethical standards of this section.

3. Benefit Defined.

A government employee who receives a benefit for the purposes of the disclosure requirement of §6980.5 (Employee Disclosure Requirement) of the Guam Procurement Act when a Territorial contract is awarded to a business in which such employee has a financial interest.

4. Disclosure Requirement.

The disclosure required by §5629 (Employee Disclosure Requirements) of the Guam Procurement Act shall be made to the Civil Service Commission within thirty (30) days after the government employee has actual or constructive notice of a benefit received or to be received. Such disclosure shall be made in written report which sets forth:

(a) the name of the government employee and the name of the business involved;

(b) the name of the government body with which the business has a contract;

(c) the dollar amount and nature of the contract; and

(d) the nature and extent of the benefit received or to be received.

This requirement applies regardless of whether such employee is subject to the conflict of interest prohibition set forth in §5629 (Employee Conflict of Interest) of the Guam Procurement Act.

REGULATION 11-4.5. GRATUITIES AND KICKBACKS.

1. Gratuities.

It shall be a breach of ethical standards for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in confection 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. 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 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 specification 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 that employee's immediate family.

4. When Prohibition Against Gratuities Not Applicable.

Section 5630 (Gratuities and Kickbacks, Gratuities) does not prohibit:

(a) 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.

(b) 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 nonprofit educational, recreational, public service, or civic organization;

(c) 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

(d) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value described in §11-3(f) (Definitions, Gratuity) of this Article.

(e) the gratuities prohibition set forth in §5630 (Gratuities and Kickbacks, Gratuities) of the Guam Procurement Act should not be construed to apply to instances in which the interests of the Territory are served by the Territorial participation in the widely attended luncheons, dinners, and similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest to the Territory and such organizations. However, payment by the Territory for attendance at such functions by government employees is encouraged.

REGULATION 11-4.6 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 employee or bona fide established commercial selling agencies for the purpose of securing business.

2. Influence Peddling.

The prohibition in §5631 (Prohibition Against Contingent Fees, Contingent Fees) of the Guam Procurement Act covers influence peddling and particularly that which might occur when a former government official is hired on a contingent basis by a business seeking Territorial contracts.

3. Improper Influence.

A business employee or a commercial selling business should be conclusively presumed not to be bona fide if the Civil Service Commission determines that improper influence has been or is being used to secure a Territorial contract.

REGULATION 11-4.7 RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES.

1. Contemporaneous Employment Prohibited.

Except as may be permitted by the Guam Procurement Act or rulings of the Civil Service Commission pursuant to the Act, or Title 4 of the Guam Code Annotated, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. "Contracting" as used in this section includes performing a Territorial contract or actively seeking award of a Territorial contract.

The Civil Service Commission may determine what constitutes a "governmental body" for purposes of the prohibition set forth in §5632(a) of the Guam Procurement Act. Such determination should be based on the separate and distinct function of the particular smaller unit.

2. Waiver.

Under the provisions of §5632(a) (Restrictions on Employment of Present and Former Employees, Contemporaneous Employment Prohibited) of the Guam Procurement Act, the Civil Service Commission may waive the prohibition set forth in that section on a case-by-case basis. Prior to granting a waiver, the Civil Service Commission shall make written determinations that:

(a) the contemporaneous employment of the government employee had been publicly disclosed;

(b) the government employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism; and

(c) the best interest of the Territory will not be impaired.

REGULATION 11-4.8 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.

REGULATION 11-5 REMEDIES. CIVIL AND ADMINISTRATIVE REMEDIES AGAINST EMPLOYEES WHO BREACH ETHICAL STANDARDS.

1. Existing Remedies Not Impaired.

Civil and administrative remedies against employees which are in existence on the effective date of the Guam Procurement Act shall not be impaired.

2. Supplemental Remedies.

In addition to existing remedies for breach of the ethical standards of the Guam Procurement Act or regulations promulgated hereunder, the Civil Service Commission may, in connection with employees of the Government of Guam, direct the appointing authority to issue any one or more of the following:

(a) oral or written warnings or reprimands;

(b) suspension with or without pay for specified periods of time; and

(c) termination of employment;

but the Civil Service Commission members who made such recommendation shall not sit upon any appeal from the resulting adverse action and the Governor shall appoint the necessary members pro tempore, without the consent of the Legislature to hear such appeals.

3. Right to Recover from Employee Value Received in Breach of Ethical Standards.

The value of anything received by an employee in breach of the ethical standards of the regulations promulgated hereunder may be recoverable by the Territory as provided in §5652 of the Guam Procurement Act.

4. Due Process.

All procedures under this section shall be in accordance with existing law and regulations regarding adverse actions and employee discipline promulgated pursuant to Title 4 of the Guam Code Annotated.

REGULATION 11-6 ETHICS ENFORCEMENT.

The Guam Procurement Act grants the functions required under this law to the Civil Service Commission with regard to employees. In the interests of continuing the employment structure already established and in not creating unnecessary commissions, the Civil Service Commission has jurisdiction over ethics violations by

government employees.

1. Ethics Commission.

(a) Regulations.

The Civil Service Commission has developed these regulations to implement the Guam Procurement Act with regard to government employees. The authority and powers of the Commission to enforce these regulations shall be pursuant to the Guam Procurement Act and all relevant statutes governing the Commission.

(b) Advisory Opinions.

On written request of an employee, the Civil Service Commission may render written advisory opinions regarding the appropriateness of the course of conduct to be followed 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 shall be deemed to constitute compliance with the ethical standards of the Guam Procurement Act.

(c) Waiver.

On written request of an employee, the Civil Service Commission may grant an employee a written waiver from the application of §5628 of the 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.

2. Appeal of Decisions.

(a) General. Except as provided under §5677 (Appeal of Decisions) of the Guam Procurement Act, a decision of the Civil Service Commission shall be reviewable in accordance with the Administrative Adjudication Law of this Territory, but only in connection with the duty to render opinions.

(b) An appeal from the decision of the Civil Service Commission as provided herein and the Guam Procurement Act, shall be taken before members, either permanent or pro tempore, who had no part in the decision being appealed from and in accordance with the rules of the Civil Service governing adverse actions in general. Parties will be advised in advance of the procedural requirements of the Commission. As provided in §5677(c) of the Guam Procurement Act, further review by the Superior Court, where permitted, shall be pursuant to the provisions of Title 4, Guam Code Annotated.

