

CHAPTER 4
SPECIFICATIONS

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« **§4101. Definition of Terms Used in this Chapter.**

(a) Definitions.

(1) *Brand Name Specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers.

(2) *Brand Name or Equal Specification* means a specification which uses one or more manufacturer's name or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet territorial requirements, and which provides for the submission of equivalent products.

(3) *Qualified Products List* means an approved list of supplies, services, or construction items described by model or catalogue numbers, which prior to competitive solicitation, the territory has determined will meet the applicable specification requirements.

(4) *Specification* means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery (5 GCA §5260 of the Guam Procurement Act). Unless the context requires otherwise, the terms *specification* and *purchase description* are used interchangeably throughout these Regulations.

(5) *Specification for a Common or General Use Item* means a specification which has been developed and approved

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for repeated use in procurement in accordance with the provisions of §4103(b)(2)(a), (Procedures for the Development of Specifications, Special Additional Procedures) of these Regulations.

§4102. Regulation. This Chapter sets forth regulations governing the preparation, maintenance, and content of specifications for suppliers, services, and construction required by the territory, pursuant to 5 GCA §5261 of the Guam Procurement Act.

(a) General Purposes and Policies.

(1) **Purpose.** The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the territory's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the territory that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the territory's requirements.

(2) **Use of Functional or Performance Descriptions.** Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the territory. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

(3) **Preference for Commercially Available Products.** It is the general policy of this territory to procure standard commercial products whenever practicable. In developing specifications, accepted commercial

standards shall be used and unique requirements shall be avoided, to the extent practicable.

(b) **Availability of Documents.** Except as provided in Subsection 4103(b)(2)(d) (Procedures for the Development of Specifications, Special Additional Procedures) regarding testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

î **§4103. Preparation of Specifications.** The Chief Procurement Officer and the Director of Public Works shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the territory, in accordance with 5 GCA §5262 of the Guam Procurement Act.

(a) Authority to Prepare Specifications.

(1) **Statutory Authority of the Chief Procurement Officer and the Director of Public Works, and other Agencies.** The Chief Procurement Officer and the Director of Public Works is authorized in 5 GCA §5262 (Duties of the Chief Procurement Officer and the Director of Public Works) of the Guam Procurement Act, to prepare specifications subject to the authority granted Purchasing Agencies in 5 GCA §5263 (Exempted Items) of the said Act. (See Section 4104, (Exempted Items) of these Regulations. The Chief Procurement Officer or the Director of Public Works may delegate in writing the authority to prepare and utilize specifications to purchasing agencies and using agencies for any type of supplies, services, or construction provided such delegations may be revoked by the Chief Procurement Officer or Director of Public Works.

(2) **Authority to Contract for Preparation of Specifications.**

(a) When a written determination is made by the Chief Procurement Officer or the Director of Public Works, or the head of a Purchasing Agency authorized to prepare such specifications that there

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will be no substantial conflict of interest involved and it is otherwise in the best interest of the territory, a contract to prepare specifications for territory use in procurement of supplies or services may be entered into provided such officer retains the authority to finally approve the specifications.

(b) Whenever it is determined under 5 GCA §5302 (Responsibility for Selection of Methods of Construction Contracting Management) of the Guam Procurement Act that the appropriate method of construction contracting management involves allowing specifications to be prepared by other than territorial personnel, a contract may be entered into for such preparation provided the Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency retains the authority to finally approve the specifications.

(c) **Small Purchase and Emergency Authority.** If a specification for general or common use or qualified products list exists for an item to be procured under §3111 (Small Purchases), it shall be used except as otherwise provided by the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency. If no such specification exists, purchasing and using agencies are hereby granted the authority to prepare specifications for use in such purchases. In an emergency under §3113 (Emergency Procurement), any necessary specifications may be utilized by the purchasing or using agency without regard to the provisions of this Chapter.

(b) Procedures for the Development of Specifications.

(1) Provisions of General Application.

(a) **Application of Section.** This Section applies to all persons who may prepare a specification for territorial use, including the Chief Procurement Officer, the Director of Public Works, the head of a

Purchasing Agency, the head of a using agency, and the designees of such officers.

(b) Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the territory's requirements.

(c) Contractual Terms Not to be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with Subsection 4103(b)(2)(a) of this Section or a qualified products list has been developed in accordance with Subsection 4103(b)(2)(d) of this Section for a particular supply, service, or construction item, it shall be used unless the Chief Procurement Officer or the Director of Public Works or the head of a Purchasing Agency makes a written determination that its use is not in the territory's best interest and that another specification shall be used.

(2) Special Additional Procedures.

(a) Specifications for Common or General Use Items.

(i) Preparation and Utilization. A specification for common or general use shall, to the extent practicable, be prepared to be utilized when:

(A) a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the

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supply, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurement is significant.

(B) the territory's recurring needs require uniquely designed or specially produced items; or

(C) the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing or Using Agency authorized to prepare such specifications finds it to be in the territory's best interest.

(D) In the event a using agency requests the preparation of a specification for a common or general use item, the Chief Procurement Officer or the Director of Public Works shall prepare such a specification if such officer determines the conditions in Subsection 4103(b)(2)(a)(i)(A), (B), or (C) of this Section have been met.

(ii) **Comments on the Draft.** The Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing or Using Agency preparing a specification for a common or general use item shall provide the using agencies, and a reasonable number of manufacturers and suppliers as such officer deems appropriate, an opportunity to comment on the draft specification.

(iii) **Final Approval.** Final approval of a proposed specification for a common or general use item shall be given only by the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing or Using Agency authorized to give such approval.

(iv) **Revisions.** Revisions to specifications for common or general use items which do not change the technical elements of the specifications, but which are necessary for clarification may be made upon approval of the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing or Using Agency authorized to approve such specifications. Interim revisions for a particular procurement which change the technical elements of the specification may be made by the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing or Using Agency authorized to approve such a specification. All other revisions shall be made in accordance with Subsections 4103(b)(2)(a)(ii) accordance with Subsections 4103(b)(2)(a)(ii) and 4103(b)(2)(a)(iii) of this Section.

(v) **Cancellation.** A specification for a common or general use item may be cancelled by the Chief Procurement Officer, the Director of Public Works, or by the head of a Purchasing or Using Agency authorized to give final approval of such specifications.

(b) Brand Name or Equal Specification.

(i) **Applicability of this Subsection.** This Subsection 4103(b)(2)(b) shall apply whenever brand names are used in specifications except as provided in Subsection 4103(b)(2)(c) of this Section.

(ii) **Use.** Brand name or equal specifications may be prepared to be used when the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency determines in writing that:

(A) no specification for a common or general use item or qualified products list is available;

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(B) time does not permit the preparation of another form of specification, not including a brand name specification;

(C) the nature of the product or the nature of the territory's requirements makes use of a brand name or equal specification suitable for the procurement;
or

(D) use of a brand name or equal specification is in the territory's best interest.

(iii) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(iv) **Required Characteristics.** Unless the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing or Using Agency authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(v) **Nonrestrictive Use of Brand Name or Equal Specifications.** Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(c) Brand Name Specification.

(i) **Use.** Since use of a brand name specification is restrictive, it may be used only when the Procurement Officer or the Director of Public Works makes a written determination that only the identified brand name item or items will satisfy the territory's needs.

(ii) **Competition.** The Procurement Officer and the Director of Public Works shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under §3112 (Sole Source Procurement).

(iii) **Reports.** The Procurement Officer and Director of Public Works shall submit (monthly) reports to the Chief Procurement Officer stating any brand name specification used; the number of suppliers solicited; the identity of these suppliers; the supplier awarded the contract; and the contract price.

(d) Qualified Products List.

(i) **Use.** A qualified products list may be developed with the approval of the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing or Using Agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy territorial requirements.

(ii) **Comments, Final Approval, Revisions, and Cancellations** Comments on, final approval of, and revisions to the proposed criteria and methodology for establishing and maintaining

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a qualified products list, and the cancellation thereof, shall follow the procedure of Subsection 4103(b)(2)(a)(ii) through 4103(b)(2)(a)(v) of this Section applicable to specifications for common or general use items.

(iii) **Solicitation.** When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(iv) **Testing and Confidential Data.** Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

§4104. Excepted Items. Specifications for supplies, services, or construction items procured under 5 GCA §5121 (Authority to Contract for Certain Services), or exempted pursuant to 5 GCA §5124 (Exemptions) of the Guam Procurement Act, may be prepared by a Purchasing Agency in accordance with the provisions of this Chapter and regulations promulgated hereunder.

(a) **Authority to Prepare Specifications Exempted Items.** §4104 (Exempted Items) of these Regulations grants Purchasing Agencies authority to prepare specifications for the services of accountants, physicians, lawyers, and dentists and other professionals, and for works of art for museum and public display; published books, books or other regular publications published by any government agency, maps, periodicals, and technical pamphlets; and architect-engineer

and land surveying services as defined in 5 GCA §5301 of the Guam Procurement Act.

§4105. Relationship with Using Agencies. The Chief Procurement Officer and the Director of Public Works shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilized its own specification (5 GCA §5264 of the Guam Procurement Act).

§4106. Maximum Practicable Competition. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the territory's needs, and shall not be unduly restrictive (5 GCA §5265 of the Guam Procurement Act).

(a) **Nonrestrictiveness Requirement.** All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

§4107. Specifications Prepared by Architects and Engineers. The requirement of this Chapter regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts (5 GCA §5266 of the Guam Procurement Act)

(a) **Specifications Prepared by Other Than Territorial Personnel.** The requirements of this Chapter shall apply to all specifications prepared by other than territorial personnel, including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen of specifications for public contracts. Contracts for the preparation of specifications by other than territorial personnel shall require the specification writer to adhere to such requirements. When persons other than territorial personnel prepare specification, the territory shall not be

relieved from the comment and review requirements of this Chapter.

§4108. Publication of Specification Sources. The specifications contained in any invitation for bids or request for proposals, and any amendment thereto, for the procurement of supplies shall identify the person responsible for drafting the specifications and any persons, technical literature or manufacturer's brochures relied upon by the responsible person in drafting the specifications.

SOURCE: Added to comply with 5 GCA §5267. (1/1/1999)

§4109. Salient Features. (a) Specifications shall not include requirements, such as but not limited to restrictive dimensions, weights or materials, which unnecessarily restrict competition, and shall include only the essential physical characteristics and functions required to meet the government of Guam's minimum needs.

(b) Purchase descriptions shall not specify a product having features which- are peculiar to the products of one manufacturer, producer or distributor unless it has been determined in writing by the Director of the using agency that those particular features are essential to the requirements and specifying the reason that similar products lacking those features would not meet minimum requirements for the item.

(c) Purchase descriptions shall describe the salient technical requirements or desired performance characteristics of supplies or services to be procured without including restrictions which do not significantly affect the technical requirements or performance characteristics.

SOURCE: Added to comply with 5 GCA §5268. (1/1/1999)
