CHAPTER 5
GUAM PROCUREMENT LAW

2024 NOTE: Pursuant to 5 GCA § 1510, I Maga'hågan/Maga'låhen Guåhan means the "Governor of Guam" and I Maga'håga/Maga'låhi means the "Governor." Pursuant to 2 GCA § 1101, I Liheslaturan Guåhan means the "Guam Legislature and I Liheslatura means the "Legislature."

2014 NOTE: The Comments found in this Chapter, unless otherwise specified, were before the Guam Legislature, and are included herein as previously published, as part of the legislative history of this Chapter. Other annotations, including Notes from the Compilers in past publications of the GCA, indicate where relevant laws have been amended or passed since enactment of this Chapter.

In the transition from the GC to the GCA, the term Part was replaced with the term Subarticle.

COMMENT: This Chapter is essentially the Model Procurement Code approved by the American Bar Association in 1979. A model code is one which provides a guide for the jurisdictions which wish to adopt it, but does not require that it be followed precisely. It is different from a uniform code, the latter being intended to unify the laws of the jurisdictions which adopt it. The ABA and the drafters of the Model Procurement Code recognize the wide organizational differences between the states and jurisdictions under the U.S. Therefore, there are many portions of this Model Code which are optional, or which may be modified. This Act has modified the model code to suit Guam's organizational structure and function.

Because this Act intends that the Policy Office adopt implementing regulations, Model Regulations are also available, and must be examined and changed to coincide with the version of this Act actually adopted by the Legislature.

The Official Comments to the Model Procurement Code are a part of the Legislative History of this Chapter and, also, may be obtained from the American Bar Association.

COMMENT: This Chapter was enacted as part of the Government Code, sections 6950 through 6982.2, plus amendments conforming other portions of the codes to this law. Since then, there have been a number of amendments to the Chapter. Because of the single source, note that the only mention of SOURCE following individual sections will be to the source of amendments only.

NOTE: Provision for the issuance of a promissory note to creditors of the Government of Guam was enacted by P.L. 19-010:33 (Nov. 14, 1987) [§ 22415 of this Title]; as the Prompt Payment Act, providing for interest on late payments by the government. *See* §§ 22501-22507 of this Title.

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GENERAL PROVISIONS

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§ 5001. Purposes, Rules of Construction.

(a) Interpretation. This Chapter shall be construed and applied to promote its underlying purposes and policies.

(b) Purposes and Policies. The underlying purposes and policies of this Chapter are:

(1) to simplify, clarify, and modernize the law governing procurement by Guam;

(2) to permit the continued development of procurement policies and practices;

(3) to provide for increased public confidence in the procedures followed in public procurement;

(4) to ensure the fair and equitable treatment of all persons who deal with the procurement system of Guam;

(5) to provide increased economy in Guam activities and to maximize to the fullest extent practicable the purchasing value of public funds of Guam;

(6) to foster effective broad-based competition within the free enterprise system;

(7) to provide safeguards for the maintenance of a procurement system of quality and integrity; and

(8) to require public access to all aspects of procurement consistent with the sealed bid procedure and the integrity of the procurement process.

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(c) Singular-Plural and Gender Rules. In this Chapter, unless the context requires otherwise:

(1) words in the singular number include the plural, and those in the plural include the singular; and

(2) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(d) Policy Concerning Sheltered Workers or Persons with Disabilities. If any entity of the government of Guam or any entity expending governmental funds intends to procure any supply or service which is offered by a nonprofit corporation employing sheltered workers or persons with disabilities, or a government of Guam entity employing sheltered workers or persons with disabilities, then that entity shall procure such supply or service from that nonprofit corporation or government entity if the supply or service is available within the period required by the procuring entity.

(1) Notwithstanding any other provision of law, any nonprofit corporation or government of Guam entity employing sheltered workers or persons with disabilities that had an existing contract or contract in force on March 1, 2001, with the government of Guam, which shall include line agencies and autonomous agencies of the government of Guam such as the Guam Power Authority, the Guam Telephone Authority and the Department of Education, shall continue said contracts for two (2) years hence, ending March 31, 2003.

(e) Procurement of local produce and fish from local farmers and fishermen may be made without competition provided that the farmers or fishermen are registered with the Department of Agriculture and further provided that the prices offered do not exceed the standard of pricing as negotiated by the Department of Agriculture. Any farmer or fisherman awarded a contract pursuant to this section shall not be required to post any of the bonds required under Article 5 of Chapter 5, Title 5, Guam Code Annotated, the Guam Procurement Act.

(f) Notwithstanding any other provisions of law, procurement of air travel vouchers by the government of Guam, including the legislative, judiciary and executive branches, and all autonomous and semi-autonomous agencies, including the Antonio B. Won Pat International Airport Authority, Guam, the Guam Telephone Authority, the Guam Power Authority, the Guam Housing and Urban Renewal Authority, the Guam Housing Corporation, the Guam Economic Development Authority, the Guam Memorial Hospital Authority, the University of Guam, the Jose D. Leon Guerrero Commercial Port of Guam, the Guam Rental Corporation, the Guam Community College, the Guam Water Works Authority, the Government of Guam Retirement Fund, the Guam Mass Transit Authority, the Guam Visitor's Bureau, the Public Defenders Service Corporation, the Guam Educational Telecommunication Corporation, the Guam Election Commission, the Civil Service Commission, the Department of Education, the Guam Environmental Protection Agency and the Guam Vocational Rehabilitation, from local travel agencies with valid business license and on good standing with the Department of Revenue and Taxation shall be rotated fairly and competitively to insure that no single travel agency or a small group of travel agencies monopolize the sale of air travel vouchers to the government of Guam. The Director of the Department of Administration, who shall be responsible in administering this Act as it applies to the executive branch, with representatives from the executive, judiciary and legislative branches shall be responsible, within ninety (90) days from the enactment of this Act, for the development of the necessary rules and regulations to insure that the intent of this Act is followed and implemented by all branches and agencies of the government of Guam and pursuant to the Administrative Adjudication Law. Each branch of the government of Guam, executive, legislative and judiciary, shall be responsible in implementing and adhering to the rules and regulations developed herein in their own respective branches. Failure to procure air travel voucher following the rules and regulations developed herein shall invalidate and render the approved travel authorization null and void and any expenditure shall be completely and totally the responsibility of the traveler and any expenditure

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the government of Guam incurred shall be reimbursed by the respective traveler. The traveler shall not be reimbursed in any manner whatsoever for any of these expenditures. Anyone authorizing such reimbursement shall be guilty of fraud and shall be prosecuted to the fullest extent of the law.

SOURCE: GC § 6950. Model Procurement Code (hereafter - MPC) §1-101. Subsection (b) amended by P.L. 18-044:25 (Nov. 14, 1986). Subsection (d) added by P.L. 18-015:X:26 (Sept. 25, 1985); amended by P.L. 18-032:5 (Apr. 24, 1986); P.L. 26-031:8 (July 30, 2001). Subsection (e) added by P.L. 23-018:3 (May 30, 1995). Subsection (f) added by P.L. 24-085:2 (Oct. 6, 1997).

2025 NOTE: Reference to "A.B. Won Pat Guam International Airport Authority" replaced with "Antonio B. Won Pat International Airport Authority, Guam" pursuant to 12 GCA §1102(a). Reference to the "Port Authority of Guam" replaced with the "Jose D. Leon Guerrero Commercial Port of Guam" pursuant to 1 GCA § 835.

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420. In light of the privatization of the Guam Telephone Authority and the repeal of Title 12 GCA Chapter 7 by P.L. 27-110:6 (Nov. 1, 2004), the Guam Telephone Authority is no longer an autonomous agency or an instrumentality of the Government of Guam.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education.

COMMENT: While it is the intent of the MPC to "simplify" state procurement procedures, the effect on Guam will be to somewhat complicate them. This is because procurement law under Executive Order 65-12A on Guam is vague and leaves much to administrative direction. At least, this Act will regularize and centralize procurement on Guam and, in so doing, attempts to save money for the Territory and make procurement more certain and regular for the vendors.

(1995) The Legislative Intent for the addition of subsection (e) and Chapter 68 of this Title is stated to be:

> **Section 1.** Legislative Intent. The Department of Education is required to provide a hot breakfast and hot noon meal to the students in the public schools. The Department of Youth Affairs is required to feed their clients daily. The Guam Memorial Hospital is required to provide nutritional food for its patients. The Department of Corrections must provide three meals a day to each of its inmates. To carry out these mandatory tasks, each of these organizations must procure enormous quantities of fresh fruits and vegetables, as well as other foodstuffs, on a daily recurring basis. To stay within their approved budgets, they each make almost superhuman efforts to obtain this produce from any available source, either from on island or from off island. Since it is the goal of the department of agriculture to promote the efforts of all local farmers and fishermen and to ensure the expansion of the local agricultural, fishing and aquacultural industries, markets must be established and maintained to ensure that the farmers and the fishermen have a viable continuing market for the results of their hard labor. The Department of Agriculture must continue to find local markets for the local produce. Therefore, the department shall be required to work with the various Procurement Officers of the Government of Guam and non-profit organizations which are in the business of feeding people, to maintain a market all year round for the crops of the farmers, fishes from the fishermen, and other local producers of foodstuffs. (P.L. 23-018:1).

§ 5002. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this Chapter, the principles of law and equity, including the Uniform Commercial Code of Guam, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Chapter.

SOURCE: GC § 6950.1. MPC § 1-102.

§ 5003. Requirement of Good Faith.

This Chapter requires all parties involved in the negotiation, performance, or administration of Guam contracts to act in good faith.

SOURCE: GC § 6950.2. MPC § 1-103.

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

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§ 5004. Application of this Chapter.

(a) General Application. This Chapter applies only to contracts solicited or entered into after the effective date of this Chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(b) Application to Guam Procurement. This Chapter shall apply to every expenditure of public funds irrespective of their source, including federal assistance funds except as otherwise specified in § 5501 of this Chapter, by Guam, acting through a governmental body as defined herein, under any contract, except that this Chapter shall not apply to either grants or contracts between Guam and another government. Nothing in this Chapter or in regulations promulgated hereunder shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

SOURCE: GC § 6950.3. MPC § 1-104 modified.

2024 NOTE: Reference to "Territorial" replaced with "Guam" pursuant to 1 GCA § 420.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: The MPC assumes the existence of counties, municipalities having a separate government, and other local governments. This Section has been modified to refer to Guam's structure, unified government, at the time of enactment.

Note that this Chapter does not affect existing contracts. Also, it does not affect agreements with private parties, such as when a person gives something to the government with conditions as to its use. Also, agreements with other governments, such as the Federal Government in areas of, say, Intergovernmental Personnel Exchanges, are not affected by this Chapter. The reason is, of course, that the other government may very well place conditions upon the agreement which are not compatible with this Act, but which must be followed. Thus, federal regulations must be followed in federal agreements notwithstanding any local laws.

§ 5005. Severability.

[Omitted.]

SOURCE: MPC § 1-105.

COMMENT: Former Government Code 19 contains a severability clause applicable to the entire Government Code. This clause, and similar ones were transferred to 1 GCA § 721, where it now applies to all of the Guam Codes, not just the Government Code.

§ 5006. Construction Against Implicit Repealer.

Since this Chapter is a general law, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

SOURCE: GC § 6950.5. MPC § 1-106.

§ 5007. Policy Against Advance Payments.

With the exception of off-island orders of the Guam Public Library System, the Department of Education, and the University of Guam, no procurement shall be made under this Chapter which shall require advance payment.

SOURCE: GC § 6950.6. New Section. Amended by P.L. 17-045:5 (Jan. 18, 1984), P.L. 30-087:2 (Feb. 8, 2010) (effective "upon adjudication of the rules and regulations required under Section 2 of this Act"), P.L. 35-114:11 (Dec. 11, 2020) and P.L. 36-133:2 (Dec. 28, 2022).

NOTE: This Section added by the Committee on General Governmental Operations. The Committee has observed the waste of money, loss of interest, and difficulty in recovery should something happen to the order when advance payments are made. Thus, there is a general prohibition on such advance payments.

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2010 NOTE: Amended by P.L. 30-087:2 (Feb. 8, 2010), effective upon adjudication of rules and regulations, pursuant to P.L. 30-087:3.

P.L. 30-087:2 provides:

"§ 5007. Policy Against Advance Payments.

With the exception of off-island orders of the Department of Education and off-island purchases of goods and services of the Guam Visitors Bureau directly related to its overseas promotions, no procurement shall be made under this Chapter which shall require advance payment. The Board of Directors of the Guam Visitors Bureau shall, pursuant to the Administrative Adjudication Act, formulate rules and regulations for the exercise of advanced payment authority."

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name to the Department of Education.

§ 5007.1. Advance Payment for the Guam Memorial Hospital Authority Allowed.

Notwithstanding 5 GCA § 5007 or any other provision of law, the Guam Memorial Hospital Authority may procure with advance payments.

SOURCE: Added by P.L. 36-054:XII:38 (Sept. 11, 2021), renumbered by the Compiler pursuant to the authority of 1 GCA § 1606. Amended by P.L. 38-136:XII:40 (Aug. 28, 2026).

2021 NOTE: This provision was originally added as § 5013 by P.L. 36-054:XII:38 (Sept. 11, 2021); however, to avoid confusion with the existing § 5013 entitled "Policy In Favor of Women-Owned Businesses," the new law was renumbered to § 5007.1.

§ 5008. Policy in Favor of Local Procurement.

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

(a) a licensed bona fide manufacturing business that adds at least twenty-five percent of the value of an item, not to include administrative overhead, using workers who are U. S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United State to work, based on their former citizenship in the Trust Territory of the Pacific Islands; or

(b) a business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or

(c) a business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars ($150,000) whichever is less, of supplies and items of a similar nature to those being sought; or

(d) A service business actually in business, doing a substantial portion of its business on Guam, and hiring at least 95% U. S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference.

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(e) The specifications, terms, conditions and qualifications for all solicitations shall be drafted to promote participation in the solicitation by local bidders and offerors to the maximum extent practicable consistent with the needs of Guam. No specification, term, condition or qualification shall preclude due consideration of a bidder or offeror on the basis of Guam-only experience; provided, the experience of such bidder or offeror is otherwise responsive to the solicitation. No specification, term, condition or qualification of a solicitation shall require off-island experience or past performance unless there is a written determination of the Chief Procurement Officer, the Director of Public Works, or the head of the procuring agency or government of Guam branch conducting the solicitation which justifies the need for such experience or performance, and such written determination is made part of the solicitation documents.

SOURCE: GC § 6950.7 added by P.L. 16-124:1 (Dec. 30, 1982) and repealed and reenacted by P.L. 19-004:12 (May 21, 1987). Subsection (e) added by P.L. 32-016:1 (Apr. 11, 2013).

COMMENT: Originally added by Committee on General Government Operations. Follows a similar provision in Executive Order 65-12A, the former Procurement Regulations for the government of Guam. The aim is to encourage local businesses to the maximum extent possible. However, some needs of the government must be procured from off-island, especially services, and often such businesses do not have a system of agencies. Also, while local businesses are to be encouraged, they are not to be encouraged at a too-great expense to the general treasury. A safeguard is added to ensure that the comparison is equalized - so that what is compared is the total, delivered cost, not just the relative catalog costs between the on and off-island vendors. The formula "f.o.b. jobsite, unloaded" is taken from Hawaii law (HRS §103-43).

§ 5008.1. Policy in Favor of Native or Grown-in-Guam Horticultural Products.

(a) Notwithstanding any other provision of law, in any procurement of horticultural products utilizing public funds, no less than seventy-five percent (75%) of the products to be procured shall be native to Guam or grown-in-Guam, except for horticultural products that are on the endangered species list, unless they are domestically cultivated and shall be made from among businesses authorized to transact business in Guam. "Horticultural products," as used in this Section, includes:

(1) plants;

(2) trees;

(3) flowers;

(4) shrubs;

(5) grass; and

(6) seeds.

(b) The Department of Agriculture shall, in cooperation with the College of Agriculture and Life Sciences of the University of Guam:

(1) determine, establish and maintain a list of species of native horticultural products;

(2) determine conditions that constitute "grown-in-Guam"; and

(3) establish and regularly update a list of qualified local landscapers, farmers and other related businesses authorized to transact business on Guam, and to assist those qualified businesses in establishment of availability and other related logistics to facilitate acquisition of horticultural products that are native to Guam, or grown-in-Guam, by all agencies and instrumentalities of Guam and other entities expending public funds.

(c) The provisions of the Administrative Adjudication Law shall not apply to the requirements of this Subsection.

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SOURCE: Added by P.L. 25-100:2 (Mar. 22, 2000).

§ 5008.2. Policy in Favor of Renewable Energy Purchase of Service.

(a) In procuring services pursuant to 17 GCA § 7116, GDOE shall, subject to the provisions of this Chapter, grant a preference to a local business; and

(b) In addition, five percent (5%) preference of the lowest Multi-Step Bidder for contracts under Five Hundred Thousand Dollars ($500,000); or three percent (3%) preference of the lowest Multi-Step Bidder for contracts of Five Hundred Thousand Dollars ($500,000) or more, shall be given to a local business that meets the following criteria:

(1) the qualified Power Purchase Agreement provider(s) must be doing business on Guam with a valid business license, and be in good standing with the Department of Revenue and Taxation prior to the award of the contract; and

(2) the qualified Power Purchase Agreement provider(s) shall be experienced in designing, implementing and installing solar energy systems, have a record of established projects, and demonstrate technical, operational, financial and managerial capabilities to design and operate the solar energy system.

SOURCE: Added by P.L. 32-095:4 (Nov. 27, 2013). Amended by P.L. 35-076:3 (Mar. 20, 2020).

NOTE: P.L. 32-095 does not define "PPA" as used in subsection (b)(2), but this public law also added 17 GCA § 7120 entitled "Power Purchase Agreement to Purchase Solar Energy"; therefore, "PPA" appears to refer to "power purchase agreement."

§ 5008.3. Energy Efficient Products Mandate.

(a) The government of Guam shall purchase energy efficient products, to the maximum extent practicable, in accordance with Chapter 56 of Division 11, Title 22, Guam Administrative Rules and Regulations.

(b) The Administrator of the Guam Environmental Protection Agency shall enforce Chapter 56 of Division 11, Title 22, Guam Administrative Rules and Regulations, relative to fulfilling the mandates of this Section, and may, pursuant to the Administrative Adjudication Law, amend the same.

SOURCE: Added by P.L. 35-045:1 (Oct. 18, 2019).

2019 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 5009. Effective Date.

This Chapter shall become effective at 12:01 A.M. on October 1, 1983, but shall be deemed effective immediately for purposes of planning and organization.

SOURCE: GC § 6950.8. MPC § 1-109 modified.

COMMENT: The Official Comments state:

> "The effective date of this Code should be set at least six months after enactment to allow adequate time for development of regulations and the other administrative matters necessitated by its enactment."
>
> Testimony by the Director of Administration and others also note that the original effective date of this Bill, Oct. 1, 1982, was impractical and, coupled with other dates in this Chapter, would conflict with existing budget cycle requirements.
>
> If the government is given just over one year to prepare, these objections will be nullified.

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§ 5010. Policy in Favor of Planned Procurement.

All procurements of supplies and services shall, where possible, be made sufficiently in advance of need for delivery or performance to promote maximum competition and good management of resources. Publication of bids and requests for proposals shall not be manipulated so as to place potential bidders at unnecessary competitive disadvantage. Except in emergency situations, lower price bids are generally preferable to shorten delivery or performance bids. Delivery time may be considered as a factor in making an award to a responsive bidder only if his average delivery time bid is at least ten percent (10%) shorter than the average delivery time of a lower price responsive bidder and if the price offered by the bidder offering the faster delivery or performance does not exceed one hundred five percent (105%) of the lower price bidder.

SOURCE: Added by P.L. 18-044:30 (Nov. 14, 1986).

§ 5011. Policy in Favor of Service-Disabled Veteran Owned Businesses.

Notwithstanding any provision of law, and except for the procurement of professional services, if any entity of the government of Guam or any entity expending governmental funds intends to procure any supply or service, which is offered by a business concern that is at least fifty-one percent (51%) owned by a service-disabled veteran(s), that entity shall procure such supply or service from that business concern, if the supply or service is available within the period required by the procuring entity and the price for the supply or service does not exceed one hundred five percent (105%) of the lowest price bidder, and shall be in addition to any other procurement benefit the service-disabled veteran owned business may qualify for under Guam law.

SOURCE: Added by P.L. 31-115:1 (Sept. 30, 2011).

§ 5012. Qualifications of a Service-Disabled Veteran Owned Business.

A business concern is qualified under § 5011 of this Chapter if:

(a) the business concern is licensed to do business on Guam;

(b) the business concern maintains its headquarters on Guam;

(c) the business concern is at least fifty-one percent (51%) owned by a service-disabled veteran(s) who served in the active U.S. military service, was discharged or released under honorable conditions and whose disability is service-connected as demonstrated by a DD214, and certified by an award letter from the U.S. Department of Veterans Affairs;

(d) the DD214 and Disability award letter from the U.S. Department of Veterans Affairs are submitted to the procuring entity for every service or supply offered; and

(e) the service-disabled veteran(s) owner of the business concern has filed individual tax returns on Guam for a period of at least three (3) consecutive years.

SOURCE: Added by P.L. 31-115:2 (Sept. 30, 2011).

§ 5013. Policy in Favor of Women-Owned Businesses.

(a) Notwithstanding any other provision of law, if any entity of the government of Guam or any entity expending governmental funds intends to procure any supply or service which is offered by a business concern that is at least fifty-one percent (51%) owned by women, that entity shall procure such supply or service from that business concern if the supply or service is available within the period required by the procuring entity and the price for the supply or service does not exceed one hundred five percent (105%) of the lowest price bidder, and shall be in addition to any other procurement benefit the women-owned business may qualify for under Guam law. The procuring entity shall determine the lowest price to the

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entity in the case of more than one (1) women-owned business, or a women-owned business and a service-disabled veteran owned business, who are competing for the same government contract.

(b) Qualifications of a Women-Owned Business. A business concern is qualified under Subsection (a) of this Section if:

(1) the business concern is licensed to do business on Guam;

(2) the business concern maintains its headquarters on Guam;

(3) the business concern is at least fifty-one percent (51%) owned by women, who manage day-to-day operations and make long-term decisions;

(4) the business concern is certified as a Women-Owned Small Business (WOSB) or an Economically Disadvantaged Women-Owned Small Business (EDWOSB) by the U.S. Small Business Administration; and

(5) the owner(s) of the business concern has (have) filed individual tax returns on Guam for a period of at least three (3) consecutive years.

SOURCE: Added by P.L. 36-026:3 (June 8, 2021).

2021 NOTE: P.L. 36-054:XII:38 (Sept. 11, 2021) added a new § 5013 entitled "Advance Payment for Medicines Allowed"; however, to avoid confusion with this existing provision, the new law was renumbered to § 5007.1. by the Compiler pursuant to 1 GCA § 1606.

SUBARTICLE B
DETERMINATIONS

§ 5020. Determinations.

§ 5020. Determinations.

Written determinations required by this Chapter shall be retained in the appropriate official file of the Chief Procurement Officer or the purchasing agency.

SOURCE: GC § 6951. MPC § 1-201.

SUBARTICLE C
DEFINITIONS USED IN THIS CHAPTER

§ 5030. Definitions.

§ 5030. Definitions.

As used in this Chapter, unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular Chapter, Article or provision:

(a) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(b) "Change Order" means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

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(c) "Chief Procurement Officer" means the person holding the position created in § 5110 of this Chapter, as the head of the central procurement office of Guam.

(d) "Contract" means all types of Guam agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

(e) "Contract Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

(f) "Contractor" means any person having a contract with a governmental body.

(g) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(h) "Data" means recorded information, regardless of form or characteristic.

(i) "Designee" means a duly authorized representative of a person holding a superior position.

(j) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.

(k) "Governmental Body" means any Department, Commission, Council, Board, Bureau, Committee, Institution, Agency, Government Corporation, Authority or other establishment or establishment or official of the Executive Branch of the government of Guam, except for the Government of Guam Retirement Fund, Guam Community College, the University of Guam, the Department of Education, and the Guam Memorial Hospital Authority.

(l) "Grant" means the furnishing by Guam of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant but a procurement contract.

(m) "May" denotes the permissive.

(n) "Person" means any business, individual, union, committee, club, other organization or group of individuals.

(o) "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(p) "Procurement Officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

(q) "Purchasing agency" means any governmental body other than the Chief Procurement Officer or the Director of Public Works which is authorized by this Chapter or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts.

(r) "Regulation" shall have the meaning given in the Administrative Adjudication Law.

(s) "Services" means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required

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performance. This term shall not include any form of employment relationship with the government or collective bargaining agreements. Services also includes printing and processing for printing finished products, such as books, reports, and other items which are, when delivered in finished form and are not to be further processed by the using agency.

(t) "Shall" denotes the imperative.

(u) "Supplies" means all property, including but not limited to equipment, materials, printing of forms, stationery and the like which are designed for further use or processing by the using agency, insurance, and leases of real property, excluding land and a permanent interest in land.

(v) "Using agency" means any governmental body of Guam which utilizes any supplies, services or construction procured under this Chapter.

(w) "Entity" means any department, agency, board, commission, instrumentality, public corporation or branch of the government of Guam and any corporation or person expending funds appropriated from the Government of Guam.

(x) "Emergency" means a condition posing an imminent threat to public health, welfare, or safety, or the health and safety of the environment, which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection.

SOURCE: GC § 6952. MPC § 1-301 modified. Subsection (k) amended by P.L. 17-027:2 (Nov. 7, 1983), P.L. 17-043:2 (Jan. 18, 1984), P.L. 29-109:10 (Aug. 26, 2008). Subsection (w) added by P.L. 18-015:X:27 (Sept. 28, 1985); amended by P.L. 18-032:6 (Apr. 24, 1986). Subsection (x) added by P.L. 18-044:26 (Nov. 14, 1986), amended by P.L. 35-109:2 (Oct. 30, 2020).

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420. Reference to Department of Education changed to Guam Public School System pursuant to P.L. 28-045:10 (June 6, 2005). P.L. 30-050:2 (July 14, 2009) reverted the name to the Department of Education.

2022 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: 1. The definition of Change Order does not preclude the Procurement Officer from seeking the consent of a contractor to a change order.

2. Collective Bargaining Agreements are excluded from this Chapter because they are part of employment, not procurement.

3. The definition of services includes what are now known as consultant agreements, and retainer agreements with attorneys, but does not include contracts of employment, such as the two-year or longer off-island employment agreements, or agreements to employ returning residents in the government.

4. Services include the printing of books, codes, etc., which are delivered finished. Supplies include printing of such things as forms, stationery, envelopes and the like which are used by an agency in its work, or are given to the public for further processing, such as applications or tax returns. The reason for differentiating the two types of printing is that the amount of labor and time involved, and the types of processes involved in printing books, etc., is greater and involves more than the mere delivery of a product. It may involve one contract for the entire production of a publication from design, writing through printing and delivery, or it may involve one contract for each phase of the work. In any event, printing of a finished product is of a different quality and type of procurement than the procuring of stationery and what is commonly referred to as office supplies.

ARTICLE 2
PROCUREMENT ORGANIZATION

Subarticle A Procurement Policy Office
Subarticle B General Services Agency
Subarticle C Organization of Public Procurement

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Subarticle D Guam Procurement Regulations
Subarticle E Coordination, Training and Education
Subarticle F Duties of the Attorney General
Subarticle G Guam Procurement Advisory Council

SUBARTICLE A
PROCUREMENT POLICY OFFICE

§ 5101. Creation and Membership of the Procurement Policy Office.
§ 5102. Authority and Duties of the Policy Office.

§ 5101. Creation and Membership of the Procurement Policy Office.

(a) Policy Office Created. There is created in the Office of I Maga'håga/Maga'låhi the Procurement Policy Office which in this Chapter is referred to as the Policy Office.

(b) Membership of the Policy Office. The Policy Office shall consist of three (3) officers or employees of the government of Guam appointed by I Maga'håga/Maga'låhi, the Director of Public Works and the Director of Administration, who shall serve as the chairperson. None of the three members appointed by I Maga'håga/Maga'låhi shall act concurrently as Procurement Officer nor shall any of such members subordinates, unless such members are directors of agencies or instrumentalities, act as Procurement Officer.

(c) Administrative Support. I Maga'håga/Maga'låhi's Office shall provide such services as the Policy Office may request, including office space and administrative assistance.

SOURCE: GC § 6953. MPC modified.

COMMENT: Committee on General Governmental Operations determined that the Policy Office, operating as it does over the entire government, should be separate from the Department in which is located the General Services Agency. Therefore, it is placed within the Office of the Governor, which is responsible for supporting it.

2024 NOTE: References to the "Governor" replaced with I Maga'håga/Maga'låhi pursuant to 5 GCA § 1510.

§ 5102. Authority and Duties of the Policy Office.

Except as otherwise provided in this Chapter, the Policy Office shall have the authority and responsibility to promulgate regulations, consistent with this Chapter, governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by Guam. The Policy Office shall consider and decide matters of policy within the provision of this Chapter including those referred to it by the Chief Procurement Officer or the Director of Public Works. The Policy Office shall have the power its regulations and the requirements of this Chapter, but shall not exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto, except that the Chief Procurement Officer and the Director of Public Works shall exercise such authority in accordance with the provisions of this Chapter.

SOURCE: GC § 6953.1. MPC modified.

2022 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: Structured to suit the composition of the membership.

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SUBARTICLE B
GENERAL SERVICES AGENCY

§ 5110. Creation of the General Services Agency.
§ 5111. Qualifications of the Chief Procurement Officer.
§ 5112. Tenure, Removal and Compensation.
§ 5113. Authority of the Chief Procurement Officer and the Director of Public Works.
§ 5114. Delegation of Authority by the Chief Procurement Officer and the Director of Public Works.
§ 5115. Revolving Fund.
§ 5116. Procurement May Be Delegated to GPA Board.
§ 5117. Procurement Shall Be Delegated to the Guam Preservation Trust.
§ 5117.1. Procurement Authority Shall Be Delegated to the Guam Solid Waste Authority.
§ 5117.2. Department of Public Health and Social Services Small Purchase Procurement Authority.
§ 5117.3. Limited Procurement Authority Granted to the Mayors' Council of Guam.
§ 5118. Procurement Counsel.
§ 5119. Legislative Inquiries and Hearings.
§ 5120. Procurement Shall Be Delegated to the Municipal Planning Council of the Host Community. [Codified as 10 GCA § 51409.]

§ 5110. Creation of the General Services Agency.

(a) There is within the Department of Administration the General Services Agency headed by the Chief Procurement Officer.

(b) [No text]

(1) The Chief Procurement Officer shall be uniquely responsible for the supervision and procurement of supplies and services as provided in this Chapter without interference from the Director of Administration.

(2) The Chief Procurement Officer shall be accountable to the Director of Administration for the management and administration of the General Services Agency.

SOURCE: GC § 6954. MPC modified. Amended by P.L. 34-132:2 (Oct. 17, 2018).

2024 NOTE: The Compiler has added "no text" to indicate a change in formatting only; the content of the provision has not been altered.

2018 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

COMMENT: The centralized procurement of the Government is placed within an existing department, the Department of Administration, in the same position as is the Supply Management Division, but with expanded responsibilities.

§ 5111. Qualifications of the Chief Procurement Officer.

The Director of Administration shall establish minimum qualifications for the position of Chief Procurement Officer consistent with the critical procurement and management requirements of that office. Such qualifications shall consist of theoretical and practical knowledge of and experience with the specialized subject matter of governmental procurement activities, and the Guam Procurement Law in particular, as well as theoretical and practical knowledge of and experience with management and best practices of the internal operational practices and responsibilities of the General Services Agency.

SOURCE: GC § 6954.1. MPC modified. Amended by P.L. 18-026:17 (Dec. 31, 1985). Effective January 1, 2006, reference to the "Civil Service Commission," amended to "Director of Administration" pursuant to P.L. 28-068:IV:45 (Sept. 30, 2005). Amended by P.L. 34-132:3 (Oct. 17, 2018).

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

§ 5112. Tenure, Removal and Compensation.

(a) Tenure and Removal.

(1) The Chief Procurement Officer holds a critical management position within the Department of Administration, but shall be a full-time classified employee, and may be removed from office in accordance with the procedures and causes of the Personnel Law, 4 GCA Chapter 4, Article 2, and for any cause specified in this Chapter.

(2) Recurrent failure to materially comply with management responsibilities, as determined by the Director of Administration, shall be cause for termination or other action as provided in the Personnel Law, but no adverse action shall be taken except in the manner provided in the Personnel Law.

(b) Compensation. The Chief Procurement Officer shall be compensated as provided by law.

SOURCE: GC § 6954.2. MPC § 2-203 heavily modified. Amended by P.L. 34-132:4 (Oct. 17, 2018).

COMMENT: Because the Chief Procurement Officer is within an Executive Agency, he is a classified employee. Therefore, the term of office suggested by the MPC is inappropriate as are specifications for removal, both of which are fully covered in 4 GCA Chapter 4 - establishing the classified employment in the government of Guam.

§ 5113. Authority of the Chief Procurement Officer and the Director of Public Works.

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

(b) Power to Adopt Operational Procedures. Consistent with the provisions of this Chapter, the Chief Procurement Officer and the Director of Public Works may adopt operational procedures governing the internal functions of their procurement operations.

(c) Duties.

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

(A) procure or supervise the procurement of all supplies and services needed by Guam;

(B) exercise general supervision and control over all inventories of supplies belonging to Guam; and

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

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

(A) procure or supervise the procurement of all construction needed by Guam; and

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

SOURCE: GC § 6954.3. MPC § 2-204 modified.

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2022 NOTE: References to "territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: The MPC has only one Chief Procurement Officer for all purposes. This Act retains the existing separation between construction for the government and other procurement. The Director of Public Works retains his cognizance over construction.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with "Lowercase Roman Numerals" to "Uppercase Letters" in subsections (c)(1)-(2).

§ 5114. Delegation of Authority by the Chief Procurement Officer and the Director of Public Works.

(a) Subject to the regulations of the Policy Office, the Chief Procurement Officer or the Director of Public Works may delegate authority to designees or to any governmental body or official.

(b) Procurement authority may not be delegated to any individual who is not required to disclose information pursuant to 4 GCA Chapter 13, The Public Official Financial Disclosure Act.

SOURCE: GC § 6954.4 MPC § 2-205 modified to follow split in authority between construction and other procurement. Amended by P.L. 30-079:2 (Jan. 22, 2010).

2013 NOTE: Letters were added to adhere to the Compiler's alpha-numeric scheme in accordance to 1 GCA § 1606.

§ 5115. Revolving Fund.

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

SOURCE: GC 6954.5. New Section.

COMMENT: This creates the Fund and mechanism necessary to regularize the present practice of stocking supplies and then "selling" them to the Using Agencies. This replaces the "Government Store" created by Executive Order 81-3.

§ 5116. Procurement May Be Delegated to GPA Board.

Notwithstanding any other provision of Guam Procurement Law, the authority to procure supplies and services for the Guam Power Authority may be delegated by the Chief Procurement Officer only to the Guam Power Authority Board of Directors.

SOURCE: Added by P.L. 25-168:2 (Oct. 19, 2000).

§ 5117. Procurement Shall Be Delegated to the Guam Preservation Trust.

Notwithstanding any other provision of Guam Procurement Law, the authority to procure supplies and services for the Guam Preservation Trust shall be delegated by the Chief Procurement Officer to the Board of Directors of the Guam Preservation Trust.

SOURCE: Added by P.L. 27-089:6 (May 6, 2004).

§ 5117.1. Procurement Authority Shall Be Delegated to the Guam Solid Waste Authority.

(a) Notwithstanding any other provision of the Guam Procurement Law, the authority to procure supplies and services and construction for the Guam Solid Waste Authority (GSWA) shall be delegated by the Chief Procurement Officer and the Director of the Department of Public Works to the Board of Directors of the Guam Solid Waste Authority.

(b) GSWA shall ensure that its procurement officials undergo and successfully complete procurement training pursuant to 5 GCA § 5141, and are enrolled in the earliest training class that becomes available.

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SOURCE: Added by P.L. 34-058:7 (Nov. 1, 2017) as § 5117A, renumbered to adhere to the Compiler's alpha-numeric scheme, in accordance with the authority of 1 GCA § 1606.

§ 5117.2. Department of Public Health and Social Services Small Purchase Procurement Authority.

(a) Notwithstanding any other provision of law, the Department of Public Health and Social Services (DPHSS) is granted an increase in the small purchase procurement threshold not to exceed Two Hundred Fifty Thousand Dollars ($250,000). The Director of the Department of Public Health and Social Services (DPHSS) is granted small purchase procurement authority not to exceed Two Hundred Fifty Thousand Dollars ($250,000). The DPHSS shall adhere to the applicable laws, rules and regulations for procuring small purchases, provided that procurement requirements shall not be artificially divided.

(b) DPHSS shall ensure that its procurement officials undergo and successfully complete procurement training pursuant to 5 GCA § 5141 and are enrolled in the earliest training class that becomes available.

(c) The Director of the Department of Public Health and Social Services shall submit a report to the Speaker of I Liheslaturan Guåhan quarterly of the procurement activities conducted under this provision.

SOURCE: Added by P.L. 38-060:XII:44 (Sept. 29, 2025).

§ 5117.3. Limited Procurement Authority Granted to the Mayors' Council of Guam.

(a) Notwithstanding any other provision of the Guam Procurement Law, the Executive Director of Mayors' Council of Guam is granted procurement authority for procurement as defined by Title 5 GCA for purchases and contracts that do not exceed Five Hundred Thousand Dollars ($500,000). The Mayors' Council of Guam (MCOG) shall adhere to the applicable procurement laws, rules and regulations.

(b) The MCOG shall ensure that its procurement officials undergo and successfully complete procurement training pursuant to 5 GCA § 5141 and are enrolled in the earliest training class that becomes available.

(c) Notwithstanding any provision of law, the Executive Director of the MCOG shall maintain active procurement certification in order to exercise the authority under this Act and automatically revert the authority back to the Chief Procurement Officer or their designee if the requirement under this Act is not met.

(d) Procurement activities for the Mayors' Council of Guam shall remain subject to independent review and audits conducted by the department of administration's internal audit office.

SOURCE: Added as § 5117.2 by P.L. 38-072:1 (Oct. 17, 2025), renumbered by Compiler pursuant to the authority granted by 1 GCA § 1606.

§ 5118. Procurement Counsel.

The Department of Administration may employ an attorney to assist the General Services Agency, to be called the Procurement Counsel. The Director of Administration shall set the terms and conditions of employment for the attorney and determine his or her compensation consistent with the laws of Guam. The attorney shall be a full-time employee, and shall be admitted to practice before the courts of Guam under the same conditions as are attorneys employed by the government pursuant to Title 7 GCA, §§ 9A114 and 9A114A. The Procurement Counsel shall assist and advise the Chief Procurement Officer on all civil matters in which the General Services Agency is legally interested, provided that the Office of the Attorney General shall represent the General Services Agency. The attorney shall provide technical assistance to the Guam Procurement Advisory Council, and shall assist with the preparation of any legislation, rules or regulations. The incumbent procurement advisor shall be designated as the procurement counsel.

SOURCE: Added by P.L. 31-093:3 (Sept. 30, 2011).

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§ 5119. Legislative Inquiries and Hearings.

The Chief Procurement Officer shall be directly responsive to any legislative inquiries and shall provide oral or written testimony on any matter relative to procurement to I Liheslaturan Guåhan without the approval of any executive branch official.

SOURCE: Added by P.L. 31-093:4 (Sept. 30, 2011).

2024 NOTE: Reference to the "Guam Legislature" replaced with I Liheslaturan Guåhan pursuant to 2 GCA § 1101.

§ 5120. Procurement Shall Be Delegated to the Municipal Planning Council of the Host Community.

[Codified as 10 GCA § 51409.]

NOTE: Added by P.L. 32-021:4 (Apr. 11, 2013) as § 5120 of Part B [now Subarticle B] of Article 2, Title 5 GCA Chapter 5. However, to avoid confusion with the existing § 5120 in Subarticle C, this provision was codified as 10 GCA § 51409 pursuant to the authority granted by 1 GCA § 1606.

SUBARTICLE C
ORGANIZATION OF PUBLIC PROCUREMENT

§ 5120. Centralization of Procurement Authority.
§ 5121. Authority to Contract for Certain Services and Approval of Contracts.
§ 5122. U.S. Government.
§ 5123. Motor Vehicles.
§ 5124. Exemptions.
§ 5125. Application of this Chapter to Executive Branch.
§ 5126. Joinder or Mutual Use of Contracts by the Women, Infants, and Children Program, and the Bureau of Economic Security Program.
§ 5126.1 Joinder or Mutual Use of Contracts by Division of Public Welfare.
§ 5126.2. Joinder or Mutual Use of Contracts by Guam Memorial Hospital Authority.
§ 5127. Commercial Leasing of Public Real Property and Related Facilities.
§ 5128. Commercial Lease of Public Real Property and Related Facilities; Extension for Tenants in Good Standing.

§ 5120. Centralization of Procurement Authority.

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

SOURCE: GC § 6954.6. Modified to reflect split between construction and other procurement.

COMMENT: This Section brings all agencies of the government within the purview of this Chapter. Whether or not such powers may be delegated depends upon the specific provisions of this Chapter, but all agencies are covered by this one Chapter.

§ 5121. Authority to Contract for Certain Services and Approval of Contracts.

(a) General Authority. For the purpose of procuring the services of accountants, physicians, lawyers, dentists, licensed nurses, other licensed health professionals and other professionals, any governmental body of Guam may act as a purchasing agency and contract on its own behalf for such services, subject to this Chapter and regulations promulgated by the Policy Office, but this Subsection shall not authorize the

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procuring of such services where any given governmental body is otherwise prohibited from procuring such services.

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

(c) Approval of Contracts Generally. The Chief Procurement Officer, or his designee, or a procurement officer of an agency authorized to procure the services or supplies in question, as stated in the Rules promulgated by the Policy Office, shall execute all contracts for the government of Guam. The Chief Procurement Officer may approve standard form contracts or purchase orders which shall include a demonstration of compliance with §§ 5801 and 5802 of this Chapter, where applicable, and once such approval of the standard form is given, contracts or purchase orders made on such form may be executed without the further approval of the Chief Procurement Officer unless he has reserved such power of approval pursuant to the applicable rules promulgated by the Policy Office.

(d) Approval of Contracts by Department of Revenue and Taxation. Notwithstanding any other provision of law, the Director of the Department of Revenue and Taxation or his designee shall have exclusive authority to approve and execute all contracts for the procurement of license plates, safety decals, tax forms, tax booklets and printing services and other materials and supplies used exclusively by the Department of Revenue and Taxation. For the purposes of this section, the Department of Revenue and Taxation is exempt from the provisions of the Guam Procurement Act (Chapter 5, Title 5, Guam Code Annotated).

(e) Approval of Contracts by Government of Guam Retirement Fund. Notwithstanding any other provision of law, the Board of Trustees of the Government of Guam Retirement Fund shall have exclusive authority to approve and execute all contracts for the procurement of professional services associated with the operation of the Fund. The Board may enter into contracts providing for alternative dispute resolution (including mediation and arbitration) of controversies arising between the Government of Guam Retirement Fund and its professional service contractors, if, in the Board's discretion, alternative dispute resolution is determined to be in the best interests of the Government of Guam Retirement Fund.

SOURCE: GC § 6954.7. MPC § 2-302 modified. GC § 6107. Subsection (d) added by P.L. 18-015:X:43 (Sept. 28, 1985); amended by P.L. 20-221:50 (Dec. 31, 1990). Subsection (a) amended by P.L.25-121:5 (Apr. 19, 2000). Subsection (c) amended by P.L. 28-165:2 (Jan. 4, 2007). Subsection (e) added by P.L. 28-188:2 (Jan. 29, 2007), amended by P.L. 32-146:3 (Apr. 28, 2014).

2024 NOTE: Past print publications of the GCA did not include the amendment to subsection (d) by P.L. 20-221:50 (Dec. 31, 1990). The omission has been corrected.

NOTE: Subsection (a) amended by P.L. 25-121:5. However, P.L. 25-121:5 purported to amend 5 GCA § 5151(a). The language therein was identical to that in section 5121(a) but for the addition of "licensed nurses, other health professional" and the replacing of "Territory" with "Guam." Compiler believes the use of section 5151 to have been a manifest clerical or typographical error.

COMMENT: Subsection (a) recognizes that the procurement of the services of professionals usually requires extended analysis by the procuring department, and procurement is needed for the specific purposes of the department. However, the final clause is added by the Committee on General Governmental Operations to make sure that this Subsection does not authorize the use of, for instance, legal services, where other law, i.e., that pertaining to the Attorney General, does not authorize an entity to use its own legal counsel.

Subsection (b) recognizes the general primacy of the Attorney General over all legal matters of the Government of Guam. Other laws provide what agencies may and may not hire their own counsel. Obviously, the Attorney General cannot act contrary to those laws, but he should have the authority to check and make sure an agency does not hire its own counsel when it is not authorized to do so.

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Subsection (c) recognizes that neither the Governor nor the Attorney General sign routine purchase orders - which are contracts. The Committee determined that neither the Attorney General nor the Governor should be required to sign procurement contracts. However, since existing law states that all contracts are not executed until signed by the Governor, this Section must state when procurement contracts are executed. If the Attorney General or the Governor wish to review any contracts, this Section will not prohibit it.

§ 5122. U.S. Government.

The General Services Agency shall procure supplies from the United States when the cost to the General Services Agency is less by ten percent (10%) than from other contractors.

SOURCE: GC § 6954.8. New Section. *See* Government Code § 6117, E.O. 65-12A. Organic Act 21-A permits the government of Guam to purchase through the General Services Agency of the U.S. Government.

§ 5123. Motor Vehicles.

(a) The General Services Agency shall purchase or lease all motor vehicles required for all government agencies as a fleet at least once every three (3) years. The Chief Procurement Officer shall maintain a vehicle purchase policy that considers the total cost of ownership that includes, but is not limited to, (1) the intended purpose for which the vehicle is purchased (2) the purchase price of the vehicle; (3) the United States EPA estimated mileage ratings in terms of Miles Per Gallon (MPG) for the vehicle; (4) the expected useful life of the vehicle; (5) the cost of maintenance and warranties over the expected useful life of the vehicle; and (6) any ratings or reviews from consumer rating companies on the performance, mileage and reliability of the vehicle. This Section shall not be interpreted to permit the lease of non-standardized fleet vehicles. The Chief Procurement Officer shall authorize non-fleet purchase or lease only if:

(1) the type of vehicle is not required by other governmental agencies; or

(2) the vehicle is a replacement of a fleet vehicle which is no longer in service and the governmental agency cannot function without a replacement until the next fleet purchase, provided, that the replacement vehicle meets the same specifications as the fleet vehicle being replaced.

(b) Public transportation buses, vans and non-rail vehicles, which are purchased or leased with government funds for fixed route or demand response systems, must be made readily accessible to and usable by individuals with disabilities and comply with the acquisition and service requirements of 49 C.F.R. Part 37 (Subpart D, F and G) and Part 38 (Subpart B of the Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles).

(c) The Chief Procurement Officer shall include preventative maintenance services for a period of no less than 3 years when procuring the vehicle fleet. He shall also determine, by requesting for proposals, whether it would be less costly to contract for fleet maintenance with private businesses; and if less costly, using either separate contracts for purchase and maintenance or a combined contract for purchase and maintenance from one source, he shall so contract for the maintenance of the fleet for a minimum of 3 years from the date of purchase of the vehicle. In any maintenance contract, there shall be inserted provisions requiring that the maintenance be performed within a certain period of time or liquidated damages assessed against the contractor.

(d) At the end of the useful life of the vehicle fleet, the Chief Procurement Officer shall dispose of such vehicles as he determines to be of no further use to the government by public auction to the highest bidder. The funds so realized shall be deposited in the General Fund.

(e) Minimum Combined Miles Per Gallon Standard. All vehicles to be purchased or leased for use by the government of Guam shall meet or exceed a minimum average combined city and highway miles per gallon of twenty-five miles per gallon (25 mpg), as determined by the United States Department of Energy's (USDOE) rating of vehicle fuel economy as contained on its website at www.fueleconomy.gov. This standard shall be reviewed every 3 years.

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(f) Excluded Vehicles. The Chief Procurement Officer shall prepare and maintain a listing of those vehicles that are excluded from the minimum average combined city and highway miles per gallon standard. The types of vehicles that are to be excluded include, but are not limited to: law enforcement vehicles; vehicles whose primary function is to carry cargo; specialized utility vehicles; construction vehicles; and any other vehicle whose primary function is other than the transportation of five (5) passengers or fewer. For the purposes of this Section, the Procurement Officers of the Judiciary of Guam, I Liheslaturan Guåhan, and any government of Guam entity not subject to the Chief Procurement Officer's procurement review, shall prepare and maintain a listing of those vehicles that are excluded from the minimum average combined city and highway miles per gallon standard as defined herein.

SOURCE: GC § 6954.9. New section. Subsection (b) repealed by P.L. 20-005:2 (Apr. 24, 1989) as GC § 6954.9(b). Subsection (b) added by P.L. 24-056:1 (June 25, 1997) relative to public transportation vehicles. Subsection (a) amended by P.L. 29-138:1 (Jan. 30, 2009). Subsection (e) added by P.L. 32-002:2 (Mar. 6, 2013). Subsection (f) added by P.L. 32-002:3 (Mar. 6, 2013). Subsection (c) amended by P.L. 32-002:4 (Mar. 6, 2013).

COMMENT: The Committee wanted to provide for temporary leasing, and fleet maintenance at the lowest cost to the government and for disposal of the fleet.

2024 NOTE: Reference to the "Guam Legislature" replaced with I Liheslaturan Guåhan pursuant to 2 GCA § 1101.

§ 5124. Exemptions.

Unless otherwise ordered by regulation of the Policy Office, with approval of I Maga'håga/Maga'låhi, the following supplies, and services need not be procured through the General Services Agency or the Department of Public Works, but shall nevertheless be procured by the appropriate Purchasing Agency subject to the requirements of this Chapter and the regulations promulgated by the Policy Office:

(a) works of art for museum and public display;

(b) published books, books or other regular publications published by any government agency, maps, periodicals and technical pamphlets; and

(c) architect, engineer and land surveying services as defined in § 5301 of this Chapter.

(d) investment agent services and actuary services for the Guam Retirement Fund.

SOURCE: GC 6954.10. Modified to eliminate reference to heavy construction, which is subject to this Chapter. Subsection (d) added by P.L. 023-045:IV:9 (Oct. 18, 1995).

2024 NOTE: Reference to the "Governor" replaced with I Maga'håga/Maga'låhi pursuant to 5 GCA § 1510.

§ 5125. Application of this Chapter to Executive Branch.

(a) Every governmental body which is in the purview of the Executive Branch, and including the Government of Guam Retirement Fund, Guam Community College, the University of Guam, the Department of Education, the Guam Memorial Hospital Authority, Guam Economic Development and Commerce Authority, the Guam Visitor's Bureau and the Office of the Attorney General of Guam, shall be governed by Articles 1, 3, 6, 7, 10, 11 and 12 of this Chapter, except to the extent that any such governmental body or other above-named body may be exempted from the centralized procurement regime of Article 2 of this Chapter, in which event the Director of each such governmental body or other above named body shall be substituted wherever there is reference to the Public Policy Office, Chief Procurement Officer or Director of Public Works in Articles 4, 5, 8 and 9 of Chapter 5 of Title 5 of the Guam Code Annotated.

(b) [Implicitly repealed by P.L. 38-136:XII:81 (Aug. 28, 2026).]

SOURCE: Added by P.L. 18-044:28 (Nov. 14, 1986). Amended by P.L. 24-142:8 (Feb. 27, 1998); P.L. 24-299:27 (Dec. 3, 1998); P.L. 26-026:9 (July 5, 2001); P.L. 27-018:3 (Apr. 26, 2003); P.L. 29-113:VI:21 (Sept. 30, 2008). Subsection (a) amended, (b) implicitly repealed by P.L. 38-136:XII:81 (Aug. 28, 2026).

2026 NOTE: Prior to the implicit repeal by P.L. 38-136:XII:81 (Aug. 28, 2026), subsection (b) stated:

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(b) It is the intent of I Liheslaturan Guåhan to require all Executive Branch governmental bodies, including autonomous agencies, and other above-named bodies, to be governed to the maximum extent practicable by Chapter 5 of Title 5 of the Guam Code Annotated. This provision requires any governmental body, and each above-named body, to conduct their procurement activities pursuant to Chapter 5 of Title 5 of the Guam Code Annotated, except insofar as said Chapter establishes and effects a system of centralized procurement.

CROSS REFERENCE: 12 GCA § 50101 (references to Guam Economic Development and Commerce Authority shall mean Guam Economic Development Authority).

2024 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606. Reference to the "Guam Legislature" replaced with I Liheslaturan Guåhan pursuant to 2 GCA § 1101.

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education.

§ 5126. Joinder or Mutual Use of Contracts by the Women, Infants, and Children Program and the Bureau of Economic Security Program.

The Women, Infants, and Children Program, and the Bureau of Economic Security Program of the Department of Public Health and Social Services are authorized to join or use the contracts of other states or other government units within the United States, with the authorization of the contracting vendor. The other states or other government units are not liable for the obligations of the Guam governmental entity which joins or uses the contract. Before any joinder or mutual use may take place, the contracting officer must determine in writing that the other jurisdiction's contract has gone through a competitive procurement process. For the purposes of this Section, the Women, Infants, and Children Program, and the Bureau of Economic Security Program of the Department of Public Health and Social Services are exempt from § 5004 of this Chapter.

SOURCE: Added by P.L. 31-212:1 (May 9, 2012). Repealed and added by P.L. 33-087:2 (Nov. 9, 2015).

§ 5126.1. Joinder or Mutual Use of Contracts by Division of Public Welfare.

The Division of Public Welfare of the Department of Public Health and Social Services is authorized to join or use the contracts of other states, other government procurement units, or not-for-profit entities comprising one or more states or government units, within the United States, with the authorization of the contracting vendor. The other states, other government units, or not-for-profit entities are not liable for the obligations of the Guam governmental entity which joins or uses the contract. Before any joinder or mutual use may take place, the contracting officer must determine in writing that the other jurisdiction's contract has gone through a competitive procurement process. For the purposes of this Section, the Division of Public Welfare of the Department of Public Health and Social Services is exempt from § 5004 of this Chapter.

SOURCE: Added by P.L. 37-107:2 (July 18, 2024).

§ 5126.2. Joinder or Mutual Use of Contracts by Guam Memorial Hospital Authority.

The Guam Memorial Hospital Authority is authorized to join or use the contracts of other states, other government procurement units, or not-for-profit entities comprising one or more states or government units, within the United States, with the authorization of the contracting vendor. The other states, other government units, or not-for-profit entities are not liable for the obligations of the Guam governmental entity which joins or uses the contract. Before any joinder or mutual use may take place, the contracting officer must determine in writing that the other jurisdiction's contract has gone through a competitive procurement process. For the purposes of this Section, Guam Memorial Hospital Authority is exempt from § 5004 of this Chapter.

SOURCE: Added by P.L. 38-136:XII:51 (Aug. 28, 2026).

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§ 5127. Commercial Leasing of Public Real Property and Related Facilities.

(a) Public Real Property and Related Facilities. From the effective date of this law, and notwithstanding any other provision of this Chapter, no commercial contract, lease, permit, or license for use of public real property, and related facilities by any non-governmental person or entity, shall be solicited, negotiated, entered into, or made for a term in excess of fifteen (15) years, inclusive of any extension, option, or renewal, provided, the terms and conditions of the commercial contract, lease, permit, or license have been satisfied during the initial fifteen (15) years as evidenced in a written approval by I Maga'hågan/Maga'låhen Guåhan or relevant Board of Directors of the government of Guam.

(1) Any contract, lease, permit or license made, renewed or extended in violation of this law shall become void upon the fifteenth (15th) anniversary of the making of such contract, lease, permit, or license.

(2) [No text]

(A) This limitation shall not apply to residential and agricultural leases to beneficiaries under the Chamorro Land Trust.

(B) This limitation shall not apply to leases and site licenses, and extensions thereof, of Chamorro Land Trust Commission licensed telecommunications providers and any government authority, provided, the applicable fee is adjusted to a fair market value rate not less than every ten (10) years.

(3) Any such contract, lease, permit, or license shall mean a "lease of real property" and not the lease of supplies as that term is used in § 5030(u) of this Chapter.

(b) Exceptional Term Contracts. The Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency, as authority may exist therefore, may solicit a contract for a term longer than otherwise allowed by this Section (an Exceptional Term Contract).

(1) Prior to soliciting any Exceptional Term Contract, I Maga'håga/Maga'låhi or, in the case of an autonomous agency, the Board of Directors, shall make a written Determination of Need justifying by a quantifiable sum an Exceptional Term Contract, and specifying the full term, inclusive of extensions, options and renewals, for such contract, and provide a copy of such Determination of Need to the Speaker of I Liheslaturan Guåhan.

(2) No Exceptional Term Contract shall be solicited unless a Determination of Need is obtained from I Maga'håga/Maga'låhi or, in the case of an autonomous agency, the Board of Directors.

(3) A written Determination of Need shall be valid for two (2) years or until an Exceptional Term Contract is executed to fill the stated need, whichever comes first.

(c) Subsequent to transmitting a Determination of Need to the Speaker of I Liheslaturan Guåhan, a notice of solicitation shall be published as provided in § 5211(c) of Subarticle B of Article 3 of this Chapter, such notice to conspicuously note the solicitation is for an Exceptional Term Contract, and specifying the term thereof, as well as the date of the proper Determination of Need. Any Exceptional Term Contract made in violation of this Section shall be void.

(d) Legislative Approval Required for Exceptional Term Contracts; Subsequent to satisfying the requirements of this § 5127, any Exceptional Term Contract for use of public real property and related facilities shall be transmitted to I Liheslaturan Guåhan for approval or disapproval, in whole.

(1) I Liheslaturan Guåhan shall take action to approve or disapprove the commercial contract, lease, permit, or license within sixty (60) calendar days from the date of filing with the Speaker.

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(2) A public hearing shall be conducted by the Chairperson of the Legislative Committee having oversight jurisdiction during the sixty (60) day review period, and said Committee shall report its findings and recommendations to I Liheslaturan Guåhan.

(3) The sixty (60) day period allowed for I Liheslaturan Guåhan to approve or disapprove the contract, lease, permit, or license shall be tolled from the time that a public hearing is noticed and until a Committee Report is completed.

(4) Legislative approval shall be by enactment into law.

For the purpose of this Subsection, the term "Exceptional Term Contract" means any commercial contract, lease, permit, or license that has a term in excess of fifteen (15) years.

(e) The solicitation and award of any such contract, lease, permit, or license shall be conducted as provided in this Chapter, and the Determination of Need shall be a part of such record and subject to § 5251 of this Chapter, along with any modification, amendment, exercise of option or renewal, or extension of such contract, lease, permit, or license.

SOURCE: Added by P.L. 32-040:2 (June 11, 2013) as 5 GCA § 5351. Codified to this section pursuant to authority granted by 1 GCA § 1606. Amended by P.L. 34-099:1 (May 16, 2018). Subsection (a) amended by P.L. 38-001:1 (Apr. 12, 2025). Subsection (d) repealed by P.L. 38:001:2 (Apr. 12, 2025), reenacted by P.L. 38-076:2 (Dec. 5, 2025).

2025 NOTE: The Compiler has added "no text" to indicate a change in formatting only; the content of the provision has not been altered.

2024 NOTE: Reference to the "Governor" replaced with I Maga'håga/Maga'låhi pursuant to 5 GCA § 1510.

2018 NOTE: Subsection/subitem designations altered/added pursuant to authority granted by 1 GCA § 1606.

2014 NOTE: Pursuant to the authority granted by § 1606, references were altered to reflect the existing codification structure.

§ 5128. Commercial Lease of Public Real Property and Related Facilities; Extension for Tenants in Good Standing.

Notwithstanding any other provision of law, a tenant who has a commercial lease of government property and has continuously occupied the government-leased property for at least five (5) years and has fully complied with all lease terms and conditions throughout such occupancy, may extend the lease at fair market value, which shall be determined by an appraiser who is licensed to do business on Guam and is paid for by the tenant, for an additional term or terms, the total of which shall not exceed fifteen (15) years, with approval from the lessor. If such extension is granted, fair market value shall be determined for, at least, every five (5) years during the extension period but in no event shall rent be less than the rent charged during the previous five (5) year period.

SOURCE: Added by P.L. 38-106:1 (Mar. 27, 2026).

SUBARTICLE D
GUAM PROCUREMENT REGULATIONS

§ 5130. Guam Procurement Regulations.
§ 5131. Adoption of Regulations.
§ 5132. Retention of Electronic Mail Correspondences. [Codified as 5 GCA § 5247.1]

§ 5130. Guam Procurement Regulations.

(a) Regulations. Regulations shall be promulgated by the Policy Office in accordance with the applicable provisions of the Administrative Adjudication Law.

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(b) Policy Office Not to Delegate Power to Promulgate Regulations. The Policy Office shall not delegate its power to promulgate regulations.

(c) Regulations Shall Not Change Existing Contract Rights. No regulation shall change any commitment, right or obligation of Guam or of a contractor under a contract in existence on the effective date of such regulation.

(d) Verification and Purchase of Surplus Items. The Policy Office shall establish as part of its regulations that using agencies, including autonomous agencies, obtain written verification from the General Services Agency (GSA), Guam State Agency for Surplus Property, whether items they intend to purchase are available. Written verification shall validate the availability or non-availability of items requested, and shall be provided in a form to be identified or established by the Policy Office. Upon verification by GSA that items are procurable, the using agency may determine whether or not to purchase the items. If GSA has not verified the availability of a particular item within ten (10) working days, the using agency may proceed with the purchase.

SOURCE: GC § 6955. MPC § 2-401. Subsection (d) added by P.L. 24-159:2 (Apr. 9, 1998).

2022 NOTE: Reference to "territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5131. Adoption of Regulations.

Each governmental body and each named body in § 5125 of this Chapter shall adopt the procurement regulations promulgated pursuant to § 5130(a) of this Chapter to the extent such agency is subject to such regulations according to the terms of § 5125 of this Chapter.

SOURCE: GC § 6955.1 added by P.L. 18-044:29 (Nov. 14, 1986).

§ 5132. Retention of Electronic Mail Correspondences.

[Codified as § 5247.1]

NOTE: Added by P.L. 32-015:1 (Apr. 11, 2013) as 5 GCA § 5132. Codified by the Compiler as 5 GCA § 5247.1 pursuant to the authority granted by 1 GCA § 1606.

SUBARTICLE E
COORDINATION, TRAINING AND EDUCATION

§ 5140. Collection of Data Concerning Public Procurement.
§ 5141. Training and Certification of Purchasing Personnel and Vendors.

§ 5140. Collection of Data Concerning Public Procurement.

The Chief Procurement Officer shall cooperate with the Bureau of Budget and Management Research and the Guam Auditor, or any successor agency, in the preparation of statistical data concerning the procurement, usage and disposition of all supplies and services, and employ such trained personnel as may be necessary to carry out this function. All Using Agencies shall furnish such reports as the Chief Procurement Officer may require concerning usage, needs and stocks on hand, and the Chief Procurement Officer shall have authority to prescribe forms to be used by the Using Agencies in requisitioning, ordering and reporting of supplies and services.

SOURCE: GC § 6956. MPC § 2-501.

COMMENT: The purpose of this Section is to give the Chief Procurement Officer and other agencies of the Government the power to make sure that procurement meets both the needs of the using agencies and the requirements of good management.

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2024 NOTE: Reference to "Territorial" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5141. Training and Certification of Purchasing Personnel and Vendors.

(a) Guam Community College Procurement Program. The Guam Community College (GCC, College) shall establish and administer an integrated program of academic, research, practical training, and continuing education, and provide the same on a full cost recovery basis, for government of Guam procurement personnel and other interested private or public participants, to be known as the "GCC Procurement Program." The College may adopt rules to provide appropriate criteria for the training, continuing education and certification authorized by this Section, and to administer this Section, including rules related to monitoring a certified purchaser's compliance with the continuing education requirements of this Section. The College may, under the GCC Procurement Program, establish a library, publish papers and journals, hold conferences and seminars, and do such other things as it deems reasonable to improve the government of Guam's acquisition and asset management strategies, practices and effectiveness. The primary focus of the activities of the GCC Procurement Program shall be on the study and instruction of the procurement laws and regulations of Guam, but may include the examination and comparison of other procurement regimes for the purpose of better understanding of procurement philosophy and best practices and the improvement of Guam's procurement regime. The College shall establish such equivalent training, education, experience and certification, and such prerequisites, tests, attendance and standards as it determines are necessary to qualify for any certification required by this Section, and is solely responsible for bestowing such certification in such form as it determines. It is not the intent, however, to require that tests be standardized or to prevent variation in subject matter tested, method of testing or the use of other pedagogical techniques. The College, in consultation with the Guam Procurement Advisory Council, shall review all qualification criteria annually, and may revise any of the same as it deems appropriate to improve the standards and proficiency of government of Guam procurement personnel. The College shall maintain records of enrollment and of the training, continuing education, and certification in same or similar manner, and subject to the same or similar rules as its regularly enrolled student records. The College may provide training, assistance and coordination with other states and nations of Micronesia on a cost recovery basis on the subject matter as covered under this Section.

(b) Mandatory Certification and Continuing Education. Notwithstanding any other provision of law or this Chapter and effective October 1, 2016, all government of Guam personnel tasked with the responsibility of purchasing or otherwise procuring goods, or services, or construction, including those employed by agencies with authority to conduct their own procurement, as well as any person within the Office of Public Accountability responsible for administering procurement appeals or auditing of the purchasing activities of the government of Guam, must receive the training and continuing education to the extent required under this Section and offered by the College in consultation with the Guam Procurement Advisory Council. A government of Guam employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the College and the Guam Procurement Advisory Council, which shall be the judge of equivalency. The equivalent training may count toward the continuing education requirements of this Section, as determined by the College, in consultation with the Guam Procurement Advisory Council.

(c) Consultation with the Guam Procurement Advisory Council. The Guam Procurement Advisory Council shall, on an annual basis and to the extent of its resources, advise and consult with the Guam Community College regarding the professional education programs contained in this Section, as they relate to the educational needs of government of Guam employees and vendors, and provide such other counsel and assistance as the College may request.

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(d) Promulgation of Fees and Rules. The College, pursuant to the Administrative Adjudication Law, shall promulgate a fee schedule for students, departments and agencies, and vendors in order to recover the College's costs under this Section. The operations budget of each government of Guam department or agency for staff development may be used to pay for fees provided herein. The College shall also promulgate any rules authorized by this Section, or which it may deem necessary or appropriate to give effect to this Section, pursuant to the Administrative Adjudication Law.

(e) Cooperation with Other Entities. The College may provide training and continuing education under this Section using its own personnel and facilities, or through contracts with other public or private entities or personnel, including the federal government Procurement Technical Assistance Program, the Hawaii Procurement Institute, and other state and international institutions.

(f) Basic Training Requirements. The College shall provide at least four (4) modules of procurement basic training, each with at least eighteen (18) hours of study and instruction, or more, as the College may determine as necessary, and shall award a Certificate of Enrichment of training to those qualifying, as required by this Section, for each module of the following subject matter areas:

Module 1. Fundamentals and Principles of Procurement (Basic).
Module 2. The Procurement Solicitation Process (Advanced).
Module 3. The Procurement Review and Remedies (Administrative).
Module 4. The Management and Administration of Procurement (Administrative).

(g) Continuing Education for Procurement Training. In consultation with the Guam Procurement Advisory Council, the College shall require a reasonable number of hours of continuing education to maintain a certification level for each Certificate of Enrichment required in this Section. The College may allow attendance at an equivalent certification training recognized by the College, in consultation with the Guam Procurement Advisory Council, to count toward the required number of hours. Maintenance of the certification level may be by yearly renewal or another reasonable renewal period comparable to nationally recognized certification requirements.

(h) Requirement of Certificate of Enrichment (Basic). The College’s prerequisites for awarding a Certificate of Enrichment (Basic) must include the completion of the first module of procurement basic training and passage of a written examination prescribed by the College. From October 1, 2016, no person shall serve in the capacity of a level-one purchaser, and no person shall sign for any procurement requisition, without the Certificate of Enrichment (Basic) provided by the College.

(i) Requirement of Certificate of Enrichment (Advanced). The College’s prerequisites for awarding a Certificate of Enrichment (Advanced) must include the completion of the first and second modules of procurement basic training and passage of a written examination prescribed by the College. From October 1, 2016, no person shall serve in the capacity of a level-two purchaser, without a Certificate of Enrichment (Advanced) provided by the College, and a minimum number of years of purchasing experience as prescribed by the Department of Administration. Recognizing that the College has been providing procurement basic training since 2012 that covers the subject matter in the first and second basic training modules required in this Section, the College may allow attendance at any such training given as credit toward any certification required without examination until such time as the College has implemented testing for such training.

(j) Requirement of Certificate of Enrichment (Administrative). The College’s prerequisites for awarding a Certificate of Enrichment (Administrative) must include the completion of the first, second, third, and fourth modules of procurement basic training and passage of a written examination prescribed by the College. From October 1, 2016, no person shall serve in the capacity of a Chief Procurement Officer or Procurement Administrator, or as a classified employee in the position of supply management

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administrator, procurement officer, or otherwise as the responsible head of procurement, or a level-three purchaser, of any government of Guam entity, including any governmental body, public corporation, semi-autonomous or autonomous agency, within or under the purview of the Executive Branch, without a Certificate of Enrichment (Advanced) provided by the College and a minimum number of years of purchasing experience as prescribed by the Department of Administration.

(k) Requirement of Industry Certification. The College may provide an Industry Certification which may require completing the required number of college credit courses to include the four (4) subject matter areas covered under this Section and passage of a written examination as developed, prescribed, and administered by the College, in consultation with the Guam Procurement Advisory Council.

(l) Requirement of Certificate of Procurement Management Program. The College's requisites for providing a GCC Certificate of Procurement Management may include completing seventeen (17) college credit(s), or more, as the College may determine necessary, to include the four (4) subject matter areas covered under this Section and meeting all the general requirements for a certificate program and a Certificate of Completion to be awarded by the College.

(m) Requirement of an Associate's Degree. The College's requisites for providing an Associate's Degree in Procurement Administration may include completing the required college credits as the College may determine necessary, to include the four (4) subject matter areas covered under this Section and meeting all the general requirements for an Associate's Degree to be awarded by the College.

(n) Procurement Training Compliance Report.

(1) Timeline for Submission. No later than thirty (30) days after the end of each fiscal year, every director, administrator, president or head of a government of Guam agency, including line agencies, autonomous and semi-autonomous agencies, public corporations, the Mayors' Council of Guam, the Courts of the Judiciary of Guam, and I Liheslaturan Guåhan shall electronically submit to the Public Auditor of Guam, in an electronic portable document format, a "Procurement Training Compliance Report."

(2) Content Guidelines. Said report shall at minimum list the employees by name, job title, each procurement training module completed, and the date of completion.

SOURCE: Added by P.L. 32-131:1 (Feb. 14, 2014). Subsection (n) added by P.L. 36-011:2 (Apr. 9, 2021).

SUBARTICLE F
DUTIES OF THE ATTORNEY GENERAL

§ 5150. Duties of the Attorney General.
§ 5151. Authorization for Legal Services for the Department of Public Works, the Guam Building Code Council, and the PEALS Board.

§ 5150. Duties of the Attorney General.

The Attorney General, the Deputy Attorney General or such Assistant Attorneys General, or such Special Assistant Attorneys General as the Attorney General may designate, shall serve as legal counsel and provide necessary legal services to the Policy Office and the General Services Agency. Whenever the Chief Procurement Officer, the Director of Public Works, or the head of any executive branch agency, autonomous agency, instrumentality or public corporation of the government of Guam conducts any solicitation or procurement which is estimated to result in an award of Five Hundred Thousand Dollars ($500,000) or more, the Attorney General or his designees, including one (1) or more Special Assistant Attorneys General who may be so designated or appointed by the Attorney General and subject to any

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reasonable requirements or conditions determined by the Attorney General, shall act as legal advisor during all phases of the solicitation or procurement process. The Attorney General, or his designee, including one (1) or more Special Assistant Attorneys General shall, in addition, when he approves contracts, determine not only the correctness of their form, but their legality. In making such a determination of legality, he may require any or all agencies involved in the contract to supply him with evidence that the required procedures precedent to executing the contract were carried out. He or his designees may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of form and legality.

SOURCE: Amended by P.L. 30-072:2 (Nov. 27, 2009), P.L. 30-157:1 (July 12, 2010).

§ 5151. Authorization for Legal Services for the Department of Public Works, the Guam Building Code Council, and the PEALS Board.

(a) The Department of Public Works (DPW), the Guam Board of Professional Engineers, Architects and Land Surveyors (PEALS), and the Guam Building Code Council (GBCC) may enter into a Memorandum of Understanding (MOU) to jointly fund an Assistant Attorney General to specifically provide legal services to DPW, GBCC, and the PEALS Board only.

(b) Pursuant to the MOU, DPW, GBCC, and PEALS may jointly enter into an MOU with the Office of the Attorney General to provide such legal services. DPW, GBCC, and PEALS shall reimburse the Office of the Attorney General for such services in equitable proportions from their respective funds.

SOURCE: Added as uncodified law by P.L. 32-068:XII:16 (Sept. 11, 2013). Codified to this section by the Compiler.

SUBARTICLE G
GUAM PROCUREMENT ADVISORY COUNCIL

SOURCE: Added by P.L. 37-088:4 (Apr. 3, 2024); formerly codified as Article 14 of this Chapter.

§ 5900. Guam Procurement Advisory Council.
§ 5901. Composition.
§ 5902. Duties.
§ 5903. Limitations.
§ 5904. Reports.
§ 5905. Administration.
§ 5906. Guam Procurement Advisory Council Support Fund.

§ 5900. Guam Procurement Advisory Council.

There is hereby established within the government of Guam, the Guam Procurement Advisory Council (Council) to research, evaluate, analyze, review and make recommendations to improve, address and modernize government procurement and contracting.

§ 5901. Composition.

(a) The Council shall be comprised of the following members:

(1) the Chief Procurement Officer or his/her designee;

(2) the Director of Public Works or his/her designee;

(3) the Attorney General of Guam or his/her designee;

(4) the Public Auditor or his/her designee;

(5) the Director of Administration or his/her designee;

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(6) the President of the Guam Community College or his/her designee; and

(7) the procurement officer from an agency with decentralized procurement or from an autonomous agency appointed for a term of three (3) years by I Maga'hågan/Maga'låhen Guåhan.

(b) The Council shall meet at least biannually. The first biannual meeting shall be called by the Director of Administration in the first quarter of the fiscal year.

(c) Council shall elect its chairperson based on the majority of members present.

§ 5902. Duties.

The Council is authorized to perform the following duties:

(a) to conduct studies, research and analysis on all matters relating to the effectiveness, responsiveness and timeliness of government procurement, including the review and comparison with model procurement code legislation and consultation with division heads, school principals and other mid-level managers, and end users of government procured goods and services;

(b) to critically examine the substantive and procedural aspects of the Guam Procurement Act and existing administrative rules and regulations governing procurement, including the legal authorities, composition, and effectiveness of the Procurement Policy Office;

(c) to review the legal infrastructure of the government procurement system to ensure the uniformity of law, regulation and practice;

(d) to propose recommendations for the improvement, streamlining, and modernization and the use of "best value" and "performance based" methods as the basis for evaluation of government procurement activities;

(e) to make recommendations and identify methods to address new industries and technologies and financial systems, while maintaining the general principles of procurement law;

(f) to review and provide advice on any aspect of law, regulation or policy that affect procurement, including laws and processes not directly found in the Guam Procurement Act;

(g) to review the statutes and process for procurement appeals and recommend improvements;

(h) to make recommendations for best practices and standard operating procedures for planned procurement, writing specifications, market research, solicitation, drafting and managing contracts, maintenance of procurement records, and other aspects of the procurement process;

(i) to make recommendations for training and/or certification of procurement professionals, including, but not limited to, developing and updating curriculum, developing online training of the trainer programs, and establishing a Guam Procurement Institute for the training and education of public and private sector participants in government contracting;

(j) to make recommendations for implementing green procurement within the government of Guam under the advisement of the Guam Energy Office, the Guam Power Authority, the Guam Environmental Protection Agency, the University of Guam Center for Island Sustainability, and/or other government of Guam entities; and

(k) to make recommendations for policies and procedures pertaining to procurement that utilize federal funds.

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§ 5903. Limitations.

The Council shall not have any executive participation in the day-to-day implementation of the Guam Procurement Act. It shall not have any executive, legislative, or adjudicative review authority over procurement matters.

§ 5904. Reports.

The Council shall provide annual reports to the Speaker of I Liheslaturan Guåhan and I Maga'hågan/Maga'låhen Guåhan.

§ 5905. Administration.

(a) The Council shall have the authority to retain professional and support staff to assist it with its duties, and shall designate an Administrative Director. However, the Director of Administration shall provide and coordinate administrative support services to the Council from the Department of Administration.

(b) The Office of I Maga'hågan/Maga'låhen Guåhan, the Office of the Attorney General of Guam, the Office of Public Accountability, and other executive branch agencies may provide, loan or transfer resources to the Council to support its operations.

§ 5906. Guam Procurement Advisory Council Support Fund.

There is hereby established a Guam Procurement Advisory Council Support Fund (Fund) to be maintained by the Director of Administration. I Maga'hågan/Maga'låhen Guåhan and the Director of Administration are authorized to transfer amounts into the Fund to support the operations of the Council. Any legislative appropriations to support the operations of the Council shall be deposited into the Guam Procurement Advisory Council Support Fund. The Chief Procurement Officer is authorized to transfer funds from the Special Surplus Property Fund to support the operations of the Guam Procurement Advisory Council.

ARTICLE 3
SOURCE SELECTION AND CONTRACT FORMATION

Subarticle A Definitions
Subarticle B Methods of Source Selection
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SUBARTICLE A
DEFINITIONS

§ 5201. Definitions.

§ 5201. Definitions.

As used in this Chapter:

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(a) "Cost-Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Chapter, and a fee, if any.

(b) "Established Catalogue Price" means the price included in a catalogue, price list, schedule or other form that:

(1) is regularly maintained by a manufacturer or contractor;

(2) is either published or otherwise available for inspection by customers; and

(3) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(c) "Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(d) "Purchase Description" means the words used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

(e) "Requests for Proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(f) "Responsible Bidder" or "Officer" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(g) "Responsive Bidder" means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

SOURCE: GC § 6958. MPC § 3-101.

SUBARTICLE B
METHODS OF SOURCE SELECTION

§ 5210. Methods of Source Selection.
§ 5211. Competitive Sealed Bidding.
§ 5212. Bid Security and Performance Bond Requirement for Contractors.
§ 5213. Small Purchases.
§ 5213.1. Small Purchases for the Guam Department of Education (GDOE).
§ 5213.2. Small Purchases of Hospital Supplies, Services, Equipment, or Pharmaceuticals for the Guam Memorial Hospital Authority (GMHA).
§ 5214. Sole Source Procurement.
§ 5215. Emergency Procurements.
§ 5216. Competitive Selection Procedures for Services Specified in § 5121 of this Chapter.
§ 5217. Procurement from Nonprofit Corporations.
§ 5218. Procurement of Products Manufactured from Recycled Glass.
§ 5219. Unsolicited Offers.
§ 5220. Publication of IFB and RFP Documents on the Agency's Website.
§ 5221. Procurement Announcement Website.
§ 5221.1. Posting of Information on the Procurement Announcement Website. [Added as § 5222]
§ 5221.2. Length of Time for Posts on Procurement Announcement Website. [Added as § 5223]

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§ 5221.3. Administrative Rules and Regulations. [Added as § 5224]
§ 5221.4. Retention of Procurement Records. [Added as § 5225]

§ 5210. Methods of Source Selection.

(a) Unless otherwise authorized by law, all Guam contracts shall be awarded by competitive sealed bidding, pursuant to § 5211 of this Article, except for the procurement of professional services and except as provided in:

(1) Section 5212 of this Article; [*see* note below]

(2) Section 5213 of this Article;

(3) Section 5214 of this Article;

(4) Section 5215 of this Article;

(5) Section 5216 of this Article for services specified in § 5121 of this Chapter; or

(6) Section 5217 of this Article.

(b) Nothing in this Section requiring competitive bidding shall prohibit the development of specifications which require compatibility with existing supplies, equipment or data processing systems.

SOURCE: GC § 6959. MPC § 3-202 modified. Subsections (a)(4) and (a)(5) amended, and (a)(6) added by P.L. 18-015:X:24 (Sept. 28, 1985).

NOTE: With respect to subsection (a)(1), section 5212 (regarding Competitive Sealed Proposals) was repealed in 1985 by P.L. 18-008:8 (Jul. 8, 1985). However, subsection (a) was not amended to reflect that repeal. In 2004, section 5212 was added as a new completely unrelated law (Bid Security and Performance Bond Requirement for Contractors) by P.L. 27-127:2 (Dec. 2, 2004).

COMMENT: In the past, some problems have arisen due to the requirement for competitive bidding for equipment which should have been, but was not, compatible with existing equipment. The reason alleged was that the lowest bidder had to be chosen. Of course, the proper writing of specifications could have prevented the problem and Subsection (b) makes clear that compatibility may be a legitimate part of the specifications. Changed by Committee on GGO.

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5211. Competitive Sealed Bidding.

(a) Conditions for Use. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in § 5210 of this Article.

(b) Invitation for Bids. An Invitation for Bids shall be issued and shall include a purchase description, a recitation of the Wage Determination most recently issued by the U.S. Department of Labor, and all contractual terms and conditions applicable to the procurement including a demonstration of compliance with §§ 5801 and 5802 of this Chapter, if applicable.

(c) Public Notice. Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations promulgated by the Policy Office. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. If a bid is given public notice which is within the time specified in the Policy Office's rules and regulations on the subject, it shall not be challenged unless the bidder can show exceptional circumstances which would render the rules and regulations inapplicable in the case of a particular bid being requested.

(d) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information

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as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

(e) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Chapter. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

(f) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulations promulgated by the Policy Office. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of Guam or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer, the Director of Public Works or head of a purchasing agency.

(g) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids and whose bid amount is sufficient to comply with Article 13 of this Chapter, if applicable. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than five percent (5%), the Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency, is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(h) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

SOURCE: GC § 6959.1. MPC § 3-202; Subsection (c) modified. Subsection (b) amended by P.L. 28-165:3 (Jan. 4, 2007). Subsection (g) amended by P.L. 28-165:4 (Jan. 4, 2007).

2022 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: *See* Official Comments for full commentary. Subsection (c) is modified to make sure that a dissatisfied bidder cannot challenge a bid because of lack of time where the bid is in conformance with the rules and regulations unless there has been some serious and exceptional reason for the challenge, such as where the time for bids was extended and, for some reason, one bidder was not notified. Further modified by P.L. 28-165 (Jan. 4, 2007).

§ 5212. Bid Security and Performance Bond Requirement for Contractors.

(a) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for the procurement of supplies or services when the total price is estimated by the Chief Procurement Officer to exceed Twenty-Five Thousand Dollars ($25,000.00). Bid security shall be a bond provided by a surety company authorized to do business in Guam, or the equivalent in cash, or otherwise supplied in a form satisfactory to the government of Guam. Nothing herein prevents the requirement of such bonds on the procurement of supplies or services totaling fewer than Twenty-Five Thousand Dollars ($25,000.00) when a written determination and justification for such requirement is included as an integral part of the Invitation for Bid solicitation package.

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(b) Amount of Bid Security. Bid security shall be in an amount equal to fifteen percent (15%) of the total amount bid.

(c) The bid security required above under any applicable Invitation for Bid shall not be released upon award of the bid, but instead shall continue in full force and effect until delivery of the supplies or services required by any contract awarded to contractor under the associated Invitation for Bid is completed, except that the bid security for a lease of real property shall be released upon the government's execution of the lease and taking possession of the property. The Director of Administration shall review all bid security for existing leases and shall release said bid security if a lessor is in compliance with the lease.

(d) Action against Bid Security. In the event that a successful bidder fails to complete delivery of supplies or services as required in the contract between such contractor and the government of Guam, the government of Guam may proceed to procure such supplies or services from the next lowest bidder who is able to deliver such supplies or services. The government of Guam may retain so much of the bid security as may be required to compensate the government for damages arising from contractor=s failure to complete delivery of such supplies or services, and the government of Guam may also bring an action in the Superior Court of Guam against the contractor for direct damages, if any, beyond the amount of the bid security posted except that no action against bid security maybe taken in such circumstances where supplies or services are terminated due to the government of Guam's failure to pay for such services or supplies on a timely basis.

(e) Rejection of Bids for Noncompliance with Bid Security Requirements. When the Invitation for Bids requires bid security, noncompliance requires that the bid be rejected unless, pursuant to Policy Office regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

(f) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids, except as provided in §§ 5211(f) of this Chapter. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

(g) No Requirement for Performance Bond. The bid security that shall be held until complete delivery of the supplies or services by the successful bidder is deemed to be satisfactory to adequately protect the best interest of the government of Guam, from default, and thus, no separate performance bond shall be required of the successful bidder on a contract for supplies or services.

(h) Bond Forms. The Policy Office shall promulgate by regulation the form of the bond or other bid security required by this Section together with any additional regulations necessary for the administration of this Section. Any person may request and obtain from the Government of Guam a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

SOURCE: Added by P.L. 27-127:2 (Dec. 2, 2004). Subsection (c) amended by P.L. 29-019:VI:87 (Sept. 29, 2007).

§ 5213. Small Purchases.

Any procurement not exceeding Two Hundred Fifty Thousand Dollars ($250,000), may be made in accordance with small purchase regulations promulgated by the Policy Office, which shall include the requirements, in a Request for Quotes (RFQ) small purchase solicitation, to solicit and obtain, to the maximum extent practicable, no less than three (3) positive written quotations from qualified sources that shall be part of the procurement record. A "no quote" response will not be considered a positive quotation but shall be part of the procurement record, which shall further include a written record or memorandum of all solicitations and responses thereto, negative or positive, orally or in writing. In the event the agency

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obtains less than three (3) positive quotations and provides the attestation required by this Section, the agency may proceed with the small purchase procurement.

The purchasing agency shall include in the procurement record of a small purchase solicitation made by RFQ, regardless of whether it was concluded, an attestation containing the following:

(a) a record of those particular businesses that were contacted, and those who, contacted or not, submitted a "no quote," or did not respond to the solicitation, as well as those that submitted positive written quotations;

(b) a statement documenting the solicitation efforts to obtain quotations from qualified sources other than those which responded; and

(c) GSA's list of all qualified vendors for the item(s) or service(s) being procured. Small purchase requirements shall not be artificially divided so as to constitute a small purchase under this Section. The Chief Procurement Officer, the Director of the Department of Public Works, the head of an agency, or designee at or above the level of the Procurement Officer utilizing this Section for procurement, shall submit a quarterly report of all small purchases to the Speaker of I Liheslaturan Guåhan.

SOURCE: GC § 6959.3. MPC § 3-204. Amended by P.L. 34-035:1 (Aug. 7, 2017); P.L. 36-103:2 (June 15, 2022); and P.L. 38-136:XII:58 (Aug. 28, 2026).

§ 5213.1. Small Purchases for the Guam Department of Education (GDOE).

Any procurement not exceeding Four Hundred Ninety- Nine Thousand Nine Hundred Ninety-Nine Dollars ($499,999) may be made in accordance with small purchase regulations promulgated by the Policy Office, which shall include the requirements, in a Request for Quotes (RFQ) small purchase solicitation, to solicit and obtain, to the maximum extent practicable, no less than three (3) positive written quotations from qualified sources that shall be part of the procurement record. A "no quote" response will not be considered a positive quotation but shall be part of the procurement record, which shall further include a written record or memorandum of all solicitations and responses thereto, negative or positive, orally or in writing. In the event the GDOE obtains less than three (3) positive quotations and provides the attestation required by this Section, the agency may proceed with the small purchase procurement. The GDOE shall include in the procurement record of a small purchase solicitation made by RFQ, regardless of whether it was concluded, an attestation containing the following:

(a) a record of those particular businesses that were contacted, and those who, contacted or not, submitted a "no quote," or did not respond to the solicitation, as well as those that submitted positive written quotations;

(b) a statement documenting the solicitation efforts to obtain quotations from qualified sources other than those which responded; and

(c) GDOE's list of all qualified vendors for the item(s) being procured. Small purchase requirements shall not be artificially divided so as to constitute a small purchase under this Section. The GDOE Superintendent, or designee at or above the level of the Procurement Officer utilizing this Section for procurement, shall submit a quarterly report of all small purchases to the Speaker of I Liheslaturan Guåhan.

SOURCE: Added by P.L. 38-060:XII:41 (Sept. 29, 2025). Amended by P.L. 38-136:XII:59 (Aug. 28, 2026).

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§ 5213.2 Small Purchases of Hospital Supplies, Services, Equipment, or Pharmaceuticals for the Guam Memorial Hospital Authority (GMHA).

(a) Threshold Tied to Federal Simplified Acquisition Threshold. Any procurement not exceeding the Federal Simplified Acquisition Threshold, as defined in subsection (b) of this Section, for Hospital supplies, services, equipment, or pharmaceuticals, may be made in accordance with small purchase regulations promulgated by the Policy Office, which shall include the requirements, in a Request for Quotes (RFQ) small purchase solicitation, to solicit and obtain, to the maximum extent practicable, no less than three (3) positive written quotations from qualified sources that shall be part of the procurement record. A "no quote" response will not be considered a positive quotation but shall be part of the procurement record, which shall further include a written record or memorandum of all solicitations and responses thereto, negative or positive, orally or in writing.

(b) Definition. As used in this Section, "Federal Simplified Acquisition Threshold" means the general simplified acquisition threshold established under 41 U.S.C. § 1908 and set forth in the definition of "simplified acquisition threshold" at 48 CFR § 2.101 (FAR 2.101), as the same may be adjusted, amended redesignated, or recodified from time to time by the Federal Acquisition Regulatory Council or by Act of Congress.

(c) Effective Date of Federal Adjustments. Each adjustment to the Federal Simplified Acquisition Threshold shall apply to GMHA small purchase solicitations issued on or after the effective date of the federal adjustment. A solicitation issued before that effective date shall remain subject to the threshold in effect at the time of issuance.

(d) Less than Three Quotations. In the event the GMHA obtains less than three (3) positive quotations and provides the attestation required by this Section, the agency may proceed with the small purchase procurement.

(e) Attestation. The GMHA shall include in the procurement record of a small purchase solicitation made by RFQ, regardless of whether it was concluded, an attestation containing the following:

(1) a record of those particular businesses that were contacted, and those who, contacted or not, submitted a "no quote," or did not respond to the solicitation, as well as those that submitted positive written quotations;

(2) a statement documenting the solicitation efforts to obtain quotations from qualified sources other than those which responded; and

(3) GMHA Material Management's list of all qualified vendors for the item(s) being procured.

(f) No Artificial Division. Small purchase requirements shall not be artificially divided so as to constitute a small purchase under this Section.

(g) Quarterly Reporting. The GMHA Hospital Administrator/CEO, or designee at or above the level of the Procurement Officer utilizing this Section for procurement, shall submit a quarterly report of all small purchases to the Speaker of I Liheslaturan Guåhan.

(h) Savings Clause. If, at any time, 41 U.S.C. § 1908 or 48 CFR § 2.101 is repealed without a successor provision establishing a federal simplified acquisition threshold, the dollar amount applicable under this Section shall be the last general Federal Simplified Acquisition Threshold in effect immediately before such repeal, and shall remain at that amount until further amendment of this Section by I Liheslaturan Guåhan.

SOURCE: Added as § 5213.A by P.L. 38:060:XII:45 (Sept. 29, 2025), renumbered by the Compiler pursuant to the authority of 1 GCA § 1606. Amended by P.L. 38-136:XII:50 (Aug. 28, 2026).

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§ 5214. Sole Source Procurement.

(a) A contract may be awarded for a supply, service, or construction item without competition when, prior to commencing negotiations:

(1) the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer above the level of the Procurement Officer, determines in writing that there is only one (1) source for the required supply, service, or construction item; and

(2) the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer above the level of the Procurement Officer, prepares a package to market and present to prospective vendors or service providers, which shall be based on the determination of need and market research, and contain a purchase description, evaluation factors, delivery or performance schedule, inspection and acceptance requirements, the contract terms and conditions, and any warranty, bond, or other security requirement of the sole source contract.

(b) A sole source contract shall not exceed a term greater than one (1) year, with four (4) successive annual options to renew. Any option to renew a contract under this Section shall not exceed a term greater than one (1) year. An option to renew may be exercised only by the government when, at the time to be exercised, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer above the level of the Procurement Officer, determines in writing that there is only one (1) source for the required supply, service, or construction item.

(c) Prior to and as a condition of making any determination in writing required under Subsections (a)(l) or (b) of this Section, the purchasing agency shall prepare a written report for the person making such determination, which shall include a detailed analysis of the minimum needs of the government upon which the contract is based, findings from thorough market research, and a conclusion that will certify accurate and complete necessary data to support their recommendation that there is no other source that will satisfy the minimum needs of the government. The report must be signed by the person or persons conducting the market research and analysis, and shall be made part of the procurement record.

(d) A sole source contract shall not be awarded or executed unless and until the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer above the level of the Procurement Officer, has determined in writing that the contract price is fair and reasonable and consistent with applicable regulations. Such determination shall include relevant cost and price information from the sole source and comparable or substitute supplies, services, or construction items.

(e) The purchasing agency shall publish a notice in a newspaper of general circulation on Guam, and on its website, within fourteen (14) calendar days of awarding any contract under this Section, in excess of Fifty Thousand Dollars ($50,000). The notice shall include the names of the purchasing agency and awardee(s), the contract award amount, term, and the nature of the contract.

SOURCE: GC § 6959.4. MPC § 3-205. Amended by P.L. 36-070:2 (Dec. 27. 2021) effective 90 calendar days after enactment pursuant to P.L. 36-070:3 (Dec. 27, 2021).

§ 5215. Emergency Procurements.

(a) Emergency Procurements. Notwithstanding any other provision of this Chapter, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer, provided the designee of any such officer is subject to § 5114(b) of this Chapter, may make or authorize others to make emergency procurements of supplies, services, or emergency construction works in the manner specified in this Section when there exists a threat to public health, welfare, or safety, or the health and safety of the environment, in the event of an emergency as defined in § 5030(x) of this Chapter and defined in regulations promulgated by the Policy Office. “Emergency construction works” means the

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emergency operation, or demolition of existing structures and real property improvements, as well as building or assembly of temporary structures, necessary to address, within the time limits of emergency procurement specified in Subsection (e) of this Section, the imminent threat and nature of a particular event of emergency as described by a Determination of Need for an Emergency Procurement required in Subsection (c) of this Section.

(b) Necessity of a Declaration of Emergency, or Certificate of Emergency. No emergency procurement shall be made except after, and consistent with, a Declaration of Emergency made by I Maga'håga/Maga'låhi, or a Certificate of Emergency made by the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer.

(1) A Declaration of Emergency shall be made by Executive Order duly issued by I Maga'håga/Maga'låhi, and expressly authorizing emergency procurement of supplies, services, or emergency construction works as authorized by this Section, and pursuant to a Determination of Need for Emergency Procurement, which shall be appended thereto.

(2) A Certificate of Emergency shall be made, under penalty of perjury, by the Chief Procurement Officer, or Director of Public Works, or by the head of a purchasing agency, or a designee of either officer having requisite authority to procure supplies, services, or emergency construction works. The Certificate of Emergency shall have appended thereto a complete and true and correct copy of the Determination of Need for Emergency Procurement, and contain the following:

(A) a statement expressly incorporating by reference the entire unaltered contents of the appended Determination of Need for Emergency Procurement; and

(B) an affirmation that the contents of the Determination of Need for Emergency Procurement are true, correct, and complete to the best, informed knowledge, and good faith belief of the person making the Certificate of Emergency.

(3) Certified copies of the Certificate of Emergency by the Chief Procurement Officer, the Director of Public Works, the head of the purchasing agency, or a designee of either officer shall be submitted, prior to award, to I Maga'håga/Maga'låhi and the Speaker of I Liheslatura. Any contract awarded under a Certificate of Emergency pursuant to Subsection (b)(2) of this Section shall be null and void unless and until I Maga'håga/Maga'låhi approves such Certificate of Emergency in writing.

(c) Determination of Need for Emergency Procurement. No emergency procurement shall be solicited or awarded without a Determination of Need for Emergency Procurement, which shall:

(1) state the date of its execution, and be signed under penalty of perjury by the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer, conducting the emergency procurement of supplies, services, or emergency construction works;

(2) describe with factual particularity, the nature and apparent cause of the condition posing an imminent threat to public health, welfare, or safety, or the health and safety of the environment, which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection;

(3) state that the threat is imminent, and that the emergency procurement authorized by this Section is necessary, without delay, to protect the public health, welfare, or safety, or the health and safety of the environment;

(4) affirm solemnly that the emergency procurement of supplies, services, or emergency construction works, in the face of the emergency described, is not being used and will not be used,

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directly or indirectly, to avoid other methods of source selection or the purposes and policies of this Chapter;

(5) be copied and appended to its respective Declaration of Emergency or Certificate of Emergency, as described in Subsection (b) of this Section, and further attached to and made a part of any contract, or Notice of Award made or given; and

(6) be a material part of the procurement record required in this Chapter.

(d) How Conducted. To the extent practicable and except as otherwise allowed under this Section, an emergency procurement shall be made and conducted with competition and utilize competitive procedures used in this Chapter as is practicable under the circumstances, in the good faith discretion of the person authorized to make such emergency procurement. A record shall be kept of all determinations and statements required by this § 5215, as well as all other matters required to be made a part of the procurement record by this Chapter. At the conclusion of a solicitation whether by award or cancellation, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or the authorized designee of either officer; provided, the designee of any such officer is subject to § 5114(b) of this Chapter, shall make, date, and sign a written statement describing: the circumstances of the event of the emergency procurement; the solicitation process used; the names of potential bidders or offerors contacted; and the justification for the selection of the awardee. The solicitation and competition for an award of an emergency procurement contract should include:

(1) sending a Notice of Request for Interest to contractors on a qualified bidders list, and others known to the government, who have provided responsive supplies, services, or emergency construction works to the government, within the preceding twelve (12) months, of the type needed to meet the particular emergency;

(2) a request for prompt expression of interest;

(3) at least three (3) Positive Written Quotations, which shall be solicited, recorded, and placed in the procurement file, for the acquisition of supplies, services, or emergency construction works needed, unrestricted by the qualified bidders list; provided, that all quotations are not required to be positive if accompanied by written certification that to the maximum extent practicable, such positive quotations could not be obtained from known or potential vendors; and

(4) an award of a contract or purchase order as expeditiously as the circumstances and prudent competition may allow for, to the responsible contractor shown to provide the lowest price and most expeditious delivery time, in accordance with § 5010 of this Chapter.

(e) Limitations on Numbers, Time, and Amount of Emergency Procurement. There shall be no limit on the number of emergency procurements of supplies, services, and emergency construction works, but no emergency procurement shall be made for an amount or construction greater than the amount of such supplies, services, or emergency construction works that are necessary to address the emergency for a ninety (90) day period immediately following the date of the Determination of Need for Emergency Procurement, as described in Subsection (c) of this Section. During said ninety (90) day period, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer shall promptly and expeditiously take all necessary steps to determine if there will be ongoing needs arising from the event of emergency beyond the ninety (90) day period, and plan for the solicitation of supplies, services, and emergency construction works for such ongoing needs under a method of procurement other than the emergency procurement authorized in this Chapter. The emergency procurement may be extended beyond ninety (90) days if the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer determines additional time is necessary and the contract scope and duration are limited to the emergency. Thirty (30) days prior to execution of the extension, a public hearing

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shall be held by the procuring agency, at which any person may present testimony. Notice of intent to extend an emergency contract shall be published in a newspaper of general circulation at least five (5) days prior to a public hearing. Notice shall include at least a description of the need for the emergency extension, the vendor, and the date, time, and location of the public hearing. A record of such plan shall be made and kept as a part of the procurement record as required by § 5249 of this Chapter.

SOURCE: GC § 6959.5. MPC § 3-206. Amended by P.L. 18-044:23 (Nov. 14, 1986); and P.L. 35-109:1 (Oct. 30, 2020) effective 90 days after enactment.

2024 NOTE: References to the "Governor" replaced with I Maga'håga/Maga'låhi pursuant to 5 GCA § 1510. Reference to the "Legislature" replaced with I Liheslatura pursuant to 2 GCA § 1101.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with "Numbers" to "Lowercase Letters" in this section.

§ 5216. Competitive Selection Procedures for Services Specified in § 5121 of this Chapter.

(a) Conditions for Use. The services specified in § 5121(a) of this Chapter shall be procured in accordance with this Section, except as authorized under §§ 5214 or 5215 of this Chapter. Services for architecture, engineering, construction, land surveying, environmental assessment and other such services shall be procured in accordance with Article 5 of this Chapter.

(b) Statement of Qualifications. Persons engaged in providing the types of services specified in § 5121(a) of this Chapter may submit statements of qualifications and expressions of interest in providing such types of services. The Procurement Officer may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(c) Public Announcement and Form of Request for Proposals. Adequate notice of the need for such services shall be given by the purchasing agency through a Request for Proposals. The Request for Proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

(d) Discussions. The head of the purchasing agency or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) Award. Award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, the negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

SOURCE: GC § 6959.6. MPC § 3-207. Subsection (a) amended by P.L. 18-044:32 (Nov. 14, 1986).

§ 5217. Procurement from Nonprofit Corporations.

A contract may be awarded for a supply or service without competition when the contractor is a nonprofit corporation employing sheltered or handicapped workers. As a condition of the award of the contract the contractor must certify that labor on the project will be performed by handicapped persons except that supervisory personnel do not have to be handicapped. A contractor awarded a contract pursuant to this Section shall not be required to post any of the bonds required under Article 5 of this Chapter.

SOURCE: GC § 6959.7 added by P.L. 18-015:X:25 (Sept. 28, 1985).

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§ 5218. Procurement of Products Manufactured from Recycled Glass.

Each Request for Proposal, Request for Price Quotation, Request for Bid or any other method used for the procurement of services and construction where the project includes concrete or asphalt paving, construction and repair of highways, including all secondary and tertiary roads, shall include the requirement that the individual or company submitting a response to any request for proposal, price quotation, bid or procurement includes the purchase of available recycled glass pulverized on Guam or appropriate products manufactured therefrom. In all contracts for concrete or asphalt paving, construction and repair of highways, including all secondary and tertiary roads, the administrator of the contract shall determine the suitable percentage of recycled glass to be used in the project and, as a condition of the award of the contract, shall require the contractor to identify and certify in writing the percentage of recycled glass contained in the material offered.

SOURCE: Added by P.L. 24-100:2 (Oct. 23, 1997).

§ 5219. Unsolicited Offers.

(a) Defined. An unsolicited offer is any offer other than one submitted in response to a solicitation.

(b) Processing of Unsolicited Offers. The Chief Procurement Officer, the Director of Public Works or the head of the Purchasing Agency shall consider the offer as provided in this Section. If an agency that receives an unsolicited offer is not authorized to solicit or enter into a contract for the supplies, services or construction offered, the head of such agency shall forward the offer to the Chief Procurement Officer, the Director of Public Works or the head of a Purchasing Agency, who shall consider and evaluate the offer as provided in this Section.

(c) Conditions for Consideration. To be considered for evaluation, an unsolicited offer:

(1) must be in writing;

(2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to Guam and to the government;

(3) must be unique or innovative to Guam's and the government's use; and

(4) may be subject to testing under terms and conditions specified by the government.

(d) Evaluation. The unsolicited offer shall be evaluated to determine its utility to Guam and to the government, and whether it would be to Guam's and the government's advantage to procure such service.

(e) Competitive Sealed Bidding Required. All unsolicited offers considered as being desirable shall be subjected to the Competitive Sealed Bidding process under § 5211. Notwithstanding any other provision of law, sole source procurement shall not be permissible in any procurement arising from an unsolicited offer. The criteria set forth in the Invitation for Bids shall not require the inclusion of any proprietary item proposed in the unsolicited offer, and the proprietary character of an unsolicited offer or the inclusion of a proprietary item in the unsolicited offer shall not be used to favor the offer or any other bid, nor be a determining factor in awarding a bid. Such Invitation for Bids shall not contain any reference to the financial offer of the unsolicited offeror, but shall contain a sufficient technical description to allow other parties to identify the technical concept of the offer, and to prepare bids.

SOURCE: Added by P.L. 25:031:2 (June 4, 1999) as § 1518; renumbered by Compiler.

§ 5220. Publication of IFB and RFP Documents on the Agency's Website.

(a) Notwithstanding any other provision of this Chapter, Invitations for Bid (IFBs) and Requests for Proposals (RFPs) shall be posted on the procuring agency's website. IFBs and RFPs procured through the General Services Agency (GSA) or the Department of Public Works (DPW) shall be posted, on the date of

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the IFB/RFP announcement, simultaneously on the procuring agency's website and the websites of GSA and DPW respectively. No fees shall be assessed to prospective bidders or other parties for accessing/downloading procurement documents from an agency's website. Such documents shall remain on the respective agencies' websites for a period of not less than one hundred eighty (180) days following the award of the Bid or Proposal.

(b) The procuring agency, and GSA and DPW if applicable, shall provide notice in each IFB/RFP announcement that recommends that prospective bidders/respondents register contact information with the agency to ensure that they receive any notices regarding any changes or updates to the IFB/RFP. The procuring agency, and GSA and DPW shall not be liable for failure to provide notice to any party who did not register contact information.

(c) Nothing herein is intended to prevent the procuring agency, GSA, or DPW from making physical or digital media copies of procurement documents and assessing reasonable fees for such documents in a manner consistent with public law, administrative rules and regulations, and departmental policy that existed prior to the enactment of this Section.

SOURCE: Added by P.L. 31-228:1 (June 15, 2012). Subsection (b) amended by P.L. 31-233:XII:36 (Sept. 7, 2012).

§ 5221. Procurement Announcement Website.

The Government of Guam Office of Technology shall create or cause to create an Executive branch-wide website known as the "Procurement Announcement Website" that contains the descriptions of the goods, services, or construction to be procured, announcement dates, the closing dates, and hyperlinks for all Invitations for Bids (IFB) and Requests for Proposals (RFP) procurement solicitations of departments, agencies, instrumentalities and public corporations of the Executive Branch of the Government of Guam inclusive of autonomous agencies enumerated in 12 GCA, including the Guam Visitor's Bureau and the Judiciary of Guam. The website shall also include procurement solicitations of the Guam Department of Education, the University of Guam, the Guam Community College and the Guam Election Commission.

The Government of Guam Office of Technology shall implement or cause to implement the requisite systems to afford procuring agencies the capability of posting to the Procurement Announcement Website. This website and its underlying systems shall conform to internationally recognized information security controls, standards and best practices, or at least National Institute of Standards and Technology (NIST) standards, guidelines and requirements for cloud-based services.

SOURCE: Amended by P.L. 37-012:2 (May 12, 2023), effective 120 days after enactment pursuant to P.L. 37-012:3.

§ 5221.1. Posting of Information on the Procurement Announcement Website.

The Guam General Services Agency, the Department of Public Works and all other purchasing agencies, with procurement authority, shall post all IFB and RFP procurement solicitations, on their respective websites. The Guam General Services Agency, the Department of Public Works and all other purchasing agencies with procurement authority shall also post the required procurement information, *infra*, on the Procurement Announcement Website by the end of the business day, on the same date that the procurement solicitation is publicly announced. The following information shall be posted on the Procurement Announcement website for each procurement solicitation:

(a) The solicitation's announcement name, a unique designation for the Procurement Announcement Website and the closing date of the solicitation hyperlinked to their matching procurement solicitations on the source agencies' websites;

(b) A general description of the goods, services, or construction being procured;

(c) The name of the procuring agency hyperlinked to the procuring agency's official website;

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(d) The name, position title, phone number and email address for at least one procurement-certified primary point of contact for the solicitation;

(e) Any other relevant information pertaining to the solicitations including special requirements and conditions; and

(f) Any related notices or pertinent information.

SOURCE: Added as § 5222 by P.L. 37-012:2 (May 12, 2023), effective 120 days after enactment pursuant to P.L. 37-012:3; and renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 5221.2. Length of Time for Posts on Procurement Announcement Website.

All information required to be posted on the Procurement Announcement Website shall be posted for the same amount of time the information is required to be posted on the General Services Agency's, the Department of Public Works' and the purchasing agency's websites.

SOURCE: Added as § 5223 by P.L. 37-012:2 (May 12, 2023), effective 120 days after enactment pursuant to P.L. 37-012:3; and renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 5221.3. Administrative Rules and Regulations.

The Director of Administration shall promulgate administrative rules and regulations pursuant to the provisions of Chapter 9, Title 5 Guam Code Annotated consistent with this Act.

SOURCE: Added as § 5224 by P.L. 37-012:2 (May 12, 2023), effective 120 days after enactment pursuant to P.L. 37-012:3; and renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606.

§ 5221.4. Retention of Procurement Records.

All procurement records shall be retained and disposed of pursuant to § 5247, Chapter 5, Title 5 Guam Code Annotated.

SOURCE: Added as § 5225 by P.L. 37-012:2 (May 12, 2023), effective 120 days after enactment pursuant to P.L. 37-012:3 and renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606.

2023 NOTE: The title of this provision is identical to the title of 5 GCA § 5247.

SUBARTICLE C
CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

§ 5225. Cancellation of Invitations for Bids or Requests for Proposals.

§ 5225. Cancellation of Invitations for Bids or Requests for Proposals.

An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of Guam in accordance with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the contract file.

SOURCE: GC § 6960. MPC § 3-301.

2022 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

SUBARTICLE D
QUALIFICATIONS AND DUTIES

§ 5230. Responsibility of Bidders and Offerors.

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§ 5231. Prequalification of Suppliers.
§ 5232. Cost or Pricing Data.
§ 5233. Disclosure of Ownership, Financial, and Conflicts of Interest.

§ 5230. Responsibility of Bidders and Offerors.

(a) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Policy Office. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(b) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the General Services Agency, the Department of Public Works or the purchasing agency without prior written consent by the bidder or offeror, but may be disclosed to the Attorney General at any time.

SOURCE: GC § 6961. MPC § 3-401 modified.

COMMENT: Subsection (b) is modified to make it clear that the Attorney General, as counsel to the government in general and to the GSA in particular, may review all data. In the past some have argued that confidential information protected in a manner of the original MPC (not mentioning the Attorney General) was not to be revealed to the Attorney General even when the agency was requesting a legal opinion on that same information.

§ 5231. Prequalification of Suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

SOURCE: GC § 6961.1. MPC § 3-402.

§ 5232. Cost or Pricing Data.

(a) Contractor Certification. A contractor shall, except as provided in Subsection (c) of this Section, submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(1) the pricing of any contract awarded pursuant to the sole source procurement authority (§ 5214) where the total contract price is expected to exceed an amount established by Policy Office regulations; or

(2) the pricing of any change order or contract modification which is expected to exceed an amount established by Policy Office regulations.

(b) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to Guam, including profit or fee, shall be adjusted to exclude any significant sums by which Guam finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the parties. The price shall also be adjusted to reflect the non-payment by the contractor of any taxes which would have been paid by him were it not for the exclusion provided by 11 GCA § 26203(k)(14) (Business Privilege Tax).

(c) Cost or Pricing Data Not Required. The requirements of this Section need not be applied to contracts:

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(1) where the contract is based on adequate price competition;

(2) where the contract price is based on established catalogue prices or market prices;

(3) where contract prices are set by law or regulation; or

(4) where it is determined in writing in accordance with regulations promulgated by the Policy Office that the requirements of this Section may be waived, and the reasons for such waiver are stated in writing.

SOURCE: GC § 6961.2. MPC § 3-403. Amended by P.L. 29-002:VI:28 (May 18, 2007) the name, Gross Receipts Tax, changed to Business Privilege Tax.

2022 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: The words "by competitive sealed proposals (§ 5212) or" have been deleted from this section as the section authorizing such competitive sealed proposals has been repealed from this Chapter.

§ 5233. Disclosure of Ownership, Financial, and Conflicts of Interest.

(a) Purpose. The disclosures required by this Section are intended to reveal information bearing on the responsibility of a bidder, and can be obtained by an inquiry regarding responsibility prior to award.

(b) Definitions. As used herein, the term "person" shall be interpreted liberally to include the definition found in 1 GCA § 715, and in § 5030(n) of this Chapter, and includes a natural person as well as every entity of whatever form or composition (an "artificial person") recognized under the laws of Guam other than a natural person, who is a prospective contractor under a bid, offer, proposal, or other response to a solicitation, or is a contractor under a contract with the government of Guam, and subject to the provisions of this Chapter.

(c) Public Disclosure of Ownership.

(1) The ownership interests to be disclosed under this Section include the interests of a natural or artificial person who owns all or any part of a prospective contractor, bidder, or offeror, whether as proprietor, a partner, limited or otherwise, a shareholder of any class, in which case the percentage ownership interest test shall be based on each class, a member of an association or company, limited or otherwise, and any person owning a beneficial legal interest in any trust, and any other person having the power to control the performance of the contract or the prospective contractor.

(2) Prior to award, every person who is a prospective contractor, bidder, or offeror of a contract to be acquired under any method of source selection authorized by this Chapter shall submit a Disclosure Statement, executed as an affidavit under oath, disclosing the name of each person who currently or has owned an ownership interest in the prospective contractor, bidder, or offeror greater than ten percent (10%) at any time during the twelve (12) month period immediately preceding the date of the solicitation (the "relevant disclosure period").

(A) If a prospective contractor, bidder, or offeror is an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such artificial person (a "second tier owner") greater than twenty-five percent (25%) at any time during the relevant disclosure period.

(B) If any such second tier owner is also an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such second tier owner (a "third tier owner") of forty-nine percent (49%) or more during the relevant disclosure period.

(C) If the name of no natural person has been identified as an owner, or a second or third tier owner of the prospective contractor, bidder, or offeror, the Disclosure Statement shall identify the

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name, position, address, and contact information of the natural person having the authority and responsibility for the performance of the prospective contract, and the name of any natural person who has the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective contract.

(d) Disclosure of Financial Interest. A prospective contractor shall execute an affidavit disclosing the name of any person who has received or is entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the solicitation by means of a Disclosure Statement, executed as an affidavit under oath, disclosing such interest and shall also contain the amounts of any such commission, gratuity, contingent fee or other compensation.

(e) Disclosure of Conflict of Interest. A prospective contractor shall disclose the name of any person who directly or indirectly participates in any solicitation if such person is also an employee of the government of Guam, or of the government of the United States if federal funds are used in payment of the contract.

(f) Every disclosure of an ownership or financial interest of any person required to be identified by this Section shall name the person required to be disclosed and the street address of their principal place of business. All information disclosed or meant to be disclosed under this Section is public procurement data and shall be kept as part of the public record of each procurement.

(g) Continuing Duty of Disclosure. Notwithstanding any other provision of this Chapter, the duty to disclose the information required under this Section shall be, upon award, a continuing duty of a contractor of every contract subject to this Chapter, and all such information shall become part of the procurement record required by § 5249 of this Chapter. Throughout the term of a contract subject to the terms of this Chapter, the contractor shall promptly make any disclosures not made previously and update changes in the identities or other required information, interests, or conflicts of the persons required to be disclosed herein. Failure to comply with this Section shall constitute a material breach of contract.

SOURCE: Added by P.L. 18-044:44 (Nov. 14, 1986). Repealed and reenacted by P.L. 36-013:1 (Apr. 9, 2021).

2021 NOTE: This provision was formerly entitled "Disclosure of Major Shareholders" and was renamed pursuant to P.L. 36-013:1 (Apr. 9, 2021).

Subsection designations added pursuant to authority granted by 1 GCA § 1606.

SUBARTICLE E
TYPES OF CONTRACTS

§ 5235. Types of Contracts.
§ 5236. Approval of Accounting System.
§ 5237. Multi-Year Contracts.

§ 5235. Types of Contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interest of Guam may be used; provided that the use of cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to Guam than any other type or that it is impracticable to obtain the supplies, services or construction required except under such contract.

SOURCE: GC § 6962. MPC § 3-501.

2022 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

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§ 5236. Approval of Accounting System.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Chief Procurement Officer, the Director of Public Works, the head of a Purchasing Agency, or a designee of any such officer that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

SOURCE: GC § 6962.1. MPC § 3-502.

§ 5237. Multi-Year Contracts.

(a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of Guam provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(b) Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing:

(1) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) that such a contract will serve the best interests of Guam by encouraging effective competition or otherwise promoting economies in Guam procurement.

(c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

SOURCE: GC § 6962.2. MPC § 3-503.

2022 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

SUBARTICLE F
INSPECTION OF PLANT AND AUDIT OF RECORDS

§ 5240. Right to Inspect Plant.
§ 5241. Right to Audit Records.

§ 5240. Right to Inspect Plant.

Guam may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by Guam.

SOURCE: GC § 6963. MPC § 3-601.

2022 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

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§ 5241. Right to Audit Records.

(a) Audit of Cost or Pricing Data. Guam may, at reasonable times and places, audit the books and records of any person who has submitted costs or pricing data pursuant to § 5232 of this Chapter to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) Contract Audit. Guam shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

SOURCE: GC § 6963.1. MPC § 3-602.

2022 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

SUBARTICLE G
DETERMINATIONS AND REPORTS

§ 5245. Finality of Determinations.
§ 5246. Reporting of Anticompetitive Practices.
§ 5247. Retention of Procurement Records.
§ 5247.1. Retention of Electronic Mail Correspondences.
§ 5248. Record of Procurement Actions Taken Under §§ 5214 and 5215 of this Chapter.
§ 5249. Record of Procurement Actions.
§ 5250. Certification of Record.
§ 5251. Public Record.
§ 5252. Rules for Procurement Records.
§ 5253. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.

§ 5245. Finality of Determinations.

The determinations required by §§ 5211(f), 5212(a), 5212(g), 5214, 5215, 5216(e), 5230(a), 5232(c), 5235, 5236 and 5237(b) of this Chapter are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

SOURCE: GC § 6964. MPC § 3-701.

§ 5246. Reporting of Anticompetitive Practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Attorney General.

SOURCE: GC § 6964.1. MPC § 3-702.

COMMENT: Reference to Territorial Prosecutor deleted by Compiler because all prosecution functions have been returned to the Attorney General following the determination by the District Court, Appellate Division that the Territorial Prosecutor Act was contrary to the Organic Act and thus null and void. *Territorial Prosecutor for the Territory of Guam, People of the Territory of Guam, Petitioners, v. Superior Court of Guam, Respondent. Peter M. Perez, et al., Real Parties in Interest*, D.C. Civ. App. 82-0215, D.C. Guam, App. Div. May 26, 1983.

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§ 5247. Retention of Procurement Records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Attorney General. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

SOURCE: GC § 6964.2. MPC § 3-703.

§ 5247.1. Retention of Electronic Mail Correspondences.

All incoming and outgoing electronic mail (email) correspondences pertaining to matters related to the procurement of goods and services as governed by this Chapter shall be retained for a period of not less than five (5) years. Such electronic mail (email) correspondences may be used for evidentiary purposes in the appellate procedures contained in this Chapter.

SOURCE: Added by P.L. 32-015:1 (Apr. 11, 2013) as 5 GCA § 5132. Codified by the Compiler to this section pursuant to 1 GCA § 1606.

§ 5248. Record of Procurement Actions Taken Under §§ 5214 and 5215 of this Chapter.

(a) Contents of Record. The Chief Procurement Officer, the Director of Public Works, all autonomous agencies and public corporations, or the head of an agency utilizing this Section shall maintain a record listing of all contracts made under §§ 5214 and 5215 of this Chapter for a minimum of five (5) years. The record shall contain:

(1) each contractor's name;

(2) the amount and type of each contract;

(3) a listing of the supplies, services or construction procured under each contract; and

(4) a report detailing the justification as to why the procurement transaction was determined to be a sole source procurement or an emergency procurement and the funding source used, pursuant to this Chapter.

(b) Submission to I Liheslatura. A copy of such record shall be submitted to I Liheslatura on a monthly basis. The record shall be available for public inspection.

SOURCE: GC § 6964.3. MPC § 3-704. Amended by P.L. 36-035:2 (June 11, 2021).

2024 NOTE: Reference to the "Legislature" replaced with I Liheslatura pursuant to 2 GCA § 1101.

§ 5249. Record of Procurement Actions.

Each procurement officer shall maintain a complete record of each procurement. The record shall include the following:

(a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement;

(b) a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;

(c) sound recordings of all pre-bid conferences; negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;

(d) brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and

(e) the requesting agency's determination of need.

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SOURCE: GC § 6964.4 added by P.L. 18-044:17 (Nov. 14, 1986).

§ 5250. Certification of Record.

No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection. The certificate is itself a part of the record.

SOURCE: GC § 6964.5 added by P.L. 18-044:18 (Nov. 14, 1986).

§ 5251. Public Record.

The record required by § 5249 of this Chapter is a public record and, subject to rules promulgated by the Public Auditor, any person may inspect and copy any portion of the record.

SOURCE: GC § 6964.6 added by P.L. 18-044:19 (Nov. 14, 1986). Amended by P.L. 28-068:IV:66 (Sept. 30, 2005).

§ 5252. Rules for Procurement Records.

The rules promulgated pursuant to § 5251 of this Chapter shall:

(a) protect the integrity of the bidding process;

(b) protect the confidentiality of trade secrets;

(c) establish reasonable charges for copying papers;

(d) provide for transcription of sound recordings;

(e) require public access to the record at the earliest possible time; and

(f) not require that the record be complete or that the procurement award be made before inspection and copying are permitted.

(g) establish the process to encode the record in searchable PDF not to exceed thirty (30) days; and

(h) establish fees for the PDF records, except that the PDF records that are available online or through electronic transfer, such as electronic mail (email), shall not be assessed any fees.

SOURCE: GC § 6964.7 added by P.L. 18-044:20 (Nov. 14, 1986). Subsections (g) and (h) added by P.L. 37-138:1 (Dec. 28, 2024).

§ 5253. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.

(a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

(b) All contracts for services to agencies listed herein shall include the following provisions:

(1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and

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(2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

(c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in § 5253(b).

(d) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

SOURCE: Added by P.L. 28-024:2 (Apr. 21, 2005). Amended by P.L. 28-098:2 (Feb. 7, 2006).

ARTICLE 4
SPECIFICATIONS

§ 5260. Definitions.
§ 5261. Duties of the Policy Office.
§ 5262. Duties of the Chief Procurement Officer and Director of Public Works.
§ 5263. Exempted Items.
§ 5264. Relationship with Using Agencies.
§ 5265. Maximum Practicable Competition.
§ 5266. Specifications Prepared by Architects and Engineers.
§ 5267. Publication of Source of Specifications.
§ 5268. Salient Features.
§ 5269. Purchase of Drugs by Generic Names.
§ 5270. Government to Purchase Drugs from Manufacturer.
§ 5271. Prescription of Drugs by Generic Name.

§ 5260. Definitions.

As used in this Chapter "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

SOURCE: GC § 6965. MPC § 4-101.

§ 5261. Duties of the Policy Office.

The Policy Office shall promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services and construction required by Guam.

SOURCE: GC § 6965.l. MPC § 4-202.

2022 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5262. Duties of the Chief Procurement Officer and Director of Public Works.

(a) The Chief Procurement Officer shall prepare, issue, revise, maintain and monitor the use of specifications for supplies and services required by Guam.

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(b) The Director of Public Works shall prepare, issue, revise, maintain and monitor the use of specifications for construction required by Guam.

SOURCE: GC § 6965.2. MPC § 4-202 modified.

2022 NOTE: References to "territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: This Section is changed to reflect the split between construction and other procurement.

§ 5263. Exempted Items.

Specifications for supplies, services or construction items procured under § 5120 of this Chapter, or exempted pursuant to § 5121 of this Chapter, may be prepared by a purchasing agency in accordance with the provisions of this Article and regulations promulgated hereunder.

SOURCE: GC § 6965.3. MPC § 4-203.

§ 5264. 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 utilize its own specifications.

SOURCE: GC § 6965.4. MPC § 4-204.

§ 5265. Maximum Practicable Competition.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying Guam's needs, and shall not be unduly restrictive.

SOURCE: GC § 6965.5. MPC § 4-205.

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5266. Specifications Prepared by Architects and Engineers.

The requirements of this Article 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.

SOURCE: GC § 6965.6. MPC § 4-206.

§ 5267. Publication of Source of Specifications.

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: GC § 6965.7 added by P.L. 18-044:21 (Nov. 14, 1986).

§ 5268. 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 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 its requirements and specifying the reason that similar products lacking those features would not meet minimum requirements for the item.

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(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: GC § 6565.8 added by P.L. 18-044:22 (Nov. 14, 1986).

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5269. Purchase of Drugs by Generic Names.

As used in § 5257 through § 5259 of this Article, "generic drug" means the chemical or generic name, as determined by the United States Adopted Names (USAN) and accepted by the Federal Food and Drug Administration (FDA), of those drug products having the same active chemical ingredients.

SOURCE: GC § 6600.4 added by P.L. 16-040:1 (Sept. 26, 1981); P.L. 16-124:2 (Dec. 30, 1982) renumbered this section as GC § 6965.7. Codified by the Compiler as 5 GCA § 5269.

§ 5270. Government to Purchase Drugs from Manufacturer.

Whenever possible, the Department of Administration, the Department of Public Health and Social Services, the Guam Memorial Hospital Authority, the Guam Behavioral Health and Wellness Center, and the Department of Education shall purchase drugs, generic or otherwise, directly from the manufacturer so as to ensure and maximize economy.

SOURCE: GC § 6600.5 added by P.L. 16-040:1 (Sept. 26, 1981); P.L. 16-124:2 (Dec. 30, 1982) renumbered this section as GC § 6965.8. Codified by the Compiler as 5 GCA § 5270. Amended by P.L. 30-175:2 (July 16, 2010).

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education.

2013 NOTE: P.L. 32-024:2 (May 6, 2013) renamed the Department of Mental Health and Substance Abuse to the Guam Behavioral Health and Wellness Center. Reference to the Department of Mental Health and Substance Abuse changed to Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4 (May 6, 2013).

§ 5271. Prescription of Drugs by Generic Names.

When providing medical services to patients whose medical services are paid for, either in part or in whole, by local legislative appropriation, by Federal grant-in-aid or by a combination of both, a pharmacist filling a prescription for a drug prescribed by its trade or brand name may:

(a) Substitute in its place a generic drug with the same (1) active chemical ingredients, (2) strength, (3) quantity, and (4) dosage form;

(b) A drug prescribed by its trade or brand name shall not be substituted if the prescriber indicates in his own handwriting do not substitute or words of similar meaning. The use of pre-dated signatures shall not prohibit a pharmacist from substituting a drug meeting the requirements of subsection (a) of this Section.

(c) The use of the substituted drug dispensed shall be indicated on the prescription label unless the prescriber orders otherwise.

(d) Selection pursuant to this Section is within the discretion of the pharmacist, except as provided in subsection (b) of this Section. The person who selects the drug product to be dispensed pursuant to this Section shall assume the same responsibility for selecting the dispensed drug product as would be incurred in filling a prescription for a drug product prescribed by generic name. There shall be no liability on the prescriber for an act or omission by a pharmacist in selecting, preparing or dispensing a drug product pursuant to this Section.

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(e) The pharmacist shall pass on to the purchaser the difference in the acquisition cost between the drug product prescribed and the drug product dispensed, exclusive of the pharmacist's professional fee. The pharmacist may not charge a higher or different professional fee for the generic drug product dispensed than that charged for the brand name product prescribed.

SOURCE: GC § 6600.6 added by P.L. 16-040:1 (Sept. 26, 1981); P.L. 16-124:2 (Dec. 30, 1982) renumbered this section as GC § 6965.9. Codified by the Compiler as 5 GCA § 5271.

ARTICLE 5
PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

§ 5301. Definitions.
§ 5302. Responsibility for Selection of Methods of Construction Contracting Management.
§ 5303. Bid Security.
§ 5304. Contract Performance and Payment Bonds.
§ 5305. Bond Forms and Copies.
§ 5306. Contract Clauses and Their Administration.
§ 5307. Fiscal Responsibility.

§ 5301. Definitions.

As used in this Chapter "Architect-Engineer" and "Land Surveying Services" are those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of Guam.

SOURCE: GC § 6966. MPC § 5-101 modified grammatically only.

§ 5302. Responsibility for Selection of Methods of Construction Contracting Management.

The Policy Office shall promulgate regulations providing for as many alternative methods of construction management as it may determine to be feasible. These regulations shall:

(a) set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project;

(b) grant to the Director of Public Works, or the head of the purchasing agency responsible for carrying out the construction project, the discretion to select the appropriate method of construction contracting management for a particular project; and

(c) require the Director of Public Works or head of the purchasing agency to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

SOURCE: GC § 6966.l. MPC § 5-201.

§ 5303. Bid Security.

(a) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Procurement Officer to exceed Twenty-Five Thousand Dollars ($25,000). Bid security shall be a bond provided by a surety company authorized to do business in Guam, or the equivalent in cash, or otherwise supplied in a form satisfactory to Guam. Nothing herein prevents the requirement of such bonds on construction contracts under Twenty-Five Thousand Dollars ($25,000) when the circumstances warrant.

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(b) Amount of Bid Security. Bid security shall be in an amount equal to at least fifteen percent (15%) of the amount of the bid.

(c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to Policy Office regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

(d) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in 5211(f) of this Chapter. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

SOURCE: GC § 6967. MPC § 5-301 with amounts added locally.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5304. Contract Performance and Payment Bonds.

(a) When Required; Amounts. When a construction contract is awarded in excess of Twenty-Five Thousand Dollars ($25,000), the following bonds or security shall be delivered to Guam and shall become binding on the parties upon the execution of the contract:

(1) a performance bond satisfactory to Guam, executed by a surety company authorized to do business in Guam or otherwise secured in a manner satisfactory to Guam, in an amount equal to one hundred percent (100%) of the price specified in the contract; and

(2) a payment bond satisfactory to Guam, executed by a surety company authorized to do business in Guam or otherwise secured in a manner satisfactory to Guam, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

(b) Reduction of Bond Amounts. The Policy Office may promulgate regulations that authorize the Director of Public Works or head of a purchasing agency to reduce the amount of performance and payment bonds to fifty percent (50%) of the contract price for each bond.

(c) Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the Government of Guam to require a performance bond or other security for a construction contract awarded hereunder in addition to those bonds specified in Subsection (a) of this Section.

(d) Suits on Payment Bonds; Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this Section, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage

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prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(e) Suits on Payment Bonds; Where and When Brought. Every suit instituted upon a payment bond shall be brought in the Superior Court, but no such suit shall be commenced after the expiration of one (l) year after the day on which the last of the labor was performed or material was sup plied by the person bringing suit. The obligee named in the bond need not be joined as a part in any such suit.

SOURCE: GC § 6967.1. MPC § 5-302 modified. Subsection (c) amended by P.L. 27-127:3 (Dec. 2, 2004).

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: 1. "The provision of this Section with regard to suits on payment bonds essentially follows the Miller Act, 40 U.S.C. § 270 (1970), and with many state statutes." Official Comments

2. Name of court specified as Superior Court.

§ 5305. Bond Forms and Copies.

(a) Bond Forms. The Policy Office shall promulgate by regulation the form of the bonds required by this Article.

(b) Certified Copies of Bonds. Any person may request and obtain from Guam a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

SOURCE: GC § 6967.2. MPC § 5-303.

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5306. Contract Clauses and Their Administration.

(a) Contract Clauses. The Policy Office shall promulgate regulations requiring the inclusion in Guam construction contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

(1) the unilateral right of Guam to order in writing:

(A) changes in the work within the scope of the contract; and

(B) changes in the time of performance of the contract that do not alter the scope of the contract;

(2) variations occurring between estimated quantities of work in a contract and actual quantities;

(3) suspension of work ordered by Guam; and

(4) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses promulgated by the Policy Office need not be included in a contract:

(A) when the contract is negotiated;

(B) when the contractor provides the site or design; or

(C) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) Price Adjustments.

(1) Adjustments in price pursuant to clauses promulgated under Subsection (a) of this Section shall be computed in one or more of the following ways:

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(A) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(B) by unit prices specified in the contract or subsequently agreed upon;

(C) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(D) in such other manner as the contracting parties may mutually agree; or

(E) in the absence of agreement by the parties, by a unilateral determination by Guam of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by Guam in accordance with applicable sections of the regulations promulgated under Chapter 7 and subject to the provisions of Chapter 9 of this Chapter.

(2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of 5232 of this Chapter.

(c) Additional Contract Clauses. The Policy Office shall promulgate regulations requiring the inclusion in Guam construction contracts of clauses providing for appropriate remedies and covering the following subjects:

(1) liquidated damages as appropriate;

(2) specified excuses for delay or non-performance;

(3) termination of the contract for default; and

(4) termination of the contract in whole or in part for the convenience of Guam.

(d) Modification of Required Clauses. The Director of Public Works or the head of a purchasing agency may vary the clauses promulgated by the Policy Office under Subsection (a) and Subsection (c) of this Section for inclusion in any particular Guam construction contract, provided, that any variations are supported by a written determination that states the circumstances justifying such variations, and provided, that notice of any such material variation be stated in the invitation for bids or request for proposals.

SOURCE: GC § 6968. MPC § 5-401.

COMMENT: *See* Official Comments.

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

2023 NOTE: References to "Territory" and "territory" replaced with "Guam" pursuant to 1 GCA § 420.

2012 NOTE: Subsection designations were amended in subsections (a) an (b) to adhere to the Compiler's alpha-numeric scheme in accordance with the authority granted by 1 GCA § 1606.

§ 5307. Fiscal Responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract with Guam in excess of Five Thousand Dollars ($5,000) shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the Director of Public Works or the head of a purchasing agency shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total

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project budget or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section.

SOURCE: GC § 6968.l. MPC § 5-402.

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

ARTICLE 6
MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

§ 5350. Contract Clauses and Administration.

§ 5350. Contract Clauses and Administration.

(a) Contract Clauses. The Policy Office may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance or other contract provisions as appropriate covering the following subjects:

(1) the unilateral right of Guam to order in writing:

(A) changes in the work within the scope of the contract; and

(B) temporary stopping of the work or delaying performance; and

(2) variations occurring between estimated quantities of work in a contract and actual quantities.

(b) Price Adjustments.

(1) Adjustments in price pursuant to clauses promulgated under Subsection (a) of this Section shall be computed in one or more of the following ways:

(A) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(B) by unit prices specified in the contract or subsequently agreed upon;

(C) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(D) in such other manner as the contracting parties may mutually agree; or

(E) in the absence of agreement by the parties, by a unilateral determination by Guam of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by Guam in accordance with applicable sections of the regulations promulgated under Chapter 7 and subject to the provisions of Chapter 9 of this Chapter.

(2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 5232 of this Chapter.

(c) Additional Contract Clauses. The Policy Office may promulgate regulations including, but not limited to, regulations permitting or requiring the inclusion in Guam contracts of clauses providing for appropriate remedies and covering the following subjects:

(1) liquidated damages as appropriate;

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(2) specified excuses for delay or nonperformance;

(3) termination of the contract for default; and

(4) termination of the contract in whole or in part for the convenience of Guam.

(d) Modification of Clauses. The Chief Procurement Officer or the head of a purchasing agency may vary the clauses promulgated by the Policy Office under Subsection (a) and Subsection (c) of this Section for inclusion in any particular Guam contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the Invitation for Bids or Request for Proposals.

SOURCE: GC § 6969. MPC § 6-101.

2024 NOTE: References to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with "Lowercase Roman Numerals" to "Uppercase Letters" in subsections (a)(1) and (b)(1).

ARTICLE 7
COST PRINCIPLES

§ 5375. Cost Principles Regulations Required.

§ 5375. Cost Principles Regulations Required.

The Policy Office shall promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided, that if a written determination is approved at a level above the Procurement Officer, such cost principles may be modified by contract.

SOURCE: GC § 6970. MPC § 7-101.

ARTICLE 8
SUPPLY MANAGEMENT

§ 5401. Definitions.
§ 5402. Supply Management Regulations Required.
§ 5403. Allocation of Proceeds from Sale or Disposal of Surplus Supplies.
§ 5404. Disposal of Excess Supplies and Surplus Equipment by the Jose D. Leon Guerrero Commercial Port of Guam.

§ 5401. Definitions.

As used in this Chapter:

(a) "Excess Supplies" means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

(b) "Expendable Supplies" means all tangible supplies other than nonexpendable supplies.

(c) "Nonexpendable Supplies" means all tangible supplies having an original acquisition cost of over One Hundred Dollars ($100.00) per unit and a probable useful life of more than one (l) year.

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(d) "Supplies" means supplies owned by Guam. (*See* § 5030(a) of this Chapter).

(e) "Surplus Supplies" means any supplies other than expendable supplies no longer having any use to Guam. This includes obsolete supplies, scrap materials and nonexpendable supplies that have completed their useful life cycle.

SOURCE: GC § 6971. MPC § 8-101.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5402. Supply Management Regulations Required.

The Policy Office shall promulgate regulations governing:

(a) the management of supplies during their entire life cycle;

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

(c) transfer of excess supplies.

SOURCE: GC § 6972. MPC § 8-201.

§ 5403. Allocation of Proceeds from Sale or Disposal of Surplus Supplies.

Unless otherwise provided by law, the Chief Procurement Officer shall be empowered, pursuant to regulations promulgated by the Policy Office, to allocate proceeds from the sale, lease or disposal of surplus supplies.

SOURCE: GC § 6973. MPC § 8-301.

§ 5404. Disposal of Excess Supplies and Surplus Equipment by the Jose D. Leon Guerrero Commercial Port of Guam.

Notwithstanding the provisions of § 5403 (Allocation of Proceeds from Sale or Disposal of Surplus Supplies), when the Jose D. Leon Guerrero Commercial Port of Guam engages in disposing of excess or surplus supplies and equipment that were purchased with funds generated from rates, tariffs, or other sources of the Jose D. Leon Guerrero Commercial Port of Guam and not from the General Fund, ninety percent (90%) of the total proceeds from the sale, lease or disposal shall revert to the Jose D. Leon Guerrero Commercial Port of Guam and the remaining ten percent (10%) of the total proceeds shall be deposited into the Guam Procurement Advisory Council Support Fund, and shall be administered in accordance with § 5906 of this Chapter. The Jose D. Leon Guerrero Commercial Port of Guam shall not transfer, sell, trade-in, or otherwise dispose of supplies and equipment owned by the Jose D. Leon Guerrero Commercial Port of Guam without the authorization of the Jose D. Leon Guerrero Commercial Port's Board of Directors.

SOURCE: Added by P.L. 32-081:2 (Nov. 27, 2013).

2025 NOTE: Reference to the "Port Authority of Guam" replaced with the "Jose D. Leon Guerrero Commercial Port of Guam" pursuant to 1 GCA § 835.

ARTICLE 9
LEGAL AND CONTRACTUAL REMEDIES

Subarticle A Pre-Litigation Resolution of Controversies
Subarticle B Solicitations or Awards in Violation of Law
Subarticle C Interest
Subarticle D Waiver of Sovereign Immunity; Limitations on Actions

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Subarticle E Procurement Data

SUBARTICLE A
PRE-LITIGATION RESOLUTION OF CONTROVERSIES

§ 5425. Authority to Resolve Protested Solicitations and Awards.
§ 5425.1. Protest Procedure for Procurement Funded with 2009 American Recovery and Reinvestment Act Moneys Allotted to the Guam Department of Education. [Repealed.]
§ 5425.2. Protest Procedure for Procurement Funded with American Rescue Plan Act of 2021, Education Stabilization Fund, or Head Start Grant Allotted to the Guam Department of Education.
§ 5426. Authority to Debar or Suspend.
§ 5427. Authority to Resolve Contract and Breach of Contract Controversies.
§ 5428. Administrative Review of Government of Guam Critical Procurement Contract Decisions.
§ 5429. Authority to Resolve Protested Critical Procurement Contract Solicitations and Awards.

§ 5425. Authority to Resolve Protested Solicitations and Awards.

(a) Right to Protest. Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.

(b) Authority to Resolve Protests. The Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of one of these officers shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with regulations promulgated by the Policy Office.

(c) Decision. If the protest is not resolved by mutual agreement, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of one of these officers shall promptly issue a decision in writing. The decision shall:

(1) state the reasons for the action taken; and

(2) inform the protestant of its right to administrative and judicial review.

(d) Notice of Decision. A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) Appeal. A decision under Subsection (c) of this Section including a decision there under regarding entitlement to costs as provided by Subsection (h) of this Section, may be appealed by the protestant, to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision.

(f) Finality. A decision of the Public Auditor is final unless a person adversely affected by the decision commences an action in the Superior Court in accordance with Subsection (a) of § 5480 of this Chapter.

(g) In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, Guam shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void, unless:

(1) The Chief Procurement Officer or the Director of Public Works after consultation with and written concurrence of the head of the using or purchasing agency and the Attorney General or

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designated Deputy Attorney General, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of Guam; and

(2) Absent a declaration of emergency by I Maga'håga/Maga'låhi, the protestant has been given at least two (2) days notice (exclusive of Guam holidays); and

(3) If the protest is pending before the Public Auditor or the Court, the Public Auditor or Court has confirmed such determination, or if no such protest is pending, no protest to the Public Auditor of such determination is filed prior to expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section.

(h) Entitlement to Costs. In addition to any other relief or remedy granted under Subsection (c) or (e) of this Section or under Subsection (a) of § 5480 of this Chapter, including the remedies provided by Subarticle B of Article 9 of this Chapter, when a protest is sustained, the protestant shall be entitled to the reasonable costs incurred in connection with the solicitation and protest, including bid preparation costs, excluding attorney's fees, if:

(1) the protestant should have been awarded the contract under the solicitation but was not; or

(2) there is a reasonable likelihood that the protestant may have been awarded the contract but for the breach of any ethical obligation imposed by Subarticle B of Article 11 of this Chapter or the willful or reckless violation of any applicable procurement law or regulation. The Public Auditor shall have the power to assess reasonable costs including reasonable attorney fees incurred by the government, including its autonomous agencies and public corporations, against a protestant upon its finding that the protest was made fraudulently, frivolously or solely to disrupt the procurement process.

SOURCE: GC § 6975. MPC § 9-101. Repealed and reenacted by P.L. 18-044:2 (Nov. 14, 1986). Subsections (e), (f), (g)(3), (h)(2) amended by P.L. 28-068:IV:67 (Sept. 30, 2005).

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420. Reference to the "Governor" replaced with I Maga'håga/Maga'låhi pursuant to 5 GCA § 1510.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5425.1. Protest Procedure for Procurement Funded with 2009 American Recovery and Reinvestment Act Moneys Allotted to the Guam Department of Education.

[Repealed.]

SOURCE: Added as § 5425A by P.L. 31-012:2 (Mar. 9, 2011) and renumbered by the Compiler pursuant to the authority granted by 1 GCA § 1606. The provision contained a sunset provision, stating that it would be repealed on Dec. 31, 2011, unless the federal grantor agency authorized the extension of time for the obligation or expenditure of grant funding.

§ 5425.2. Protest Procedure for Procurement Funded with American Rescue Plan Act of 2021, Education Stabilization Fund, or Head Start Grant Allotted to the Guam Department of Education.

(a) Notwithstanding any other provision of law, if a selected or non-selected vendor, contractor, or service provider is aggrieved by an award or a contract for capital improvement projects funded, in whole or in part, by the funds allotted to the Guam Department of Education from the American Rescue Plan Act (ARPA) of 2021, Education Stabilization Fund, or Head Start Grant, the procedure for initiating a protest outlined in this Section shall apply, and shall be the exclusive means available to resolve the concerns of persons aggrieved in connection with awards or solicitations funded in whole or in part with moneys allotted to GDOE from ARPA, the Education Stabilization Fund, or the Head Start Grant. The protest shall be submitted to the Public Auditor who shall expedite the administrative review process of the appeal in accordance with rules and regulations to be adopted and promulgated by the Public Auditor within sixty (60) calendar days of the effective date of this Act and approved by I Liheslaturan Guåhan. The expedited

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procedures shall be prominently designated as such in the notice and the solicitation. All prospective bidders, offerors, and contractors shall acknowledge and sign an affidavit stating they are aware of the expedited process and agree to abide by the rules and deadlines outlined in the expedited process.

(b) If the protest is not resolved by mutual agreement within twenty (20) days of the filing of the protest with the Public Auditor, the Public Auditor shall issue a decision, in writing, no later than twenty (20) days, Saturdays, Sundays and Government of Guam holidays excepted, of receipt of the protest. The decision shall state the Public Auditor's reasons for its decision. A copy of the written decision shall be served by certified mail, or otherwise personally served to the parties named in the protest, including but not limited to: the vendor, contractor, or service provider who initiated the protest, the person awarded the contract, and to all other non-selected bidders or offerors.

(c) For purposes of this Section, the Public Auditor's decision and determination of facts resolving protests of procurement contracts funded in whole or in part by ARPA, Education Stabilization Fund, or Head Start Grants shall be final and conclusive with no right of appeal or judicial review. The fact that a protest has been filed pursuant to this Section shall not stay the procurement process or award of any contract funded in whole or in part by ARPA, Education Stabilization Fund, or Head Start Grants unless so ordered by the Public Auditor. In addition, a request for reconsideration shall not stay the award of any contract funded in whole or in part by ARPA, Education Stabilization Fund, or Head Start Grants, unless so ordered by the Public Auditor.

(d) This Section is repealed effective December 31, 2024, unless the federal grantor agency authorizes an extension of time for the expenditure of ARPA funds, in which case this Section shall be repealed at the end of the extension period.

SOURCE: Added by P.L. 37-006:2 (Apr. 1, 2023).

2023 NOTE: Designation for subsection (d) added by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 5426. Authority to Debar or Suspend.

(a) Authority. After reasonable notice to the person involved and reason able opportunity for that person to be heard, the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency, after consultation with the using agency and the Attorney General, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than two (2) years. The same officer, after consultation with the using agency and the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the Policy Office.

(b) Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under Guam or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a Guam contractor;

(3) conviction under federal antitrust statutes arising out of the submission of bids or proposals;

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(4) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency to be so serious as to justify debarment action:

(A) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) any other cause the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency determines to be so serious and compelling as to affect responsibility as a Guam contractor, including debarment by another governmental entity for any cause listed in regulations of the Policy Office;

(6) for violation of the ethical standards set forth in Article 11 of this Chapter.

(7) filing a frivolous or fraudulent petition, protest or appeal under § 5425(e), § 5426(f) or of § 5427(e) of this Chapter.

(c) Decision. The Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency shall issue a written decision to debar or suspend. The decision shall:

(1) state the reasons for the action taken; and

(2) inform the debarred or suspended person involved of its rights to judicial or administrative review as provided in this Chapter.

(d) Notice of Decision. A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(e) Finality of Decision. A decision under Subsections (c) or (f) of this Section shall be final and conclusive, unless fraudulent, or an appeal is taken to the Public Auditor in accordance with § 5706 of this Chapter.

(f) Any member of the public may petition the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency to take action to debar or suspend pursuant to Subsection (a) of this Section. An investigation of each petition shall be conducted promptly and a written report should be made of findings of fact and action taken.

SOURCE: GC § 6975.l. MPC § 9-102. Subsection (b) amended by P.L. 18-044:31 (Nov. 14, 1986). Subsection (c) amended by P.L. 18-044:3 (Nov. 14, 1986). Subsection (e) amended by P.L. 18-044:4 (Nov. 14, 1986), and P.L. 28-068:IV:68 (Sept. 30, 2005). Subsection (f) added by P.L. 18-044:5 (Nov. 14, 1986).

2024 NOTE: References to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with "Lowercase Roman Numerals" to "Uppercase Letters" in subsection (b)(4).

§ 5427. Authority to Resolve Contract and Breach of Contract Controversies.

(a) Applicability. This Section applies to controversies between Guam and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(b) Authority. The Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of one of these officers is authorized, prior to commencement of an action in a court

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concerning the controversy, to settle and resolve a controversy described in Subsection (a) of this Section. This authority shall be exercised in accordance with regulations promulgated by the Policy Office.

(c) Decision. If such a controversy is not resolved by mutual agreement, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or the designee of one of these officers shall promptly issue a decision in writing. The decision shall:

(1) state the reasons for the action taken; and

(2) inform the contractor of its rights to judicial or administrative review as provided in this Chapter.

(d) Notice of Decision. A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the contractor.

(e) Finality of Decision. The decision reached pursuant to Subsection (c) of this Section shall be final and conclusive, unless fraudulent, or the contractor appeals administratively to the Public Auditor in accordance with § 5706 of this Chapter.

(f) Failure to Render Timely Decision. If the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or the designee of one of these officers does not issue the written decision required under Subsection (c) of this Section within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

SOURCE: GC § 6975.2. MPC § 9-103. Subsection (c) amended by P.L. 18-044:6 (Nov. 14, 1986). Subsection (e) amended by P.L. 18-044:7 (Nov. 14, 1986), and P.L. 28-068:IV:69 (Sept. 30, 2005).

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5428. Administrative Review of Government of Guam Critical Procurement Contract Decisions.

(a) A Critical Procurement Contract is a contract solicited as contemplated in the Guam Procurement Law, 5 Guam Code Annotated Chapter 5, and meets the following criteria:

(1) the solicitation is one which is integral to the timing of the planning, development, construction, financing or completion of major public infrastructure or capital improvement;

(2) the contract is reasonably expected to cost Five Million Dollars ($5,000,000) or more and is funded by at least eighty percent (80%) or more from the American Rescue Plan Act and or the Infrastructure Investment and Jobs Act funds; and

(3) the identified funding for the Critical Procurement Contract is restricted pursuant to the American Rescue Plan Act and or the Infrastructure Investment and Jobs Act or becomes restricted to the material detriment of the procuring agency.

(b) A Critical Procurement Contract shall be designated by the Chief Procurement Officer, the Director of Public Works, or the governing board of the procuring agency, in accordance with regulations to be promulgated by the Policy Office. The Critical Procurement Contract shall be prominently designated as such in the notice of and solicitation for the contract. All prospective bidders, offerors, and contractors shall acknowledge and sign an affidavit that they are aware of and agree to abide by the Critical Procurement Contract deadlines, rules, and regulations.

SOURCE: Added by P.L. 37-051:2 (Dec. 13, 2023) and automatically repealed effective Dec. 31, 2026 pursuant to P.L. 37-051:4.

2024 NOTE: P.L. 37-051:4 provided for automatic repeal effective December 31, 2026 "unless the federal grantor agency authorizes an extension of time for the expenditure of the Infrastructure Investment and Jobs Act funds, in

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which case th[is section] shall be repealed at the end of the extension period." P.L. 37-051:5 states "The Procurement Policy Office, pursuant to 5GCA, Chapter 5, § 5130(a), shall promulgate rules and regulations consistent with this Act no later than sixty (60) calendar days after enactment of this Act, except for the rules and regulations required in § 5429(i) of Subarticle A, Article 9, Chapter 5, 5 GCA, which shall be promulgated by the Public Auditor."

§ 5429. Authority to Resolve Protested Critical Procurement Contract Solicitations and Awards.

(a) Right to Protest. Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a Critical Procurement Contract, may protest to the Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Authority to Resolve Critical Procurement Contract Protests. The Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of one of these officers shall have the authority, prior to the commencement of an appeal to the Public Auditor concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with regulations promulgated by the Policy Office.

(c) Decision. If the protest is not resolved by mutual agreement, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of one of these officers shall promptly issue a decision in writing within fifteen (15) days from the date the protest is filed. The decision shall:

(1) state the reasons for the action taken; and

(2) inform the protestant of its right to administrative appeal.

(d) Notice of Decision. A copy of the decision under Subsection (c) of this Section shall be mailed electronically or otherwise furnished immediately to the protestant and any other party intervening.

(e) Appeal. A decision under Subsection (c) of this Section may be appealed by the protestant to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision.

(f) Finality. For the purposes of this Section, the determination of facts and decision by the Public Auditor for the resolution shall be final and conclusive with no right of appeal or judicial review and the automatic stay for the solicitation or award of a Critical Procurement Contract shall be lifted.

(g) Automatic Stay. In the event of a timely protest under Subsection (a) of this Section, the government of Guam shall not proceed further with the solicitation or with the award of the contract prior to final administrative resolution of such protest, and any such further action is void.

(h) No Entitlement to Costs. There shall be no entitlement to costs or fees regardless of the outcome of the protest or appeal to the Public Auditor.

(i) The Public Auditor shall expedite the administrative review process of the appeal in accordance with the rules and regulations to be promulgated and adopted by the Public Auditor within sixty (60) days of the effective date of this Act, notwithstanding the Administrative Adjudication Law found in Chapter 9 of Title 5, Guam Code Annotated. Protests of any Critical Procurement Contract to the Public Auditor shall be in compliance with Title 5, Guam Code Annotated, Chapter 5, Article 12; and Title 2, Guam Administrative Rules and Regulations, Division 4, Chapter 12.

SOURCE: Added by P.L. 37-051:3 (Dec. 13, 2023) and automatically repealed effective Dec. 31, 2026 pursuant to P.L. 37-051:4.

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2024 NOTE: P.L. 37-051:4 provided for automatic repeal effective December 31, 2026 "unless the federal grantor agency authorizes an extension of time for the expenditure of the Infrastructure Investment and Jobs Act funds, in which case th[is section] shall be repealed at the end of the extension period." P.L. 37-051:5 states "The Procurement Policy Office, pursuant to 5GCA, Chapter 5, § 5130(a), shall promulgate rules and regulations consistent with this Act no later than sixty (60) calendar days after enactment of this Act, except for the rules and regulations required in § 5429(i) of Subarticle A, Article 9, Chapter 5, 5 GCA, which shall be promulgated by the Public Auditor."

SUBARTICLE B
SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

§ 5450. Applicability of this Subarticle.
§ 5451. Remedies Prior to an Award.
§ 5452. Remedies After an Award.

§ 5450. Applicability of this Subarticle.

The provisions of this Subarticle apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

SOURCE: GC § 6976. MPC § 9-201. Amended by P.L. 18-044:14 (Nov. 14, 1986).

COMMENT: This Subarticle applies only after a solicitation or award has been actually made or, in the case of an award, in such a stage as to be beyond the general scope of negotiation or review. It does not apply to, say, a review by the Attorney General, who determines, in the course of his normal review, that the proposed action would be in violation of law if it were to be made.

§ 5451. Remedies Prior to an Award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

(a) cancelled; or

(b) revised to comply with the law.

SOURCE: GC § 6976.l. MPC § 9-202.

COMMENT: This Section restates, in statutory form, current law and practice.

§ 5452. Remedies After an Award.

(a) If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

(1) if the person awarded the contract has not acted fraudulently or in bad faith:

(A) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of Guam; or

(B) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

(2) if the person awarded the contract has acted fraudulently or in bad faith:

(A) the contract may be declared null and void; or

(B) the contract may be ratified and affirmed if such action is in the best interests of Guam, without prejudice to Guam's rights to such damages as may be appropriate.

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(b) This Section shall be read as being in addition to and not in conflict with, or repealing 4 GCA § 4137 (Prohibitions on the Activities of Government Employees).

SOURCE: GC § 6976.2. MPC § 9-203 modified.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with "Lowercase Roman Numerals" to "Uppercase Letters" in subsections (a)(1)-(2).

COMMENT: *See* 4 GCA § 4134(f)(2) regarding situations where a government employee has a conflict of interest. Since this Section deals with similar remedies as does 4 GCA § 4137, the two sections should be read as complementing each other, not one repealing the other. Both have their place within the government. In cases of employee conflicts, 4 GCA should prevail and those contracts rendered null and void as a result of the application of 4 GCA § 4137 would not be subject to this Section.

NOTE: (2004) After a diligent search, it appears that 4 GCA § 4134 no longer exists. While, specifically, there is no record of its repeal, the Compiler believes that this section was removed as a part of the overall re-enactment of Title 4 GCA Chapter 4 in the 16th Guam Legislature. Nowhere were individual sections repealed in that Legislature, rather the entire first Article was repealed and re-enacted. Since it adds nothing to this Section, it loss will not be missed.

SUBARTICLE C
INTEREST

§ 5475. Interest.

§ 5475. Interest.

Interest on amounts ultimately determined to be due to a contractor or Guam shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

SOURCE: GC § 6977. MPC § 9-301.

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

2007 **COMMENT:** *See* 18 GCA § 47106 (Legal Rate of Interest).

SUBARTICLE D
WAIVER OF SOVEREIGN IMMUNITY; LIMITATIONS ON ACTIONS

§ 5480. Waiver of Sovereign Immunity in Connection with Contracts.
§ 5481. Time Limitations on Actions.

§ 5480. Waiver of Sovereign Immunity in Connection with Contracts.

(a) Solicitation and Award of Contracts. The Superior Court of Guam shall have jurisdiction over an action between Guam and a bidder, offeror, or contractor, either actual or prospective, to determine whether a solicitation or award of a contract is in accordance with the statutes, regulations, and the terms and conditions of the solicitation. The Superior Court shall have such jurisdiction in actions at law or in equity, and whether the actions are for monetary damages or for declaratory, or other equitable relief.

(b) Debarment or Suspension. The Superior Court shall have jurisdiction over an action between Guam and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the statutes and regulations. The Superior Court shall have such jurisdiction, in actions at law or in equity, and whether the actions are for declaratory, or other equitable relief.

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(c) In addition to other relief and remedies, the Superior Court shall have jurisdiction to grant injunctive relief in any action brought under Subsections (a), (b) or (c) of this Section.

(d) Limited Finality for Administrative Determinations. In any judicial action under this Section, factual or legal determinations by employees, agents or other persons appointed by Guam shall have no finality and shall not be conclusive, notwithstanding any contract provision, or regulation, except to the extent provided in §§ 5245, 5705 and 5706 of this Chapter.

(e) For purposes of this Section a "prospective" bidder, contractor or offeror is one who will actually submit a bid, contract or otherwise offer his services if, in the actions permitted by this Section, such person would prevail.

(f) All actions permitted by this Article shall be conducted as provided in the Government Claims Act.

SOURCE: GC § 6978. MPC § 9-401. Subsection (c) as amended by P.L. 18-044:9 (Nov. 14, 1986). Subsection (d) amended P.L. 18-044:8 (Nov. 14, 1986).

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: The MPC envisions a waiver of sovereign immunity far in excess of what has been granted heretofore on Guam. Under existing law (before enactment of this Title) the Appellate Division of the District Court has held, in *Alexander et al v. Bordallo*, Civ. Appeal No. 78-038A, 1970 WL 24948 (D. Guam App. Div., Jan. 8, 1979) that:

> "... sovereign immunity applies to specific performance actions against the Government; otherwise the government cannot operate effectively if its every act is subject to injunctive actions. *See Larson v. Domestic and Foreign Corporation*, 337 U.S. 682, 69 S.Ct. 457, 93 L.Ed. 1629 (1948). Wright and Miller, Volume 14, 3655."

Further, the Government Claims Act, while not ideal (and substantially amended by P.L. 17-029 (Nov. 9, 1983), after the enactment of this Chapter), has provided very adequate remedies in contract actions against the government. Therefore, this Section has been amended to permit the additional action of declaratory judgment against the government and suits as specifically permitted in this Section, but not injunctions. If the government or its employees are to be stopped in undertaking actions alleged (by them) to be lawful, the plaintiff must meet the more difficult standard of a writ of mandate or of prohibition.

Another change is to define "prospective" to limit it to a person who actually will submit a bid, contract or offer if he succeeds in his suit rather than to permit wider suits by persons who may allege some vague interest in the solicitation or contract, but who plan no immediate action.

The MPC is changed again to follow the Government Claims Act with respect to the procedure required in actions against the government. Since this Section allows suits in certain specified cases, obviously claims need not first be filed with the Attorney General, but at least the same court procedure must be followed.

A final change from the MPC is to delete references to "notwithstanding" provisions of other laws relative to finality of decisions. While this Section does not permit executive action (contracts or rules of the Policy Office) to make certain decisions of administrative officials unchallengeable, the change does continue former general provisions of law with respect to administrative decisions and limited finality. There is no good reason to, in practice, change the law so drastically. It does not serve either this title or other provisions of law on Guam.

The whole aim of this Chapter is to centralize procurement. The enacted amendments (P.L. 17-29) to the Government Claims Act do the same with claims. If this Section were to follow the MPC exactly, the net effect would be to "decentralize" and confuse the legal aspects of both claims and this Chapter.

Changed by Committee on GGO.

§ 5481. Time Limitations on Actions.

(a) Protested Solicitations and Awards. Any action under § 5480(a) of this Chapter shall be initiated within fourteen (14) days after receipt of a final administrative decision.

(b) Debarments and Suspensions for Cause. Any action under § 5480(b) of this Chapter shall be commenced within six (6) months after receipt of the decision of the Policy Office under § 5651 of this

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Chapter, or the decision of the Procurement Appeals Board under § 5707 of this Chapter, whichever is applicable.

(c) Actions Under Contracts or for Breach of Contract. Any action commenced under 5480(c) of this Chapter shall be commenced within twelve (12) months after the date of the Procurement Appeals Board decision.

(d) The limitations on actions provided by this Section are tolled during the pendency of any proceeding brought pursuant to § 5485 of this Chapter.

SOURCE: GC § 6978.l. MPC § 9-402 modified. Subsections (a), (b) and (c) amended, and (d) added by P.L. 18-044:10-13 (Nov. 14, 1986), respectively.

COMMENT: Subsection (c) retains the limitations contained in the Government Claims Act (as in effect at the time of enactment of this Chapter).

SUBARTICLE E
PROCUREMENT DATA

§ 5485. Complaints that Procurement Data was Withheld.

§ 5485. Complaints that Procurement Data was Withheld.

(a) On complaint by any member of the public, the Superior Court has jurisdiction to enjoin a governmental body from withholding procurement data and to order the production of any government data improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such procurement data in camera to determine whether such records or any part thereof shall be withheld under any of the exceptions set forth in 6 GCA § 4202 and the burden is on the agency to sustain its action.

(b) Notwithstanding any other provision of law, the government or a governmental body shall serve an answer or otherwise plead to any complaint made under this Section within thirty (3) days after service of the pleading in which such complaint is made, unless the court otherwise directs, for good cause shown.

(c) Except as to cases the court considers of greater importance, proceedings as authorized by this Section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(d) The court may assess against the government or governmental body reasonable attorney fees and other litigation costs reasonably incurred in any case under this Section in which the complainant has substantially prevailed.

(e) Whenever the court orders the production of any procurement data improperly withheld from the complainant and assesses against the government or governmental body reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether government personnel acted arbitrarily or capriciously with respect to the withholding, apart from such other actions as the Court may take, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer of employee or his representative. The administrative authority shall take the corrective action that the Commission recommends. No right or power granted to the Civil Service Commission shall bar or preclude the Court from issuing such orders, imposing such sanctions or providing such remedy or relief as it deems proper.

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(f) In the event of noncompliance with the order of the Court, the Superior Court may punish for contempt, the responsible employees or officer.

SOURCE: GC § 6978.2 added by P.L. 18-044:27 (Nov. 14, 1986).

ARTICLE 10
COMPLIANCE WITH FEDERAL REQUIREMENTS

§ 5501. Federal Funds.

§ 5501. Federal Funds.

Where a procurement involves the expenditure of federal assistance or contract funds, or other federal funds as defined by Section 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 this Chapter.

SOURCE: GC § 6979. MPC § 11-301 modified.

COMMENT: The only modification is to reflect the limitation on the power of the Legislature to appropriate contained in Section 20 of the Organic Act which reads:

> "Appropriations, ..., and except such appropriations as shall be made from time to time by the Congress of the United States, shall be by the Legislature."

ARTICLE 11
ETHICS IN PUBLIC CONTRACTING

Subarticle A Definitions
Subarticle B Standards of Conduct
Subarticle C Remedies
Subarticle D Ethics Enforcement

SUBARTICLE A
DEFINITIONS

§ 5601. Definitions.

§ 5601. Definitions.

As used in this Chapter:

(a) "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.

(b) "Confidential Information" means any information which is available to an employee only because of the employee's status as an employee of Guam and is not a matter of public knowledge or available to the public on request.

(c) "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.

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(d) "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 in any other advisory capacity.

(e) "Financial Interest" means:

(1) 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;

(2) ownership or such interest in any property or any business as may be specified by the Ethics Commission; or

(3) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(f) "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.

(g) "Immediate Family" means a spouse, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family.

(h) "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 Guam action.

(i) "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 this Chapter.

SOURCE: GC § 6980. MPC § 12-101. Subsection (g) amended by P.L. 31-016:1 (Apr. 18, 2011).

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

SUBARTICLE B
STANDARDS OF CONDUCT

§ 5625. Statement of Policy.
§ 5626. General Standards of Ethical Conduct.
§ 5627. Criminal Sanctions.
§ 5628. Employee Conflict of Interest.
§ 5629. Employee Disclosure Requirements.
§ 5630. Gratuities and Kickbacks.
§ 5631. Prohibition Against Contingent Fees.
§ 5632. Restrictions on Employment of Present and Former Employees.
§ 5633. Use of Confidential Information.

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§ 5625. Statement of Policy.

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

(b) 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 Guam procurement organization.

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

SOURCE: GC § 6980.l. MPC § 12-201.

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420. Subsection designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5626. General Standards of Ethical Conduct.

(a) 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 a public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in §§ 5628 through 5633 of this Chapter.

(b) General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and §§ 5628 through 5633 of this Chapter is also a breach of ethical standards.

SOURCE: GC § 6980.2. MPC § 12-202.

§ 5627. Criminal Sanctions.

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of Title 9 of the Guam Code Annotated (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.

SOURCE: GC § 6980.3. MPC § 12-203 modified to refer to appropriate portions of Guam law.

§ 5628. Employee Conflict of Interest.

(a) 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:

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

(2) 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

(3) 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.

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(b) 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.

(c) 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 with draw from further participation in the transaction involved. The employee may, at the same time, apply to the Civil Service Commission in accordance with § 5676(c) of this Chapter for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(d) Notice. Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission.

SOURCE: GC § 6980.4. MPC § 12-204 modified.

COMMENT: Modification is to refer employees to the Civil Service Commission for opinions on conflicts of interest, since this Chapter does not create a separate Ethics Commission, but continues the general supervision of employment matters with the Civil Service Commission and gives the Policy Office responsibility for opinions requested by non-employees. Change by Committee on GGO.

§ 5629. Employee Disclosure Requirements.

(a) Disclosure of Benefit Received from Contract. Any employee who has, or obtains any benefit from, any Guam 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.

(b) Failure to Disclose Benefit Received. Any 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.

(c) Notice. Notice of this requirement shall be provided in accordance with regulations promulgated by the Civil Service Commission.

SOURCE: GC § 6980.5. MPC § 12-205 modified to reflect participation of Civil Service Commission.

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5630. Gratuities and Kickbacks.

(a) 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.

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

(c) Contract Clause. The prohibition against gratuities, kickbacks and favors to Guam prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

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

SOURCE: GC § 6980.6. MPC § 12-206. Subsection (c) amended by P.L. 18-044:16 (Nov. 14, 1986). Subsection (d) added by P.L. 18-044:15 (Nov. 14, 1986).

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5631. Prohibition Against Contingent Fees.

(a) 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 Guam 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.

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

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

SOURCE: GC § 6980.7. MPC § 12-207.

2024 NOTE: References to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

§ 5632. Restrictions on Employment of Present and Former Employees.

(a) Contemporaneous Employment Prohibited. Except as may be permitted by regulations pursuant to this Chapter or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to this Chapter, 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. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission.

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

(1) 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 Guam, 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;

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in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where Guam is a party or has a direct and substantial interest.

(2) 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 a principal, or as an agent for anyone other than Guam, 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 matters which were within the former employee's official responsibility, where Guam is a party or has a direct or substantial interest.

(c) 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 Guam, in connection with any:

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

(2) contract;

(3) claim; or

(4) 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 Guam is a party or has a direct and substantial interest.

(d) Selling to Guam 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 Twelve Thousand Dollars ($12,000.00), to engage in selling or attempting to sell supplies, services other than personal services, or construction to Guam 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 therefor 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 Guam, nor shall a former employee be precluded from serving as a consultant to Guam.

SOURCE: GC § 6980.8. MPC § 12-208 with salary amount added locally.

2024 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with "Lowercase Roman Numerals" to "Uppercase Letters" in subsections (b)(1)-(2).

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§ 5633. 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.

SOURCE: GC § 6980.9. MPC § 12-209.

SUBARTICLE C
REMEDIES

§ 5650. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.
§ 5651. Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.
§ 5652. Recovery of Value Transferred or Received in Breach of Ethical Standards.

§ 5650. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.

(a) Existing Remedies Not Impaired. Civil and administrative remedies against employees which are in existence on the effective date of this Chapter 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 Civil Service Commissions may, in connection with employees of the government of Guam, direct the appointing authority to issue any one or more of the following:

(1) oral or written warnings or reprimands;

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

(3) 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 I Maga'håga/Maga'låhi shall appoint members pro tempore, without the consent of I Liheslatura, to hear such appeals.

(c) 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 this Chapter or regulations promulgated hereunder shall be recoverable by Guam as provided in § 5652 of this Chapter.

(d) 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 Guam Code Annotated.

SOURCE: GC § 6981. MPC § 12-301 modified.

2024 NOTE: Reference to the "Governor" replaced with I Maga'håga/Maga'låhi pursuant to 5 GCA § 1510. Reference to the "Legislature" replaced with I Liheslatura pursuant to 2 GCA § 1101.

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: Since Guam has an established Civil Service Commission strengthened by P.L. 16-023, this system is continued. Just as the Civil Service Commission is not intended to be the body making actual decisions as to an employee's discipline, so this Section gives the CSC the power to require the appointing authority to take certain action, conforming to the appointing authority's powers in other matters dealing with employees. Since, under existing law, an employee can appeal such a decision, the CSC is authorized to hear the appeal, but with members, either permanent or temporary, who did not participate in the original decision. There is no constitutional problem with having the staff of the Commission present the case to both the first Commission hearing (where it makes the binding recommendation) and to the second where the appeal is heard. Change by Committee on GGO.

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§ 5651. 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 this Chapter 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:

(1) written warnings or reprimands;

(2) termination of transactions; and

(3) debarment or suspension from being a contractor or subcontractor under Guam 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 recoverable by Guam as provided in § 5652 of this Chapter.

(d) Right of Guam to Debar or Suspend. Debarment or suspension may be imposed by the Procurement Policy Office in accordance with the procedures set forth in § 5426 of this Chapter 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.

SOURCE: GC § 6981.l. MPC § 12-302 modified.

2024 NOTE: Reference to "territorial" replaced with "Guam" pursuant to 1 GCA § 420.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: The modifications are that (a) the Policy Office acts as the Ethics Commission with respect to non-employees, in order to avoid the creation of yet another commission and (b) that procedures are to be under the Administrative Adjudication Law rather than some undefined and variable "due process" requirement. Change by Committee on GGO.

§ 5652. 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 a non- employee may be recovered from both the employee and non-employee.

(b) Recovery of Kickbacks by Guam. 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 Guam 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.

SOURCE: GC § 6981.2. MPC § 12-303.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

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SUBARTICLE D
ETHICS ENFORCEMENT

§ 5675. Ethics: Non-Employees.
§ 5676. Ethics Commission.
§ 5677. Appeal of Decisions.

§ 5675. Ethics: Non-Employees.

In addition to the authority and duties of the Policy Office established under § 5101 of this Chapter, such office is hereby given the functions required under this Chapter with regard to non-employees and the Civil Service Commission is hereby given the functions required with regard to employees.

SOURCE: GC § 6982.

COMMENT: 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 employees and the Policy Office has jurisdiction over non-employees. Change by Committee on GGO.

§ 5676. 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 Guam.

(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 Guam 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 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 Guam so require or when the ethical conflict is insubstantial or remote.

SOURCE: GC § 6982.l. MPC § 12-401 modified.

2023 NOTE: References to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: Modification changes the reference to the applicable bodies responsible for the decisions. Change by Committee on GGO.

§ 5677. Appeal of Decisions.

(a) General. Except as provided under Subsections (b) and (c) of this Section, a decision of the Policy Office under § 5481 of this Chapter shall be reviewable in accordance with the Administrative Adjudication Law of Guam. 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 5481(b) of this Chapter shall be reviewable as provided in 5481(b) of this Chapter.

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(c) An appeal from the decision of the Civil Service Commission under § 5650 of this Chapter shall be taken before members, either permanent or pro tempore, who had no part in the decision being appealed from in accordance with the rules of the Civil Service Commission governing adverse actions in general. Further review by the Superior Court, where permitted, shall be pursuant to the provisions of Title 4 Guam Code Annotated.

SOURCE: GC § 6982.2. MPC § 12-402 modified.

2023 NOTE: Reference to "Territory" replaced with "Guam" pursuant to 1 GCA § 420.

COMMENT: Modification reflects the split in Ethics Commission responsibilities between the Policy Office and Civil Service Commission. Change by Committee on GGO.

ARTICLE 12
PROCUREMENT APPEALS

SOURCE: The entire Article 12, Procurement Appeals Board, was added as § 6983, *et seq*. of the Government Code by P.L. 18-044 (Sept. 14, 1986), effective on January 4, 1987. Amended by P.L. 26-090:2 and 3 (May 31, 2002). Entire Article was repealed and reenacted by P.L. 28-068:IV:65 (Sept. 30, 2005) replacing the Procurement Appeals Board with the Public Auditor.

§ 5701. Rules of Procedure.
§ 5702. Decisions of the Public Auditor.
§ 5703. Jurisdiction of the Public Auditor.
§ 5704. Standard of Review.
§ 5705. Suspension or Debarment Proceedings.
§ 5706. Contract and Breach of Contract Controversies.
§ 5707. Appeals and Review of Public Auditor Decisions.
§ 5708. Discontinuance of Contractor's Appeal.
§ 5709. Transfer of Authority.

§ 5701. Rules of Procedure.

(a) The Public Auditor shall adopt rules of procedure, which, to the fullest extent possible, will provide for the expeditious resolution of controversies in accordance with the requirements of this Chapter.

(b) The Public Auditor shall have the authority to appoint a hearing officer, who shall take written, oral or otherwise presented testimony, evaluate such testimony and make recommendations to the Public Auditor.

(c) The Public Auditor may adopt Small Claims Procedures for the resolution of controversies involving claims of less than Twenty-five Thousand Dollars ($25,000.00).

2017 NOTE: Subsection designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

§ 5702. Decisions of the Public Auditor.

The Public Auditor shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties, and, as appropriate, the Chief Procurement Office, the Director of Public Works and the head of a purchasing agency.

§ 5703. Jurisdiction of the Public Auditor.

(a) The Public Auditor shall have the power to review and determine de novo any matter properly submitted to her or him.

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(b) The Public Auditor shall not have jurisdiction over disputes having to do with money owed to or by the government of Guam.

(c) Notwithstanding § 5245 of this Chapter, no prior determination shall be final or conclusive on the Public Auditor or upon any appeal from the Public Auditor.

(d) The Public Auditor shall have the power to compel attendance and testimony of, and production of documents by any employee of the government of Guam, including any employee of any autonomous agency or public corporation.

(e) The Public Auditor may consider testimony and evidence submitted by any competing bidder, offeror or contractor of the protestant.

(f) The Public Auditor's jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.

2017 NOTE: Subsection designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

§ 5704. Standard of Review.

(a) Any determination of an issue or a finding of fact by the Public Auditor shall be final and conclusive unless arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law.

(b) Any decision of the Public Auditor, including any determination regarding the application or interpretation of the procurement law or regulations, shall be entitled to great weight and the benefit of reasonable doubt, although it shall not be conclusive on any court having competent jurisdiction.

2017 NOTE: Subsection designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

§ 5705. Suspension or Debarment Proceedings.

(a) Scope. This § 5705 applies to a review by the Public Auditor of a decision under § 5426 of this Chapter.

(b) Time Limitation on Filing an Appeal. The aggrieved person shall file his/her appeal with the Public Auditor within sixty (60) days of the receipt of a decision under Subsection (c) of § 5426 of this Chapter.

(c) Decision. The Public Auditor shall decide whether, or the extent to which, the debarment or suspension was in accordance with the statutes, regulations and the best interest of the government or any autonomous agency or public corporation, and was fair. The Public Auditor shall issue her or his decision within thirty (30) days of the completion of the hearing on the issue.

§ 5706. Contract and Breach of Contract Controversies.

(a) Scope. This § 5706 applies to a review by the Public Auditor of a decision under § 5427 of this Chapter.

(b) Time Limitation on Filing an Appeal. The aggrieved contractor shall file his/her appeal with the Public Auditor within sixty (60) days of the receipt of the decision or within sixty (60) days following the failure to render a timely decision as provided in § 5427 of this Chapter.

(c) Decision. The Public Auditor shall decide the contract or breach of contract controversy and shall issue her or his decision within thirty (30) days of the completion of the hearing on the issue.

§ 5707. Appeals and Review of Public Auditor Decisions.

(a) Appeal. Any person receiving an adverse decision, the government or any autonomous agency or public corporation, or both, may appeal a decision by the Public Auditor to the Superior Court of Guam by filing a petition for judicial review.

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(b) Authorization of Appeal by the Government. No such appeal shall be made by the government or an autonomous agency or public corporation unless recommended by the Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency involved.

SOURCE: Repealed and reenacted by P.L. 28-068:IV:65 (Sept. 30, 2005). Subsection (a) amended by P.L. 38-011:2 (June 17, 2025).

§ 5708. Discontinuance of Contractor's Appeal.

After notice of an appeal to the Public Auditor has been filed by the Chief Procurement Officer, the Director of Public Works or the head of the Purchasing Agency, a contractor may not discontinue such appeal without prejudice, except as authorized by the Public Auditor."

§ 5709. Transfer of Authority.

Upon enactment, all Guam statutes and regulations which refer to the "Procurement Appeals Board" are hereby amended to reflect the "Public Auditor." All other government of Guam documents which may refer to "Procurement Appeals Board" shall mean the "Public Auditor."

ARTICLE 13
WAGE AND BENEFIT DETERMINATION

SOURCE: This Article was added by P.L. 26-111:2 (June 18, 2002).

§ 5801. Wage Determination Established.
§ 5802. Benefits.
§ 5802.1. Employment Right of First Refusal.
§ 5803. Department of Labor Monitoring and Penalizing Authority.
§ 5804. Probation and Appeal.
§ 5805. Awards and Compliance.

§ 5801. Wage Determination Established.

(a) In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation (contractor) for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

(b) The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

2017 NOTE: Subsection designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article,

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such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

§ 5802.1. Employment Right of First Refusal.

(a) Any and all outsourcing of government of Guam services that replace in part or whole the services presently being provided by a government entity shall require that the employees providing such services, who will be separated from the government as a result of any award, be provided the Right of First Refusal for employment openings under such award in positions for which they are qualified. Except for employees possessing information not available to all other subsequent bidders that would give unfair advantage to a subsequent bidder, the post-government employment conflict of interest standards or 5 GCA § 5632 and § 5633 shall not restrict the hiring of employees upon outsourcing as provided by this Act.

(b) Within ten (10) days after the award, the Department of Administration will provide to the Awardee a list of all government employees who have been or will be separated as a result of such award.

(1) The Awardee shall report back to the Department of Administration the names of individuals identified on the list who are employed by the prime or any sub-awardee no later than thirty (30) days upon the commencement of such service.

(2) Furthermore, the Awardee shall include the substance of this clause in all subcontracts under this Award.

(3) The minimum and prevailing wage, and benefits criteria established within P.L. 26-111 shall be applicable.

SOURCE: Added by P.L. 27-016:2 (Apr. 25, 2003).

2017 NOTE: Subsection/subitem designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

§ 5803. Department of Labor Monitoring and Penalizing Authority.

(a) The Guam Department of Labor, or its successor, shall monitor compliance with the provisions of this Article. The Director of the Department of Labor, or that person's successor, shall investigate possible or reported violations of the provisions of this Article, and shall forward such findings to the Chief Procurement Officer of the General Services Agency, or that person's successor.

(b) The Department of Labor, or its successor, shall promulgate rules and regulations, pursuant to the Administrative Adjudication Law, as needed to ensure the equitable investigation of violations and the maintenance of due process, as well as the assessment of monetary penalties in the event of a violation, providing that such monetary penalties shall be limited to the assessment of daily penalties of no less than One Hundred Dollars ($100.00) per day, and no more than One Thousand Dollars ($1,000.00) per day, until such time as a violation has been corrected, as well as the payment of all back wages and benefits due.

2017 NOTE: Subsection designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

§ 5804. Probation and Appeal.

A contractor who violates the provisions of this Article, as determined by the process authorized in § 5803 of this Article, may be placed on a probationary status by the Chief Procurement Officer of the General Services Agency, or its successor, for a period of one (1) year.

(a) During such probationary status, a contractor shall not be awarded any contract by any instrumentality of the government of Guam.

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(b) A contractor who has been placed on probationary status pursuant to this Article, or who has been assessed a monetary penalty pursuant to this Article, may appeal such penalty or probationary status to the Superior Court of Guam.

2017 NOTE: Subsection designations added by the Compiler pursuant to authority granted by 1 GCA § 1606.

§ 5805. Awards and Compliance.

The Chief Procurement Officer shall require bidders to submit declarations made pursuant to Title 6 GCA § 4308 to demonstrate their compliance with §§ 5801 and 5802 of this Chapter, if applicable.

SOURCE: Added by P.L. 28-165:1 (Jan. 4, 2007).

ARTICLE 14
GUAM PROCUREMENT ADVISORY COUNCIL

[Codified as Subarticle G of Article 2]

SOURCE: Entire Article added by P.L. 31-093:1 (Sept. 30, 2011). Repealed by P.L. 37-088:2 (Apr. 3, 2024).

2024 NOTE: The Guam Procurement Advisory Council is codified as Subarticle G of Article 2 of this Chapter, pursuant to P.L. 37-088:1 (Apr. 3, 2024).

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