



Office of Public Accountability

Executive Summary of Guam Procurement Law and Regulations For Procurement Solicitation

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“The fundamental objective of government procurement is to provide departments and agencies with the goods and services they need to carry out their duties to the public efficiently and effectively. Those goods and services must be of the right quality and quantity at the lowest overall cost, and delivered and available on a timely basis. To these ends, the procurement process should involve as much competition as possible, to ensure that the opportunity to compete is open and fair to all who choose to do business with their government.” - OPA Report No. 11-12

Preface

The following is a general summary of Guam’s Procurement Laws and Regulations governing the authorized solicitation methods of Small Purchase, Sole Source Procurement, Emergency Procurement, Invitation for Bids (IFB), and Request for Proposals (RFP). This summary is organized by the amount of the solicitation into four general categories: \$1 to \$500, \$500 to \$25,000, \$500 to \$100,000 for Construction, and amounts in excess of \$25,000 for Supplies and Services and \$100,000 for Construction. It is not intended to be a comprehensive review of Guam Procurement Laws and Regulations nor is it intended to be any decision, determination, opinion, or other finding of the Guam Public Auditor, or the Office of Public Accountability (OPA). Instead, this summary is meant to serve as a guide for Guam’s Procurement practitioners who must carefully and comprehensively review Guam’s Procurement Law and Regulations to ensure their procurement actions are correct and based on proper authority.

SMALL PURCHASE PROCUREMENT

Small Purchases of \$500 or Less. General Services Agency’s (GSA) Standard Operating Procedures require a minimum of three (3) telephonic quotations. The names of the vendors, the salespeople providing the quote, and the date and amount of the price quotation must be recorded and kept in the procurement file. When three (3) telephonic quotations cannot be obtained, documentation stating what efforts were made to obtain the quotations must be recorded and kept in the procurement file. *Source: 5 G.C.A. §5213, 2 G.A.R., Div. 4, Chap. 3, §3111(e), and GSA Procedural Directive dated June 1, 1995*

Small Purchases between \$500 and \$25,000. The Regulations require no less than three (3) positive written quotations from businesses to be solicited. In practice, this means that Request for Quotations must be faxed, mailed, or emailed to at least three (3) vendors. Written quotations from vendors, which should include the vendor name, the vendor’s personnel authorized to submit the quotation, and the date and amount of each quotation, must be recorded and placed in the procurement file which shall be maintained as a public record. Awards shall be made to the lowest responsible and responsive bidder. Procurement under this section shall not be artificially divided to render a small purchase and avoid using other selection methods. *Source: 5 G.C.A. §5213, 2 G.A.R., Div. 4, Chap. 3, §§3111(b), (c), and (d), and GSA Procedural Directive dated June 1, 1995*

Small Purchases between \$500 and \$25,000 for the services of accountants, physicians, lawyers, dentists architects, engineers, land surveyors, and other professionals. Before contacting any person to perform the required services, the Procurement Officer shall examine any current statements of qualification on file with the Government of Guam (GovGuam).

Based on this examination, the Procurement Officer shall contact the most qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price within the aforementioned small purchase limits. If no current statements of qualifications for the required services are on file, or if the statements of qualifications on file are inadequate to determine the most qualified firm, technical proposals or statements of qualifications shall be solicited.

A minimum of three (3) firms shall be considered unless there are only one (1) or two (2) qualified firms. In the latter case, the Procurement Officer shall make a written determination justifying the consideration of only one (1) or two (2) firms. A price or fee shall not be solicited until the most qualified firm is chosen and only the most qualified firm will be requested to submit a price. If after negotiations, a fair and reasonable price cannot be agreed to, negotiations will be terminated from such firm and negotiations begun with the next most qualified firm. The process shall be continued until a contract can be negotiated at a fair and reasonable price. *Source: 2 G.A.R., Div. 4, Chap. 3, §3111(f)*

Public Law (P.L.) 34-35 was signed into law in August 2017 and amended the small purchases threshold from \$15,000 to \$25,000 for supplies and \$50,000 to \$100,000 for construction. However, the GARR has not yet been updated to reflect the change. P.L. 34-35 also requires the Chief Procurement Officer, the Director of the Department of Public Works, or head of an agency utilizing this section to submit a report to the Speaker of I Liheslaturan Guåhan monthly as to procurement exceeding Fifteen Thousand Dollars (\$15,000) for supplies and services, or exceeding Fifty Thousand Dollars (\$50,000) for construction.

Best Practice: OPA recommends obtaining three (3) positive written quotes and discourages the acceptance of “no quote” as a positive quote.

PUBLIC NOTICE OF IFBs AND RFPs

For purchases of \$25,000 or less, IFBs, RFPs, or notices of availability of IFBs or RFPs, shall be mailed or otherwise furnished to a sufficient number of potential bidders or offerors to secure competition.

For purchases in excess of \$25,000, IFBs or RFPs must be publicized at least once and at least seven (7) days prior to the final submission date of bids or proposals in:

- (A) A newspaper of general circulation on Guam; or
- (B) In a newspaper of local circulation in the area pertinent to the procurement; or
- (C) In industry media; or
- (D) In a Government Publication designed for giving Public Notices. Publication of IFBs or RFPs shall not be manipulated to place potential bidders or offerors at an unnecessary competitive disadvantage.

Source: 5 G.C.A. §5010, §5211(c), 2 G.A.R., Div. 4, Chap. 3, §§3109(f) and (q), 3114(e) and GSA Procedural Directive June 1, 1995

INVITATION FOR BIDS (IFB)

Competitive sealed bidding for goods, services, and construction

SOLICITATIONS OVER \$25,000 FOR SUPPLIES & SERVICES AND OVER \$100,000 FOR CONSTRUCTION

Competitive Sealed Bidding is the preferred method for the procurement of supplies, services, or construction. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(b)*

An **IFB** shall be issued and shall include:

- (A) The purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements that are not included in the purchase description
- (B) A recitation of the Wage Determination most recently issued by the U.S. Department of Labor.
- (C) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, address of the office to which bids are to be delivered, maximum time for bid acceptance by the purchasing agency, and any other special information.
- (D) The contract terms and conditions, including warranty and bonding, or other security requirements, as applicable.
- (E) When a bid guarantee is required, the IFB shall contain: (i) A statement that identifies details which will enable bidders to determine the amount of the bid guarantee, and (ii) A bid guarantee provision.
- (F) When a performance bond is required, the IFB shall contain the written determination.
- (G) When it incorporates other documents by reference, the IFB shall specify where such documents can be obtained.
- (H) The potential bidders' acknowledgement of the receipt of all amendments issued.
- (I) Statement that bid samples or descriptive literature should

not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any provision of the IFB.

(J) If the purchasing agency will hold a pre-bid conference, the IFB shall state that nothing stated in the conference shall change the IFB unless a written amendment is made to the IFB.

(K) The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder.

The IFB may also include the criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and will be considered in evaluation or award shall be objectively measurable, such as discounts, transportation costs, and total or lifecycle costs. *Source: 5 G.C.A. §5211(b) and (e), §5801, §5802, and 2 G.A.R., Div. 4, Chap. 3, §§3109(c)(2), (c)(3)(B), (c)(4), c(4)(D), (c)(5), (c)(6), (g)(4), (n)(1), (n)(3)*

Bidding time is the period of time between the date of distribution of the IFB and the time and date set for receipt of bids. A minimum of fifteen (15) days shall be provided, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Procurement Officer. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(d)*

Bid Form. The IFB shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(e)(1)*

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

In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity, or other compensation. A bidder's failure to submit the affidavit shall result in such bidder to be deemed non-responsive and cause the bid to be rejected upon opening. *Source: 5 G.C.A. §5233 and 2 G.A.R., Div. 4, Chap. 3, §3109(e)(3)(E)*

Pre-Bid Conference. If a pre-bid conference is conducted to explain the procurement requirements, it shall be announced to all prospective bidders known to have received the IFB. The conference shall be held long enough after the IFB has been issued to allow bidders to become familiar with it, but suffi-

ciently before the bid opening to allow consideration of the conference results in preparing their bids. Nothing stated in the pre-bid conference shall change the IFB unless a written amendment is made to the IFB, or the notice of pre-bid conference shall so provide. A summary of the pre-bid conference shall be provided to all those prospective bidders known to have received the IFB. If transcript is made, it shall be a public record. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(g)(4)*

Amendments to IFBs. IFB amendments shall be identified as such and reference the portion of the IFB it amends. Amendments shall be sent to all prospective bidders known to have received the IFB and require that the bidder acknowledge receipt of all amendments issued. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time will be increased to the extent possible in the amendment. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(i)*

Pre-Opening Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written notice received in the office designated in the IFB prior to the time and date set for bid opening. If a bid is withdrawn, the bid security, if any, shall be returned to the bidder. All documents relating to modifications and withdrawals shall be a part of the procurement file. *Source: 5 G.C.A. §5211(f) and 2 G.A.R., Div. 4, Chap. 3, §3109(j)*

Late bids, late withdrawals, and late modifications. Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of the bids at the place designated for opening is late. After bid opening, no changes in bid prices, or other provisions in bids prejudicial to GovGuam or fair competition will be permitted.

No late bid, late modification, or late withdrawal will be considered unless received before contract award and the bid, modification, or withdrawal would have been timely but for the action or inaction of GovGuam personnel directly serving the procurement activity. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be made by a written determination made by the Chief Procurement Officer (CPO), the Director of Public Works, or the head of a purchasing agency. *Source: 5 G.C.A. §5211(f) and 2 G.A.R., Div. 4, Chap. 3, §3109(k)*

Receipt of Bids. Upon its receipt, each bid and modification shall be time-stamped, but not opened and shall be stored in a secure place until the time and date set for bid opening. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(l)*

Opening and Recording of Bids. Bids shall be opened publicly, in the presence of one or more witnesses at the time and place designated in the IFB. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, and other information as deemed appropriate by the Procurement Officer shall be read aloud or otherwise be made available and shall be recorded, specifically, the bids shall be tabulated or a bid abstract made.

The names and addresses of required witnesses shall also be recorded at the opening. *Source: 5 G.C.A. §5211(d) and 2 G.A.R., Div. 4, Chap. 3, §3109(l)(2)*

Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized by Guam Procurement Law and Regulations. Bids shall be evaluated based on the requirements set forth in the IFB. No criteria may be used in bid evaluation that are not set forth in the IFB. No bid shall be evaluated for any requirement or criterion that is not disclosed in the IFB. *Source: 5 G.C.A. §5211(e) and 2 G.A.R. Div. 4, Chap. 3, §3109(n)(1)*

Product Acceptability. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the IFB. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(n)(3)(c)*

Contract Award. Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to GovGuam accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria set forth in the IFB shall be applied to determine the lowest bidder.

The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements set forth in the IFB, and whose bid amount is sufficient to comply with the U.S. Wage and Benefits determination applicable to Guam. Contract award is not permitted to a bidder submitting a higher quality than that designated in the IFB if such bidder is not also the lowest bidder. Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file. *Source: 5 G.C.A. §5211(g) and 2 G.A.R., Div. 4, Chap. 3, §3109(n)(1), (n)(4), (n)(5), (p)*

MULTI-STEP SEALED BIDDING

Conditions for use. When it is considered impractical to initially prepare a purchase description to support an award based on price, an IFB may be issued requesting the submission of unpriced offers to be followed by an IFB limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. *Source: 5 G.C.A. §5211(h) and 2 G.A.R., Div. 4, Chap. 3, §3109(r)(2)*

Process. Multi-Step Sealed Bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive and responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure (Note: Procedure longer part of Procurement Law)

through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(r)(1)*

Pre-Bid Conference. Prior to the submission of unpriced technical offers, a pre-bid conference may be conducted by the Procurement Officer. The Procurement Officer may also hold a conference of all potential bidders at any time during the evaluation of the unpriced technical offers. Pre-bid conferences shall be conducted in the same manner as in Competitive Sealed Bidding. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(s)*

Procedure for Phase One of Multi-Step Sealed Bidding

Form. Multi-Step Sealed Bidding shall be initiated by the issuance of an IFB in the same form as in Competitive Sealed Bidding, except that the multi-step IFB shall state:

- (A) That unpriced technical offers are requested;
- (B) Whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;
- (C) That it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;
- (D) The criteria to be used in the evaluation of the unpriced technical offers;
- (E) That GovGuam, to the extent the Procurement Officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;
- (F) That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data to remain confidential; and
- (G) That the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the IFB.

Source: 2 G.A.R., Div. 4, Chap. 3, §3109(t)(1)

Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the IFB shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated amendment will significantly change the nature of the procurement, the IFB shall be cancelled and a new IFB issued. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(t)(2)*

Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(t)(3)*

Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the IFB. The unpriced technical offers shall be categorized as:

- (A) Acceptable;
- (B) Potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- (C) Unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to the IFB or engage in technical discussions. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(t)(4)*

Discussions of Unpriced Technical Offers. The Procurement Officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one unpriced technical offer to any other bidder.

Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(t)(5)*

Notice of Unacceptable Unpriced Technical offer. When the Procurement Officer determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(t)(6)*

Mistakes during Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during Phase One at any time. During Phase Two, mistakes may be corrected or withdrawal permitted as in Competitive Sealed Bidding.

Source: 2 G.A.R., Div. 4, Chap. 3, §3109(u)

Procedure for Phase Two of Multi-Step Sealed Bidding

Initiation. Upon the completion of Phase One, the Procurement Officer shall either: (A) Open priced bids submitted in Phase One (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or (B) If priced bids have not been submitted, technical discussions have been held, or amendments to the IFB have been issued, invite each acceptable bidder to submit a price bid. *Source: 2 G.A.R., Div. 4, Chap. 3, §3109(v)(1)*

Conduct. Phase Two shall be conducted as any other competitive sealed bid procurement except:

- (A) As specifically allowed by Guam Procurement Laws and

- Regulations governing Multi-Step Sealed Bidding;
- (B) No public notice need be given of this Invitation to submit priced bids because such notice was previously given;
- (C) After award the unpriced technical offer of the successful bidder shall be disclosed in accordance with Guam Procurement Laws and Regulations;
- (D) Unpriced technical offers of bidders who are not awarded the contract shall not be opened to public inspection unless the Procurement Officer determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process.

Source: 2 G.A.R., Div. 4, Chap. 3, §3109(v)(2)

REQUEST FOR PROPOSAL (RFP) Competitive Sealed Bidding for Professional Services

Conditions for Use. This solicitation process is used for procuring the services of accountants, physicians, lawyers, dentists, licensed nurses, other licensed health professionals and other professionals. Source: 5 G.C.A. §5121(a), §5216(a), and 2 G.A.R., Div. 4, Chap. 3, §3114(a)

Determination Required Prior to Use of Competitive Selection Procedures. For the purposes of procuring professional services. Any using agency of GovGuam may act as a Purchasing Agency except as otherwise provided by law. The head of the using agency or a designee of such officer shall determine in writing, prior to announcing the need for any such services:

- (A) That the services to be acquired are services authorized to be procured by 5 G.C.A. §5121(a) and 2 G.A.R., Div. 4, Chap. 3, §3114(a);
- (B) That a reasonable inquiry has been conducted, which shall include requesting the appropriate Personnel Services Department to report on the availability of such personnel, and GovGuam does not have the personnel nor resources to perform the services required under the proposed contract;
- (C) The nature of the relationship to be established between the using agency and the contractor by the proposed contract; and
- (D) That the using agency has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.

Source: 2 G.A.R., Div. 4, Chap. 3, §3114(c)

Statement of Qualifications. When the professional services are needed on a recurring basis, the Procurement Officer shall actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format which shall include the following information:

- (A) Technical education and training;
- (B) General or special experience, certifications, licenses, and membership in professional associations, societies, or boards;
- (C) An expression of interest in providing a particular profes-

- sional service; and
- (D) Any other pertinent information requested by the Procurement Officer, who may specify a uniform format for statements of qualifications. Persons may amend statements of qualifications at any time by filing a new statement.

Source: 5 G.C.A. §5216(b) and 2 G.A.R., Div. 4, Chap. 3, §3114(d)

Request for Proposals. The RFPs shall be in the form specified by the Procurement Officer and contain at least the following information:

- (A) The type of services required;
- (B) A description of the work involved;
- (C) An estimate of when and for how long the services will be required;
- (D) The type of contract to be used;
- (E) A date by which proposals for the performance of the services shall be submitted;
- (F) A statement that the proposals shall be in writing;
- (G) A statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data may remain confidential;
- (H) A statement of the minimum information that the proposal shall contain, to include:
 - (1) The name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 - (2) If deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;
 - (3) The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
 - (4) A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a period of time, as specified in the RFP;
 - (5) A plan giving as much detail as is practical explaining how the services will be performed; and
 - (6) The factors to be used in the evaluation and selection process and their importance.

Source: 2 G.A.R., Div. 4, Chap. 3, §3114(f)(1)

Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. The following factors may be appropriate to use in conducting the evaluation. The relative importance of these and other factors will vary according to the type of services being procured. The minimum factors are:

- (A) The plan for performing the required services;
- (B) The ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the personnel proposed to be assigned to perform the services;
- (C) The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting, and
- (D) A record of past performance of similar work.

Source: 2 G.A.R., Div. 4, Chap. 3, §3114(f)(2)

Pre-Proposal Conferences. Pre-proposal conferences, as appropriate, may be conducted as in Competitive Sealed Bidding. Such a conference may be held anytime prior to the date established for submission of proposals. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(g)

Receipt and Handling of Proposals. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two (2) or more procurement officials.

A Register of Proposals shall be established, which shall include for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(h)(1)

Discussions. The head of the purchasing agency or his or her designee may conduct discussions with any offeror who has submitted a proposal. The purposes of such discussions shall be to: (A) Determine in greater detail such offeror's qualifications, and (B) Explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be opened to public inspection, except as otherwise provided in the contract. Source: 5 G.C.A. §5216(d) and 2 G.A.R., Div. 4, Chap. 3, §3114(i)(1) and (2)

Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn at any time prior to the conclusion of discussions. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(i)(3)

Selection of the Best Qualified Offerors. After conclusion of validation of qualifications, evaluation, and discussions, the head of the purchasing agency or his or her designee shall select, in the order of their respective qualification ranking, no fewer than three (3) acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(j)

Submission of Cost or Pricing Data. The offeror determined to be best qualified shall be required to submit cost or pricing data to the head of the agency conducting the procurement at a time specified prior to the commencement of negotiations. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(k)

Negotiation and Award of Contract. The head of the purchasing agency or his or her designee shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:

- (A) Making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;
- (B) Determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
- (C) Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

Source: 2 G.A.R., Div. 4, Chap. 3, §3114(l)(1) and (2)

Successful Negotiation of Contract with Best Qualified Offeror. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(l)(3)

Failure to Negotiate Contract With Best Qualified Offeror. If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file and the head of the purchasing agency or his or her designee shall advise such offeror of the termination of negotiations, which shall be confirmed by written notice within three (3) days.

Upon failure to negotiate a contract with the best qualified offeror, the head of the purchasing agency or his or her designee may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated and commenced with the next qualified offeror. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(l)(4)

Award shall be made to the offeror determined in writing by the head of the purchasing agency or his or her designee to be best qualified based on the evaluation factors set forth in the RFP, and negotiation of compensation determined to be fair and reasonable. Written notice of award shall be public information and made a part of the contract file. Source: 5 G.C.A. §5216(e) and 2 G.A.R., Div. 4, Chap. 3, §3114(l)(5)

Failure to Negotiate Contract with Offerors Initially Selected as Best Qualified. Should the head of the agency conducting the procurement or his or her designee be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue until an agreement is reached and the contract awarded. Source: 2 G.A.R., Div. 4, Chap. 3, §3114(l)(6)

Memorandum of Evaluation and Negotiation. At the conclusion of negotiations resulting in the award of the contract, the head of the purchasing agency or his or her designee shall prepare a memorandum setting forth the basis of award including: (A) How the evaluation factors stated in the RFP were applied to determine the best qualified offerors; and (B) The principal elements of the negotiations including the significant considerations relating to price and other terms of the contract. *Source: 2 G.A.R., Div. 4, Chap. 3, §3114(m)*

PROCUREMENT RECORD

Record of Procurement Actions. Each Procurement Officer shall maintain a complete record of each procurement. The record shall include the following:

- (A) The date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement;
- (B) A log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;
- (C) Sound recordings of all pre-bid conferences; negotiations arising from RFPs and discussions with vendors concerning small purchase procurement;
- (D) Brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and
- (E) The requesting agency's determination of need.

Source: 5 G.C.A. § 5250

Certification of Record. No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection. The certificate is itself a part of the record. *Source: 5 G.C.A. § 5251*

Public Record. The procurement record required by 5 GCA § 5249 of this Chapter is a public record and, subject to rules promulgated by the Public Auditor, any person may inspect and copy any portion of the record. *Source: 5 G.C.A. § 5251*

Note: OPA has not promulgated Public Record rules, but plans to address this in the near future.

Rules for Procurement Records. The rules promulgated pursuant to § 5251 of this Chapter shall: (a) protect the integrity of the bidding process; (b) protect the confidentiality of trade secrets; (c) establish reasonable charges for copying papers; (d) provide for transcription of sound recordings; (e) require public access to the record at the earliest possible time; and (f) not require that the record be complete or that the procurement award be made before inspection and copying are permitted. *Source: 5 G.C.A. § 5251*

SOLE SOURCE PROCUREMENT

If the supply, service, or construction is only available from one (1) vendor, the Sole Source Procurement procedure must be used even if the procured item or service is a small purchase. A requirement for a particular proprietary item does not justify a Sole Source Procurement if there is more than one potential bidder or offeror for that item. Any request by a using agency that a procurement be restricted to one (1) potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

The CPO, the Director of Public Works, the head of a Purchasing Agency, or a designee of either officer above the level of the Procurement Officer must make a written determination that there is only one source for the required supply or service and the written determination may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

A record listing all contracts made under Sole Source Procurement shall be maintained for a period of five (5) years. The record shall contain:

- (A) Each contractor's name;
- (B) The amount and type of each contract;
- (C) A listing of the supplies, services, or construction procured under each contract; and
- (D) The identification number of each contract file.

A copy of such record shall be submitted to the Legislature on an annual basis. The record shall be available for public inspection. *Source: 5 G.C.A. §5214 and 2 G.A.R., Div. 4, Chap. 3, §3112*

Best Practice: OPA highly discourages the use of Sole Source Procurement. In this day and age of the internet, it is rare for only one (1) vendor to be able to provide the service or product.

PROCUREMENT FROM NON PROFIT CORPORATIONS

A contract may be awarded for a supply or service without using Competitive Sealed Bidding when the contractor is a non profit corporation employing sheltered or disabled workers. *Source: 5 G.C.A. §5217 and 2 G.A.R. Div. 4, Chap. 3, §3110.1*

Certification. As a condition of the award of the contract, the contractor must certify that labor on the project will be performed by handicapped persons except that supervisory personnel do not have to be handicapped. *Source: 5 G.C.A. §5217 and 2 G.A.R. Div. 4, Chap. 3, §3110.1*

Bond not Required. A non-profit corporation awarded a contract under this procedure shall not be required to post any of the bonds required by Guam Procurement Law and Regulations. *Source: 5 G.C.A. §5217 and 2 G.A.R. Div. 4, Chap. 3, §3110.1*

ATTORNEY GENERAL (AG) REVIEW FOR SOLICITATIONS \$500K AND HIGHER

The AG, Deputy AG, or such Assistant AG, or such Special Assistant AG as the AG may designate, shall serve as legal counsel and provide necessary legal services to the Policy Office and the GSA. Whenever the CPO, the Director of Public Works, or the head of any executive branch agency, autonomous agency, instrumentality or public corporation of GovGuam conducts any solicitation or procurement which is estimated to result in an award of Five Hundred Thousand Dollars (\$500,000) or more, the AG or his designee(s) shall act as legal advisor during all phases of the solicitation or procurement process.

The AG, or his designee shall, in addition, when he approves contracts, determine not only the correctness of their form, but their legality. In making such a determination of legality, he may require any or all agencies involved in the contract to supply him with evidence that the required procedures precedent to executing the contract were carried out. He or his designees may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of form and legality. *Source: 5 GCA § 5150*

DEFINITE QUANTITY AND INDEFINITE QUANTITY CONTRACTS

A definite quantity contract is a fixed price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times or as ordered that establishes unit prices of a fixed-price type. Generally, an approximate quantity is stated in the solicitation and the contract may provide a minimum quantity GovGuam is obligated to order.

Every indefinite quantity contract shall indicate the rationale for using this type of contract and the reasons why another form of contract will not suffice. Indefinite quantity contracts shall be reviewed every six months to determine if there is a continued need for such a contract.

Indefinite quantity contracts shall not be used more than twice per fiscal year for such supplies and services and should the department or agency continue to require the supplies or services, competitive sealed bidding or small purchase, as applicable, shall be used. *Source: 2 G.A.R., Div. 4, Chap. 3, §3119(i)*

**If you have any questions or concerns,
please contact the OPA :**

Email: admin@guamopa.com

Phone: (671) 475-0390 Fax: (671) 472-7951

OPA hotline : (671) 47AUDIT (671-472-8348)

EMERGENCY PROCUREMENT

The CPO, the Director of Public Works, the head of a Purchasing Agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Unless authorized by an Executive Order declaring an emergency, no emergency procurement may be made except on a certificate made under penalty of perjury by the CPO, Director of Public Works, or the head of a Purchasing Agency, as the case may be. Certified copies of the certificate shall be sent, prior to award and as a condition thereof, to the Governor and Speaker of the Legislature.

The certificate shall contain the following:

- (A) A statement of the facts giving rise to the emergency;
- (B) The factual basis of the determination that an emergency procurement is necessary; and
- (C) A statement that emergency procurement is not being used solely for the purpose of avoidance of Guam Procurement Law and Regulations.

Source: 5 G.C.A. §5215 and 2 G.A.R. Div. 4, Chap. 3, §3113 and (3)

Governor's Approval. The Governor must approve, in writing, all authorizations for emergency procurements. *Source: 2 G.A.R. Div. 4, Chap. 3, §3113 and (3)*

Governor's Declaration of Emergency. The requirements for a written determination and Certification for the emergency shall be met if the procurements are being made on the basis of the Governor's declaration of an emergency situation by Executive Order if such Order states that emergency procurement may be resorted to for the purposes of the Order. *Source: 5 G.C.A. §5215 and 2 G.A.R. Div. 4, Chap. 3, §3113*

Procedure. The procurement agent must solicit at least three (3) informal price quotations, and if time allows, must give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months, and must award the procurement to the firm with the best offer, as determined by evaluating cost and delivery time. *Source: 5 G.C.A. §5215 and 2 G.A.R. Div. 4, Chap. 3, §3113*

Thirty (30) Day Limitation. No emergency procurement or combination of emergency procurements may be made for an amount of goods or supplies greater than the amount of such goods and supplies which is necessary to meet an emergency for the thirty (30) day period immediately following the procurement. *Source: 5 G.C.A. §5215 and 2 G.A.R. Div. 4, Chap. 3, §3113*

Visit www.opaguam.org for information on Procurement Appeals and to view the Procurement Flowchart.