



Jerrick Hernandez <jhernandez@guamopa.com>

Procurement Appeal - GDOE IFB-026-2021

Scott T. Kadiasang <scott.kadiasang@gu.g4s.com>

Fri, Sep 17, 2021 at 4:41 PM

To: jhernandez@guamopa.com

Cc: Greg Duenas <greg.duenas@gu.g4s.com>, Cris Ortiz <cris.ortiz@gu.g4s.com>, Teresa Sakazaki <teresa.sakazaki@gu.g4s.com>, "Ronnie B. Delfin" <ronnie.delfin@gu.g4s.com>

Hafa Adai Mr. Hernandez,

Thank you for taking my call the other day.

Per our discussion, I've attached Appendix A: Notice of Appeal Form along with supporting documents to file our appeal.

Tomorrow (9/18/21) marks the 15th day since their decision.

Do I also send a copy of Appendix A to GDOE within the next 24 hours or is that something the OPA will do?

I have other supporting files and documents to provide but are unavailable at the moment. I can have them to you by the close of business on 9/24/2021.

Please advise on our next steps.

--

Thank you,

Scott T. Kadiasang
Quality Control / Designer & Project Manager

G4S Security Systems (Guam), Inc.

Main Office: +671 646-2307

Mobile: +671 686-6712

Fax: +671 649-7245

J & G Commercial Plaza

Bldg. B, Suite 101

[130 East Marine Corp Drive](#)[Hagatna, GU 96910](#)Scott.kadiasang@gu.g4s.com

Local website: www.gu.g4s.com

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Please consider the environment before printing this email.










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9 attachments

-  **procurement appeal.pdf**
90K
-  **2022 License Information as of September 16, 2021 (1).xlsx**
321K
-  **a91 IFB 026-2021 Bid Status - G4S - FINAL.pdf**
324K
-  **a91 IFB 026-2021 Notice of Award to Technologies for Tomorrow - G4S - FINAL.pdf**
390K
-  **appendix_a_-_notice_of_appeal_form GDOE IFB 026-2021.pdf**
364K
-  **Letter of Protest 7.29.2021 - GDOE IFB 026-2021 Indoor and Outdoor Wireless Local Area Network (WLAN) Infrastructure Installation Project.pdf**
50K
-  **21 GCA REAL PROPERTY CH 70 CONTRACTORS.pdf**
654K
-  **IFB 026-2021 Response to Protest Received Aug 10, 2021 - FINAL.pdf**
486K
-  **Appeal statement.pdf**
70K



**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

PART I- To be completed by OPA

In the Appeal of)	
)	NOTICE OF APPEAL
)	
_____)	
(Name of Company), APPELLANT)	Docket No. OPA-PA_____
)	
_____)	

PART II- Appellant Information

Name: G4S Security Systems (Guam) Inc.
Mailing Address: J&G Commercial Plaza, Bldg B. Suite 101
130 East Marine Drive, Hagatna, GU 96910
Business Address: Same as above
Email Address: teresa.sakazaki@gu.g4s.com
Daytime Contact No: (671) 483-5386
Fax No.: (671) 649-7245

PART III- Appeal Information

- A) Purchasing Agency: Guam Department of Education
- B) Identification/Number of Procurement, Solicitation, or Contract: GDOE IFB 026-2021
- C) Decision being appealed was made on Sept. 03, 2021 (date) by:
___ Chief Procurement Officer ___ Director of Public Works X Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

- D) Appeal is made from:
(Please select one and attach a copy of the Decision to this form)
X Decision on Protest of Method, Solicitation or Award
___ Decision on Debarment or Suspension
___ Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
___ Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

<u>Technologies for Tomorrow</u>	_____
<u>Pacific Data Systems</u>	_____
<u>California Pacific Technical Services</u>	_____
_____	_____
_____	_____

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART V- Declaration Re Court Action


Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 17 day of Sept., 2021.

By: G4S Security Systems (Guam) Inc.
APPELLANT

or

By: Crisanto Ortiz 
Appellant's Duly Authorized Representative
(Address) 130 East Marine Corps Dr., Hagatna, Guam 96910
(Phone No.) 646-2307



G4S Security Systems (Guam), Inc.

J&G Commercial Plaza
Building B, Suite 101
130 East Marine Corps Drive
Hagatna, Guam 96910
Tel: (671) 646-2307/08
Fax: (671) 649-7245
Email: guam@gu.g4s.com
www.gu.g4s.com

September 14, 2021

Guam Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910
Phone: 671-475-0390 ext. 204
Fax: 671-472-7951

Delivered by Email:
jhernandez@guamopa.com

Attention: Jerrick Hernandez

Subject: Procurement Appeal

Hafa Adai,

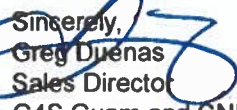
On behalf of G4S Security Systems (Guam) Inc. (G4S), we wish to appeal the recent decision made on September 3, 2021 by the Guam Department of Education's (GDOE) to deny our protest pertaining to the award to Technologies for Tomorrow (hereafter referred to as "TFT") for: GDOE IFB 026-2021. Our protest was on the grounds that TFT does not have a valid Guam Contractors License to perform service, maintain and/or install structured cabling on Guam.

It is our contention that although Guam Procurement Law mandates that an IFB shall be evaluated based on the requirements set forth in the IFB and that GDOE IFB 026-2021 in its published terms and conditions did not require the submission of a Guam Contractor's License, one must have been previously obtained to lawfully execute the terms of said IFB as a Specialty Contractor pursuant to 21 GCA Real Property CH. 70.

"No person within the purview of 21 GCA Real Property CH. 70 shall act, or assume to act, or advertise, as general engineering contractor, general building contractor or specialty contractor without a license previously obtained under and in compliance with this 21 GCA Real Property CH. 70 and the rules and regulations of the Contractors License Board"

The intent of this letter is to advance the position that "in the interest of the Government of Guam," the award should be to G4S, in the amount of \$1,944,000.00 as the most responsible bidder, therefore being the lowest bidder.

We look forward to a favorable consideration.

Sincerely,

Greg Duenas
Sales Director
G4S Guam and CNMI
G4S Security Systems (Guam), Inc.



DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT

www.gdoe.net

501 Mariner Avenue
B-Building, Suite 116
Barrigada, Guam 96913

Telephone: (671) 475-0438/Fax: (671) 472-5001

Email: procurement@gdoe.net



CARMEN T. CHARFAUROS
Supply Management Administrator

JON J. P. FERNANDEZ
Superintendent of Education

July 13, 2021

BID STATUS

Phase II

G4S Security Systems (Guam), Inc.
J&G Commercial Plaza, Building B, Suite 101
130 East Marine Corps Drive, Hagatna, GU 96910
Tel: (671) 646-2307 ext. 5107
Email: guam@gu.g4s.com

Attn: Crisanto Ortiz
Finance Director

Bid no.: GDOE Multi-Step IFB 026-2021 OPENED: Friday, June 18, 2021 at 9:00am

Description: Indoor and Outdoor Wireless Local Area Network (WLAN) Infrastructure Installation Project

The following is the evaluation results of subject bid: Refer to item(s) checked below.

- Rejected (in its entirety), or partially rejected due to:
 - Insufficient funds
 - Change of specifications
 - Insufficient number of bidders
 - Bids received are at unreasonable prices
 - Solicitation did not provide for consideration of all factors
- Not recommended due to:
 - Late submission of bid
 - No bid bond submitted
 - Non-conformance with Specifications
 - Others:

Bid is recommended for award to:

Technologies for Tomorrow Inc. Bid Total: \$1,531,820.00

Remarks: The following bidders did not submit the lowest, most responsive, and responsible bid:

California Pacific Technical Services LLC	Bid Total: \$3,750,285.30
Pacific Data Systems	Bid Total: \$2,213,208.00
G4S Security System (Guam), Inc.	Bid Total: \$1,944,000.00

Sincerely,

CARMEN T. CHARFAUROS
Supply Management Administrator

Acknowledgement Receipt

Print Name

Signature

Date

Time



JON J. P. FERNANDEZ
Superintendent of Education

**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

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Email: procurement@gdoe.net



CARMEN T. CHARFAUROS
Supply Management Administrator

NOTICE OF AWARD

July 13, 2021

G4S Security Systems (Guam), Inc.
J&G Commercial Plaza, Building B, Suite 101
130 East Marine Corps Drive, Hagatna, GU 96910
Tel: (671) 646-2307 ext. 5107
Email: guam@gu.g4s.com

Attn: Crisanto Ortiz
Finance Director

Reference: Indoor and Outdoor Wireless Local Area Network (WLAN) Infrastructure Installation Project
Multi-Step Formal Invitation for Bid: GDOE IFB 026-2021

Hafa Adai,

This Notice of Award is issued in regards to the referenced Invitation for Bid (IFB), issued by the Government of Guam, Guam Department of Education for Indoor and Outdoor Wireless Local Area Network (WLAN) Infrastructure Installation Project. The Guam Department of Education has evaluated the bids received using the evaluation factors identified in the IFB, and the Guam Department of Education is hereby announcing its award to the following Bidder:

- **Technologies for Tomorrow Inc.**

This award is conditioned upon the successful execution and final approval of the contract by all parties required by Guam law. This notice does not constitute the formation of a contract between the Guam Department of Education and the successful Bidder. The successful Bidder shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the Government of Guam is executed. The Guam Department of Education further reserves the right to cancel this Notice of Award at any time prior to the execution of a written contract in accordance with the provisions of the Guam Procurement Law and any other applicable laws or regulations.

If you have any questions regarding this matter, kindly contact our office at (671) 475-0438.

Please acknowledge receipt and return via email to kobayson@gdoe.net.

Sincerely,


CARMEN T. CHARFAUROS
Supply Management Administrator

Acknowledgement Receipt

Print Name

Signature

Date

Time



G4S Security Systems (Guam) Inc.

J&G Commercial Plaza
Building B, Suite 101
130 East Marine Corps Drive
Hagatna, Guam 96910
Tel: (671) 646-2307
Fax: (671) 649-7245
Email: greg.duenas@gu.g4s.com

July 29, 2021

Ms. Carmen T. Charfauros
Guam Department of Education
Office of Supply Management
501 Mariner Avenue
B-Building, Suite 116
Barrigada, Guam 96913
Phone: 671-475-0438
Fax: 671-472-5001

Attn: Ms. Carmen T. Charfauros, Supply Management Administrator
Mr. Jon J.P. Fernandez, Superintendent of Education
REFERENCE: BID NO. GDOE IFB 026-2021 "PROTEST"

Hafa Adai Ms. Charfauros & Mr. Fernandez,

Pursuant to Public Law No. 33-103 - "An act to *Amend* §§ 70108 and 70109.1 of Chapter 70, Division 2, Title 21, Guam Code Annotated, Relative to Promoting Consumer Protection by requiring the publication of a contractors list and strengthening the penalties for unlicensed contractors", which was signed into law on December 1, 2015. The listing published by the Contractors License Board was as of close of business on June 30, 2021.

After careful review of the documents provided by the Guam Department of Education in response to G4S' FOIA request dated 27 July 2021 and Under 5 GCA Chapter 5 § 5425. Authority to Resolve Protested Solicitations and Awards, G4S would like to officially protest the Notice of Award for solicitation Bid No. GDOE IFB 026-2021 Indoor and Outdoor Wireless to Technologies for Tomorrow Inc. on the basis that said company does not possess and has not submitted evidence of a valid Guam Contractors License to perform the work dictated by GDOE IFB 026-2021.

We have reviewed Amendment # 4 that was emailed to Teresa Sakazaki. We find that amendment #4 were answers to Pacific Data Systems' pre-bid written questions related to the requirement of a Guam Contractors License.

The intent of this letter is to advance the position that "in the interest of the Government of Guam," the award should be to G4S, in the amount of \$1,944,000.00 as the most responsible bidder, therefore being the lowest bidder.

We look forward to a favorable consideration.

Sincerely,



Greg Duenas
Sales Director
G4S Guam and CNMI
G4S Security Systems (Guam), Inc.
Phone: 671-646-2307
Fax: 671-649-7245
E-mail: greg.duenas@gu.g4s.com



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Telephone: (671) 475-0438/Fax: (671) 472-5001

Email: procurement@gdoe.net



CARMEN T. CHARFAUROS
Supply Management Administrator

JON J. P. FERNANDEZ
Superintendent of Education

September 3, 2021

G4S Security Systems (Guam), Inc.
J&G Commercial Plaza, Building B, Suite 101
130 East Marine Corps Drive, Hagatna, GU 96910
Tel: (671) 646-2307 ext. 5107
Email: guam@gu.g4s.com

Attn: Greg Duenas
Sales Director

Subject: **Response to Protest Letter Received on August 10, 2021**

Reference: Indoor and Outdoor Wireless Local Area Network (WLAN) Infrastructure Installation Project
Multi-Step Formal Invitation for Bid: GDOE IFB 026-2021

Hafa Adai Mr. Duenas,

This is a written response to your letter of protest received on August 10, 2021 regarding Guam Department of Education (“GDOE”) Invitation for Bid No. 026-2021 (“IFB”) for Indoor and Outdoor Wireless Local Area Network (“WLAN”) Infrastructure Installation Project.

GDOE has reviewed and hereby DENIES your protest in its entirety for the reasons discussed below:

Pursuant to G4S Security Systems (Guam), Inc.’s (hereafter referred to as “G4S”) protest, G4S states Technologies for Tomorrow Inc. (“TFT”) does not possess and has not submitted evidence of a valid Guam Contractors License regarding GDOE IFB 026-2021. G4S further states that amendment #4 included answers related to the requirement of a Guam Contractors License.

Guam Procurement Law mandates that an IFB shall be evaluated based on the requirements set forth in the IFB, and that no criteria may be used in bid evaluation that are not set forth in the IFB. In this case, the IFB and its published terms and conditions did not require the submission of a Guam Contractors License in the bid submission. In addition, Amendment No. 4 did not require Bidders to submit a Guam Contractors License with their bid submission. Therefore, pursuant to Guam Procurement Law, GDOE properly evaluated and awarded in accordance with the terms and conditions set forth in the IFB.

Given the facts and reasons stated above, GDOE hereby denies your protest in its entirety. Pursuant to 5 GCA §5425(e), you are hereby advised that you have a right to administrative and judicial review as allowed by the Guam Procurement Law. You may appeal the decision to the Guam Office of Public Accountability within fifteen (15) days.

Acknowledgement Receipt

Print Name

Signature

Date

Time

Sincerely,

CARMEN T. CHARFAUROS
Supply Management Administrator

21 GCA REAL PROPERTY
CH. 70 CONTRACTORS

CHAPTER 70
CONTRACTORS

SOURCE: This Chapter was added by P.L. 14-051, and later amended. The original enactment was to add §§ 19599 et seq. to the Government Code. The Chapter is placed here because of its relationship to prior Chapters of this Title. The entire Chapter was repealed and reenacted by P.L. 30-011:1 (Apr. 17, 2009).

- § 70100. Definitions.
- § 70101. Exemptions.
- § 70102. Contractors License Board.
- § 70103. Powers and Duties of Board.
- § 70104. Executive Director; Other Assistants.
- § 70105. Place of Meeting.
- § 70106. Classification.
- § 70107. Powers to Classify and Limit Operations.
- § 70108. Licenses; Publication of Contractors List Required.
- § 70108.1. Advertising.
- § 70109. Investigation Permitted.
- § 70109.1. Investigation Citation Authority.
- § 70109.2. Immediate Cease Work Order Permitted.
- § 70109.3. Cease Work Order Permitted.
- § 70110. No License Issued When.
- § 70111. Application: Fees.
- § 70112. Form of Licenses.
- § 70113. Place of Business and Posting of License.
- § 70114. Fees; Annual.
- § 70115. Action on Application.
- § 70116. Revocation, Suspension and Renewal of Licenses.
- § 70117. Hearings.
- § 70118. Appeal to Superior Court.
- § 70119. Disposition of Fees, Refunds.
- § 70120. Death *or* Dissociation.
- § 70121. Violation, Penalty.
- § 70122. Injunction.
- § 70123. Exemptions for Prior Licensees.
- § **70100. Definitions.**

As used in this Chapter:

- (a) *Board* means the Contractors License Board.

21 GCA REAL PROPERTY
CH. 70 CONTRACTORS

(b) *Contractor* means any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck *or* demolish any building, highway, road, railroad, excavation *or* other structure, project development *or* improvement *or* do any part thereof, including the erection of scaffolding *or* other structure of works in connection therewith for another person for a fee.

(c) Contractor includes a subcontractor and a specialty contractor.

(d) *Person* means an individual, partnership, joint venture, corporation *or* any combination thereof. Corporation includes an association, business trust *or* any organized group of persons.

(e) *Self-construction* means a project *or* operation performed by the owner for personal needs on personal premises; a self-constructed/performed project *or* operation *shall* otherwise be deemed performed by a contractor.

(f) *Investigator* means an employee with the Contractors License Board who conducts thorough investigations of applicants applying for a contractor's license and who inspects, regulates, and enforces the laws, rules and regulations of the Licensing Board for Contractors.

(g) *Responsible Management Employee* means the individual responsible for the direct management of the contracting business of the licensee.

§ 70101. Exemptions.

This Chapter *shall not* apply to:

(a) An officer *or* employee of the United States, the Territory *or* any political subdivision, *if* the project *or* operation is performed by employees thereof;

(b) Any person acting as a receiver, trustee in bankruptcy, administrator *or* executor, *or* any other person acting under any order *or* authorization of any court;

(c) A person who sells *or* installs any finished products, materials *or* articles *or* merchandise which are *not* actually fabricated into and *do not* become a permanent fixed part of the structure, *or* to the construction, alteration, improvement *or* repair of personal property;

21 GCA REAL PROPERTY
CH. 70 CONTRACTORS

(d) Any project *or* operation for which the aggregate contract price for labor, materials and all other items is *less than* Two Thousand Five Hundred Dollars (\$2,500). This exemption *shall not* apply in any case wherein the undertaking is by a licensed contractor *or* is only part of a larger *or* major project *or* operation, whether undertaken by the same *or* a different contractor *or* in which a division of the project *or* operation is made in contracts of amounts *less than* Two Thousand Five Hundred Dollars (\$2,500) for the purpose of evading this Chapter *or* otherwise;

(e) A registered architect *or* professional engineer acting *solely* in a professional capacity;

(f) Any person who engages in the activities herein regulated as an employee with wages as *sole* compensation;

(g) Any person who undertakes either personally *or* through his *or* her employees, any project *or* operation for himself or herself; and

(h) Any co-partnership *or* joint venture *if* all members thereof hold licenses issued under this Chapter *or if* the person *or* persons who have direct management of the contracting business thereof hold a license for purposes of requiring additional contractor's licenses for the copartnership *or* joint venture.

§ 70102. Contractors License Board.

(a) There *shall* be a Contractors License Board compose of seven (7) members; two (2) of which *shall* be appointed by *I Maga'lahi* from the construction industry; three (3) of which *shall* be appointed by *I Maga'lahi* from the general public and who *shall* have no interest in the construction industry; the Director of Revenue and Taxation, ex-officio; and the Director of Public Works, ex-officio. Those members appointed by *I Maga'lahi* are subject to confirmation by *I Liheslatura*. Their terms *shall* be four (4) years.

(b) The concurrence of four (4) members of the Board *shall* be necessary for the validity of any of its actions.

(c) Organization, Records, Reports. Immediately upon the appointment and qualifications of the original members, and annually thereafter, the Board *shall* organize by the election of one (1) member as Chairman and one (1) member as Vice-Chairman. The Board *shall* keep a complete record of all its proceedings and *shall* present annually to the Governor through the Executive Director a detailed statement of the

previous year, proceedings and such recommendations as the Board may deem proper.

(d) Compensation. Members of the Board *shall* receive the sum of Fifty Dollars (\$50) for each attendance at the meetings of the Board, provided, however, that *no* member *shall* receive more than One Hundred Dollars (\$100) per month.

§ 70103. Powers and Duties of Board.

In addition to any other duties and powers granted by this Chapter, the Contractors License Board *shall*:

(a) Grant licenses to contractors pursuant to this Chapter;

(b) Make, amend *or* repeal such rules and regulations as it may deem proper to fully effectuate this Chapter and carry out the purpose thereof, which purpose is the protection of the general public. All such rules and regulations *shall* be adopted pursuant to the Administrative Adjudication Law. The rules and regulations may forbid acts *or* practices deemed by the Board to be detrimental to the accomplishment of the purpose of this Chapter. The rules and regulations may require contractors to make reports to the Board containing such items of information as will better enable the Board to enforce this Chapter and rules and regulations, *or* as will better enable the Board from time to time to amend the rules and regulations more to fully effectuate the purposes of this Chapter. The rules and regulations may require contractors to furnish reports to owners containing such matters of information as the Board deems necessary to promote the purpose of this Chapter. The enumeration of specific matters which may properly be made the subject of rules and regulations *shall not* be construed to limit the Board's general power to make all rules and regulations necessary to fully effectuate the purpose of this Chapter;

(c) Enforce this Chapter and rules and regulations adopted pursuant thereto;

(d) Suspend *or* revoke any license for any cause prescribed by § 70116 *or* for any cause for suspension *or* revocation prescribed by the rules and regulations, and refuse to grant any license for any cause which would be grounds for revocation *or* suspension of a license;

(e) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this Chapter; and

(f) Contract professional testing services as deemed necessary to prepare, administer, and grade applicant examinations as may be required for the purpose of this Chapter.

§ 70104. Executive Director; Other Assistants.

(a) The Contractors License Board *shall* employ an Executive Director. The Executive Director *shall* be employed with due regard to his *or* her fitness, thorough administrative ability and knowledge of and experience in the business of contracting. The Executive Director *shall* act only with the advice and consent of the Board and *shall* be responsible to the Board. The Executive Director *shall* devote his *or* her entire time to the duties of the office and *shall not* be actively engaged *or* employed in any other business, vocation *or* employment, *nor* have any pecuniary interest, direct *or* indirect, in any contracting enterprise *or* enterprises conducted *or* carried on within the Territory.

(b) The Executive Director *shall*, under the supervision of the Board, administer this Chapter and the rules and regulations and orders established thereunder and perform such other duties as the Board may require; *shall* attend but *not* vote at all meetings of the Board; and *shall* be in charge of the offices of the Board and responsible to the Board for the preparation of reports and the collection and dissemination of data and other public information relating to contracting.

(c) The Board may, by written order filed in its office, delegate to the Executive Director such of its powers *or* duties as it deems reasonable and proper for the effective administration of this Chapter, *except* the power to make rules *or* regulations. The delegated powers and duties may be exercised by the Executive Director in the name of the Board.

(d) Subject to the Personnel Law, the Executive Director may employ and remove such administrative and clerical assistants as may be required, and prescribe their powers and duties.

§ 70105. Place of Meeting.

The Executive Director *shall* provide suitable quarters for meetings of the Contractors License Board and for the transaction of its other business.

§ 70106. Classification.

(a) For the purpose of classification, the contracting business includes any *or* all of the following branches:

- (1) General Engineering Contracting;
- (2) General Building Contracting;
- (3) Specialty Contracting; and
- (4) Responsible Management Employee (R.M.E.).

(b) A *General Engineering Contractor* is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions *or* subjects: irrigations, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, highways, streets and roads, tunnels, airports and airways, sewer, sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid *or* gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earth-moving projects, excavating, grating, trenching, paving and surfacing work and cement and concrete works in connection with the above-mentioned fixed works.

(c) A *General Building Contractor* is a contractor whose principal contracting business is in connection with any structure built, being built *or* to be built, for the support, shelter and enclosure of persons, animals, chattels *or* movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades *or* crafts, *or* to do *or* superintend the whole *or* any part thereof.

(d) A *Specialty Contractor* is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades *or* crafts.

(e) A *Responsible Management Employee* is an individual responsible for the direct management of the contracting business of the licensee and has

proved contracting knowledge by both written examination, as administered by the Board, and the fulfillment of requirements, as stated in Part II Section 2.2 of the Guam Contractors License Board Rules and Regulations.

§ 70107. Powers to Classify and Limit Operations.

(a) The Contractors License Board may adopt rules and regulations necessary to effect the classification of contractors and *shall* require a written examination in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which the licensed contractor is classified and qualified to engage, as defined in § 70106.

(b) A licensee may make application for classification and be classified in more than one (1) classification *if* the licensee meets the qualifications prescribed by the Board for such additional classification. For qualifying *or* classifying in additional classifications, the licensee *shall* pay the appropriate application fee but *shall not* be required to pay any additional license fee.

(c) This Section *shall not* prohibit a specialty contractor from taking and executing a contract involving the use of two (2) *or* more crafts *or* trades, *if* the performance of the work in the crafts *or* trades, other than in which the specialty contractor is licensed, is *less than* thirty-five percent (35%) and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

§ 70108. Licenses; Publication of Contractors List Required.

(a) No person within the purview of this Chapter shall act, or assume to act, or advertise, as a general engineering contractor, a general building contractor or a specialty contractor without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractors License Board (CLB).

(b) The CLB *shall* publish, in print and electronically, in a newspaper of general circulation, as defined in Title 5 GCA, § 8104(a)(5)(B), a list of contractors authorized to conduct business on Guam. The list of contractors *shall* include, but *not* be limited to, the contractor's name and phone number(s), CLB license number, identification of responsible managing employee, and authorized classification(s). The CLB *shall* also include instructions on how the public may verify if certain contractors have been

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added to, or removed from, the contractors list. The list of contractors *shall* be published annually, *no later than* on the first Monday of August, *shall* be made available to the general public via the CLB's website, and *shall* be updated on a monthly basis.

SOURCE: Added by P.L. 14-051. Repealed and reenacted by P.L. 30-011:1 (Apr. 17, 2009). Amended by P.L. 33-103:1 (Dec. 1, 2015).

2015 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 70108.1. Advertising.

A Contractor may advertise in print *or* broadcast medium *only if* the contractor includes in the advertisement *or* listing the contractor's applicable and current license number, and provides proof of the number's validity to the publisher *or* producer of the advertising medium. Violation of this Section may be subject to the provisions of § 70116 and/or § 70121.

§ 70109. Investigation Permitted.

The Contractors License Board may investigate, classify and qualify applicants for contractor's licenses, and investigate for compliance with the rules and regulations of the Board and the provisions of this Chapter.

§ 70109.1. Investigation Citation Authority.

(a) In addition to any other remedy available, the investigator of the Contractors License Board may issue citations to acting contractors, licensed or unlicensed, in violation of the provisions of this Chapter and rules promulgated pursuant to the requirements of the Administrative Adjudication Law.

(b) Each citation *shall* be in writing and *shall* describe the basis of the citation, including the statutory provisions alleged to have been violated. The citation *shall* also contain an order to cease and desist from the violation, and an assessment of civil penalties of *no less than* Two Hundred Dollars (\$200.00), but *not to exceed* fifty percent (50%) of the value of the project.

(c) Citations for unlicensed contractors *shall* each contain an order to cease and desist from the violation, and an assessment of civil penalties of fifty percent (50%) of the value of the project – of which *no less than* fifty percent (50%) *shall* be used to compensate affected consumers. Payments *shall* be made in accordance with rules promulgated by the CLB in accordance with the requirements of the Administrative Adjudication Law.

(d) Recipients of contractual work *shall* be notified of each violation in a timely manner.

SOURCE: Added by P.L. 14-051. Repealed and reenacted by P.L. 30-011:1 (Apr. 17, 2009). Amended by P.L. 33-103:2 (Dec. 1, 2015).

§ 70109.2. Immediate Cease Work Order Permitted.

The investigator may issue an immediate cease work order to any person's construction activity where serious safety concerns are present.

§ 70109.3. Cease Work Order Permitted.

The Executive Director may issue a cease work order to any person's construction activity *if* found to be in violation of this Chapter and/or of any Contractors License Board rules and regulations.

§ 70110. No License Issued When.

No license hereunder *shall* be issued to:

(a) Any person unless said person has filed an application and paid the applicable fees therefore;

(b) Any person who *does not* possess a good reputation for honesty, truthfulness, financial integrity and fair dealing;

(c) Any co-partnership *or* joint venture who *does not* actively participate in at least one (1) construction job in the course of the license year in the contracting business and thereof *does not* hold an appropriate license;

(d) Any corporation, unless the contracting business thereof is under the direct management of an officer *or* employee thereof, and unless the officer *or* employee holds an appropriate Responsible Management Employee license;

(e) Any individual, unless eighteen (18) years of age *or* more; and

(f) Any person who employs other individuals as employees unless satisfactory proof is submitted by the person of a current workers' compensation insurance policy.

2015 NOTE: Subsection designations altered to adhere to the Compiler's alphanumeric scheme pursuant to authority granted by 1 GCA § 1606.

§ 70111. Application: Fees.

(a) Every applicant for a license under this Chapter *shall* file an application with the Contractors License Board in such form and setting forth such information as may be prescribed *or* required by the Board, and *shall* furnish such additional information bearing upon the issuance of the license as it *shall* require. Every application *shall* be sworn to before an officer authorized to administer oaths. In the case of a co-partnership, joint venture *or* corporation, any member *or* officer thereof may sign the application and verify the same on behalf of the applicant.

(b) Every application, in the case of an individual, *shall* be accompanied by sworn certificates of *not less than* two (2) persons who have known the applicant for a period of *not less than* six (6) months certifying that the applicant bears a good reputation for honesty, truthfulness and fair dealings.

(c) Every application for a license hereunder *shall* be accompanied by an application fee of Fifty Dollars (\$50.00)

§ 70112. Form of Licenses.

The form of every license *shall* be prescribed by the Contractors License Board and *shall* be issued in the name of the Board.

§ 70113. Place of Business and Posting of License.

A licensed contractor *shall* have and maintain a definite place of business in the Territory and *shall* display therein a personal contractor's license.

§ 70114. Fees; Annual.

(a) The annual fees for each license thereof prescribed by this Chapter *shall* be as follows:

(1) License Fee

License to act as specialty contractor \$400

License to act as general engineering contractor \$400

License to act as general building contractor \$400

(2) License Fee for Responsible Management Employee (RME)

License to act as RME in specialty Contracting \$400

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License to act as RME in general engineering contracting	\$400
License to act as RME in general building contracting	\$400
(3) Reissuance of a license or issuance of a certified copy of license	\$20
(4) Application:	\$50
(5) Application for Additional Classifications	\$50
(6) Letter of Good Standing	\$50
(7) Study Guide	\$75
(8) Inactive license fee (in lieu of renewal fee)	\$50
(9) Exam Fee	\$50

(b) The annual fee *or* inactive license fee *shall* be paid on *or* before June 30 of each year for a license year beginning on July 1. Failure, neglect *or* refusal of any licensee to pay the annual fee before such date *shall* constitute a forfeiture of license. Any such license may be restored upon written application, therefore, within one (1) year from such date and the payment of the required fee plus an amount equal to ten percent (10%) thereof.

(c) Upon written request by a contractor, and for good cause, the Board *shall* place an active license in an inactive status. The license, upon payment of the annual inactive license fee, may continue inactive for a period of three (3) years after which time it must be reactivated *or shall* automatically become forfeited. The license may be reactivated at any time within the three (3)-year period by fulfilling the requirements for renewal, including the payment of the appropriate renewal fee.

§ 70115. Action on Application.

Within forty-five (45) days after the filing of a proper application for a license and the payment of the required fees, the Contractors License Board *shall*:

(a) Conduct an investigation of the applicant and in such investigation may post pertinent information, including, but *not limited to*, the name and address of the applicant, and *if* the applicant is

associated in any partnership, corporation *or* other entity, the names, addresses and official capacities of associates; and

(b) Either issue a license to the applicant *or* else notify the applicant in writing by registered mail of the Board's decision *not* to grant the license and specifically notify applicant of the right to have a hearing within fifteen (15) days from the receipt of the Board's decision. The hearing *shall* be conducted in accordance with § 70117.

§ 70116. Revocation, Suspension and Renewal of Licenses.

(a) The Contractors License Board may revoke any license issued hereunder, *or* suspend the right of the licensee to use such licenses, *or* refuse to renew any such license for any of the following causes:

(1) Conviction of any felony *or* misdemeanor involving moral turpitude;

(2) Any dishonest *or* fraudulent *or* deceitful act as a contractor which causes a substantial damage to another;

(3) Pursuing a continued and flagrant course of misrepresentation *or* of making false promises through advertising *or* otherwise;

(4) Abandonment of any construction project *or* operation without reasonable *or* legal excuse;

(5) Willful departure from *or* willful disregard of plans *or* specifications in any material respect without consent of the owner *or* duly authorized representative, which is prejudicial to a person entitled to have the construction project *or* operation completed in accordance with such plans and specifications;

(6) Willful violation of any law of the Territory *or* of any political subdivision thereof, relating to building, including any violation of any applicable rule *or* regulation of the Department of Public Health, *or* of any applicable safety *or* labor law;

(7) Failure to make and keep records showing all contracts, documents, records, receipts and disbursements by a licensee of all transactions as a contractor for a period of *not less than* three (3) years after completion of any construction project *or* operation to which the records refer *or* to permit inspections of such records by the Board;

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(8) When the licensee being a co-partnership *or* a joint venture permits any member of such co-partnership *or* joint venture who *does not* hold a license to actively participate in the contracting business thereof;

(9) When the licensee being a corporation permits any officer *or* employee of such corporation who *does not* hold a license to have the direct management of the contracting business thereof;

(10) Misrepresentation of a material fact by an applicant in obtaining a license;

(11) Failure of a licensee to complete in a material respect any construction project *or* operation for the agreed price *if* such failure is without legal excuse;

(12) Willful failure in any material respect to comply with this Chapter *or* the rules and regulations promulgated pursuant thereto;

(13) Willful failure *or* refusal to prosecute a project *or* operation to completion with reasonable diligence;

(14) Willful failure to pay when due a debt incurred for services of materials rendered *or* purchased in connection with his operations as a contractor when the individual has the ability to pay *or* when the individual has received sufficient funds therefor as payment for the particular operation for which the services *or* materials were rendered *or* purchased;

(15) The false denial of any debt due *or* the validity of the claim therefor with intent to secure for licensee, employer *or* other person, any discount of such debt *or* with intent to hinder, delay *or* defraud the person to whom such debt is due;

(16) Failure to secure *or* maintain workmen's compensation insurance;

(17) Knowingly entering into a contract with an unlicensed contractor involving work *or* activity for the performance of which licensing is required under this Chapter; *or*

(18) When the Responsible Management Employee and/or the majority stockholders have, under another corporate *or* company

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structure, caused the non-payment of employees wages and/or the abandonment of alien workers to become a burden on the Government.

(19) Willful failure to pay when due a debt *or* penalty incurred for damaging a public utility operated by the Guam Power Authority, the Guam Telephone Authority *or* the Guam Waterworks Authority and the Department of Public Works.

(20) Knowingly taps into any power, water, sewer line, *or* facility belonging to the Guam Power Authority and/or the Guam Waterworks Authority without first obtaining permission through the established service rules and regulations of each respective governmental agency.

(b) *No* license *shall* be suspended for longer than two (2) years and *no* person whose license is revoked *shall* be eligible for a new license until the expiration of two (2) years.

(c) For purposes of this Section, the Contractors License Board in cooperation and in conjunction with the Department of Public Works, Department of Revenue and Taxation and the Department of Labor may have investigative powers for purposes of carrying out the intent of this Section.

§ 70117. Hearings.

(a) In every case where it is proposed to refuse to grant a license *or* to revoke *or* suspend a license *or* to refuse to renew a license, the Contractors License Board *shall* give the person concerned notice and hearing in conformity with the Administrative Adjudication Law. The notice *shall* be given in writing by registered *or* certified mail with return receipt requested *at least* fifteen (15) days before the hearing.

(b) In all proceedings before it, the Board, and each member thereof, *shall* have the same powers with respect to administering oaths, compelling the attendance of witnesses and the production of documentary evidence and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the Board, *or* any member thereof, *or* any subpoena issued by it, *or* the person, *or* the refusal of any witness to testify to any matter regarding which the individual may be questioned lawfully, any judge of the Superior Court, on application by the Board thereof, *shall* compel obedience as in the case of disobedience of the

requirements of a subpoena issued by the Superior Court, *or* a refusal to testify therein.

§ 70118. Appeal to Superior Court.

An applicant who has been refused a license and every licensee whose license has been suspended, revoked *or not* renewed may appeal the Contractors License Board's decision to the Superior Court in the manner provided in the Administrative Adjudication Law.

§ 70119. Disposition of Fees, Refunds.

(a) Notwithstanding the Central Accounting Act, all fees and money collected under the provisions of this Chapter *shall* be deposited in a special fund known as the *Contractors License Board Fund*. This Fund *shall* be kept in a bank licensed to do business on Guam and funds *shall* be paid out only upon a request for payment *or* requisition submitted by the Executive Director *or* its personnel and countersigned by the Chairman of the Board. All monies in this Fund *shall* require legislative appropriation.

(b) The Board may request the Treasurer of Guam to have any fee erroneously paid to it under this Chapter refunded when the Board deems it just and equitable.

§ 70120. Death *or* Dissociation.

No co-partnership, joint venture *or* corporation *shall* be deemed to have violated any provision of this Chapter by acting *or* assuming to act as a contractor after the death *or* dissociation of a licensee who had the direct management of the contracting business thereof prior to final disposition by the Contractors License Board of an application for a license made within thirty (30) days from the date of the death *or* dissociation.

§ 70121. Violation, Penalty.

Any person who violates *or* omits to comply with any of the provisions of this Chapter *shall* be fined an amount *no less than* Two Hundred Dollars (\$200) but *not to exceed* fifty percent (50%) of the value of the project.

§ 70122. Injunction.

The Contractors License Board may, in addition to any other remedies available, apply to a judge of the Superior Court for a preliminary *or* permanent injunction restraining any person from acting *or* assuming to act *or* advertising as general engineering contractor, general building contractor

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or specialty contractor, without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Board and upon hearing and for cause shown, the judge may grant the preliminary *or* permanent injunction.

§ 70123. Exemptions for Prior Licensees.

Any contractor who obtained a valid contractor's license under the existing license statute prior to July 1, 1977, *shall* be *exempt* from the provisions of this Chapter relative to application, investigations and examinations. Any contractor with a valid license issued prior to July 1, 1977, with a classification different from those enumerated in § 70106, *shall* be automatically placed in the appropriate classification without the necessity of complying with the application, investigation and examination provisions of this Chapter. All other provisions *shall* apply.
