

**5 GCA GOVERNMENT OPERATIONS  
CH. 5 GUAM PROCUREMENT LAW**

**CHAPTER 5  
GUAM PROCUREMENT LAW**

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- Article 10. Compliance With Federal Requirements.
- Article 11. Ethics in Public Contracting.
- Article 12. Procurement Appeals Board.
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**NOTE:** Provision for the issuance of a promissory note to creditors of the Government of Guam was enacted by P.L. 19-10:33 [§ 22415 of this Title]; as the Prompt Payment Act, providing for interest on late payments by the government. See §§ 22501-22507 of this Title.

**ARTICLE 1  
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- § 5030. Definitions.

**NOTE:** The comments found in this Chapter, unless otherwise specified, were before the Legislature and, therefore, can be considered as Legislative History. Certain updates were made by this publication to indicate where relevant laws have been amended or passed since enactment of this Chapter.

**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.

**PART A**  
**PURPOSES, CONSTRUCTION AND APPLICATION**

**§ 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 this Territory;

(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 this Territory;

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

(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.

(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.

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(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 Guam Public School System, 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 A. B. Won Pat Guam International Airport Authority, the Guam Telephone Authority, the Guam Power Authority, the Guam Housing & Urban Renewal Authority, the Guam Housing Corporation, the Guam Economic Development Authority, the Guam Memorial Hospital Authority, the University of Guam, the Port Authority 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

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Educational Telecommunication Corporation, the Guam Election Commission, the Civil Service Commission, the Guam Public School System, 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 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. 18-44:25. Subsection (d) added by P.L. 18-15:X:26; amended by P.L. 18-32:5; P.L. 26-31:8. Subsection (e) added by P.L. 23-18:3 (5/30/95). Subsection (f) added by P.L. 24-85:2.

**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 state to be:

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**Section 1. Legislative Intent.** The Guam Public School System 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. 23-18:1)

**COMMENT:** Reference to Department of Education changed to Guam Public School System pursuant to P.L. 28-045:10 (June 6, 2005).

**§ 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 territorial contracts to act in good faith.

**SOURCE:** GC § 6950.2. MPC § 1-103.

**§ 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

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parties agree to its application to a contract solicited or entered into prior to the effective date.

(b) Application to Territorial 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 this Territory, acting through a governmental body as defined herein, under any contract, except that this Chapter shall not apply to either grants or contracts between the Territory 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.

**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.

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**§ 5007. Policy Against Advance Payments.**

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

**SOURCE:** GC § 6950.6. New Section. Amended by P.L. 17-45:5.

**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.

**COMMENT:** Reference to Department of Education changed to Guam Public School System pursuant to P.L. 28-045:10 (June 6, 2005).

**§ 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 bonafide 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 bonafide 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) which ever 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



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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.

**SOURCE:** GC § 6950.7 added by P.L. 16-124 and repealed/reenacted by P.L. 19-4:12.

**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 specie 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*

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(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.

**SOURCE:** Added by P.L. 25-100:2.

**§ 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.

**§ 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

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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. 18-44:30.

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**PART B  
DETERMINATION**

**§ 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.

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**PART C  
DEFINITIONS USED IN THIS CHAPTER**

**§ 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 territorial 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 Guam Community College, the University of Guam, the Guam Public School System, and the Guam Memorial Hospital Authority.

(l) *Grant* means the furnishing by the Territory 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.

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(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 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 the Territory which utilizes any supplies, services or construction procured under this Chapter.

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(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 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. 17-27:2, P.L. 17-43:2. Subsection (w) added by P.L. 18-15:X:27; amended by P.L. 18-32:6. Subsection (x) added by P.L. 18-44:26.

**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.

**COMMENT:** Reference to Department of Education changed to Guam Public School System pursuant to P.L. 28-045:10 (June 6, 2005).

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**ARTICLE 2  
PROCUREMENT ORGANIZATION**

Part A. Procurement Policy Office.

Part B. General Services Agency.

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- Part C. Organization of Public Procurement.
- Part D. Guam Procurement Regulations.
- Part E. Coordination, Training and Education.
- Part F. Duties of the Attorney General.

**PART 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 the Governor 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 the Governor, the Director of Public Works and the Director of Administration, who shall serve as the chairperson. None of the three members appointed by the Governor 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. The Governor'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.

**§ 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 the Territory. The Policy Office shall consider and decide

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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.

**COMMENT:** Structured to suit the composition of the membership.

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**PART 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.

**5110. Creation of the General Services Agency.**

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

**SOURCE:** GC § 6954. MPC modified.

**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.



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**SOURCE:** GC § 6954.1. MPC modified. Amended by P.L. 18-26:17. Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

**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. The Chief Procurement Officer shall be a full-time classified employee and may be removed from office in accordance with the provisions of the Personnel Law, 4 GCA Chapter 4.

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

**SOURCE:** GC § 6954.2. MPC § 2-203 heavily modified.

**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 the Territory. The Chief Procurement Officer of the General Services Agency, shall serve as the central procurement officer of the Territory with respect to supplies and services. The Director of Public Works shall serve as the central procurement officer of the Territory with respect to construction.

(b) Power to Adopt Operational Procedures. Consistent with the provisions of 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:

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(i) procure or supervise the procurement of all supplies and services needed by the Territory;

(ii) exercise general supervision and control over all inventories of supplies belonging to the Territory; and

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

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

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

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

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

**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.

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

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.

**SOURCE:** GC § 6954.4 MPC § 2-205 modified to follow split in authority between construction and other procurement.

**§ 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 government agencies obtaining supplies from the General Services Agency.

**SOURCE:** GC 6954.5. New Section.

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**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.

**§ 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. 27-89:6.

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**PART 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 the Executive Branch.

**§ 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.

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**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 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 & 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

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exclusive authority to approve and execute all contracts for the procurement of supplies, license plates, safety decals, tax forms, tax booklets, and printing services for the department.

(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.

**SOURCE:** GC § 6954.7. MPC § 2-302 modified. GC § 6107. Subsection (d) added by P.L. 18-15:X:43. Subsection (a) amended by P.L.25-121:5. Subsection (c) amended by P.L. 28-154:2 (Jan. 4, 2007). Subsection (e) added by P.L. 28-188:2 (Jan. 29, 2007).

**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.

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.

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**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. No governmental agency may purchase a motor vehicle not a part of the fleet without the written authorization of the Chief Procurement Officer. This Section shall not be interpreted to permit the lease of non-standardized fleet vehicles. The Chief Procurement Officer shall authorize nonfleet purchase or lease only if:

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

(2) the vehicle is in 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.

(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 determine, when procuring the vehicle fleet, whether a contract for maintenance should be included in the contract for purchase. 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. In any maintenance contract, there shall be inserted provisions requiring that the maintain 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

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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.

**SOURCE:** GC § 6954.9. New Section. Subsection (b) repealed by P.L. 20-5:2 (04/29/89) as GC § 6954.9(b). A new subsection (b) added by P.L. 24-56:1 relative to public transportation vehicles.

**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.

**§ 5124. Exemptions.**

Unless otherwise ordered by regulation of the Policy Office, with approval of the Governor, 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. 23-45:IV:9.

**§ 5125. Application of this Chapter to Executive Branch.**

Every governmental body which is in the purview of the Executive Branch, and including Guam Community College, the University of Guam, the Guam Public School System, the Guam Memorial Hospital Authority, Guam Economic Development and Commerce Authority, and the Guam Visitor's Bureau, 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

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Articles 4, 5, 8 and 9 of Chapter 5 of Title 5 of the Guam Code Annotated.

It is the intent of *I Liheslaturan Guåhan* [the Legislature] 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.

**SOURCE:** Added by P.L. 18-44:28. Amended by P.L. 24-142:8; P.L. 24-299:27; P.L. 26-26:9 and P.L. 27-018:3.

**COMMENT:** Reference to Department of Education changed to Guam Public School System pursuant to P.L. 28-045:10 (June 6, 2005).

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**PART D  
GUAM PROCUREMENT REGULATIONS**

§ 5130. Guam Procurement Regulations.

§ 5131. Adoption of Regulations.

**§ 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.

(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 the Territory 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



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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.

**§ 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. 18-44:29.

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**PART E**  
**COORDINATION, TRAINING AND EDUCATION**

§ 5140. Collection of Data Concerning Public Procurement.

**§ 5140. Collection of Data Concerning Public Procurement.**

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

**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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**PART F**  
**DUTIES OF THE ATTORNEY GENERAL**

§ 5150. Duties of the Attorney General.

**§ 5150. Duties of the Attorney General.**

The Attorney General, the Deputy Attorney General or such Assistant Attorneys General as the Attorney General may designate, shall serve as legal counsel and provide necessary legal services to the Policy Officer and the General Services Agency. The Attorney General shall, in addition, when he approves contracts, determine not only the correctness of their form, but their legality. In making such 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 may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of legality.

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**ARTICLE 3**  
**SOURCE SELECTION AND CONTRACT FORMATION**

- Part A. Definitions.
- Part B. Methods of Source Selection.
- Part C. Cancellation of Invitations for Bids or Requests for Proposals.
- Part D. Qualifications and Duties.
- Part E. Types of Contracts.
- Part F. Inspection of Plant and Audit of Records.
- Part G. Determinations and Reports.

**PART 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.

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**PART 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.

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- § 5214. Sole Source Procurement.
- § 5215. Emergency Procurement.
- § 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.

**§ 5210. Methods of Source Selection.**

(a) Unless other wise authorized by law, all territorial 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. 18-15:X:24.

**NOTE:** With respect to subsection (a)(1), section 5212 (regarding Competitive Sealed Proposals) was repealed in 1985 by P.L. 18-8:8. 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.

**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.

**§ 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 & 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 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.

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(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 the Territory 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).

**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.

(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 may be taken in such circumstances where supplies or

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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.

**§ 5213. Small Purchases.**

Any procurement not exceeding the amount established by regulation may be made in accordance with small purchase procedures promulgated by the Policy Office, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

**SOURCE:** GC § 6959.3. MPC § 3-204. Subsection (c) amended by P.L. 29-019:VI:87 (Sept. 29, 2007).

**§ 5214. Sole Source Procurement.**



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A contract may be awarded for a supply, service, or construction item without competition when, under regulations promulgated by the Policy Office, 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 source for the required supply, service or construction item.

**SOURCE:** GC § 6959.4. MPC § 3-205.

**§ 5215. 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 may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Policy Office; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances, and further provided that the procurement agent must solicit at least three (3) informal price quotations, if time allows must give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months, and must award the procurement to the firm with the best offer, as determined by evaluating cost and delivery time. No emergency procurement or combination of emergency procurements may be made for an amount of goods or supplies greater than the amount of such goods and supplies which is necessary to meet an emergency for the thirty (30) day period immediately following the procurement. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The requirements for a written determination for the emergency shall be met if the procurements are being made on the basis of the Governor's declaration of an emergency situation by Executive Order if such Order states that emergency procurement may be resorted to for the purposes of the Order. Unless authorized by an Executive Order declaring an emergency, no emergency procurement may be made except on a certificate made under penalty of perjury by the Chief Procurement Officer, Director of Public Works or the head of a purchasing agency, as the case may be. Certified copies of the certificate shall be sent, prior to award and as a condition thereof, to

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the Governor and Speaker of the Legislature. The certificate shall contain the following:

- (1) a statement of the facts giving rise to the emergency;
- (2) the factual basis of the determination that an emergency procurement is necessary; and
- (3) a statement that emergency procurement is not being used solely for the purpose of avoidance of the provisions of this Chapter.

In addition to any other requirement, the Governor must approve in writing all authorizations for emergency procurement.

**SOURCE:** GC § 6959.5. MPC § 3-206. Amended by P.L. 18-44:23.

**§ 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

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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. 18-44:32.

**§ 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. 18-15:X:25.

**§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

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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.

**§ 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

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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. 25:31:2 as § 1518; renumbered by Compiler.

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**PART 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 the Territory 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.

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**PART D  
QUALIFICATIONS AND DUTIES**

- § 5230. Responsibility of Bidders and Offerors.
- § 5231. Prequalification of Suppliers.
- § 5232. Cost or Pricing Data.
- § 5233. Disclosure of Major Shareholders.

**§ 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

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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.

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(b) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the Territory, including profit or fee, shall be adjusted to exclude any significant sums by which the Territory 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:

- (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.

**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 Major Shareholders.**

As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a

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commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying.

**SOURCE:** Added by P.L. 18-44:44.

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**PART 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 the Territory 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 the Territory 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.

**§ 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.**



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(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 the Territory 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 the Territory by encouraging effective competition or otherwise promoting economies in territory 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.

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**PART F**

**INSPECTION OF PLANT AND AUDIT OF RECORDS**

§ 5240. Right to Inspect Plant.

§ 5241. Right to Audit Records.

**§ 5240. Right to Inspect Plant.**

The Territory 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 the Territory.

**SOURCE:** GC § 6963. MPC § 3-601.

**§ 5241. Right to Audit Records.**

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(a) **Audit of Cost or Pricing Data.** The Territory 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.** The Territory 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.

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**PART G  
DETERMINATIONS AND REPORTS**

- § 5245. Finality of Determinations.
- § 5246. Reporting of Anticompetitive Practices.
- § 5247. Retention of Procurement Records.
- § 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

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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.

**§ 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.

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

(a) Contents of Record. The Chief Procurement Officer or the Director of Public Works shall maintain a record listing of all contracts made under § 5214 or § 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; and
- (3) a listing of the supplies, services or construction procured under each contract.

(b) Submission to Legislature. A copy of such record shall be submitted to the Legislature on an annual basis. The record shall be available for public inspection.

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**SOURCE:** GC § 6964.3. MPC § 3-704.

**§ 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.

**SOURCE:** GC § 6964.4 added by P.L. 18-44:17.

**§ 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. 18-44:18.

**§ 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. 18-44:19. 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:

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- (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.

**SOURCE:** GC § 6964.7 added by P.L. 18-44:20.

**§ 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 (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.

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(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. 28-24:2. Amended by P.L. 28-98:2 (Feb. 7, 2006).

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**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.**

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

**SOURCE:** GC § 6965.1. MPC § 4-202.

**§ 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 the Territory.

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

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

**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 the Territory's needs, and shall not be unduly restrictive.

**SOURCE:** GC § 6965.5. MPC § 4-205.

**§ 5266. Specifications Prepared by Architects and Engineers.**

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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. 18-44:21.

**§ 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 the Territory'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.

(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. 18-44:22.

**§ 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 & Drug Administration (FDA), of those drug products having the same active chemical ingredients.



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**SOURCE:** GC § 6600.4 added by P.L. 16-40:1; renumbered [§ 6965.7] and placed in this Chapter by P.L. 16-124:2.

**§ 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 and the Guam Public School System shall purchase drugs, generic or other wise, directly from the manufacturer so as to ensure and maximize economy.

**SOURCE:** GC § 6600.5 added by P.L. 16-40:1; renumbered [§ 6965.8] and placed in this Chapter by P.L. 16-124:2.

**COMMENT:** Reference to Department of Education changed to Guam Public School System pursuant to P.L. 28-045:10 (June 6, 2005).

**§ 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

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selecting, preparing or dispensing a drug product pursuant to this Section.

(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. 16-40:1; renumbered [§ 6965.9] and placed in this Chapter by P.L. 16-124:2.

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**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 & Payment Bonds.
- § 5305. Bond Forms and Copies.
- § 5306. Contract Clauses & 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:

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(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.I. 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 this Territory, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Territory. Nothing herein prevents the requirement of such bonds on construction contracts under Twenty-Five Thousand Dollars (\$25,000) when the circumstances warrant.

(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.

**§ 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 the Territory and shall become binding on the parties upon the execution of the contract:

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

(2) a payment bond satisfactory to the Territory, executed by a surety company authorized to do business in this Territory or otherwise secured in a manner satisfactory to the Territory, 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;

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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 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 (1) year after the day on which the last of the labor was performed or material was supplied 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.

**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 the Territory 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.

**§ 5306. Contract Clauses and Their Administration.**

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(a) Contract Clauses. The Policy Office shall promulgate regulations requiring the inclusion in territory 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 the Territory to order in writing:

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

(ii) 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 the Territory; 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:

(i) when the contract is negotiated;

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

(iii) 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:

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

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

(iii) 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;

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

(v) in the absence of agreement by the parties, by a unilateral determination by the Territory of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Territory 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 territory 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 the Territory.

(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 territorial 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.

**§ 5307. Fiscal Responsibility.**

Every contract modification, change order, or contract price adjustment under a construction contract with the Territory in excess of

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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 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 § 6968.1. MPC § 5-402.

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**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 the Territory to order in writing:

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



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(ii) 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:

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

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

(iii) 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;

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

(v) in the absence of agreement by the parties, by a unilateral determination by the Territory of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Territory 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 territorial contracts of clauses providing for appropriate remedies and covering the following subjects:

(1) liquidated damages as appropriate;

(2) specified excuses for delay or nonperformance;

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(3) termination of the contract for default; and

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

(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 territorial 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.

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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.

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ARTICLE 8  
SUPPLY MANAGEMENT

§ 5401. Definitions.

§ 5402. Supply Management Regulations Required.

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

**§ 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 (1) year.

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

(e) *Surplus Supplies* means any supplies other than expendable supplies no longer having any use to the Territory. This includes

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obsolete supplies, scrap materials and nonexpendable supplies that have completed their useful life cycle.

**SOURCE:** GC § 6971. MPC § 8-101.

**§ 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.

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**ARTICLE 9**

**LEGAL AND CONTRACTUAL REMEDIES**

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| Part | A. Pre-Litigation Resolution of Controversies.           |
| Part | B. Solicitations or Awards in Violation of Law.          |
| Part | C. Interest.   |
| Part | D. Waiver of Sovereign Immunity; Limitations on Actions. |
| Part | E. Procurement Data.                                     |

**PART A**

**PRE-LITIGATION RESOLUTION OF CONTROVERSIES**

§ 5425. Authority to Resolve Protested Solicitations and Awards.

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§ 5426. Authority to Debar or Suspend.

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

**§ 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

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

(2) Absent a declaration of emergency by the Governor, the protestant has been given at least two (2) days notice (exclusive of territorial 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 Part 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 Part 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

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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. 18-44:2. Subsections (e), (f),(g)(3),(h)(2) amended by P.L. 28-068:IV:67 (Sept. 30, 2005).

**§ 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 territorial 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 territorial contractor;

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

(4) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer, the

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Director of Public Works or the head of a purchasing agency to be so serious as to justify debarment action:

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

(ii) 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 territorial 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.



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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 § 6975.1. MPC §9-102. Subsection (b) amended by P.L. 18-44:31; (c) by P.L. 18-44:3; (e) amended and (f) added by P.L. 18-44:4 and 5 respectively. Subsection (e) amended by P.L. 28-068:IV:68 (Sept. 30, 2005).

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

(a) Applicability. This Section applies to controversies between the Territory 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 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

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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. 18-44:6 and (e) amended by P.L. 18-44:7. Subsection (e) amended by P.L. 28-068:IV:69 (Sept. 30, 2005).

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**PART B**  
**SOLICITATIONS OR AWARDS IN VIOLATION OF LAW**

- § 5450. Applicability of this Article.
- § 5451. Remedies Prior to an Award.
- § 5452. Remedies After an Award.

**§ 5450. Applicability of this Part.**

The provisions of this Part 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. 18-44:14.

**COMMENT:** This Part 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 § 6976.1. 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:

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(1) if the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Territory; or

(ii) 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:

(i) the contract may be declared null and void; or

(ii) the contract may be ratified and affirmed if such action is in the best interests of the Territory, without prejudice to the Territory's rights to such damages as may be appropriate.

(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.

**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 16<sup>th</sup> 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.

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**PART C**  
**INTEREST**

§ 5475. Interest.

**§ 5475. Interest.**

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Interest on amounts ultimately determined to be due to a contractor or the Territory 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.

**2007 COMMENT:** See 18 GCA § 47106 (Legal Rate of Interest).

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**PART 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 the Territory 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 the Territory 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.

(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 the Territory shall have

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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 heavily modified. Subsection (c) as amended by P.L. 18-44:9 and (d) by P.L. 18-44:8.

**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* (not yet reported) (January 8, 1979, Civil Appeal No. 78-038A) 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. 17-29, 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

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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 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 § 6978.1. MPC § 9-402 modified. Subsections (a), (b) and (c) amended, and (d) added by P.L. 18-44:10-13 respectively.

**COMMENT:** Subsection (c) retains the limitations contained in the Government Claims Act (as in effect at the time of enactment of this Chapter).

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**PART 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

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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 or 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. 18-44:27.

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**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."

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**ARTICLE 11  
ETHICS IN PUBLIC CONTRACTING**

- Part A. Definitions.
- Part B. Standards of Conduct.
- Part C. Remedies.
- Part D. Ethics Enforcement.

**PART A  
DEFINITIONS**

§ 5601. Definitions.

**§ 5601. Definitions.**



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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 this Territory 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.

(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.

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(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 territorial 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.

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**PART 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.

**§ 5625. Statement of Policy.**

Public employment is a public trust. It is the policy of the Territory to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the Territory. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in

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such a manner as to foster public confidence in the integrity of the territorial procurement organization.

To achieve the purpose of this Chapter, it is essential that those doing business with the Territory also observe the ethical standards prescribed herein.

**SOURCE:** GC § 6980.1. MPC § 12-201.

**§ 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;

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(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.

(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 withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Civil Service Commission in accordance with § 5676(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 territorial contract with a business in which the employee has a financial interest shall report such benefit to the Civil Service Commission; provided, however, that this Section shall not apply to a contract with a business where the

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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.

**§ 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 the Territory prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

(d) Favors to the Territory. For purposes of this Section, a favor is anything, including raffle tickets, of more than de minimus 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

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person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, 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. 18-44:16; (d) added by P.L. 18-44:15.

**§ 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 territorial 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 territorial 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.

**§ 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

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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 the Territory, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy;

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the Territory 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 the Territory, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy; in matters which were within the former employee's official responsibility, where the Territory is a party or has a direct or substantial interest.

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(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 the Territory, 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 the Territory is a party or has a direct and substantial interest.

(d) Selling to the Territory 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 the Territory 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 this Territory, nor shall a former employee be precluded from serving as a consultant to this Territory.

**SOURCE:** GC § 6980.8. MPC § 12-208 with salary amount added locally.

**§ 5633. Use of Confidential Information.**



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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.

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**PART C  
REMEDIES**

- § 5650. Civil & 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 the Governor shall appoint members pro tempore, without the consent of the Legislature, to hear such appeals.

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(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 the Territory 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.

**COMMENT:** Since Guam has an established Civil Service Commission strengthened by P.L. 16-23, 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.

**§ 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 territorial contracts.

(c) Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach

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of the ethical standards of this Chapter or regulations promulgated hereunder by a non-employee shall be recoverable by the Territory as provided in § 5652 of this Chapter.

(d) Right of the Territory 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 § 6981.1. MPC § 12-302 modified.

**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 the Territory. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Territory 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.

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**PART D  
ETHICS ENFORCEMENT**

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§ 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. New Section.

**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 this Territory.

(b) Advisory Opinions. On written request of employees, the Civil Service Commission may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. The Policy Office may render such opinions to contractors regarding the appropriateness of the course of conduct to be followed by the contractors in proposed transactions. Such requests and advisory opinions must be duly published in the manner in which regulations of this Territory 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

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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 the Territory so require or when the ethical conflict is insubstantial or remote.

**SOURCE:** GC § 6982.1. MPC § 12-401 modified.

**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 this Territory. The opinions of the Civil Service Commission shall be reviewable in the same manner, but only in connection with their duty to render opinions.

(b) Debarment or Suspension. A decision of the Policy Office regarding debarment or suspension under 5481(b) of this Chapter shall be reviewable as provided in 5481(b) of this Chapter.

(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.

**COMMENT:** Modification reflects the split in Ethics Commission responsibilities between the Policy Office and Civil Service Commission. Change by Committee on GGO.

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**ARTICLE 12  
PROCUREMENT APPEALS**

**SOURCE:** This 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.

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- § 5701. Rules of Procedure.
- § 5702. Decisions of the Public Auditor.
- § 5703. Jurisdiction of the Public Auditor.
- § 5704. Standard of Review.
- § 5705. Suspension or Disbarment Proceedings.
- § 5706. Contract and Breach of Contract Controversies.
- § 5707. Appeals and Review of Public Auditor Decisions.
- § 5708. Discontinuance of Contractor' Appeal.
- § 5709. Transfer of Authority.

**§ 5701. Rules of Procedure.**

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.

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.

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).

**§ 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.**

The Public Auditor shall have the power to review and determine de novo any matter properly submitted to her or him. The Public Auditor shall not have jurisdiction over disputes having to do with money owed to or by the government of Guam. 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. 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,

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including any employee of any autonomous agency or public corporation. The Public Auditor may consider testimony and evidence submitted by any competing bidder, offeror or contractor of the protestant. The Public Auditor's jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5.

**§ 5704. Standard of Review.**

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. 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.

**§ 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 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

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(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 from a decision by the Public Auditor to the Superior Court of Guam as provided in Article D of Chapter 9 of this Chapter.

(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.

**§ 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.”

**SOURCE:** The entire Article 12, Procurement Appeals Board, was added as § 6983, et seq. of the Government Code by P.L. 18-44, effective on January 4, 1987. Amended by P.L. 26-90:2 & 3. The entire Article 12 was repealed and reenacted by P.L. 28-068:IV:65 (Sept. 30, 2005).

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**ARTICLE 13  
WAGE AND BENEFIT DETERMINATION**

**SOURCE:** This Article was added by P.L. 25-111:2.

- § 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.



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§ 5805. Awards and Compliance.

**§ 5801. Wage Determination Established.**

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.

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.

**§ 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, 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.**

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

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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.

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. 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. Furthermore, the Awardee shall include the substance of this clause in all subcontracts under this Award. The minimum and prevailing wage, and benefits criteria established within Public Law No. 26-111 shall be applicable.

**SOURCE:** Added by P.L. 27-016:2,

**§ 5803. Department of Labor Monitoring and Penalizing Authority.**

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.

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.

**§ 5804. Probation and Appeal.**

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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. During such probationary status, a contractor shall not be awarded any contract by any instrumentality of the government of Guam. 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.

**§ 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).

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