

5 GCA GOVERNMENT OPERATION
CH. 50 CONTRACTING FOR PUBLIC WORKS

DIVISION 5
PUBLIC WORKS

NOTE: Chapter IV of Title XXII of the Government Code, Public Transportation Franchises, has been effectively repealed by 12 GCA § 6401. This section, an addition to the law on the Guam Mass Transit Authority, stated that the GMTA shall have the exclusive franchise for public transportation in Guam and that any franchises existing at the time of passage -- there were none -- were to be phased out by July 1, 1977.

Chapter V of Title XXII of the Government Code, the Water Resources Conservation Act, is found in 10 GCA Chapter 46.

Chapters VI and VII of Title XXII of the Government Code, dealing with the Guam Power Authority, are found in 12 GCA Chapter 8.

CHAPTER 50
CONTRACTING FOR PUBLIC WORKS

NOTE: The Department of Public Works has been given authority to contract with respect to capital improvement and construction projects. This authority and the procedures governing its use are found in 5 GCA Chapter 5, Guam Procurement Law.

- § 50101. Employment of Aliens in Public Works.
- § 50102. Report of Emergency.
- § 50103. Record of Citizenship of Worker.
- § 50104. Penalty for Employing Alien.
- § 50105. Minimum Wage.
- § 50106. Definitions.
- § 50107. Public Bids Required. [Repealed]
- § 50108. Credits for Using Citizens and Permanent Residents; Amounts.
- § 50109. Minimum Percentage of Citizens Required for Government Contracts.
- § 50110. Non-Immigrant Temporary Workers.
- § 50111. Provisions for the Disabled.

§ 50101. Employment of Aliens in Public Works.

No contractor or subcontractor engaged in the construction of public works for the government of Guam shall knowingly employ, or permit to be employed, any alien in such construction except in cases of extraordinary emergency which endanger life or property, or upon certification by the Employment Service of the Department of Labor that

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United States citizens are not available in the Territory of Guam in the craft or skill of employee required.

SOURCE: GC § 10001 added by P.L. 5-127.

§ 50102. Report of Emergency.

Within thirty days after any alien is permitted to work in the construction of public works due to an extraordinary emergency, the contractor shall file with the contracting officer of the government a verified report setting forth the nature of the emergency, the name of the alien, and such date he was permitted to work.

SOURCE: GC § 10001.1 added by P.L. 5-127.

§ 50103. Record of Citizenship of Worker.

Every contractor and subcontractor shall keep an accurate record showing the name and citizenship of each workman employed by him in the construction of public works for the government of Guam. The record shall be kept open at all reasonable hours for inspection by the contracting officer of the government of Guam.

SOURCE: GC § 10001.2 added by P.L. 5-127.

§ 50104. Penalty for Employing Alien.

Any contractor engaged in the construction of public works for the government of Guam shall forfeit, as a penalty, to the government of Guam, Ten Dollars for each alien knowingly employed in such construction, by either such contractor or a subcontractor, for each calendar day, or portion thereof, during which each such alien is permitted or required to labor in violation of this Chapter. All contracts awarded for the construction of public works shall contain provisions for such forfeiture.

SOURCE: GC § 10001.3 added by P.L. 5-127.

§ 50105. Minimum Wage.

All contracts executed by the government of Guam for the construction of public works shall provide that persons employed thereon shall be paid not less than the minimum wage applicable to the corresponding skill or craft in the service of the government of Guam.

SOURCE: GC § 10001.4 added by P.L. 5-127.

§ 50106. Definitions.

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For purposes of this Chapter the term *construction of public works* shall mean and include work performed pursuant to contract for the erection, maintenance, rehabilitation, repair, or demolition of any public building, roadway, or any public facility. The term *alien* shall not include permanent residents of the United States or immigrant aliens eligible for United States citizenship. The term *total workforce* shall include only the full-time employees of the prime contractor and all subcontractors engaged by said prime contractor.

SOURCE: GC § 10001.5 added by P.L. 5-127; amended by P.L. 14-8:1.

§ 50107. Public Bids Required.

[Repealed.]

SOURCE: GC § 10001.6 added by P.L. 5-127; amended by P.L. 10-150; repealed by P.L. 17-9 to conform with the Guam Procurement Law (5 GCA Chapter 5).

§ 50108. Credits for Using Citizens and Permanent Residents; Amounts.

(a) In order to induce contractors to hire more United States citizens and permanent residents and to encourage training and apprenticeship programs, all bids submitted for government of Guam public works contracts, including service contracts, shall be adjusted in accordance with the following schedule:

(1) A bid credit of 2½% for that bidder which has and maintains throughout the term of the contract a total workforce of which no less than 25% are citizens or permanent residents of the United States;

(2) A bid credit of 5% for that bidder which has and maintains throughout the term of the contract a total workforce of which no less than 30% are citizens or permanent residents of the United States;

(3) A bid credit of 10% for that bidder which has and maintains throughout the term of the contract a total workforce of which no less than 40% are citizens or permanent residents of the United States.

(b) To be eligible to participate in the above described credit system the bidder must have in force and effect a training and apprenticeship program to train local employees. All H-2 workers employed by any

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bidder must upon entering Guam be able to pass an English Proficiency Examination in both writing and verbal skills. The standard for this requirement is recommended as Grade Level 3.

(c) The Department of Labor shall certify to the agency awarding a contract as to the percentage of citizen and permanent resident employees of the bidder and their subcontractors and shall monitor performance of such contract by the bidder and its subcontractors awarded the same to make certain that the percentage of such employees upon which the bid was awarded is maintained for the full term of the contract. If at any time during the term of the contract the percentage of citizens and permanent residents in the total workforce is less than the percentage which was required for the award of a bid credit pursuant to subsection (a) of this section, amounts payable under said contract shall be reduced by the amount of the bid credit which the contractor was awarded; provided, that, said reduction shall be offset by the amount of bid credit said contractor would be entitled to by virtue his employment of citizens or permanent residents within the total workforce.

(d) The Director of Labor is authorized to issue rules, pursuant to the provisions of the Administrative Adjudication Law [5 GCA Chapter 9], to carry out the provisions of this Section and of 50109 of this Chapter.

SOURCE: GC § 10001.7 added by P.L. 14-8:2.

COMMENT: Sections 1 and 2 of P.L. 14-8 (§§ 50106 and 50108 of this Chapter) were declared contrary to the U.S. Constitution and Organic Act for a variety of reasons. The Superior Court (the case was never appealed) also ruled that the Legislature could, if it desired, write a law which would encourage local employment but not infringe upon federal powers. *Hawaiian Dredging & Construction Corp. et. al v. Guam Airport Authority et. al*, 2 Guam R. 116 (1980).

§ 50106 read, before amendment by P.L. 14-8:

"§ **50106. Definitions.** For purposes of this Chapter the term *construction of public works* shall mean and include work performed pursuant to contract for the erection, maintenance, rehabilitation, repair, or demolition of any public building, roadway, or other public facility. The term alien shall not include permanent residents of the United States or immigrant aliens eligible for United States citizenship." [Added by P.L. 5-127.]

§ 50109. Minimum Percentage of Citizens Required for Government Contracts.

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No contract for the construction of public works or for services shall be awarded by the government of Guam unless the contractor has, and throughout the term of the contract, maintains a total workforce of which no less than 40% are citizens or permanent residents of the United States.

SOURCE: GC § 10001.8 added by P.L. 13-142:3; amended by P.L. 15-66:VI:25.

§ 50110. Non-Immigrant Temporary Workers.

(GC §§ 44017-44022, passed by P.L. 18-48:3-8, and amended extensively through the 21st Guam Legislature, requires mandatory registration, repatriation guaranty performance and payment bonds, and certain other regulations governing non-immigrant workers.)

§ 50111. Provisions for Persons with Disabilities.

(a) All buildings parking lots, walks and recreational facilities hereafter constructed by or for the government of Guam intended for the use of the general public shall be designed and constructed in such manner as to permit persons with disabilities who use wheelchairs or are otherwise of limited mobility ready access to such buildings, parking lots, walks, recreational facilities and to all parts thereof open to the general public. All public buildings, parking lots, walks, and recreational facilities now in use by the general public shall be modified, insofar as is possible and practicable to permit ready access by persons with disabilities, and in leasing buildings for public use, priority shall be given to those structures where access to public areas by persons with disabilities is provided. All modifications and construction shall follow existing federal guidelines regarding access by persons with disabilities.

(b) The Director of DPW shall designate, by use of the International Symbol of Accessibility, parking areas which are to be used by persons with disabilities. Such spaces shall also carry a designation that illegal parking carries a fine of not less than Three Hundred Dollars (\$300) and not more than Five Hundred Dollars (\$500), and that an illegally parked vehicle may be towed. In designating parking areas for persons with disabilities, the Director of DPW and the Department shall coordinate its activities with the various departments, agencies, boards, and authorities of the government to insure the reasonable allocation of accessible parking areas for persons with disabilities.

(c) A Fund to be known as the Accessible Parking Fund (Fund) is hereby re-enacted and will continue to be separate and apart from any

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other fund of the government of Guam. The Department of Integrated Services for Individuals with Disabilities *shall* maintain the Fund, and *shall* utilize the Fund for the purpose of ensuring community awareness regarding parking issues for individuals with disabilities, which *shall* include the monitoring and compliance for the provision of accessible parking for individuals with disabilities.

SOURCE: GC § 10001.7 added by P.L. 10-20; renumbered to § 10001.9 by P.L. 14-8:3, amended by P.L. 17-59:1; amended by P.L. 18-28:6. Amended by P.L. 23-11:5 (04/26/95). Subsection (c) amended by P.L. 24:16:4; repealed by P.L. 28-130:5:(b) (July 11, 2006); added by P.L. 28-150:V:61 (Sept. 30, 2006) and P.L. 31-152:3 (Nov. 21, 2011).

CROSS-REFERENCES: See 16 GCA § 3491.1 for related Vehicle Code provisions.
