



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-23-005 In the Appeal of ASC Trust, LLC (Comments on Agency Report)

Jen Spesungel <jspesungel@arriolafirm.com>

Mon, Oct 16, 2023 at 3:35 PM

To: jhernandez@guamopa.com, tbagana@guamopa.com, vduenas@guamopa.com

Cc: William Brennan <wbrennan@arriolafirm.com>, jgrimes@carlsmith.com, amuller@carlsmith.com

Hafa Adai,

Please see the attached *Comments on Agency Report* for filing.

Regards,

Jen Spesungel
Legal Assistant to Attorney Christine C. Arriola**ARRIOLA LAW FIRM****259 Martyr Street, Suite 201**

Calvo-Arriola Building

Hagåtña, Guam 96910

Tel: 671.477.9730/33

Fax: 671.477.9734

Email: jspesungel@arriolafirm.com

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 **OPA-PA-23-005 Comments on Agency Report and Statement.pdf**
4491K

WILLIAM B. BRENNAN, ESQ.
ARRIOLA LAW FIRM
259 MARTYR STREET, SUITE 201
HAGÁTÑA, GUAM 96910
TEL: (671) 477-9730/33
FAX: (671) 477-9734
attorneys@arriolafirm.com

Counsel for Appellant
ASC TRUST, LLC

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

In the Appeal of,

ASC TRUST, LLC,

Appellant.

APPEAL CASE NO.: OPA-PA-23-005

COMMENTS ON AGENCY REPORT

COMES NOW, ASC, Trust LLC (“ASC”), through the undersigned counsel, who submits ASC’s comments on the Government of Guam Retirement Fund’s (“GGRF”) Agency Statement filed in this matter on October 5, 2023.

COMMENTS ON GGRF’S RESPONSES TO PROTEST

1. Additional factual background.

On September 27, 2023, ASC issued a letter of concern to the Office of the Attorney General (“OAG”) concerning actions taken by GGRF and because ASC’s appeal in this matter alleges violations of the Guam Open Government Law (“OGL”). Because of what ASC believes are blatant violations of the OGL and the procurement law, ASC also included a request under the Sunshine Reform Act of 1999 for documents concerning any designation of an attorney for GGRF as a Special Assistant Attorney General (“SAAG”) related to GGRF RFP GGRF-002-22 (the “RFP”). In response, the OAG provided *inter alia* February 2, 2022 correspondence from the GGRF requesting a SAAG

appointment (see Exhibit A attached hereto), and an April 7, 2022 Memorandum, which appointed/designated Attorney Vincent C. Camacho as a SAAG related to the RFP. See Exhibit B attached hereto.

2. The GGRF Board is subject to the Open Government Law.

GGRF contends that (1) the OPA is not tasked with determining violations of the OGL, (2) GGRF is not explicitly prohibited from extending its contract with the incumbent on a month-to-month basis, and (3) the GGRF took no action related to the RFP on February 10, 2023 and notice was given that the RFP would be discussed on July 28, 2023. Agency Statement at 3-4 (October 5, 2023).

a. There is and was no lawful basis to indefinitely extend the contract with the incumbent.

The contract was not lawfully extended given that GGRF knew ASC was interested in providing the services. As put forward in the Notice of Appeal, every expenditure of public funds is subject to the procurement law. 5 G.C.A. § 5004(b). Because GGRF was aware of another potential offeror, GGRF was required to procure services, even on a short-term basis through a method of source selection expressly authorized in the Procurement law. The extension, even if possibly stated in the incumbent's contract, cannot be used to circumvent the requirement that public monies be spent in accordance with the procurement law and that contracts be solicited through a lawful means of source selection. If GGRF's argument were taken to its logical conclusion, public agencies would have no incentive to efficiently and expeditiously reprocure goods and services when approaching contract expiration dates, when they could simply extend existing contracts at a whim so long as an extension is allowed in any given contract. That is what occurred here. GGRF had no incentive to complete this procurement in a lawful manner, given they could simply extend their existing provider's contract, while negotiating with the existing provider. There is no incentive for negotiations to be completed efficiently and for GGRF to move on to the next qualified offeror if negotiations were prolonged.

b. The GGRF Board is subject to the OGL when taking procurement action and otherwise.

In Exhibit A, GGRF concedes that the GGRF Board of Trustees “is authorized to exclusively approve and execute all contracts procured for professional services.” Ex. B. Therefore, GGRF cannot argue that Board Action does not affect the procurement at issue. As discussed in the Notice of Appeal, the GGRF is subject to the OGL and therefore actions taken in violation of the OGL are void, and this includes procurement-related action of the Board. GGRF does not address the lawfulness of the GGRF Board Action on February 10 beyond a conclusory assertion that the action was not related to the RFP. ASC disagrees, but even assuming for argument’s sake GGRF were correct, its action of extending the incumbent’s contract, which ASC timely protested and appealed – *is still void*. At a minimum, GGRF’s current contractor is operating on a void contract under the OGL. As put forth above in section a., this would have incentivized GGRF to complete negotiations and award the contract, but the lack of that incentive, coupled with the Board’s illegal action taint the entire RFP.

Additionally, while what actually occurred related to the RFP on July 28, 2023 is still unclear, the OGL violation is not. GGRF concedes that its notice of meeting, at best, only gave notice that the RFP would be discussed. This is different than GGRF’s response to ASC’s protest, which stated that the Board approved the RFP Proposal Selection Panel’s recommendation. The best evidence of the GGRF’s OGL violation is the waffling explanation given for the inadequate notice. The matter to be discussed was the selection panel’s recommendation of the RFP, not just the RFP. Because no notice was given that the Board would consider for approval the selection panel’s recommendation on the procurement, Board action related to the RFP at the July 28, 2023 meeting is void.

c. The OPA has jurisdiction over the any matter properly submitted.

Finally, the OPA’s jurisdiction under the procurement code is “the power to review and determine de novo *any matter* properly submitted to her or him.” 5 G.C.A. § 5703(a). Such jurisdiction “shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA

Chapter 5.” 5 G.C.A. § 5703(f). The purposes and policies of the procurement law are *inter alia* “to provide for increased public confidence in the procedures followed in public procurement and to require public access to all aspects of procurement consistent with the sealed bid procedure and the integrity of the procurement process.” 5 G.C.A. §§ 5001(3), (8). The OPA is well within the scope of this authority in reviewing the procurement related actions of the GGRF Board, as they relate to the RFP.

3. GGRF failed to give ASC notice of the ranking of its proposal.

The GGRF posits that ASC cited no authority for the proposition that GGRF must give ASC notice of its proposal’s ranking. Agency Statement at 4. GGRF also states that it cannot give pre-award notice of rankings. Id.

GGRF’s position is contrary to an express requirement of its attorney’s SAAG designation from the Attorney General. OAG Form 1 at page 53 of Exhibit B is clear at item 15 “Letters to Bidders concerning outcome of bid; for offerors, letters informing them of ranking and letter to best qualified offeror inviting negotiations.” Exhibit B at p. 53. Exhibit B is unequivocal in the scope of its certification:

“[a]fter ascertaining the statement’s accuracy and truthfulness, the agency’s procurement officer (director or head of agency) must sign the Certification below to indicate that the agency has kept a complete procurement record of all documents required by law. The checklist below is provided to ensure that the record is complete, and must be filled out by the procurement officer or administrator. The checklist is comprised of every item **that is required by law for an invitation for bid (IFB) or a request for proposal (RFP)**, and therefore every item, except as noted below, must be checked from the **resulting contract to be legally sufficient. . . .**”

Ex. B at p. 53. The SAAG designation forms are expressly authorized by law to demonstrate the form and legality of contracts entered into by the Government of Guam. See 5 G.C.A. Section 5150 (“In making such a determination of legality, he may require any or all agencies involved in the contract to supply him with evidence that the required procedures precedent to executing the contract were

carried out. He or his designees may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of form and legality.”). The OAG requires these forms to be completed in order for an attorney to execute public contracts as to legality and form.

GGRF’s contention that there is no requirement that it give notice of ranking of offerors is therefore contrary to GGRF’s SAAG designation and the forms for prescribing the legality and form of procurements carried out in Guam, including by the GGRF. GGRF cannot certify the procurement record for an RFP without first following the steps expressly stated in the OAG procurement forms.

Put another way, because no notice of ranking was provided to ASC, it is not clear how GGRF issued a notice of award to ASC, or how GGRF will ever certify the procurement given that negotiations with the highest ranked offeror have ostensibly been completed without a notice of ranking being first issued as required by the OAG checklist.

4. GGRF’s record is incomplete, which interferes with the OPA’s review of this matter.

GGRF states that because negotiations are ongoing, GGRF has not certified the record as complete. Agency Statement at 4. GGRF also states that portions of its procurement record are not available to the Public Auditor or ASC as part of this appeal. Agency Report at 1-2 (Oct. 5, 2023).

Guam law requires a purchasing agency, when served a notice of appeal to the public auditor, to submit “**a complete copy of the procurement record** relevant to the appeal”. 2 GAR § 12104(c)(3) (**emphasis added**). The GGRF withheld documents from its procurement record submission to the OPA. This is improper. There is a process for designating material confidential or exempt from disclosure, but this does not excuse submission of such material to the Public Auditor. See 2 GAR § 12104(c)(6) (“If the Appellant or the Agency considers that the Appeal, the Procurement File, the Agency Report, or any other report or material *submitted* contains material which shall be withheld pursuant to law or regulation, a statement advising of this fact must be affixed to the front page of the

document and the allegedly exempted information must be so identified wherever it appears.” (*emphasis added*)).

Guam law mandates the complete procurement records of an agency must be maintained. See 5 G.C.A. § 5249. In the face of an appeal to the Public Auditor, that record must be submitted for the OPA to review. The record is particularly important in this case as ASC alleges *inter alia* that it was issued a notice of award of a contract. When ASC asked for the record to substantiate the award, GGRF rescinded the notice of award as issued in error. While GGRF attempts to retract that notice in error, the document was issued, and such document is consequential under the procurement law. ASC has alleged other errors in this procurement. For example, ASC’s second FOIA has revealed that certain documents required to be a part of the record, such as a written plan for use of the services and a written determination about the type of contract to be entered into, are not kept as separate documents in the procurement record.

However, the GGRF has only given ASC piecemeal access to the procurement records. At this time, ASC is unable to determine how a notice of award was issued if the procurement process is still ongoing and where the error in the process occurred allowing such notice of award to be issued. Additionally, ASC is unable to review the process and decision-making related to the GGRF procurement actions here. Review of an agency’s process and decision making is exactly why procurement records are required to be preserved, and why an incomplete record is a valid basis of protest. See Teleguam v. Guam, 2018 Guam 5 ¶ 40 (requiring an appealing party to show that missing procurement documents are material to a procurement, and holding material means those situations where review is thwarted by missing material related to the relief requested).

Because a notice of award was issued to ASC, because GGRF has failed to comply with the rules of procedure regarding submission of the procurement record in procurement appeals, and because ASC’s review of documents submitted does not reveal how a notice of award was issued, ASC

maintains the procurement record here was improperly kept. The improper maintenance of the record already seems to be interfering with the OPA's review of this procurement and thus the improper maintenance of the record is material to ASC's protest and claims for relief.

CONCLUSION

Based on the foregoing, as well as for those reasons set forth in the Notice of Appeal in this matter, ASC requests that the OPA find that:

1. The GGRF violated the OGL related to GGRF Board Actions related to the RFP on February 10 and July 28, 2023 and thus those actions are void.
2. That GGRF failed to give notice of the ranking of offerors to ASC prior to issuing the August 16, 2023 notice of award to Empower, and
3. That the RFP procurement record was not kept in compliance with law. Thus, the August 16, 2023 notice of award was unlawfully issued and the incomplete record deprives the OPA of the ability to meaningfully review the procurement and GGRF's actions.

ASC requests that the OPA cancel the RFP and order the GGRF to restart the process and act in compliance with Guam law.

Dated: October 16, 2023

Respectfully submitted,
ARRIOLA LAW FIRM

By: 
WILLIAM B. BRENNAN

02-24-22



GOVERNMENT OF GUAM
RETIREMENT FUND
STABILITY · SECURITY · REWARDS

Lourdes A. Leon Guerrero
Governor

Joshua F. Tenorio
Lieutenant Governor

Paula M. Blas
Director

Trustees:

Wilfred P. Leon Guerrero, Ed.D.
Chairman

Antolina S. Leon Guerrero
Vice Chair

Katherine T.E. Taitano
Secretary
Chair, Members and Benefits Committee

Artemio R.A. Hernandez, Ph.D.
Treasurer
Chair, Investment Committee

Thomas H. San Agustin
Trustee

David N. Sanford
Trustee

George A. Santos
Trustee

February 22, 2022

2/23/22

Leevin Taitano Camacho
Attorney General of Guam
Office of the Attorney General
590 S. Marine Corps Dr.
Tamuning, Guam 96913

Re: Request for Appointment of Special Assistant Attorney General for Legal Services
Related to the Procurement of Professional Services to the Retirement Fund

Dear Attorney General Camacho,

The Retirement Fund will soon be issuing a request for proposals for the professional services described below. The Retirement Fund Board of Trustees is authorized to exclusively approve and execute all contracts procured for professional services. 5 G.C.A. § 5121(e). However, because 5 G.C.A. § 5150 requires the Attorney General to review all phases of government procurements estimated to cost \$500,000 or more, the Retirement Fund requests that Vincent C. Camacho, of Camacho Calvo Law Group LLC be appointed as special assistant attorney general to provide legal counsel to the Retirement Fund in connection with its procurement of the services described below.

The professional services to be provided to the Retirement Fund are: Recordkeeping and Third-Party Administration services for the Defined Contribution Retirement System (the IRC Section 401(a) plan, codified at 4 G.C.A. chapter 8, article 2) and the Deferred Compensation Plan (the IRC Section 457 plan, codified at 4 G.C.A., chapter 8, article 3).

The estimated cost of services for a 1-year contract range from \$950,000 to \$1,000,000.

The sources of funds for these services are (a) 12b-1 fees generated on an ongoing basis (see 4 G.C.A. § 8217, § 8302(a), § 8305(f)), and § 8307; and (b) forfeitures (see 4 G.C.A. § 8210(d) - (e) and § 8217(c)).

The solicited services will begin in August 2022, so your prompt attention to this request would be greatly appreciated.

Please do not hesitate to contact me if you have any additional questions or concerns.

Thank you very much,

Paula M. Blas
Director

li: 502 2022 39214
RECEIVED 2/23/22
OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATION @1048

424 Route 8
Maito, Guam 96910
Tel: 671.475.8900
Fax: 671.475.8922
www.ggrf.com

RECEIVED
0229-22
OFFICE OF THE ATTORNEY GENERAL
SOLICITORS DIVISION

EXHIBIT A



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96911

Phone: 671.475.3324 extension 5015 ♦ Fax: 671.477-4703 ♦ Email: ag@oagguamg.org

Hon. Leevin Taitano Camacho
Attorney General of Guam

April 7, 2022

**GOVERNMENT OF GUAM
RETIREMENT FUND**

APR 12 2022 *QV*

**RECEIVED
DIRECTOR'S OFFICE**

TO: Ms. Paula M. Blas, Director
Government of Guam Retirement Fund

Vincent C. Camacho, Legal Counsel
Government of Guam Retirement Fund

FROM: Attorney General of Guam

RE: Appointment/Designation of Vincent C. Camacho as Special Assistant
Attorney General

Pursuant to 5 G.C.A. § 5150, the above-named attorney is hereby appointed and designated to be a Special Assistant Attorney General to act as the legal advisor during all phases of the procurement solicitation process including approving the form, and determining the legality of such procurement contracts for the above agency. This appointment and designation is effective April 7, 2022, for a period of two (2) years, which term may be extended thereafter, and may be revoked at the discretion of the Attorney General. As a Special Assistant Attorney General, the above-named attorney will be required to certify in writing that, for each procurement solicitation and contract that is estimated to result in an award of Five Hundred Thousand Dollars (\$500,000.00) or more, all applicable procurement laws, rules, and regulations, have been complied with.

This appointment and designation requires adherence to the following processes for each procurement solicitation estimated to result in an award of Five Hundred Thousand Dollars (\$500,000.00) or more:

1. Submission to the Solicitor Division of the Office of the Attorney General, for each procurement solicitation, a notification that the Special Assistant Attorney General is to be engaged as the legal advisor to the agency. The notification shall have sufficient information to identify the procurement solicitation by topical name description, project number (Invitation For Bid number or Request for Proposal number), and the funding source and such other information as is required by the Attorney General; and

EXHIBIT B

FILE COPY

Appointment/Designation of Special Assistant Attorney General
Agency Name: Government of Guam Retirement Fund
Ref: RF 22-0140
Date: April 7, 2022
Page 2 of 2

2. Submission to the Solicitor Division of the Office of the Attorney General, at the time of an award of a contract in each such procurement solicitation, the completed Procurement Checklist, as is provided to the Agency at the initiation of each procurement solicitation process by the Office of the Attorney General.


LEEVIN TAITANO CAMACHO
Attorney General

ACCEPTANCE:

Subject to the terms and conditions as required by the Attorney General of Guam, I hereby agree and accept the appointment and designation by the Attorney General of Guam to act as a Special Assistant Attorney General and legal advisor for the Government of Guam Retirement Fund pursuant to 5 G.C.A §5150.

Vincent C. Camacho, Legal Counsel

Signature

Date: _____



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96911
Phone: 671.475.3324 extension 5015 ♦ Fax: 671.477-4703 ♦ Email: ag@oagguam.gov

GOVERNMENT OF GUAM
RETIREMENT FUND

Hon. Leevin Taitano Camacho
Attorney General of Guam

APR 12 2022

RECEIVED
DIRECTOR'S OFFICE

NOTIFICATION OF PROCUREMENT OVER \$500,000

To: Office of the Attorney General
Attention: Deputy Attorney General, Solicitor Division
From: Government of Guam Retirement Fund
[Agency Name]

Name of Attorney for Agency: Mr. Vincent C. Camacho, Esq.

Type of Procurement: _____
[IFB, RFP, etc.]

Description of Procurement: _____

Project Number: _____

Funding Source: _____

ARRA: Yes No If yes, federal agency: _____

Procurement Officer (Print Name)

Signature of Procurement Officer

Date: _____



OFFICE OF THE ATTORNEY GENERAL OF GUAM

590 S. Marine Corps Drive, Suite 901, Tamuning, Guam 96913

♦ Phone: 671.475.3324 extension 5015 ♦ Fax 671.477.4170

law@guamag.org

GOVERNMENT OF GUAM
RETIREMENT FUND

APR 12 2022

Hon. Leevin Taitano Camacho
Attorney General of Guam

RECEIVED
DIRECTOR'S OFFICE

PROCUREMENT REVIEW CHECKLIST FOR INVITATION FOR BID (IFB)

April 12, 2022

AG Reference No.: Enter PCF # Here.

Special Assistant Attorney General: Enter Agency Attorney's Name Here.

Agency: Enter Requesting Agency's Name Here.

Project /IFB No.: Enter Project Number and/or IFB No. Here.

Description of Procurement: Enter Description Provided by Agency on Notification of

Procurement (form 012) Submitted to OAG.

Instructions: For each question or item below, please answer "yes," "no," or "not applicable" ("n/a") by checking the appropriate box. Each question must be answered, or the checklist will be considered incomplete and returned to you for completion. In some cases, a short answer is required in addition to checking one of the boxes. Please provide an answer in the space provided. Some questions or items below are also accompanied by notes or special instructions. Please read them carefully and respond accordingly. Please note that if an item is required by a law, or based on one, the applicable law is cited. "L" refers to sections from 5 GCA (the Guam Procurement Law); "R" refers to sections from 2 GAR Div. 4 (the Guam Procurement Regulations).

When you have completed the procurement and the checklist, please sign and date the certification, and submit the certified checklist to the Attorney General's Office.

This checklist covers the basic essentials of an IFB type of procurement. However, depending upon the circumstances, other requirements of the Guam Procurement Law and regulations may apply. In addition, federally funded acquisitions may be subject to federal requirements. You are responsible for ensuring that all legal requirements are followed, including any requirements not specifically addressed in this checklist.

The Attorney General's Office will conduct occasional audits of your agency's acquisitions which you are handling as a Special Assistant Attorney General pursuant to 5 GCA § 5150. Please have the procurement record ready for audit at all times. The procurement record should be complete, organized, without multiple numbers of the same documents, and bound in some manner so that there are no loose papers. If we audit a record, and find that it is unorganized, or contains unnecessary duplications, or loose papers, we will return it to you for restructuring into an acceptable form.



FILE COPY

Enter Date Here
Agency: Enter Requesting Agency's Name Here.
Ref No.: Enter PCF No. Here.
Description of Procurement: Enter Description Provided by Agency on Notification of
Procurement (form 012).
Project or IFB No.: Enter Project and/or IFB No. Here.

yes no n/a

INITIAL QUESTIONS

1. Is there a record of planning for this procurement? [5GCA § 5010; 2 GAR, Div. 4 § 1102.03]
2. Is there a record of the requesting agency's determination of need? [5 GCA § 5249(e)]
3. Is this procurement mandated by statute? If so, cite: _____

STATUTORY PREFERENCES

4. Can matter being procured be a product that is biodegradable, reusable, recyclable, made from recycled material, or some combination of the foregoing? [2 GAR, Div. 4 § 1102.02]
5. If matter being procured includes concrete or asphalt paving, construction or repair of highways, does IFB give notice that bids must include use of available recycled glass, and require bidders to identify and certify in writing the percentage of recycled glass contained in the material offered? [5GCA § 5218]
6. Does IFB give notice about local preference policy? [5GCA § 5008; 2 GAR, Div. 4 § 1104] If "not applicable" is checked, please state why: _____
7. If horticulture products are being procured, does IFB give notice that 75% must be native grown or grown-in-Guam? [5GCA § 5008.1]
8. Is this an acquisition of local produce and/or fish from local farmers and fishermen? [5 GCA § 5001(e)]
- 8.1. If the answer is "yes," make determination whether this acquisition is exempted from the procurement law.
9. Does IFB give notice about service-disabled veteran preference? [5 GCA §§ 5011, 5012]



Enter Date Here

Agency: *Enter Requesting Agency's Name Here.*

Ref No.: *Enter PCF No. Here.*

Description of Procurement: *Enter Description Provided by Agency on Notification of Procurement (form 012).*

Project or IFB No.: *Enter Project and/or IFB No. Here.*

yes no n/a

10. Are there laws or regulations applicable to this procurement by virtue of this agency's enabling legislation or the requirements imposed by the funding source?

If the answer to # 10 is "yes," list the applicable laws and regulations here:

REQUIREMENTS FOR ALL SOLICITATIONS

11. Does IFB advise of disclosure of major shareholders? [5GCA § 5233; 2 GAR, Div. 4 §3109(e)(3)(E)]
- 11.1. Is affidavit form (AG Procurement Form 002) attached to IFB?
12. Does IFB advise that submission of bid or offer is a certification by bidder that price or offer was independently arrived at without collusion? [2 GAR, Div. 4 § 3126(b)]
- 12.1. Is affidavit form (AG Procurement Form 003) attached to IFB?
13. Does solicitation conspicuously state prohibition against gratuities and kickbacks? [5GCA § 5630(c); 2 GAR, Div. 4 §11107(3)]
- 13.1. Is affidavit form (AG Procurement Form 004) attached to IFB?
- 13.2. If proposed form of contract is attached to IFB, then prohibition must be stated in proposed contract. [2 GAR, Div. 4 §1107(4)(e)]
Is the prohibition stated? *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*
14. Does solicitation conspicuously state prohibition against contingent fees and retention of persons to secure contract? [5GCA § 5631(c); 2 GAR, Div. 4 §§ 11108(a)(3), 11108(f)]



Enter Date Here

Agency: Enter Requesting Agency's Name Here.

Ref No.: Enter PCF No. Here.

Description of Procurement: Enter Description Provided by Agency on Notification of Procurement (form 012).

Project or IFB No.: Enter Project and/or IFB No. Here.

yes no n/a

- 14.1. Is affidavit form (AG Procurement Form 007) attached to IFB?
- 14.2. If proposed form of contract attached to IFB, then prohibition must be stated in proposed contract. [2 GAR, Div. 4 §11108(h)]
[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]
15. Does IFB conspicuously state ethical standards? [2 GAR, Div. 4 § 11103(b)]
- 15.1. Is affidavit form (AG Procurement Form 005) attached to IFB?
- 15.2. If proposed form of contract attached to IFB, then ethical standards must be stated in proposed contract. [Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]
16. Does IFB advise that solicitation for bids may be cancelled as provided for in regulations? [5GCA § 5225; 2 GAR, Div. 4 § 3115(c)]
17. Does IFB advise that any bid may be rejected in whole or in part in the best interest of territory as provided in the regulations? [2 GAR, Div. 4 § 3115(e)(2)]
18. Does IFB recite prohibition against employment of sex offenders? [5 GCA § 5253(c)]
- 18.1. If proposed form of contract attached to IFB, then prohibition must be stated in proposed contract. [Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]
19. If for services, does IFB recite wage and benefits determination requirement? [5GCA § 5211(b); see also, 5 GCA §§5801 and 5802]
[Instructions: For question 19 and its sub-questions, you may check "not applicable" only if procurement is for something other than services.]



Enter Date Here

Agency: Enter Requesting Agency's Name Here.

Ref No.: Enter PCF No. Here.

Description of Procurement: Enter Description Provided by Agency on Notification of Procurement (form 012).

Project or IFB No.: Enter Project and/or IFB No. Here.

yes no n/a

- 19.1. Is the most recent applicable USDOL wage and benefits determination attached to IFB?
- 19.2. Is declaration form (AG Procurement Form 006) attached to IFB?
20. Does IFB specifically provide for multiple or alternate bids?
- 20.1 If answer is no, then does solicitation state that multiple or alternate bids will be rejected. [2 GAR, Div. 4 §§ 3102(d)]
21. If contract will be for more than one year, does IFB state contract term and conditions of renewal or extension? [5GCA § 5237(a); 2 GAR, Div. 4 §3121(e); for leases, see 2 GAR, Div. 4 § 3119(j)] The following apply only if the contract is for more than one year.
- 21.1. Was written determination made? [5GCA § 5237(b); 2 GAR, Div. 4 § 3121(d)]
- 21.2. Does IFB state amount of supply or service needed? [2 GAR, Div. 4 § 3121(e)(1)(A)]
- 21.3. Does IFB state unit price for supply or service is to be given? [2 GAR, Div. 4 § 3121(e)(1)(B)]
- 21.4. Does IFB state that contract will be cancelled if funds not appropriated or are insufficient? [2 GAR, Div. 4 § 3121(e)(1)(C)]
- 21.5. Does IFB state that, if contract cancelled due to insufficient funds, contractor will be timely informed? [2 GAR, Div. 4 §3121(e)(1)(D)]
- 21.6. Does IFB state whether bidders should submit price for first year only or for entire contract term? [2 GAR, Div. 4 § 3121(e)(1)(E)]
- 21.7. Does IFB state how award will be determined, including price comparison if applicable? [2 GAR, Div. 4 § 3121(e)(1)(F)]

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yes no n/a

 21.8. Does IFB state that, if cancelled, contractor will be reimbursed unamortized reasonably incurred non-recurring costs? [2 GAR, Div. 4 § 3121(e)(1)(G)]

 22. If contract is to have an option for renewal, extension, or purchase, is notice of this provision included in the IFB ? [2 GAR, Div. 4 §3119(k)(1)]

 23. If contract is for the lease of equipment, supplies or real property, have the provisions of 2 GAR, Div. 4 §§3119(j), and 3119(k)(3) been reviewed and applied to this solicitation?

 24. Is contract for an indefinite quantity? [2 GAR, Div. 4 §3119(i); and see 2 GAR, Div. 4 §6101(5) (b) as to contract terms.] If yes, the following apply.

 24.1. Is there a written determination stating the rationale for using this type of contract and the reason why another form of contract will not suffice? [2 GAR, Div. 4 §3119(i) (2)]

 24.2. Does the IFB state an approximate quantity or the best information available as to quantity? [2 GAR, Div. 4 §3119(i) (2)]

 24.3. Does IFB specify that the contract will be for unit prices of a fixed price type? [2 GAR, Div. 4 §3119(i), (1) and (2)]

 24.4. Does the IFB specify minimum quantities and/or maximum quantities that the Territory is obligated to purchase? [2 GAR, Div. 4 §3119(i)(2)] If so, state those minimum or maximum quantities here: _____

 24.5. Does the IFB state approximate quantities? [2 GAR, Div. 4 §3119(i) (2)] If so, state those approximate quantities here: _____

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yes no n/a

 24.6. Is this contract for a supply or service that obligates the territory to order all of the actual requirements of the agency for that supply or service from the contractor during a specified period of time? If yes, this is a Requirements Contract. [2 GAR, Div. 4 §3119(i)(3)]

 24.6.1. If the answer to #24.6 is "yes," have you reviewed 2 GAR, Div. 4 §§3119(i)(2) and (i)(3) and followed provisions for a requirements contract in development of the IFB and the contract for this solicitation?

 24.6.2. If the answer to # 24.6 is "yes," does the IFB reserve for the government the right to initiate and issue a new solicitation for the supply or service in the event that a particular quantity requirement arises that exceeds normal requirements or amounts specified in the contract? [2 GAR, Div. 4 §3119(i)(3)(A)]

 24.7. Does the IFB state the proposed term of the contract? If yes, state the term here: _____
Note that indefinite quantity contracts for a given supply or service shall not be used more than two times per fiscal year. [2 GAR, Div. 4 §3119(i)(2)] **CAUTION!** Should the department or agency continue to require the supply or service, the procurement of such supply or service must comply with 2 GAR, Div. 4 §3109 (competitive sealed bidding) or §3111 (small purchases).

 25. Does the IFB permit the bidder to condition its bid as "all or none"? [2 GAR, Div. 4 §3115(f)]

SPECIFICATIONS

 26. Does this solicitation seek to acquire a common or general use standard commercial product? It may be necessary to confer with the CPO or the DPW to determine this question. You are referred to 2 GAR, Div. 4 §§ 4102(a)(3) and 4103(b)(2)(a) for guidance.

 26.1. Has a specification for the common or general use standard commercial product been developed, and is it being utilized here?



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yes no n/a

27. Has the CPO (or DPW for construction) prepared, issued, revised, maintained and monitored the use of the specifications in this acquisition? [5 GCA §5262; 2GAR, Div.4 §4103]
28. Were the specifications prepared pursuant to a contract entered into by the CPO, DPW, or head of the Purchasing Agency with a private contractor? [2 GAR, Div. 4 §4103(a)(2) (a) & (b)]
- 28.1. If the answer to # 28 is "yes," is there a written determination made to justify contracting for the preparation of these specifications?
- 28.2. If the answer to # 28 is "yes," does the contract for preparation of these specifications require that the contractor abide by Guam procurement law and regulations?
- 28.3. If the answer to # 28 is "yes," does the CPO, DPW, or head of the Purchasing Agency retain responsibility and authority to finally approve of specifications.
29. Were specifications reviewed to confirm that they include only essential physical characteristics and functions to meet government's needs? [5GCA § 5268(a); 2 GAR, Div. 4 § 4109(a)]
30. Is it true that the specifications do not contain features peculiar to product of one manufacturer? [5GCA § 5268(b); 2 GAR, Div. 4 § 4102(a)]
- 30.1. If answer is "no," is there a written determination that peculiar features are essential and reasons why similar product without features do not meet minimum requirements? [5GCA § 5268(b)]
31. Is a "brand name or equal" specified?

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yes no n/a

- 31.1. If so, is there a written determination by the CPO, DPW or head of the purchasing agency that 1) no specification for a common or general use item is available, 2) time does not permit the preparation of another form of specification, and 3) either nature of product or government's requirements make use of brand name or equal suitable, or it is otherwise in the government's best interest? [2 GAR, Div 4 §4103(b)(2)(b)(ii)]
- 31.2. If so, are three or more different brands named as the "or equal" references? [2 GAR, Div. 4 §4103(b)(2)(b)(iii)]
- 31.3. If so, does the IFB state that substantially equivalent products to those designated will be considered for award? [2 GAR, Div. 4 §4103(b)(2)(b)(iii)]
- 31.4. If so, do the specifications include a description of the particular design, functional, or performance characteristics which are required? [2 GAR, Div. 4 §4103(b)(2)(b)(iv)]
- 31.5. If so, does the IFB contain explanatory language that use of brand name is for purpose of describing standard of quality, performance, and characteristics desired, and not to limit or restrict completion. [2 GAR, Div. 4 §4103(b)(2)(b) (v)]
32. Is a "brand name" product specified?
- 32.1. If so, has the CPO or DPW made a written determination that only the identified brand name will satisfy the government's needs? [2 GAR, Div. 4 §4103(b)(2)(c)] Note: There is a reporting requirement for use of a brand name. *Id.*
33. Do specifications describe salient technical requirements or desired performance without restrictions which do not affect requirements or performance? [5GCA § 5268(c); 2 GAR, Div. 4 §§ 4102(a) (2) and 4109(c)]
34. Do specifications include requirements which do not unnecessarily restrict competition? [5 GCA 5268(a); 2GAR, Div. 4 §4109(a)]

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yes no n/a

35. Do specifications include only the essential physical characteristics and functions required to meet the government's minimum needs? [5 GCA 5268(a); 2GAR, Div. 4 §4109(a)]
36. Are specifications free of product features which are peculiar to products of one manufacturer, producer or distributor? [5 GCA § 5268(b); 2 GAR, Div. 4 §4109(b)]
37. Does the specification describe the requirements to be met without having effect of exclusively requiring a proprietary supply, service, or construction item, or requiring a sole source procurement? [2 GAR, Div. 4 §4106(a)]
- 37.1. If the answer is "no," has a written determination been completed that it is not practicable to use a less restrictive specification?
38. Do specifications permit and encourage maximum practicable competition? [5 GCA § 5265; 2 GAR, Div. 4 § 4102(a) (1)]
39. Does the IFB for supplies, and any amendment, identify the person responsible for drafting specifications, and any persons, technical literature and manufacturer's brochures relied upon? [5GCA § 5267; 2 GAR, Div. 4 § 4108]

REQUIREMENTS AND CRITERIA

40. Does the IFB set forth, prior to publication, all of the requirements and criteria that will be used to determine the lowest responsive bidder? [5 GCA §5211(g), 2GAR, Div. 4 §3109(n)(1)]

IFB DOCUMENT REQUIREMENTS

Items 41 – 57. The following items are mandatory, except where noted, as required by 5GCA § 5211 and/or 2-GAR, Div. 4 § 3109, unless another citation is given:

41. Instructions to bidders. [2 GAR §3109(c)(2)(A)]
42. Time and date set for receipt of bids. [2 GAR §3109(c)(2)(A)]



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yes no n/a

43. Address to deliver bids. [2 GAR §3109(c)(2)(A)]
44. Maximum time for bid acceptance. [2 GAR §3109(c)(2)(A)]
45. Bids are due at least 15 days after date of distribution of IFB. [2 GAR §3109(d)] A shorter time is possible for a particular acquisition if supported by written determination.
46. Advise that bid shall acknowledge receipt of amendments to IFB. [2 GAR, Div. 4 §3109(c)(6)]
47. Purchase description. [2 GAR §3109(c)(2)(B)]
48. Delivery and performance schedule. [2 GAR §3109(c)(2)(B)]
49. Inspection and acceptance requirements [2 GAR §3109(c)(2)(B)]
50. Evaluation factors for product acceptability [2 GAR §3109(c)(2)(B)]
51. Limiting statement on samples or descriptive literature. [2 GAR §3109(c)(3)(D)]
52. Advise of contract terms and conditions [2 GAR, Div. 4 §3109(c)(2)(C)]
- 52.1. Does any contract clause or condition for supply or service concern any of the following:
- Change orders in a fixed price contract
 - Stop work order in a fixed price contract
 - Variation in quantity in a definite quantity contract
 - Any other price adjustment
 - Claims based on procurement officer's acts or omissions
 - Termination based on default of the contractor



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yes no n/a

_____ Liquidated damages

_____ Termination for convenience of the government

_____ Remedies

- 52.2. If any of these matters are to appear in the contract, and it is not the intention to follow the exact language as provided in the applicable subsection of 2 GAR, Div. 4 §6101, (3) through (10) and (12), then does the IFB contain the mandatory clause advising of a material change in otherwise mandatory contract language? [5 GCA §§5350(d), and 5306(d) for construction; 2GAR, Div. 4 §6101(2)]
- 52.3. If the mandatory clause advising of a material change in contract language is required, has the written determination been completed by the CPO or DPW? [5 GCA §5350(d); 2GAR, Div. 4 §6101(2)]
53. Bid bond requirements, applicable only if contract will be greater than \$25,000 [5GCA § 5212; 5GCA § 5303 for construction; 2 GAR, Div.4 §3109(c)(3)(B)]
54. Performance bond or payment bond requirements, applicable only if for construction and if contract will be greater than \$25,000 [5GCA § 5304]
55. If anticipated that Certificate of Current Cost or Pricing Data may be required of winning bidder, then notice thereof must be included in IFB [2 GAR, Div. 4 § 3118(e)(3)]
56. If payments will be made in installments, then IFB must so advise [2 GAR, Div. 4 § 3106]
57. Include bid form, with space for bid amount and signature [2 GAR, Div. 4§3109(e)(1)]
58. If your answer to # 10, above, is "yes," have you applied all applicable laws and regulations to the development and formulation of the IFB?

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yes no n/a

PUBLIC NOTICE AND DISTRIBUTION OF IFB

59. Was the IFB or Notice of the Availability of IFB mailed or otherwise furnished to a sufficient number of potential bidders in order to secure competition? [2 GAR, Div. 4 §3109(f) (1)]
60. If the procurement is for greater than \$25,000, was notice of IFB published at least fifteen days before due date? [5GCA § 5211(c) and 2 GAR, Div. 4 §§ 3109(d) and (f)(2)]
61. In addition to # 59, above, has bidding time been adequate to provide bidders a reasonable time to prepare bids? [2 GAR, Div. 4 §3109(d)]
62. Was the Notice of the Availability of IFB adequate to describe the supply, service or construction desired? [2 GAR, Div. 4 §3109(f)(1)]
63. Does the Notice of the Availability of IFB indicate where, when and for how long IFB's may be obtained? [2 GAR, Div. 4 §3109(f) (1)]
64. Was bid invitation made publicly available at GSA (or Department of Public Works, if construction)? [2 GAR, Div. 4 §3109(f) (3)]
65. Was register or log of distribution of IFB kept?

PRE-BID CONFERENCE

66. Was pre-bid conference timely conducted? [2 GAR, Div. 4 § 3109(g) (4)]
67. Was time, date and place announced to all prospective bidders?
68. Was summary or minutes of conference prepared?
69. Was summary or minutes distributed to all prospective bidders?
70. Were prospective bidders notified, in either the IFB or the pre-bid conference notice, that the IFB could only be modified by a written amendment to IFB. [2 GAR, Div. 4 §3109(g)(4)]



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yes no n/a

AMENDMENTS TO IFB

71. Were any amendments to the IFB issued? [2 GAR, Div. 4 § 3109(i)]
72. How many amendments were issued? _____
73. Does each amendment advise that bidder shall acknowledge receipt of amendment. [2 GAR, Div. 2 §3109(i) (1)]
74. Was each amendment timely distributed to or served on all prospective bidders who received an IFB. [2 GAR, Div. 2 §§3109(i) (2) and (3)]
75. Was proof of distribution or service maintained for the record?
- 75.1. Was proof of distribution kept in the form of a register or log of distribution, or in the form of some other documentation? [2 GAR, Div. 4 §3109(i) (2)] Please identify form of documentation used to confirm proper distribution of amendments:
-

BIDS RECEIVED AND BID OPENING

76. Was register maintained of bids received?
77. Was each bid time-stamped and dated upon receipt? [2 GAR, Div. 4 § 3109(l)(1)]
78. Was any bid received after the date and time set for submission?
- 78.1. If "yes," was late bidders notified that the late bid will not be considered? [2 GAR, Div. 4 § 3109(k)(3)]
- 78.2. Was a record maintained of the late bids? [2 GAR, Div. 4 §3109(k)(4)]
79. Was a record of bids and an abstract of bids prepared at time of opening? [5GCA § 5211(d); 2 GAR, Div. 4 § 3109(l)(2)]



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yes no n/a

80. Was a public opening conducted at the time, date and place indicated in IFB? [5GCA § 5211(d); 2 GAR, Div. 4 § 3109(l) (2)]
81. Were there any bid mistakes, corrections, or withdrawals after the time of opening? [2 GAR, Div. 4 §3109(m)]
- 81.1. If the answer to # 81 is "yes," is there a record of each in accordance with [2 GAR, Div. 4 § 3109(m) (4)]?
82. Has a bidder designated any part of a bid confidential as trade secret or proprietary? [2 GAR, Div. 4 § 3109(l)-(3)]
- 82.1. If the answer to # 82 is "yes," has the procurement officer examined designated material to validate request for nondisclosure?
- 82.1.1. If the answer to # 82.1 is "yes," has procurement officer agreed with the request of bidder claiming confidentiality?
- 82.1.2. If the procurement officer does not agree with the request of the bidder, is there a record that the bidder was informed in writing of decision, the effect of decision, and of appeal rights?

DETERMINATION OF BID RESPONSIVENESS AND RESPONSIBILITY

83. Were bids evaluated to determine that each meets the requirements and criteria set forth in the IFB? [5 GCA §5211(g); 2 GAR, Div. 4 §§ 3109(n) (1) and (3)]
84. Does any bid assert the condition, "All or None"? [2 GAR, Div. 4 §3115(f)]
- 84.1. If the answer to #84 is "yes," then did the IFB specifically permit an "All or None" bid? If the answer is "No", then the "All or None" bid must be rejected as non-responsive. [2 GAR, Div. 4 §3115(f)]
85. If for services, are the bid amounts sufficient to comply with the wage and benefit requirements of 5 GCA §§5801 and 5802? [5GCA § 5211(g)]



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yes no n/a

86. If matter being procured includes concrete or asphalt paving, construction or repair of highways, did bidders identify and certify in writing the percentage of recycled glass contained in the material offered. [5 GCA §5218]
87. If horticulture products are being procured, does bid confirm that 75% will be native grown or grown-in-Guam? [5GCA § 5008.1]
88. Is any bidder qualified for the service-disabled veteran preference? [5 GCA §5011]
- 88.1. If the answer to #88 is "yes," has the bid from that bidder been evaluated in light of the services-disabled veteran preference?
89. Is matter being procured from business licensed on Guam, and maintaining an office on Guam? [5GCA § 5008, 2 GAR, Div. 4 § 1.104]

If the answer to #89 is "yes," then check the following items that apply:

- _____ 89.1. For manufacturing business, is 25% value added by U. S. workers?
- _____ 89.2. For business with regular inventory, does it carry 50% of items being procured?
- _____ 89.3. For bona fide retail or wholesale business, is the value of its inventory at least one-half of items being procured or is the value of its inventory at least \$150,000?
- _____ 89.4. For a service business, are at least 95% of its workers U.S. citizens, etc.?
- 89.5. For foreign supplier, is total cost of items or services no greater than eighty-five percent (85%) of the total cost FOB job-site, unloaded, when procured from Guam business?
- 89.6. If the answer to item 89 was "no," please state why: _____
- _____



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yes no n/a

90. Were acceptable bids evaluated to determine lowest bidder? [2 GAR, Div. 4 § 3109(n) (4)]
91. Was only one responsive bid received? [2 GAR, Div. 4 § 3102(c)]
- 91.1. If so, has finding been made that the price is fair and reasonable, and 1) that other prospective bidders had reasonable opportunity to respond, or 2) that there is not adequate time for re-solicitation? See § 3102(c) for other considerations.
92. Does the record show a basis for determining successful bidder? [2 GAR, Div. 4 § 3109(p)]
93. Were any bids rejected for any reason? [2 GAR, Div. 4 § 3115(e)]
- 93.1. If the answer to #93 was "yes," was the rejected bidders notified and was a written determination prepared? [2 GAR, Div. 4 §§ 3115(d)(2)(B), 3115(e)(4), 3116(a) and 3116(b)(5)]
94. For construction contracts, if all bids exceeded available funds but lowest bid did not exceed available funds by 5%, was a contract negotiated? [5GCA § 5211(g)]
95. If there were not at least two responsible bidders, and the contract amount will be over \$100,000, was the lowest bidder to whom a contract will be awarded, asked to submit cost or pricing data, and did bidder submit data? [2 GAR, Div. 4 §§ 3118]
- 95.1. If the answer to # 95 was "yes," did the proposed contractor submit the proposed data as a certified statement? [2 GAR, Div. 4 §§ 3118(d) (3) and 3118(e) (1)]

AWARD AND NOTICE OF AWARD

96. Was written notice sent to successful bidder? [2 GAR, Div. 4 § 3109(q)]
97. For procurement over \$25,000, was written notice sent to all unsuccessful bidders? [2 GAR, Div. 4 § 3109(q)]



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yes no n/a

- 98. If your answer to # 10, above, is "yes," have you applied all applicable laws and regulations to the receipt and handling of bids?

MANDATORY REQUIREMENTS FOR ALL CONTRACTS

- 99. Did the procurement officer certify in writing and under penalty of perjury that a complete record exists before award was made? [5GCA § 5250; 2 GAR, Div. 4 § 3130] The certification should be in the following form or in substantially similar language:

"CERTIFICATION: Pursuant to 5 G.C.A. §5250, I hereby certify under penalty of perjury that I am the procurement officer responsible for administering the solicitation of the attached contract, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law."

100. Identify contract type by checking one [2 GAR, Div. 4 § 3119]:

- fixed price contract - firm fixed price
- fixed price contract - with price adjustment
- cost-reimbursement - cost contract
- cost reimbursement - cost-plus-fixed fee contract
- cost incentive contract - fixed-price cost incentive
- cost incentive contract - cost-reimbursement contract with cost incentive fee
- performance incentive contract
- time and materials contract - time and materials contract
- time and materials contract - labor hour contract
- lease
- other: _____

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yes no n/a

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101. For contracts which are not firm fixed price, has a written determination been made that the contractor's accounting system is adequate to allocate costs and will permit timely development of all cost data? [5GCA § 5236; 2 GAR, Div. 4 § 3119(e)(2)]
102. Can an assurance be made that contract is not a "cost-plus-a-percentage-of-cost" contract? [5GCA § 5235; 2 GAR, Div. 4 § 3119(b)]
103. If this is a cost-reimbursement contract, then has a written determination been made that the contract is likely to be less costly than other types of contracts, and meets further conditions set out at 2 GAR, Div. 4 § 3119(e)(2)? [5GCA § 5235]
104. Does the contract conspicuously state the prohibition against gratuities and kickbacks? [5GCA § 5630(e); 2 GAR, Div. 4 § 11107(3)]
105. Does the contract conspicuously state contractor's representation that contractor has not retained a person to solicit or secure contract, or paid a contingent fees, commissions, or brokerage fees? [5GCA § 5631(c); 2 GAR, Div. 4 § 11108(a) (3)]
106. Does contract conspicuously state ethical standard? [2 GAR, Div. 4 § 11103(b)]
107. Does contract recite prohibition against employment of sex offenders? [5GCA § 5253]
108. If contract is for multiple years, does contract state exactly the same term provision and renewal provision that were stated in the IFB? [5GCA § 5237(a)]
109. For multi-year contracts, are funds available for the first year at time of contracting? [5GCA § 5237(a)]
110. For multi-year service contract, and/or service contract with renewal clause, is there a stipulation to apply the Wage and Benefits Determination for



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yes no n/a

Guam promulgated by the U.S. Department of Labor on a date most recent to the renewal date? [5 GCA §§5801, 5802]

111. If the contract is not a firm fixed price contract, does the contract state that the contractor shall maintain its books and records for three years from the date of final payment, and that this provision must be included in subcontracts? [5GCA § 5241; 2 GAR, Div. 4 § 3124]
112. If cost or pricing data was required, then does contract include provision that government may, at reasonable times and places, audit books and records relative to cost or pricing data, and that contractor shall maintain such records and books for three years from date of final payment? [5GCA § 5241; 2 GAR, Div. 4 § 3124]
113. A Disputes Clause is mandated in each contract by 2 GAR, Div. 4 §9103(g). The language proposed by §9103(g) is not adequate in light of the amendment to the procurement law by P.L.28-068:IV:68 [codified at 5 GCA §5427(e)] providing for an administrative appeal to the Public Auditor, and in light of *Pacific Rock v. Department of Education*, 2001 Guam 21, confirming that disputes for money owed to or from the government of Guam are to be resolved pursuant to the Government Claims Act. Representatives of government agencies should contact the Office of the Attorney General at paag@guamag.org for assistance and guidance.

CONTRACT REQUIREMENTS FOR CONSTRUCTION CONTRACTS ONLY

114. Is there a written statement setting forth the facts leading to selection of a particular method of construction contract management? [5GCA § 5302(c); 2 GAR, Div. 4 §§ 5102(4) (a) and 5102(4) (d)] If yes, please state the method of contract management: _____
115. If a contract is awarded in excess of \$25,000, does the contract specify the amount of a performance or payment bond to be delivered and that delivery must be 100% of the amount stated? [5GCA § 5304(a); 2 GAR, Div. 4 § 5104]

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yes no n/a

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CONTRACT CLAUSES FOR CONSTRUCTION CONTRACTS ONLY

116. If contract contains estimated quantity items, then does contract also contain the "variations in estimated quantities" clause? [5GCA § 5306(a) (2); 2 GAR, Div. 4 § 5106(4)]

117 - 124. The following are mandatory clauses for all construction contracts:

117. "Suspension of work" clause [5GCA § 5306(a)(3); 2 GAR, Div. 4 § 5106(5)]

118. "Differing site conditions" clause [5GCA § 5306(a)(4); 2 GAR, Div. 4 § 5106(6)] [*Note: 2 GAR, Div. 4 § 5106(6) contains two alternative clauses.*]

119. "Price adjustment" clause [5GCA § 5306(b); 2 GAR, Div. 4 § 5106(7)]

120. "Claims based on government's acts or omissions" clause [5GCA § 5306(a); 2 GAR, Div. 4 § 5106(8)]

121. "Termination for default for non-performance or delay; damages for delay; time extension" clause [5GCA § 5306(c); 2 GAR, Div. 4 § 5106(9)]

122. "Liquidated damages" clause [5GCA § 5306(c); 2 GAR, Div. 4 § 5106(10)]

123. "Termination for convenience" clause [5GCA § 5306(c); 2 GAR, Div. 4 § 5106(11)]

124. "Remedies" clause [5GCA § 5306(a); 2 GAR, Div. 4 § 5106(12)]

125. Items 117 through 124 are mandatory provisions for construction contracts, and the procurement regulations contain the provisions which must be used verbatim. The provision for item 116 is also found in the procurement regulations and must be used verbatim if the provision is applicable. Deviations from these provisions as found in the regulations cannot be used routinely but only in particular contracts, and require a written determination



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yes no n/a

to support the modification. Were any deviations made? [5GCA § 5306(d);
2 GAR, Div. 4 §§ 5106(1) and (2)]

126. Regarding item 125, if there is a deviation from a mandatory contract clause is there a written determination to support each deviation? [5GCA § 5306(d); 2 GAR, Div. 4 §§ 5106(2)]
127. Is there a change order clause in the contract giving the government the unilateral right to change work or time of performance? [5GCA § 5306(a)]
[Note: The regulations do not contain a change order clause to be used verbatim.]
128. If matter to be procured includes concrete or asphalt paving, construction or repair of highways, does contract include provision stating suitable percentage of recycled glass to be used in project as condition of award; and require contractor to identify and certify in writing the percentage of recycled glass contained in the material offered? [5GCA § 5218]

CONTRACT CLAUSES FOR NON-CONSTRUCTION CONTRACTS

129 -137. The following are contract clauses for supplies and services, and should be used only if the subject matter is applicable. If applicable, the clause in the regulation is to be used verbatim unless the provisions of the regulations at 2 GAR, Div. 4 §6101(2) are followed [5GCA § 5350 (a) and (c); 2 GAR, Div. 4 § 6101(2)].

129. "Changes" clause [2 GAR, Div. 4 § 6101(3)(a)]
130. "Stop work order" clause [2 GAR, Div. 4 § 6101(4)(c)]
131. "Variation in quantity" clause for definite quantity contracts [2 GAR, Div. 4 § 6101(5)(a)]
132. "Price adjustment" clause [2 GAR, Div. 4 § 6101(6)]
133. "Claims based on government's actions or omissions" clause [2 GAR, Div. 4 § 6101(7) referring one to 2 GAR, Div. 4 § 5106(8)]
134. "Termination for default" clause [2 GAR, Div. 4 § 6101(8)]



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yes no n/a

135. "Liquidated damages" clause [2 GAR, Div. 4 § 6101(9) (a); see also 2 GAR, Div. 4 § 6101(9)(b)]
136. "Termination for convenience" clause [2 GAR, Div. 4 § 6101(10)]
137. "Remedies" clause [2 GAR, Div. 4 § 6101(12) referring one to 2 GAR, Div. 4 § 5106(12)]
138. With respect to items 129 through 137, if the clauses were applicable, but not quoted in the contract verbatim from the rule, then was a written determination made to justify each deviation? [5GCA § 5350(d); 2 GAR, Div. 4 § 6101(2)]
139. If Certificate of Current Cost or Pricing Data was required of winning bidder, then does contract state the government's right to a reduction in price? [2 GAR, Div. 4 §§ 3118(e)(3) and 3118(f)(1).]
140. If horticulture products are being procured, does the contract require that 75% will be native grown or grown-in-Guam? [5GCA § 5008.1]
141. If matter being procured includes concrete or asphalt paving, construction or repair of highways, does the contract provide for the contractor to comply with the required percentage of recycled glass contained in the material to be provided. [5 GCA § 5218]
142. If your answer to # 10, above, is "yes," have you applied all applicable laws and regulations to the development and award of the contract?

CERTIFICATION

I am the undersigned Special Assistant Attorney General for this procurement, and I certify that I have done due diligence in reviewing this procurement with respect to the foregoing requirements and any other legal requirements not listed, and to the best of my knowledge, all laws and regulations have been followed for this procurement.

Signature



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yes no n/a

Date: _____

SAMPLE





OFFICE OF THE ATTORNEY GENERAL OF GUAM

590 S. Marine Corps Drive, Suite 901, Tamuning, Guam 96913

♦ Phone: 671.475.3324 extension 5015 ♦ Fax 671.477.4703 ♦ Email

law@guamag.org

GOVERNMENT OF GUAM
RETIREMENT FUND

APR 12 2022

Hon. Leevin Taitano Camacho
Attorney General of Guam

RECEIVED
DIRECTOR'S OFFICE

PROCUREMENT REVIEW CHECKLIST FOR REQUEST FOR PROPOSALS (RFP)

April 12, 2022

AG Reference No.: Enter PCF # Here.

Special Assistant Attorney General: Enter Agency Attorney's Name Here.

Agency: Enter Requesting Agency's Name Here.

Project /RFP No.: Enter Project Number and/or RFP No. Here.

Description of Procurement: Enter Description Provided by Agency on Notification of

Procurement (form 012) Submitted to OAG.

Instructions: For each question or item below, please answer "yes," "no," or "not applicable" ("n/a") by checking the appropriate box. Each question must be answered, or the checklist will be considered incomplete and returned to you for completion. In some cases, a short answer is required in addition to checking one of the boxes. Please provide an answer in the space provided. Some questions or items below are also accompanied by notes or special instructions. Please read them carefully and respond accordingly. Please note that if an item is required by a law, or based on one, the applicable law is cited. "L" refers to sections from 5 GCA (the Guam Procurement Law); "R" refers to sections from 2 GAR Div. 4 (the Guam Procurement Regulations).

When you have completed the procurement and the checklist, please sign and date the certification, and submit the certified checklist to the Attorney General's Office.

This checklist covers the basic essentials of an RFP type of procurement. However, depending upon the circumstances, other requirements of the Guam Procurement Law and regulations may apply. In addition, federally funded acquisitions may be subject to federal requirements. You are responsible for ensuring that all legal requirements are followed, including any requirements not specifically addressed in this checklist.

The Attorney General's Office will conduct occasional audits of your agency's acquisitions which you are handling as a Special Assistant Attorney General pursuant to 5 GCA § 5150. Please have the procurement record ready for audit at all times. The procurement record should be complete, organized, without multiple numbers of the same documents, and bound in some manner so that there are no loose papers. If we audit a record, and find that it is unorganized, or contains unnecessary duplications, or loose papers, we will return it to you for restructuring into an acceptable form.



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yes no n/a

INITIAL QUESTIONS

- 1. Is there a record of planning for this procurement? [5GCA §5010; 2 GAR, Div. 4 §1102.03]
- 2. Is there a record of the requesting agency's determination of need? [5 GCA § 5249(e)]
- 3. Is this procurement mandated by statute? If so, cite: _____

- 4. Are the services to be acquired for accountants, physicians, lawyers, dentists, licensed nurses, other licensed health professionals, or other professionals? [5 GCA §5216; 2 GAR, Div. 4 §3114(c)(1)]
- 4.1. If the answer to #4 is "yes," has a written determination been made in support?
- 5. Has a reasonable inquiry been conducted with the appropriate personnel department regarding the availability of personnel to perform the services required? [2 GAR, Div. 4 §3114(c)(2)]
- 5.1. If the answer to # 5 is "yes," has it been confirmed that the government does not have the personnel or resources to perform the services?
- 5.2. If the answers to ##'s 5 and 5.1 are "yes," has a written determination been made in support?
- 6. Has a written determination been made of the nature of the relationship to be established between the government and the contractor? [2 GAR, Div. 4 §3114(c)(3)]
- 7. Has a written plan for utilizing the services been developed? [2 GAR, Div. 4 §3114(c)(4)]

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400 33

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yes no n/a

 7.1. Has a written determination been made that the using agency intends to implement the written plan for utilizing the services and include it in the contractual statement of work?

 8. Are there laws or regulations applicable to this procurement by virtue of this agency's enabling legislation or the requirements imposed by the funding source?

If the answer to # 8 is "yes," list the applicable laws and regulations here:

REQUIREMENTS FOR ALL SOLICITATIONS

 9. Does RFP advise of disclosure of major shareholders? [5GCA §5233]

 9.1. Is affidavit form (AG Procurement Form 002) attached to RFP?

 10. Does RFP advise that submission of price proposal is a certification by offeror that price was independently arrived at without collusion? [2 GAR, Div. 4 §3126(b)]

 10.1. Is affidavit form (AG Procurement Form 003) attached to RFP?

 11. Does solicitation conspicuously state prohibition against gratuities and kickbacks? [5GCA §5630(c); 2 GAR, Div. 4 §§11107(3) and 11107(4)(e)]

 11.1. Is affidavit form (AG Procurement Form 004) attached to RFP?

 11.2. If proposed form of contract is attached to RFP, then prohibition must be stated in proposed contract. Is the prohibition stated? [Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to RFP. If a proposed form is not attached, then your answer is "not applicable".]

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yes no n/a

12. Does solicitation conspicuously state prohibition against contingent fees and retention of persons to secure contract? [5GCA §5631(c); 2 GAR, Div. 4 §§11108(a)(3), 11108(f), and 11108(h)]
- 12.1. Is affidavit form (AG Procurement Form 007) attached to RFP?
- 12.2. If proposed form of contract attached to RFP, then prohibition must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to RFP. If a proposed form is not attached, then your answer is "not applicable".]*
13. Does RFP conspicuously state ethical standards? [2 GAR, Div. 4 §11103(b)]
- 13.1. Is affidavit form (AG Procurement Form 005) attached to RFP?
- 13.2. If proposed form of contract attached to RFP, then ethical standards must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to RFP. If a proposed form is not attached, then your answer is "not applicable".]*
14. Does RFP advise that solicitation for proposals may be cancelled as provided for in the regulations? [5GCA §5225; 2 GAR, Div. 4 §3115(c)]
15. Does RFP advise that any bid may be rejected in whole or in part in the best interest of territory as provided in the regulations? [2 GAR, Div. 4 § 3115(e) (2)]
16. Does RFP recite prohibition against employment of sex offenders? [5GCA §5253(c)]
- 16.1. If proposed form of contract attached to RFP, then prohibition must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to RFP. If a proposed form is not attached, then your answer is "not applicable".]*



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yes no n/a

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17. Does RFP recite wage and benefits determination requirement? [5GCA §5211(b); see also 5 GCA §§ 5801 and 5802]
- 17.1. Is the most recent applicable USDOL wage and benefits determination attached to RFP?
- 17.2. Is declaration form (AG Procurement Form 006) attached to RFP?
18. Does RFP specifically provide for multiple or alternate bids?
- 18.1. If answer is no, then does solicitation state that multiple or alternate bids will be rejected. [2 GAR, Div. 4 §§ 3102(d)]
19. If contract will be for more than one year, does RFP state:
- 19.1. Contract term and conditions of renewal or extension? [5GCA §5237(a); 2 GAR, Div. 4 §§ 3121(e)]
- 19.2. The amount of services required for the proposed contract period? [2 GAR, Div. 4 §3121(e) (1) (A)]
- 19.3. That contract will be cancelled only if funds not appropriated or are insufficient? [2 GAR, Div. 4 §3121(e)(1)(C)]
- 19.4. That, if contract cancelled for lack of funds, government will timely inform contractor; but that neither party's rights under termination clause are affected? [2 GAR, Div. 4 §3121(e)(1)(C) and (D)]
- 19.5. How award will be determined? [2 GAR, Div. 4 §3121(e) (1) (F)]
- 19.6. That, if contract cancelled, contractor will be reimbursed unamortized reasonably incurred non-recurring costs? [2 GAR, Div. 4 §3121(e) (1) (G)]
20. If contract will be for more than one year was a written determination made citing relevant factors? [5 GCA §5237(b); 2 Gar, Div. 4 §3121(d)]
[Note: See regulation for relevant factors in making determination.]



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yes no n/a

20.1. List relevant factors found in written determination:

21. If contract is to have an option for renewal or extension, is notice of this provision included in the RFP? [2 GAR, Div. 4 §3119(k)(1)]

SCOPE OF WORK (SPECIFICATIONS)

22. Were specifications reviewed to confirm that they include only essential functions to meet government's needs? [5GCA §5268(a); 2 GAR, Div. 4 §4102(a)]

23. Were specification reviewed to confirm that they are not unduly restrictive? [5 GCA §§5265]

24. Is it true that the specifications do not contain features peculiar to services of only one service provider, or have the effect of requiring a sole source procurement? [5GCA §5268(b); 2 GAR, Div. 4 §§4106 (a) and 4102(a)(3)]

- 24.1. If answer is "no," is there a written determination that it is not practicable to use a less restrictive specification, or that peculiar features are essential, stating reasons why similar services without these features do not meet minimum requirements? [5GCA §5268(b); 2 GAR, Div. 4 § 4106(a)]

25. Do specifications describe salient technical requirements or desired performance without restrictions which do not affect requirements or performance? [5GCA §5268(c); 2 GAR, Div. 4 §§4102(a) (2) and 4109(c)]

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yes no n/a

26. Do specifications permit maximum practicable competition? [5 GCA §5265; 2 GAR, Div. 4 §4102(a) (1)]

REQUIREMENTS AND CRITERIA

27. Does the RFP set forth, prior to publication, all of the requirements and criteria that will be used to determine the best qualified, responsive offeror? [5 GCA §5216(e)]

RFP DOCUMENT REQUIREMENTS

28. - 36.6. The following items are mandatory as required by 5GCA §5216(c) and/or 2 GAR, Div. 4 §3114 and must be stated in the RFP.

28. Description of type of services required [5 GCA §5216(c); 2 GAR, Div. 4 §3114(f)(1)(A)]
29. Description of work involved [2 GAR, Div. 4 §3114(f)(1)(B)]
30. Estimate of when and for how long the services will be required [2 GAR, Div. 4 §3114(f)(1)(C)]
31. Description of type of contract to be used [2 GAR, Div. 4 §3114(f)(1)(D)]
32. Date by which proposals shall be submitted [2 GAR, Div. 4 §3114(f)(1)(E)]
33. Statement that proposals shall be in writing [2 GAR, Div. 4 §3114(f)(1)(F)]
34. Statement that offerors must designate those portions of their proposal which contain trade secrets or other proprietary data which offerors want to keep confidential [2 GAR, Div. 4 §3114(f)(1)(G)]

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yes no n/a

35. Statement that the following is minimum information that proposals must contain:

- 35.1. Name of offeror, location of principal place of business, and place of performance. [2 GAR, Div. 4 § 3114(f)(1)(H)(i)]
- 35.2. If deemed relevant, age of offeror's business and average number of employees over a previous period of time as specified. [2 GAR, Div. 4 § 3114(f)(1)(H)(ii)]
- 35.3. Abilities, qualifications, and experience of all persons who would be assigned to provide required services. [2 GAR, Div. 4 § 3114(f)(1)(H)(iii)]
- 35.4. Listing of other contracts under which services similar in scope, size or discipline were performed [2 GAR, Div. 4 § 3114(f)(1)(H)(iv)]
- 35.5. Detailed plan for performance [2 GAR, Div. 4 § 3114(f)(1)(H)(v)]

36. Description of factors to be used in evaluation and selection process, and their importance, as follows: [2 GAR, Div. 4 § 3114(f)(1)(H)(vi)]

- 36.1. Quality of detailed plan for performance [2 GAR, Div. 4 § 3114(f)(2)(A)]
- 36.2. Ability to perform [2 GAR, Div. 4 § 3114(f)(2)(B)]
- 36.3. Personnel, equipment, and facilities to perform [2 GAR, Div. 4 § 3114(f)(2)(C)]
- 36.4. Record of past performance of similar work [2 GAR, Div. 4 § 3114(f)(2)(D)]
- 36.5. Other factors, as mentioned in RFP, briefly described:



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yes no n/a

- 36.6. Is the relative importance of each factor to be considered in evaluating proposals stated in an objective numerical fashion? [5 GCA §5216(c); 2 GAR, Div. 4 §§3114(f)(2) and 3114(j)]
37. If your answer to # 8, above, is "yes," have you applied all applicable laws and regulations to the development and formulation of the RFP?

PUBLIC NOTICE AND DISTRIBUTION OF RFP

38. Was notice of RFP mailed, published, or otherwise furnished to prospective offerors at least ten days before due date? [5GCA §5216(c); 2 GAR, Div. 4 §3114(e) and 3109(f)(2)]
39. If the procurement is for greater than \$25,000, was notice of RFP published at least ten days before due date in a newspaper of general circulation on Guam, in a newspaper of local circulation in area pertinent to the procurement, in industry media, or in a government publication designed for public notices? [2 GAR, Div. 4 §§ 3114(e) and 3109(f) (2)]

39.1. Describe means of publication: _____

40. Was the RFP or Notice of the Availability of RFP mailed or otherwise furnished to a sufficient number of potential bidders in order to secure competition? [2 GAR, Div. 4 §3109(f) (1) as applicable by §3114(e)]
41. Was RFP package made publicly available for inspection at the office of the Procurement Officer? [2 GAR, Div. 4 §3109(f)(3) as applicable by §3114(e)]
42. Was RFP also distributed to persons interested in performing, if such persons are known to be interested? [2 GAR, Div. 4 §3114(e)]
43. Was register or log of distribution of RFP kept?



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yes no n/a

44. Given the nature of the service to be acquired, and of the market place, was adequate notice of the need for these services given by the purchasing agency? [5 GCA §5216(c)]

PRE-PROPOSAL CONFERENCE AND QUESTIONS

45. Was pre-proposal conference conducted? [2 GAR, Div. 4 §3114(g) and 2 GAR, Div. 4 § 3109(g)(4) [editor's note: this section apparently should have been numbered 3109(h), as it is referred to in §3114(g)]]
46. Was time, date and place announced to all prospective offerors?
47. Was summary or minutes of conference prepared?
48. Was summary or minutes of conference distributed to all prospective offerors?
49. Were questions received from any prospective offeror?
50. If answer to #49 was "yes," were written answers provided to each prospective offeror who picked up an RFP package?

AMENDMENTS TO RFP

51. Were any amendments or addenda to the RFP issued? [see 2 GAR, Div. 4 §3109(i)]
52. How many amendments or addenda were issued? _____
53. Was each amendment or addenda distributed to or served on all prospective offerors who received an RFP?
54. Was proof of distribution or service kept in the form of a register or log of distribution?

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yes no n/a

55. Was proof of service kept in the form of some other documentation? [see 2 GAR, Div. 4 §3109 (i) (2)]. If "yes," please identify form of documentation:

RECEIPT AND OPENING OF PROPOSALS

56. Was register of proposals received kept? [2 GAR, Div. 4 §3114 (h) (1)]
57. Was each proposal time-stamped and dated? [2 GAR, Div. 4 §3114 (h) (1)]
59. Were the offerors of late proposals notified that their proposal would not be considered? [see 2 GAR, Div. 4 §3109 (k) (3)]
60. Were proposals opened privately in the presence of two or more procurement officials? [2 GAR, Div. 4 §3114 (h) (1)]
61. Were proposals kept in a secure place until established due date? [2 GAR, Div. 4 §3114 (h) (1)]
62. Were the contents of proposals disclosed to any unauthorized persons? [2 GAR, Div. 4 §3114 (h) (1)]

DISCUSSIONS, EVALUATIONS AND SELECTION OF BEST QUALIFIED OFFEROR

63. Were discussions held with any offeror? [5GCA §5216(d), and 2 GAR, Div. 4 §3114(i) (1)]
64. If answer to #63 was "yes," was care taken that information from other proposals was not disclosed to the offeror with whom discussions were being held? [2 GAR, Div. 4 §3114(i) (2)]
65. As a result of discussions, did any offeror decide to modify or withdraw its proposal? [2 GAR, Div. 4 §3114 (i) (3)]



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yes no n/a

66. If any proposals were modified, was a log of modifications kept? [2 GAR, Div. 4 §3114(h) (1)]
67. Were proposals evaluated and ranked, and were the top three offerors designated? [2 GAR, Div. 4 §3114(j)]
68. Were the factors and process used in evaluating proposals consistent with RFP? [5GCA §5216(e); 2 GAR, Div. 4 §3114(j)]
69. Were any proposals rejected because the offeror was found to be non-responsible? [2 GAR, Div. 4 §3115(e)(3) (B)]
70. Were any proposals rejected because the proposal ultimately failed to meet announced requirements? [2 GAR, Div. 4 §3115(e) (3) (B)]
71. Were any proposals rejected because the price is clearly unreasonable? [2 GAR, Div. 4 §3115(e) (3) (B)]
- 71.1. If the answer to # 69, #70 or #71 was "yes," was a written determination prepared for each rejection? [2 GAR, Div. 4 §3115(d)(3), 3116(a), and 3116(b)(5)]
- 71.2. If the answer to # 69, #70 or #71 was "yes," was each unsuccessful offeror notified in writing about the rejection and reasons? [see 2 GAR, Div. 4 §§3115(e)(4), and 3116(b)(5)]
72. After the top three offerors were designated, were all offerors given written notice of their proposal's status?
73. Was best qualified offeror asked to submit cost or pricing data for negotiations to begin? [2 GAR, Div. 4 §3114(k)]
74. Has best qualified offeror requested in writing non-disclosure of trade secrets and proprietary data? [2 GAR, Div. 4 §3114(h)(2)]
- 74.1. If the answer to # 74 is "yes," has procurement officer examined designated material to validate request for nondisclosure?

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yes no n/a

- 74.1.1. If the answer to #74.1 is "yes," has procurement officer agreed with the request of offeror claiming confidentiality?
- 74.1.2. If the procurement officer does not agree with the request of the offeror, is there a record that the offeror was informed in writing of decision, the effect of decision, and of appeal rights?

NEGOTIATIONS AND AWARD

75. Were negotiations with the best qualified offeror successful, and were all terms and price agreed to?
76. Were contract negotiations directed toward: [2 GAR, Div. 4 §§3114 (1) (2) and (3)]
- 76.1. Assuring offeror has clear understanding of scope of work, including essential requirements to providing required services?
- 76.2. Determining offeror will make necessary personnel and facilities available?
- 76.3. Agreeing upon compensation that is fair and reasonable by taking account of value, scope, complexity and nature of required services?
- 76.4. Agreeing upon contract requirements and documents?
77. Is there a written determination that negotiated price is fair and reasonable? [5GCA §5216(e) and 2 GAR, Div. 4 §3114(l)(1)]
78. Is negotiated price sufficient to comply with the wage and benefit requirements of 5 GCA §§ 5801 and 5802? [5GCA §5211(g)]
79. If negotiations with best qualified offeror were not successful, was such offeror advised immediately that negotiations were being terminated? [2 GAR, Div. 4 §3114(l) (4) (A)]



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yes no n/a

80. Regarding #79, was written confirmation of the termination of negotiations given within three days of the verbal notice? [2 GAR, Div. 4 §3114(l) (4) (A)]
81. Was written record kept of reasons why negotiations failed? [2 GAR, Div. 4 §3114(l) (4) (A)]
82. At conclusion of successful negotiations, was memorandum of evaluations and negotiations prepared setting forth basis for award, to specifically include 1) how evaluation factors were applied to determine best qualified offers, and 2) principle elements of negotiation and significant considerations of price and terms? [2 GAR, Div. 4 §3114(m)]
83. Was written notice of award made? [2 GAR, Div. 4 §3114(l) (5)]
84. If your answer to # 8, above, is "yes," have you applied all applicable laws and regulations to the receipt and handling of proposals, and to the evaluation and negotiation of an agreement in this acquisition ?

MANDATORY REQUIREMENTS FOR ALL CONTRACTS

85. Did the procurement officer certify in writing and under penalty of perjury that a complete procurement record exists before award was made? [5GCA §5250; 2 GAR, Div. 4 §3130] The certification should be in the following form or in substantially similar language:

"CERTIFICATION: Pursuant to 5 G.C.A. §5250, I hereby certify under penalty of perjury that I am the procurement officer responsible for administering the solicitation of the attached contract, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law."

86. Identify contract type by checking one [2 GAR, Div. 4 §3119]:

- _____ fixed price contract - firm fixed price
- _____ fixed price contract - with price adjustment
- _____ cost-reimbursement - cost contract



Enter Date Here

Agency: Enter Requesting Agency's Name Here.

Ref No.: Enter PCF No. Here.

Description of Procurement: Enter Description Provided by Agency on Notification of Procurement (form 012).

Project or RFP No.: Enter Project and/or RFP No. Here.

yes no n/a

_____ cost reimbursement - cost-plus-fixed fee contract

_____ cost incentive contract - fixed-price cost incentive

_____ cost incentive contract - cost-reimbursement contract with cost incentive fee

_____ performance incentive contract

_____ time and materials contract - time and materials contract

_____ time and materials contract - labor hour contract

_____ lease

_____ other: _____

87. For contracts which are not firm fixed price, has a written determination been made that the contractor's accounting system is adequate to allocate costs and will permit timely development of all cost data? [5GCA §5236; 2 GAR, Div. 4 §3119(e)(2)]
88. Can an assurance be made that contract is not a "cost-plus-a-percentage-of-cost" contract? [5GCA §5235; 2 GAR, Div. 4 §3119(b)]
89. If this is a cost-reimbursement contract, then has a written determination been made that the contract is likely to be less costly than other types of contracts, and meets further conditions set out at 2 GAR, Div. 4 § 3119(e)(2)? [5GCA §5235]
90. Does the contract conspicuously state the prohibition against gratuities and kickbacks? [5GCA §5630(c); 2 GAR, Div. 4 §11107(3)]
91. Does the contract conspicuously state contractor's representation that contractor has not retained a person to solicit or secure contract, or paid a contingent fees, commissions, or brokerage fees? [5GCA §5631(a); 2 GAR, Div. 4 §11108(a)(3)]

///



Enter Date Here

Agency: Enter Requesting Agency's Name Here.

Ref No.: Enter PCF No. Here.

Description of Procurement: Enter Description Provided by Agency on Notification of Procurement (form 012).

Project or RFP No.: Enter Project and/or RFP No. Here.

yes no n/a

92. Does contract conspicuously state ethical standard? [2 GAR, Div. 4 §11103(b)]
93. Does contract recite prohibition against employment of sex offenders? [5GCA §5253]
94. If contract is for multiple years, does contract state exactly the same term provision and renewal provision that were stated in the RFP? [5GCA §5237(a)]
95. For multi-year contracts, are funds available for the first year at time of contracting? [5GCA §5237(a)]
96. For multi-year service contract, and/or service contract with renewal clause, is there a stipulation to apply the Wage and Benefits Determination for Guam promulgated by the U.S. Department of Labor on a date most recent to the renewal date? [5GCA §§5801, 5802]
97. If the contract is not a firm fixed price contract, does the contract state that the contractor shall maintain its books and records for three years from the date of final payment, and that this provision must be included in subcontracts? [5GCA §5241; 2 GAR, Div. 4 §3124]
98. If cost or pricing data was required, then does contract include provision that government may, at reasonable times and places, audit books and records relative to cost or pricing data, and that contractor shall maintain such records and books for three years from date of final payment? [5GCA §5241; 2 GAR, Div. 4 §3124]
99. A Disputes Clause is mandated in each contract by 2 GAR, Div. 4 §9103(g). The language proposed by §9103(g) is not adequate in light of the amendment to the procurement law by P.L.28-068:IV:68 [codified at 5 GCA §5427(e)] providing for an administrative appeal to the Public Auditor, and in light of *Pacific Rock v. Department of Education*, 2001 Guam 21, confirming that disputes for money owed to or from the government of Guam are to be resolved pursuant to the Government Claims Act. Representatives of government agencies should contact the Office of the Attorney General at paag@guamag.org for assistance and guidance.



Enter Date Here

Agency: Enter Requesting Agency's Name Here.

Ref No.: Enter PCF No. Here.

Description of Procurement: Enter Description Provided by Agency on Notification of Procurement (form 012).

Project or RFP No.: Enter Project and/or RFP No. Here.

yes no n/a

CONTRACT CLAUSES

100. Does the contractual statement of work implement the written plan for utilizing the services prepared at the initiation of this acquisition? [2 GAR, Div. 4 §3114(c) (4)]

101 - 109. The following are contract clauses that should be used only if the subject matter is applicable. If applicable, the clause in the regulation is to be used verbatim unless the provisions of the regulations at 2 GAR, Div. 4 §6101(2) are followed. [5GCA § 5350 (a) and (c); 2 GAR, Div. 4 § 6101(2)]:

101. "Changes" clause [2 GAR, Div. 4 §6101(3)(a)]
102. "Stop work order" clause [R-6101(4)(c)]
103. "Variation in quantity" clause for definite quantity contracts [2 GAR, Div. 4 §6101(5)(a)]
104. "Price adjustment" clause [2 GAR, Div. 4 §6101(6)]
105. "Claims based on government's actions or omissions" clause [2 GAR, Div. 4 §6101(7); referring one to 2 GAR, Div. 4 § 5106(8)]
106. "Termination for default" clause [2 GAR, Div. 4 §6101(8)]
107. "Liquidated damages" clause [2 GAR, Div. 4 §6101(9)(a); see also 2 GAR, Div. 4 §6101(9)(b)]
108. "Termination for convenience" clause [2 GAR, Div. 4 §6101(10)]
109. "Remedies" clause [2 GAR, Div. 4 §6101(12); referring one to 2 GAR, Div. 4 §5106(12)]
110. With respect to items 101 through 109, if the clauses were applicable, but not quoted in the contract verbatim from the rule, then was a written determination made to justify each deviation? [5GCA §5350(d); 2 GAR, Div. 4 §6101(2)]

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Enter Date Here
Agency: Enter Requesting Agency's Name Here.
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Procurement (form 012).
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yes no n/a

MISCELLANEOUS

111. If for legal services, has the AG's approval been obtained? [5GCA §5121(b) and 2 GAR, Div. 4 §3114 (n)]
112. If your answer to # 8, above, is "yes," have you applied all applicable laws and regulations to the development and award of the contract?

CERTIFICATION

I am the undersigned Special Assistant Attorney General for this procurement, and I certify that I have done due diligence in reviewing this procurement with respect to the foregoing requirements and any other legal requirements not listed, and to the best of my knowledge, all laws and regulations have been followed for this procurement.

Signature

Date: _____



John M. Weisenberger
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

**GOVERNMENT OF GUAM
RETIREMENT FUND**

Office of the Attorney General

APR 12 2022

**RECEIVED
DIRECTOR'S OFFICE**

September 9, 2010

MEMORANDUM

TO: All Special Assistant Attorneys General for Procurement over \$500,000

FROM: Deputy Attorney General, Civil Division

SUBJECT: Further Instructions for Filling Out Procurement Checklists

This is to instruct and clarify that the original checklist we issue to you for a specific procurement with your name on it, is the checklist that you must submit to us at the end of the process.

We will not be accepting any re-typed versions of the checklists for two reasons. First, we are unable to review re-typed checklists to ensure that they state word-for-word everything in the original, and second, we are developing templates for reviewing filled out checklists adapted to our checklists's formatting.

If there is any need to provide additional information that does not fit on the original checklist, please use a separate sheet or sheets of paper identifying the question number for which you are providing the additional information, and firmly attach the sheet or sheets of paper to the original checklist. Thank you.


J. PATRICK MASON
Deputy Attorney General

AG Procurement Form 013 (Sep. 9, 2010)

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

Office of the Attorney General

GOVERNMENT OF GUAM
RETIREMENT FUND

APR 12 2022

December 13, 2011

RECEIVED
DIRECTOR'S OFFICE

PROCUREMENT CIRCULAR NO. 2011-01

TO: All Government of Guam Agencies

FROM: Attorney General of Guam

SUBJECT: Announcement of New AG Procurement Form 014 to Identify Estimated Cost of Procurement as Being \$500,000 or More, or Less than \$500,000, and Compliance with 5 GCA § 5150; Guidelines for Use

Attached is new AG Procurement Form 014 entitled "Declaration re Compliance with 5 GCA § 5150" (hereinafter "Form 014") to assist government of Guam agencies in deciding when to engage our Office's assistance based on the estimated cost of a procurement, and to inform agencies of their responsibilities relative to 5 GCA § 5150. As you know, § 5150 requires our Office to assist all government agencies, both line agencies and autonomous, "during all phases of the solicitation or procurement process" if the cost of an acquisition is \$500,000 or more over the life of a contract or purchase order.

A failure to comply with 5 GCA § 5150 may result in serious adverse consequences including, but not limited to, procurement protests, protracted litigation, and additional financial liabilities for the agency.

To help you in your understanding of how § 5150 applies, the Attorney General's Office has determined that the procurement process essentially has four basic phases regardless of the type of procurement process employed. All of the basic four phases have sub-phases, and each sub-phase may require our Office's involvement as well. Some of the important sub-phases are listed below, but the list of sub-phases is not exhaustive, nor will the listed sub-phases necessarily apply to each and every procurement:

- (a) The Planning and Drafting Phase: from the time the need is identified and the procurement is conceived, to the time the procurement documents are drafted and finalized, and a package put together and ready for issuance;
- (b) The Solicitation and Bidding Phase: from official issuance and announcement of the procurement, to the date and time that bids or proposals are due and received:
 - the official issuance of the procurement documents and package;
 - the publication of notice;
 - the handling of any amendments to procurement;
 - the handling of questions and answers;

PROCUREMENT CIRCULAR NO. 2011-01

To: All Government of Guam Agencies

December 13, 2011

Page -2-

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- the handling of any pre-bid or pre-proposal conference;
 - the receipt of bids or proposals;
- (c) The Evaluations and Negotiations Phase: from the time bids or proposals are opened, to the time right before the decision to make an award:
- the opening of bids or proposals;
 - checking bids or proposals for responsiveness;
 - evaluating bids or proposals;
 - conducting discussions with offerors;
 - in the case of offerors, negotiating with the best qualified;
- (d) The Decision to Award and Contract Signing Phase: from the time a decision is made to make an award to the lowest bidder or a decision is made that negotiations with the best qualified offeror have been successful, to the time a purchase order is issued or a formal contract is drafted, issued and signed by all signatories.

Please note that § 5150 applies to sole source procurement and emergency procurement as well. These two types of procurement processes may also be broken down into the four basic phases described above.

The following are the guidelines which should be used in filling out Form 014:

1. Form 014 must be filled out during a procurement's initial planning stage and before any procurement is publicly announced or officially issued.
2. Form 014 applies to all procurement processes, except small purchases. Please use Form 014 for competitive sealed bids, requests for proposals, sole source procurement, or emergency procurement.
3. Form 014 must be certified and signed under penalty of perjury by the person who is the procurement officer for the agency. For the General Services Agency, it is the Chief Procurement Officer. For the Department of Public Works, it is the Director. For a purchasing agency or autonomous agency, it is the director or other head of the agency.
4. After filling out Form 014, it becomes a part of the procurement record. Please keep it with the procurement record at all times. If the Attorney General and Governor are required to approve your agency's contracts and the procurement cost is less than \$500,000, please submit Form 014 with the contract and procurement record to the Attorney General at the time the Attorney General reviews the contract and procurement.

PROCUREMENT CIRCULAR NO. 2011-01

To: All Government of Guam Agencies

December 13, 2011

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If you have any questions regarding this circular, please contact the Civil Division at 475-3324, extension 130.



LEONARDO M. RAPADAS
Attorney General

cc: Governor of Guam
Governor's Chief of Staff
Governor's Legal Counsel
Director, Department of Administration
Chief Procurement Officer, General Services Agency
Director, Department of Public Works

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

GOVERNMENT OF GUAM
RETIREMENT FUND

Office of the Attorney General

APR 12 2022

May 7, 2012

RECEIVED
DIRECTOR'S OFFICE

PROCUREMENT CIRCULAR NO. 2012-01

Ref: AG 12-0434

TO: All Government of Guam Agencies
FROM: Attorney General of Guam
SUBJECT: AG Procurement Form 001, Certification of Completed Procurement Record

Announcement

Attached is a copy of AG Procurement Form 001 re-titled "Certification of Completed Procurement Record" with a revision date of May 7, 2012. The Certification is required by 5 GCA § 5250. Form 001 and all other AG Procurement Forms are available at www.guamattorneygeneral.com/procurement.html.

Effective Date

The revised form is effective as of the date of this memorandum. Please discontinue using Form 001 dated January 10, 2008, and immediately begin using Form 001 dated May 7, 2012.

Who Should Use Form 001

If a government agency has made an acquisition using either the request for proposal (RFP) method or the invitation for bid (IFB) method (or the IFB hybrid multi-step procedure), and the solicitation has resulted in a contract which the agency is required to submit to the Attorney General for approval, then the agency must use Form 001 and follow its instructions. For those agencies that are not required to submit their contracts to the Attorney General, we only suggest that Form 001 be used, and its instructions followed, as a matter of "best practice." If the procurement conducted is an emergency, sole source, or small purchase, then the checklist shown on Form 001 does not apply.¹

Explanation of Revisions and Guidelines for Use

The revision of the title (from "Checklist for Attorney General Review of Contracts" to "Certification of Completed Procurement Record") was done predominantly to clarify that Form 001 is a certification of the existence of a complete procurement record for the acquisition identified on the form, and to avoid confusion with the purposes of other procurement forms issued by the Attorney General's Office.

¹ However, please note that the certification required by 5 GCA § 5250 is mandatory for all procurement, regardless of method or procedure used and whether or not a formal contract results. A written certification similar to the one that appears on Form 001 should be prepared if a small purchase, sole source or emergency procurement was conducted.

PROCUREMENT CIRCULAR NO. 2012-01

To: All Government of Guam Agencies

May 7, 2012

Page -2-

The procurement officer, who is always the director or other head of an agency, is responsible for causing to be prepared, and for maintaining, a complete record of the procurement. The certification language found at the bottom of Form 001 should be signed by the procurement officer. The law at 5 GCA § 5250 requires a written certification, made under penalty of perjury, that a record is full and complete, and that the record contains every item required by law. Because it is made under penalty of perjury, the statement should not be signed unless the procurement officer has ascertained that a full and complete record has actually been kept, and unless the procurement officer understands the statement to be true and accurate.

The revisions to Form 001 also clarify that the checklist is being made available to assist the procurement officer and his or her procurement administrators in the process of compiling a full and complete record of the procurement. The checklist should be used as a guide to the creation and compilation of a complete and accurate procurement record whenever an agency submits a contract to the Attorney General's Office. The 21 items appearing on the checklist are listed in relatively the same order that they would occur chronologically.² Generally, all 21 items should be checked, except where otherwise noted.

Finally, the instructions at the top of Form 001 were revised to reflect that the procurement record should be kept organized in the same order found as the 21 items appearing on the checklist, in a three-ring binder with visible tabs to separate the 21 items. If an agency is required to submit its contracts to the Attorney General for approval, then the agency must prepare its record as instructed or the agency's contract will not be reviewed. By complying with these instructions, an agency will create a better record that not only works for the agency, but works for anyone else who is required or wishes to review the record.

Contact for Questions

If you have any questions regarding this circular or revised Form 001, please contact the Civil Division of this Office at 475-3324, extension 3660, or send an email to a "procurement assistant attorney general" at paag@guamattorneygeneral.com.


LEONARDO M. RAPADAS
Attorney General

cc: Governor's Chief of Staff
Governor's Legal Counsel
Chief Procurement Officer, General Services Agency
Director, Department of Public Works

² The 21 items have not changed from the previous form, and remain exactly the same. Only the wording was slightly revised. Mainly, the abbreviation "IFB" is now used in lieu of "ITB" in the former version.

CERTIFICATION of COMPLETED PROCUREMENT RECORD

Instructions: After ascertaining the statement's accuracy and truthfulness, the agency's procurement officer (director or head of agency) must sign the Certification below to indicate that the agency has kept a complete procurement record of all documents required by law. The checklist below is provided to ensure that the record is complete, and must be filled out by the procurement officer or administrator. The checklist is comprised of every item that is required by law for an invitation for bid (IFB) or a request for proposal (RFP), and therefore every item, except as noted below, must be checked for the resulting contract to be considered legally sufficient. Please assemble the procurement record in the order stated below and place it in a three-ring binder, with visible tabs for each of the items below appearing in numerical order.

IFB/RFP No: _____ Contractor: _____

- 1. Published notice in newspaper of general circulation
- 2. Procurement package (IFB or RFP) issued to bidders or offerors
- 3. Log of distribution of procurement package
- 4. Amendments to IFB or RFP, if any were issued
- 5. Logs of distribution of amendments to IFB or RFP, but only if amendments were issued
- 6. Minutes or summary of pre-submission conferences, but only if conferences were held
- 7. Logs of attendees of pre-submission conferences, but only if conferences were held
- 8. Written questions from bidders or offerors, but only if any questions were received
- 9. Written answers, but only if any questions were received
- 10. Proof that written answers were provided to all potential bidders or offerors, but only if any questions were received
- 11. Log of bids or registry of proposals received
- 12. Each bid or proposal received
- 13. Evaluation of proposals or analysis of bids (bids are not required by law to be analyzed, but may be)
- 14. Tabulation of evaluations or analysis (tabulations are not required by law but recommended)
- 15. Letters to bidders concerning outcome of bid; for offerors, letters informing them of ranking and letter to best qualified offeror inviting negotiations
- 16. Memorandum of evaluations and negotiations (only required for RFP's)
- 17. Notice of intent to award
- 18. Any and all communications from or to anyone concerning any part of IFB or RFP
- 19. Contract, including all draft versions
- 20. Bid protests, if any, and responses thereto
- 21. Any determination required by law as may fit the circumstances

CERTIFICATION: Pursuant to 5 G.C.A. §5250, I hereby certify under penalty of perjury that I am the procurement officer responsible for administering the solicitation of the acquisition referenced above, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law.

Signature: _____

Print Name: _____ Date: _____



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning GU 96911

Phone: 671.475.3324 ext. 5015 ♦ Fax: 671.477.4703 ♦ email: ag@oagguamag.org

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Hon. Leevin Taitano Camacho
Attorney General of Guam

REQUEST FOR DOCUMENT SERVICE/DELIVERY/PICKUP

DATE: TUESDAY, APRIL 12, 2022 12:15 PM

DIVISION: Pros Litigation Solicitor CSED Family Consumer

Requested by: MARIA ANNA U. BLAS

Document Description:

Subpoena (DT) Summons Complaint NOH OAH OSC

OTHER: SAAG APPOINTMENT DESIGNATION FOR VINCENT C. CAMACHO

CASE NUMBER/CAPTION: RF 22-0140 NOT APPLICABLE

For FILING at: Judiciary Northern Court OPA Civ Service Comm

For Service after filing - LOCATION(S): _____

For DELIVERY/Stamped Received at: RETIREMENT FUND

For SERVICE: Dec of Service Required: Yes No

CANNOT be left at residence or place of business. Reason: _____

Subpoena OSC Attorney Request

For PICKUP at: _____

DEADLINE FOR DELIVERY OF SERVICE: TUESDAY, APRIL 12, 2022 SAME DAY DELIVERY REQUESTED

Service Address or Special Instructions:

PLEASE ENSURE THAT AGENCY RECEIVES EACH ITEM FLAGGED IN MY SAAG DESIGNATION PACKET.

AGENCY: RETIREMENT FUND