

Andrew S. Quenga, Esq.
Daniel Mensching, Esq.
Judiciary of Guam
Guam Judicial Center
120 West O'Brien Dr.
Hagåtña, Guam 96910
aquenga@guamcourts.org
dmensching@guamcourts.org
Telephone: (671) 475-3278, 3186
Fax: (671) 477-3184

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 10/11/2021
TIME: 1:27 PM BY: MY
FILE NO OPA-PA: 21-008

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of

PTI PACIFICA INC., dba IT&E,

Appellant.

Docket No. OPA-PA21-008

**JUDICIARY OF GUAM'S MOTION TO
DISMISS FOR LACK OF JURISDICTION**

I. INTRODUCTION

Pursuant to the Office of the Public Accountability (the "OPA") Rules of Procedure, specifically 2 GAR § 12104(c)(9), the Judiciary of Guam ("Judiciary") hereby files this Motion to Dismiss Appellant's Procurement Appeal based on the Office of Public Accountability's (the "OPA") lack of jurisdiction to hear appeals of protests of Judiciary procurement actions.

II. BACKGROUND

On August 6, 2021, the Judiciary issued Invitation for Bid No. 21-09 ("IFB 21-09"), seeking bids to provide the Judiciary with internet services. On the first page of IFB 21-09 (attached here as Exhibit A) is stated: "[t]his IFB is governed by the Judicial Council of Guam Procurement Regulations adopted on March 19, 2004, as amended, and the applicable laws of Guam." On page 1 of the Judiciary of Guam General Terms and Conditions (Attached here as Exhibit B), which were attached and incorporated into IFB 21-09, is

stated: “1. Authority: This Solicitation is subject to all the provisions of the Judicial Council of Guam Procurement Regulations.” IT&E expressly acknowledged and accepted this condition in its bid response.

On September 3, 2021, IT&E filed a protest with the Judiciary on IFB 21-09. On September 10, 2021, the Judiciary issued a letter denying the protest to IT&E. On September 24, 2021 at 4:48 p.m., IT&E provided a copy of its appeal to the OPA by email to the Judiciary’s Procurement Contract Supervisor. On September 27, 2021, the OPA served a Notice of Receipt of Appeal – OPA-PA-21-008 on the Administrator of the Courts advising that IT&E had appealed the Judiciary’s denial of its protest to the OPA.¹

III. DISCUSSION

On November 10, 2003, Governor Felix P. Camacho signed Public Law 27-31, *An Act to Re-Organize the Judiciary as the Third Co-Equal and Independent Branch of the Government of Guam; To Designate the Judicial Council as the Head of a Unified Judiciary; and to Amend Title 7 and 19 of the Guam Code Annotated Relative to the Judiciary and Its Operations*. Public Law 27-31 added Title 7 GCA § 2102, which reads as follows: “[t]he Judicial Council shall administer the operations of the Supreme Court and Superior Court and shall promulgate rules, regulation and policy governing personnel, procurement, finance and travel for the Judicial Branch consistent with the Hay Study and Unified Pay Schedule adopted in 1991, as amended.” 7 GCA § 2102.

Pursuant to P.L.27-31, in 2004 after the unification of the courts of Guam, the Judicial Council adopted JC Resolution No. JC04-007, *Relative to the Adoption of the Procurement Regulations Applicable to the Supreme Court of Guam and Superior Court of Guam*, which approved the Judicial Council of Guam Procurement Regulations (attached here as Exhibit C). These Procurement Regulations create a process for aggrieved bidders to challenge the decisions of the Judiciary’s Purchasing Officer. This process does not

¹ The OPA’s Notice of Receipt of Appeal states in the first paragraph that IT&E’s appeal was filed on September 17, 2021 which appears to be a typo. IT&E’s appeal is dated September 24, 2021 and the OPA receipt stamp indicates the appeal was received on September 24, 2021.

provide for appeals to the OPA. Instead, protests are filed with the Purchasing Officer, whose decision can be appealed directly to the Superior Court of Guam. Judicial Council of Guam Procurement Regulations Section 10(D) provides in full:

SECTION 10. PROTESTS

- (A) Any aggrieved party who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, and who wishes to pursue a protest shall file a written protest with the Purchasing Officer. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knew or should have known of the facts giving rise to the protest.
- (B) The Purchasing Officer shall have the authority to settle and resolve a protest.
- (C) If the protest is not resolved by mutual agreement, the Purchasing Officer shall issue a decision in writing within thirty (30) days of receipt of the protest. If no written decision has been issued by the Purchasing Officer at the expiration of the thirty (30) day period, such shall be considered an adverse decision.
- (D) **Upon the issuance of an adverse decision by the Purchasing Officer, or upon the expiration of the thirty (30) day period after filing of the complaint, the aggrieved party may file an action in the Superior Court of Guam for appropriate relief within fourteen (14) days of such adverse decision or expiration of time.**

The Judicial Council of Guam Procurement Regulations adopted in 2004 were intended to apply to the entire Judiciary and replaced the Amended Procurement Regulations of the Supreme Court of Guam adopted earlier in Supreme Court Promulgation Order No. 03-007 in 2003 attached here as Exhibit D. The Supreme Court Amended Procurement Regulations also provided for appeal of a protest denial directly to the Superior Court. The Judiciary has asserted its authority to govern its own procurement actions.

IT&E should have sought review of the Purchasing Officer's denial of its protest to the Superior Court of Guam pursuant to Section 10(D) of the Judicial Council of Guam Procurement Regulations. IT&E has failed to seek review of the protest denial in the correct venue. Allowing Judiciary procurements to be

appealed to the OPA would usurp the Judicial Council's authority to create its own procurement regulations. For this reason, this Procurement Appeal should be dismissed in its entirety for lack of jurisdiction.

IV. CONCLUSION

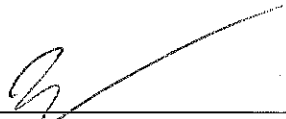
Based on the above, the Judiciary respectfully moves for dismissal of this Procurement Appeal. Further, as this Motion to Dismiss raises significant jurisdictional issues, the Judiciary respectfully requests a stay of any submission deadlines pending a decision from the OPA.

Respectfully submitted this 1st day of October, 2021.

By:



Andrew S. Quenga, Esq.



Daniel Mensching, Esq.

Attorneys for Respondent Judiciary of Guam

JUDICIARY OF GUAM
Invitation for Bids (IFB) No. 21-09

Description of Items/Services	Term
Internet Services	One (1) Year with option to add two (2) more years to be renewed annually, not to exceed three (3) years total.

I. GENERAL INFORMATION.

Purpose: This Invitation for Bids (IFB) is issued to solicit bids only from qualified, responsible and established bidders known to be experienced and regularly engaged in the services sought in this IFB and described in **Section VIII Scope of Services and Exhibit A: Pricing Sheet.**

Authority: This IFB is governed by the Judicial Council of Guam Procurement Regulations adopted on March 19, 2004, as amended, and the applicable laws of Guam.

Issued By: Kristina L. Baird, Administrator of the Courts/Purchasing Officer
 Judiciary of Guam
 Guam Judicial Center
 120 West O'Brien Drive
 Hagåtña, Guam 96910

Date Issued: This IFB is issued **August 6, 2021.**

Date Due: All original copies of bids must be submitted by **10:00 a.m. on August 27, 2021**, Chamorro Standard Time. All bids will be opened and read aloud at the Procurement Conference Room on that said date and time. Late bids will not be considered.

Proposals: One (1) original, four (4) copies of the bids must be submitted in a sealed envelope addressed to the Judiciary of Guam (hereinafter the "Judiciary") and clearly marked "IFB No. 21-09." The bidder's name, address and phone numbers must also be identified on the envelope.

Place: Bids must be submitted to:
 Office of the Procurement & Facilities Management Division
 Guam Judicial Center, 1st floor
 120 West O'Brien Drive, Hagåtña, Guam 96910

Questions: Questions concerning this IFB may be directed to:
 Procurement & Facilities Management Division
Attention: Marissa C. Antonio, Deputy Procurement & Fac. Mgt. Administrator
 Joleen P. Cepeda, Procurement Contract Supervisor
 Guam Judicial Center
 120 West O'Brien Drive
 Hagåtña, Guam 96910
 Tel: (671) 475-3393/3175 Fax: (671) 477-8009
 Email: mantonio@guamcourts.org and/or jpcepeda@guamcourts.org

**JUDICIARY OF GUAM
GOVERNMENT OF GUAM**

GENERAL TERMS AND CONDITIONS

Sealed Bid Solicitation and Award

ONLY THOSE BOXES CHECKED BELOW ARE APPLICABLE TO THIS BID.

- (x) 1. **AUTHORITY:** This Solicitation is issued subject to all the provisions of the Judicial Council of Guam Procurement Regulations. The Bid requires all parties involved in the preparation, negotiation, performance, or administration of a contract to act in good faith.
- (x) 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and Conditions for the bidder to provide the Judiciary of Guam with specified services or with materials, supplies, or equipment completely assembled and ready for use.
- (x) 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Guam Director of Revenue and Taxation.
- (x) 4. **LICENSING:** Bidders are cautioned that the Judiciary of Guam will not consider for award any offer submitted by a bidder who has not complied with applicable provisions of the Guam Business License Law or other applicable federal, state or Guam licensing requirements. Specific information on Guam licenses may be obtained from the Government of Guam Director of Revenue and Taxation. A copy of any required business license and/or certificate should be submitted with the bid proposal and must be received prior to award of contract.
- (x) 5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam.
- (x) 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
- (x) 7. **"ALL OR NONE" BIDS:** By checking this item, the Judiciary of Guam is requesting all of the bid items to be bid or none at all. **The Judiciary of Guam will not award on an itemized basis.**
- () 7a. If the Judiciary of Guam does not require all or none bids (Section 7 is not checked off), but the bidder indicates on the bid that it is an all or none bid, then the Judiciary of Guam will deem the bid submitted to be non-responsive.

JUDICIAL COUNCIL OF GUAM PROCUREMENT REGULATIONS

SOURCE: Adopted by the Judicial Council pursuant to JC04-007 (Mar. 19, 2004). Section 4(3) amended by JC06-011 (April 6, 2006) to remove "trade" from the definition of Procurement. Section 6(G), Requests for Health Proposals, added by Judicial Council approval in meetings of May 16 and 23, 2013 and memorialized in the approved minutes thereof. Sections 6(A),(B),(C),(D) and (E) amended by JC17-018 (June 5, 2017) to increase the limits for small purchases from \$15,000 to \$25,000 and to add 6(D)(4) regarding small construction purchases. Section 12 added by JC18-020 (July 19, 2018) to incorporate fees for bid and proposal packages.

SECTION 1. PURPOSE

It is the purpose of these regulations to provide uniform and standard procurement policies and procedures for the entire Judicial Branch of Guam ("Judiciary") including the Supreme and Superior Courts and all entities attached thereto.

SECTION 2. GENERAL POLICY

It shall be the policy of the Judiciary to procure supplies and services, including the provision of health insurance or benefits for medical and dental services as a benefit to its employees pursuant to 4 GCA §4301(c), from the lowest bidder or best qualified offeror as provided herein, consistent with quality and service, and to conduct procurement activities in the manner that shall best serve the public interest. These rules shall not apply to the hiring of interns, law clerks, attorneys, marriage counselors, therapists, psychiatrists, psychologists, interpreters, or Judges and Justices Pro Tempore by the Judiciary; to the contracting of services related to legal research, or to expenditures pursuant to court order in matters before the various courts of Guam.

SECTION 3. LOCAL PROCUREMENT PREFERENCE

Procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam. Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or the procurement is for supplies or services to be acquired from or through a federal agency when costs are known to be lower than the prevailing market prices or if the total cost of F.O.B. job site, unloaded, from off Guam is no greater than 85% of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam.

SECTION 4. DEFINITIONS

- (1) "Bid" means a bid submitted in response to an Invitation to Bid or small purchase solicitation.
- (2) "Central Procurement" means the Supply Management Division of the Department of Administration.
- (3) "Procurement" means any authorized acquisition of supplies and services through the expenditure of Judiciary funds, including purchases, rental or lease by the Judicial Council, or its authorized designee(s) within the purview of these regulations, and not in

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conflict with applicable laws.

- (4) "Health Care Benefits" means those benefits procured pursuant to 4 GCA §4301, as group insurance for health benefits, including but not limited to hospitalization and medical care, including dental care, for employees and their dependents of the Judicial Branch of Guam, to include all benefits applicable to Government of Guam employees pursuant to Article 3 of Title 4 GCA and to Chapter 28 of Title 22, "Parity in Health Insurance for Mental Illness and Chemical Dependency."
- (5) "Professional Services" means service requiring the provider to possess specialized knowledge or technical training, educational degrees or certifications, or licenses. Professional services do not include services by interns, law clerks, attorneys, marriage counselors, psychiatrists, psychologists, therapists, interpreters or Judges or Justices Pro Tempore, or to the contracting of services related to legal research.
- (6) "Proposal" means a proposal submitted in response to a Request for Proposals or small purchase solicitation.
- (7) "Purchasing Officer" means the Administrator of the Courts.
- (8) "Services" means any rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services; remodeling, renovations or new construction of buildings or facilities; the printing of stationery, forms and journals; or rental, lease, repair or maintenance of equipment, machinery or other personal property. Services do not include contracts with interns, law clerks, attorneys, marriage counselors, therapists, psychiatrists, psychologists, interpreters or Judges or Justices Pro Tempore, or services related to legal research.
- (9) "Supplies" means any item or article, except the purchase of real estate, which is furnished to or used by the Judiciary including, but not limited to, stationery, forms and journals; reproduction or publications and binding; repair and maintenance items; fuel, furnishings and foodstuffs; and all materials and equipment.
- (10) "Responsible Bidder or Offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (11) "Responsive Bidder or Offeror" means a person who has submitted a bid or proposal which conforms in all material respects to the Invitation to Bid or Request for Proposals.

SECTION 5. ADMINISTRATION

Responsibility for the administration of these regulations is vested in the Administrator of the Courts, who shall be the Purchasing Officer, and who may, at his or her own discretion, delegate or assign various actions required by these regulations to qualified persons unless such delegation or assignment of specific actions is expressly prohibited herein, provided that if any actions are so delegated or assigned the Purchasing Officer nonetheless remains responsible for the administration of these regulations. Further, in carrying out the administration of these regulations, the Purchasing Officer may, at his or her own discretion, use the services of the

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Central Procurement Office of Guam.

(A) DUTIES AND RESPONSIBILITIES OF THE PURCHASING OFFICER.

The Purchasing Officer shall undertake the necessary actions to:

- (1) disqualify suppliers for a stated period of time not to exceed a maximum of three (3) years who default in performances or who supply poor quality goods from any bidding or negotiation, which action shall not be delegated nor assigned by the Purchasing Officer;
- (2) disqualify suppliers who fail to comply with appropriate licensing requirements, which action shall not be delegated nor assigned by the Purchasing Officer;
- (3) regulate the storage and distribution of supplies to avoid loss and waste and account for properties and equipment, and establish a replacement schedule to avoid costly maintenance of obsolete equipment;
- (4) prescribe the procedures and forms to be used for submitting requisitions for supplies and services, and for processing procurement transactions;
- (5) resolve procurement disputes and breach of contract controversies at the administrative level;
- (6) purchase, or contract for the purchase of, all supplies and services for the Judiciary in accordance with the provisions of these regulations and applicable laws;
- (7) prescribe the manner, place and date of delivery of supplies and materials procured for the Judiciary;
- (8) prescribe the manner of inspecting supplies and materials upon delivery before acceptance and the manner of tests of samples submitted with bids to determine compliance with ordering specifications;
- (9) determine whether a surety bid bond or cash deposit shall be required with any bid, or whether a surety performance bond shall be required before a contract is entered into, and if required, to prescribe the amount thereof and to enforce forfeiture of such bond or deposit upon failure of the successful bidder to enter into a contract within the prescribed time or to perform the contract in a satisfactory manner, which action shall not be delegated nor assigned by the Purchasing Officer;
- (10) prescribe, on an item basis, the amount of liquidated damages to assess defaulter for breach of contract, which action shall not be delegated nor assigned by the Purchasing Officer; and
- (11) undertake such other actions as may be required to effect these regulations.

SECTION 6. PURCHASING AND CONTRACTING PROCEDURES

The following procedures shall govern the purchase of supplies and services.

- (A) COMPETITIVE SEALED BIDS. Procurement by competitive sealed bids is optional for any purchase at the discretion of the Purchasing Officer, but it is mandatory where the total cost is Twenty Five Thousand Dollars (\$25,000.00) or more, except as otherwise provided.
- (1) Procedure. The procedures to be observed when procuring by sealed bids are as follows:
 - (a) Notice. A public notice requesting sealed bids shall be published in a newspaper of general circulation on Guam at the time of bid issuance. A final notice shall be published at least five (5) business days before the final date for submission of bids. Such notice shall also be posted on a bulletin board to which the public has access. The Purchasing Officer may also solicit bids by posting on the Judiciary web site or by sending invitations by fax, e-mail, regular mail or messenger to prospective bidders. Public notice shall include a general description of supplies or services to be procured, and shall state where Invitation to Bid forms and specifications are available, and the time and place for submission and opening of bids. The Purchasing Officer may require payment of a fee or a deposit for the supplying of the Invitation to Bid forms and specifications.
 - (b) Invitation to Bid. The Invitation to Bid shall include instructions including place, time and date for submission and opening of bids, purchase description, evaluation factors, delivery or performance schedule, contract terms including warranty and bonding, and any other pertinent information. The Invitation to Bid shall include a form wherein a bidder shall insert the bid price.
 - (c) Pre-Bid Conference. A pre-bid conference may be conducted at the discretion of the Purchasing Officer to explain procurement requirements. Notice of a pre-bid conference may be included in the Invitation to Bid or sent to all prospective bidders known to have obtained an Invitation to Bid.
 - (d) Amendments to Invitations to Bid. Amendments to Invitations to Bid shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. Amendments shall be sent to all prospective bidders known to have received an Invitation to Bid. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids.
 - (e) Modification or Withdrawal of Bids. Bids may be modified or withdrawn by bidders by written notice submitted prior to the date and time set for bid opening. Bidders must correct mistakes in their bids by submitting a timely modification or withdrawing and resubmitting bids. Late

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modifications or withdrawals will not be considered.

- (f) Submission of Bids. Bids shall be submitted to the Purchasing Officer on the date and time set for submission of bids, and each bid shall be identified as a bid on its envelope in such manner as the Purchasing Officer may prescribe.
 - (g) Opening of Bids, Public Inspection, Proprietary Information. Bids shall be opened in public at the time and place stated in the public notice. Each bid, with the name of the bidder, shall be entered on a written record. The opened bids shall be available for public inspection except those parts of each bid that have been designated as trade secrets or proprietary data. Such trade secrets or proprietary data must be clearly designated and readily separable from the bid. Prices and contractual terms shall not be deemed secret or proprietary and shall be available for public inspection.
 - (h) Award of Contract. The contract shall be awarded to the lowest responsible and responsive bidder. All bidders shall be informed in writing of the selection of the lowest responsible and responsive bidder as soon as practicable.
 - (i) Tie Bids. If bids are for the same unit price or total amount, in whole or in part, the Purchasing Officer shall have authority to award the bid to one (1) of the tie bidders by drawing lots in public, or to reject all such bids.
- (2) Determining Lowest Responsible and Responsive Bidder. In determining the lowest responsible and responsive bidder, the Purchasing Officer shall be guided by the following:
- (a) compliance by the bidder with necessary licensing requirements;
 - (b) ability and sufficiency of financial resources of the bidder to perform promptly, or within the time specified, without delay or interference;
 - (c) quality of performance of the bidder with regard to awards previously made to the bidder;
 - (d) record of the bidder with respect to compliance with laws and regulations relating to procurement;
 - (e) quality and availability of the supplies or services offered by the bidder, and adaptability to the particular use required;
 - (f) ability of the bidder to provide future maintenance and service for the use of the subject of the award; and
 - (g) number and scope of conditions attached to the bid.

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- (B) COMPETITIVE SEALED PROPOSALS. Procurement by competitive sealed proposals is optional at the discretion of the Purchasing Officer, but it is mandatory where the total cost is Twenty Five Thousand Dollars (\$25,000.00) or more and procurement by competitive sealed bids is not practicable, except as otherwise provided.
- (1) General Discussion. Procurement by competitive sealed bids is the preferred method of procurement, except that the preferred method of procurement for any rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services, shall be by competitive sealed proposal. Furthermore, if procurement by competitive sealed bids is not practicable for procurement of other than the rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services, competitive sealed proposals should be used. The competitive sealed proposal method differs from the competitive sealed bids method in two important ways:
 - (a) it permits discussions with competing offerors and changes in their proposals, including price if price is identified as an evaluation factor in the particular procurement; and
 - (b) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.
 - (2) Procedures. The procedures to be observed when procuring by competitive sealed proposals are as follows:
 - (a) The Request for Proposals ("RFP"). The RFP shall be prepared in the same manner as provided for preparation of an Invitation to Bid provided that it shall also include a statement that discussions may be conducted with, and comparative judgmental evaluations may be made regarding, offerors who submit proposals determined to be reasonably susceptible of being selected for award, although proposals may be accepted without such discussions.
 - (b) Notice. Public notice of the RFP shall be given in the same manner as provided for notice of an Invitation to Bid.
 - (c) Pre-Proposal Conferences. Pre-proposal conferences may be conducted in accordance with Pre-Bid Conferences. Any such conference should be held prior to submission of initial proposals.
 - (d) Amendments to Request for Proposals. Amendments to Request for Proposals may be made in accordance with Amendments to Invitations to Bid.
 - (e) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.
 - (f) Receipt and Handling of Proposals. Proposals and modifications shall be

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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 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.

(g) 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 if services are being procured, although the relative importance of these and other factors will vary according to the services being procured. The minimum factors are:

1. the plan for performing the required services;
2. 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 services;
3. the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
4. a record of past performance of similar work.

(h) Requests for Nondisclosure of Data. If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Purchasing Officer shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the Purchasing Officer shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals or protests, the proposal will be so disclosed.

1. Discussion. The Purchasing Officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions may include but are not limited to:
 - i. determining in greater detail such offeror's qualifications; and
 - ii. exploring with the offeror the scope and nature of the required method of performance, and the relative utility of alternative methods of approach.

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2. No Disclosure of Information. During discussions with offerors, information obtained in discussions or from proposals by other offerors shall not be disclosed. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in these rules.
- (i) Selection of the Best Qualified Offerors. After evaluation of proposals and discussions with offerors, the Purchasing Officer shall select, in the order of their respective qualification ranking, no fewer than three 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.
 - (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 Purchasing Officer prior to the commencement of negotiations.
 - (k) Negotiation. The Purchasing Officer conducting the procurement or a designee of such officer shall negotiate a contract with the best qualified offeror at the compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:
 1. making certain that the offeror has a clear understanding of the scope of work, and specifically, if services are being procured, the essential requirements involved in providing the required services;
 2. if services are being procured, determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 3. agreeing upon compensation which is fair and reasonable, and, if services are being procured, doing so while taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.
 - (l) Award of Contract. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.
 - (m) 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 therefor shall be placed in the file and the Purchasing Officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) business days. Upon failure to negotiate a contract with the best qualified offeror, the Purchasing Officer 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

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negotiations again fail, negotiations shall be terminated as provided above and negotiations may commence with the next most qualified offeror.

- (n) Notice of Award. Written notice of award shall be public information and made a part of the contract file.
- (o) Failure to Award Contract. Should the Purchasing Officer 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 their original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with these rules until an agreement is reached and the contract awarded.
- (p) Memorandum of Evaluation and Negotiation. At the conclusion of negotiations resulting in the award of a contract, the Purchasing Officer shall prepare a memorandum setting forth the bases of the award including application of the evaluation factors in selecting the best qualified offerors and the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract. All memoranda shall be included in the contract file and be available for public inspection.

(C) REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES. The provisions of this Section apply to the procurement of professional services except as otherwise provided by law. This section shall not apply to the hiring of interns, law clerks, attorneys, Judges or Justices Pro Tempore, marriage counselors, therapists, psychiatrists, psychologists, interpreters or services related to the contracting of services related to legal research.

Procurement of professional services by Request for Proposals ("RFP") is optional at the discretion of the Purchasing Officer, but it is mandatory where the total cost is Twenty Five Thousand Dollars (\$25,000.00) or more, except as otherwise provided.

- (1) Determination Required Prior to Use of RFPs. For the purposes of procuring professional services, the Purchasing Officer shall determine in writing, prior to issuing an RFP, that the Judiciary does not have the personnel or resources to perform the services required under the proposed contract. This determination shall not be delegated nor assigned by the Purchasing Officer.
- (2) Statement of Qualifications. When professional services are needed on a recurring basis, the Purchasing 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;

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- (c) an expression of interest in providing the specific service; and
 - (d) any other pertinent information requested by the Purchasing Officer, provided that a person may amend a statement of qualifications at any time by filing a new statement.
- (3) Procedure. The procedures for procurement of professional services by RFP are as follows:
- (a) Notice. Public notice of the RFP shall be given in the same manner as provided for notice of Invitation to Bid.
 - (b) Content of Request for Proposals. An RFP shall be in the form specified by the Purchasing Officer and shall contain at least the following information:
 - 1. the type of services required;
 - 2. description of the work involved;
 - 3. an estimate of when and for how long the services will be required;
 - 4. the type of contract to be used;
 - 5. a date by which proposals for the performance of the services shall be submitted;
 - 6. a statement that the proposals shall be in writing;
 - 7. a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;
 - 8. the factors to be used in the evaluation and selection process and their importance; and
 - 9. a statement of the minimum information that the proposal shall contain, to include:
 - i. 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;
 - ii. if deemed relevant by the Purchasing Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;
 - iii. the abilities, qualifications, and experience of all persons

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who would be assigned to provide the required services;

- iv. 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; and
 - v. a plan giving as much detail as is practical explaining how the services will be performed.
- (c) 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 professional services being procured. The minimum factors are:
- 1. the plan for performing the required services;
 - 2. 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 services;
 - 3. the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
 - 4. a record of past performance of similar work.
- (d) Pre-Proposal Conference. A pre-proposal conference may be conducted at the discretion of the Purchasing Officer or Purchasing Officer to explain procurement requirements prior to the date set for submission of proposals. Notice of a pre-proposal conference may be included in the RFP or sent to the known prospective proposers.
- (e) 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 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.
- (f) Requests for Nondisclosure of Data. If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Purchasing Officer shall examine the

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request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the Purchasing Officer shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals or protests, the proposal will be so disclosed.

- (g) Discussion. The Purchasing Officer or persons designated by the Purchasing Officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall include, but are not limited to:
 - 1. determining in greater detail such offeror's qualifications; and
 - 2. exploring 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.
- (h) No Disclosure of Information. During discussions with offerors, information obtained in discussions or from proposals by other offerors shall not be disclosed. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in these rules.
- (i) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.
- (j) Selection of the Best Qualified Offerors. After evaluation of proposals and discussions with offerors, the Purchasing Officer shall select, in the order of their respective qualification ranking, no fewer than three 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.
- (k) Submission of Cost or Pricing Data. The offeror determined to be best qualified shall be required to submit cost or pricing data to the Purchasing Officer prior to the commencement of negotiations.
- (l) Negotiation. The Purchasing Officer conducting the procurement or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at the compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:
 - 1. making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirement involved in providing the required services;
 - 2. determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

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3. 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.
- (m) Award of Contract. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.
 - (n) 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 therefor shall be placed in the file and the Purchasing Officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) business days. Upon failure to negotiate a contract with the best qualified offeror, the Purchasing Officer 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 as provided above and negotiations may commence with the next qualified offeror.
 - (o) Notice of Award. Written notice of award shall be public information and made a part of the contract file.
 - (p) Failure to Award Contract. Should the Purchasing Officer 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 their original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with these rules until an agreement is reached and the contract awarded.
 - (q) Memorandum of Evaluation and Negotiation. At the conclusion of negotiations resulting in the award of a contract, the Purchasing Officer shall prepare a memorandum setting forth the bases of award including application of the evaluation factors in selecting the best qualified offerors and the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract. All memoranda shall be included in the contract file and be available for public inspection.
- (D) **SMALL PURCHASES.** Procurement for small purchases is authorized when the cost is less than Twenty Five Thousand Dollars (\$25,000.00), subject to the following.
- (1) Less Than One Thousand Dollars (\$1,000.00). When the total cost of a requisition is less than One Thousand Dollars (\$1,000.00), procurement may be made by the Purchasing Officer through Blanket Purchase Agreements or, if the cost is less than Forty Dollars (\$ 40.00), through petty cash.

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- (2) One Thousand Dollars (\$1,000.00) or More, But Less Than Five Thousand Dollars (\$5,000.00). When the total cost of a requisition is One Thousand Dollars (\$1,000.00) or more, but less than Five Thousand Dollars (\$5,000.00), procurement may be made by solicitation of informal written or oral quotations on the open market, except that the Purchasing Officer may dispense with such solicitations and negotiate directly with a vendor when, in the opinion of the Purchasing Officer, it is deemed more advantageous to the Judiciary.
- (3) Five Thousand Dollars (\$5,000.00) or More, But Less Than Twenty Five Thousand Dollars (\$25,000.00). When the cost is Five Thousand Dollars (\$5,000.00) or more, but less than Twenty Five Thousand Dollars (\$25,000.00), procurement may be made by solicitation of not less than three (3) informal written quotations on the open market of which a written record shall be kept, except that the Purchasing Officer may dispense with such quotations and negotiate directly with a vendor when, in the opinion of the Purchasing Officer, it is deemed more advantageous to the Judiciary.
- (4) Small Construction Purchases. For procurement of construction between One Thousand Dollars (\$1000.00) and One Hundred Thousand Dollars (\$100,000.00), the procedures set forth in subsection (3) above, shall apply.

(E) EXCEPTIONS. Exceptions to the Purchasing and Contracting Procedures are as follows:

- (1) Where the total cost is Twenty Five Thousand Dollars (\$25,000.00) or more, exception to the requirements of this Section 6 is authorized only where at least one (1) of the following conditions exist, and the Purchasing Officer certifies this exception in writing, which action shall not be delegated nor assigned:
 - (a) an emergency situation affecting the essential operations of the Judiciary or the General Public exists which will not allow the normal delay attendant to the sealed bid procedures;
 - (b) the procurement is for supplies or services for which it is impractical or impossible to secure competition;
 - (c) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
 - (d) the procurement is for supplies or services to be acquired from or through a federal agency when costs are known to be lower than the prevailing market prices; or
 - (e) the procurement is for supplies which are offered through bargain sales, bankruptcy or receivership sales, or other dispositions of property at lower than prevailing market prices.
- (2) Exception to Requirement to Procure from Local Suppliers. Whenever it is determined that the local franchised dealer or distributor is not able to furnish the

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required service or supply from shelf stock, the Purchasing Officer may authorize procurement direct from a manufacturer or supply distributor when the procurement is for supplies or equipment needed to meet an emergency or disaster, and the Purchasing Officer certifies this exception in writing.

(F) BLANKET PURCHASE AGREEMENTS. A Blanket Purchase Agreement is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply and is to be used only if the services or supplies cannot be properly identified as to the quantity and the type of services or supplies required. Blanket Purchase Agreements must be authorized and approved by the Purchasing Officer. All competitive sources should be given an equal opportunity to furnish supplies or services under Blanket Purchase Agreements to the extent practicable.

(1) Establishment of Blanket Purchase Agreements. The following are circumstances under which Blanket Purchase Agreements may be approved.

(a) If there is a wide variety of items in a broad class of goods (e.g. hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(b) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(G) REQUEST FOR PROPOSALS FOR HEALTH CARE SERVICES.

(1) The Purchasing Officer may issue Requests for Health Proposals ("RFHP") for the procurement of Health Care Services, including the service of providing health insurance or benefits for medical and dental services as a benefit to its employees. Anything in the Judiciary Procurement Regulations to the contrary notwithstanding, the Purchasing Officer shall develop minimum qualifications for proposals to be submitted for health insurance coverage; is authorized to contract for the services of a recognized insurance consultant to advise the Purchasing Officer; shall announce the RFHP for qualified active employees of the Judicial Branch of Guam pursuant to 4 GCA § 4301(c); and shall review the best available proposals by participating healthcare respondents/providers which reflect the most economical and beneficial healthcare insurance proposal plan for Judiciary employees and their dependents. Pursuant to 4 GCA § 4302(d), no health insurance company or health care provider contracted to provide health care to Judiciary employees may deny coverage to the employee or dependents on the basis of a congenital anomaly. No health insurance company or health care provider contracted to provide health care to Judiciary of Guam employees may deny coverage to the employee or dependents on the basis of chronic orthopedic deformities as that term is defined in 4 GCA § 4302(h). Blood and blood derivatives will be covered pursuant to 4 GCA § 4302(i).

(2) Procurement of such Health Care Services shall be conducted pursuant to the steps set forth below. The manner of securing proposals shall be "Request for Health Proposals."

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The Request for Health Proposals (“RFHP”). The RFHP shall be prepared in the same manner as provided for preparation of an Invitation to Bid, provided that it shall also include a statement that discussions may be conducted with, and comparative judgmental evaluations may be made regarding, offerors who submit proposals determined to be reasonably susceptible of being selected for award, although proposals may be accepted without such discussions.

- (a) Notice. Public notice of the RFHP shall be given in the same manner as provided for notice of an Invitation to Bid.
- (b) Pre-Proposal Conferences. A pre-proposal conference may be conducted at the discretion of the Purchasing Officer to explain procurement requirements prior to the date set for submission of proposals. Notice of a pre-proposal conference may be included in the RFHP or sent to the known prospective proposers.
- (c) Amendments to RFHP. Amendments to RFHP may be made in accordance with Amendments to Invitations to Bid.
- (d) 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 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.

(3) Evaluation Factors in the Request for Health Proposals

The Request for Health Proposals shall state all of the evaluation factors, including price, and their relative importance.

(a) Evaluations

The evaluation shall be based on the evaluation factors set forth in the Request for Health Proposals. Numerical rating systems may be used, but are not required.

1. Classifying Proposals

For the purpose of conducting Discussions with Individual Offerors, proposals shall be initially classified as:

- i. Acceptable;
- ii. Potentially acceptable, that is, reasonably susceptible of

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being made acceptable; or

iii. Unacceptable.

Offerors whose proposals are unacceptable shall be so notified promptly.

2. Purpose of Discussions

Discussions are held to:

- i. Promote understanding of the Judiciary's requirements and the offerors' proposals; and
- ii. Facilitate arriving at a contract that will be most advantageous to the Judiciary, taking into consideration price and the other evaluation factors set forth in the Request for Health Proposals.

3. Conduct of Discussions

Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The Purchasing Officer should establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification of or change in the RFHP, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

4. Best and Final Offers

The Purchasing Officer shall establish a common date and time for the submission of best and final offers. Best and final offers shall be submitted only once; provided, however, the Purchasing Officer may make written determination that it is in the Judiciary's best interest to conduct additional discussions or change the Judiciary's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

5. Mistakes in Proposals

- (a) Modification or Withdrawal of Proposal

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Proposals may be modified or withdrawn prior to the established due date. For purposes of this section, the established due date is either the time and date announced for receipt of proposals or receipt of modifications of proposal, if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

(b) Confirmation of Proposal

When the Purchasing Officer knows or has reason to conclude before award that a mistake has been made, such officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if conditions set forth in Subsections 6(G)(3)(a)(5)(c)(5)(i-iii) are met.

(c) Mistakes Discovered after Receipt of Proposals but Before Award

- (1) This Subsection sets forth procedures to be applied in the following situations in which mistakes in proposals are discovered after receipt of proposals but before award.
- (2) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set forth for receipt of best and final offers.
- (3) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding in Section 6(A)(1)(e) above.
- (4) Correction of Mistakes. If discussions are not held or if best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

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- (i) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
 - (ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.
- (5) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
- (i) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
 - (ii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made, but does not demonstrate the intended correct offer; or
 - (iii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction could be contrary to the fair and equal treatment of the other offerors.

(d) Mistakes Discovered after Award

Mistakes shall not be corrected after award of the contract except where the Purchasing Officer finds it would be unconscionable not to allow the mistake to be corrected.

(e) Determinations Require

When a proposal is corrected or withdrawn, or when correction or withdrawal is denied as provided above, a written determination shall be prepared showing that relief was granted or denied in accordance with these

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Regulations. The Purchasing Officer shall prepare the determination.

(b) Award.

1. The Purchasing Officer shall make a written determination showing the basis on which the award was found to be most advantageous to the Judiciary based on the factors set forth in the RFHP including price.
2. Publicizing Awards. After a contract is entered into, notice of award shall be posted in the Purchasing Officer's office or public information office of the Judiciary.

SECTION 7. CANCELLATION OF SOLICITATIONS; REJECTION OF BIDS AND PROPOSALS

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the Judiciary under Invitation to Bid, Request for Proposals, small purchases, or any other selection method, and rejection of bids or proposals in whole or in part.

- (A) POLICY. Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation shall give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of government time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the Judiciary's best interest.
- (B) NOTICE. Each solicitation issued by the Judiciary shall state that the solicitation may be cancelled as provided in these Regulations.
- (C) CANCELLATION OF SOLICITATION. Rejection of All Bids or Proposals.
- (1) Prior to Opening.
 - (a) As used in this Section, opening means the date set for opening of bids, or receipt of proposals in requests for proposals.
 - (b) Prior to opening, a solicitation may be cancelled in whole or in part when the Purchasing Officer determines in writing that such action is in the Judiciary's best interest for reasons including, but not limited to:
 1. the Judiciary no longer requires the supplies, services, or construction;
 2. the Judiciary no longer can reasonably expect to fund the procurement; or

EXHIBIT C - Judicial Council of Guam Procurement Regulations

3. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- (c) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited.
 - (d) The notice of cancellation shall:
 1. identify the solicitation;
 2. briefly explain the reason for cancellation; and
 3. where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar supplies, services, or construction.
- (2) After Opening.
 - (a) After opening, but prior to award, all bids or proposals may be rejected in whole or in part when the Purchasing Officer determines in writing that such action is in the Judiciary's best interest for reasons including, but not limited to:
 1. the supplies, services, or construction being procured are no longer required;
 2. ambiguous or otherwise inadequate specifications were part of the solicitation;
 3. the solicitation did not provide for consideration of all factors of significance to the Judiciary;
 4. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 5. all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 6. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
 - (b) A notice of rejection shall be sent to all businesses that submitted bids or proposals.
 - (3) Documentation. The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

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(D) REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

- (1) General. This section applies to rejection of individual bids or proposals in whole or in part.
- (2) Notice in Solicitation. Each solicitation issued by the Judiciary shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the Judiciary as provided in these Regulations.
- (3) Reasons for Rejection. Reasons for rejecting a bid or proposal include, but are not limited to:
 - (a) untimeliness;
 - (b) the bid or proposal is not responsive, that is, it does not provide the information requested in the Invitation to Bid or Request for Proposals; or
 - (c) the supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation to Bid or Request for Proposals.
- (4) Notice of Rejection. Upon written request, unsuccessful bidders or offerors shall be advised of the reasons therefor.

(E) "ALL OR NONE" BIDS OR PROPOSALS. Only when provided by the solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering. Otherwise, such bids or proposals shall be deemed to be nonresponsive. If the bid or proposal is properly so limited, the Judiciary shall not reject part of such bid or proposal and award on the remainder.

(F) DISPOSITION OF BIDS OR PROPOSALS. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

SECTION 8. PROHIBITIONS

(A) No procurement of supplies or services shall be made except in accordance with these regulations, and where authorized herein, with conditions and requirements prescribed by the Purchasing Officer. Except as may be authorized by the Purchasing Officer, no member or employee of the Judiciary is authorized to procure supplies or services, or enter into a contract or agreement to purchase, sell, exchange or trade or tender thereof, on behalf of the Judiciary or any unit thereof. Neither the Purchasing Officer, the Purchasing Office's designee, nor any procurement personnel of the Judiciary may encumber or charge the funds of the Judiciary, except in accordance with these regulations, absent prior written authorization from the Judicial Council. Where there has been an unauthorized procurement, the Judicial Council reserves the right, without liability, to rescind the procurement and to reject any delivery or tender of such supplies

EXHIBIT C - Judicial Council of Guam Procurement Regulations

or services.

- (B) Neither the Purchasing Officer, the Purchasing Officer's designee, nor any procurement personnel of the Judiciary shall be financially interested, directly or indirectly, in any procurement for supplies or services for any unit of the Judiciary. Neither the Purchasing Officer, the Purchasing Office's designee, nor any procurement personnel of the Judiciary shall accept or receive, directly or indirectly, from any supplier, either before or after, any procurement, whether by sealed bid or open market procedures, any compensation, gift, commission, reward, rebate or other benefit, either in money or anything of value, or any promise, obligation or contract for any such future benefit or employment. The Purchasing Officer, designee or other Judiciary employee who so violates this provision shall be subject to disciplinary action including dismissal.

SECTION 9. SURPLUS STOCK

Whenever necessary, the Purchasing Officer or his designee shall prepare reports for the Judicial Council showing stocks of all supplies, materials and equipment which are no longer used or which have become obsolete, worn out or scrapped. The Judicial Council may transfer such stock to another section or any branch of the government which has need for the item, or to a registered non-profit organization in Guam, or discard such stock if it cannot otherwise be disposed of. Departing or retiring employees may be permitted to purchase items of equipment from the Judiciary for sentimental or commemorative purposes at a cost determined equitable by the Purchasing Officer through depreciation and the age and condition of such equipment.

SECTION 10. PROTESTS

- (A) Any aggrieved party who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, and who wishes to pursue a protest shall file a written protest with the Purchasing Officer. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knew or should have known of the facts giving rise to the protest.
- (B) The Purchasing Officer shall have the authority to settle and resolve a protest.
- (C) If the protest is not resolved by mutual agreement, the Purchasing Officer shall issue a decision in writing within thirty (30) days of receipt of the protest. If no written decision has been issued by the Purchasing Officer at the expiration of the thirty (30) day period, such shall be considered an adverse decision.
- (D) Upon the issuance of an adverse decision by the Purchasing Officer, or upon the expiration of the thirty (30) day period after filing of the complaint, the aggrieved party may file an action in the Superior Court of Guam for appropriate relief within fourteen (14) days of such adverse decision or expiration of time.

SECTION 11. CONTRACT DISPUTES

- (A) Any contractor claiming to have been aggrieved shall file a written complaint explaining the contract dispute with particularity with the Purchasing Officer who shall have the

EXHIBIT C - Judicial Council of Guam Procurement Regulations

authority to resolve such contract disputes.

- (B) The written contract dispute complaint must be filed with the Purchasing Officer within fourteen (14) days of when the complaining contractor knew or should have known of the facts giving rise to the complaint.
- (C) The Purchasing Officer shall make good faith efforts to resolve the complaint. If the Purchasing Officer determines that no resolution can be reached, an adverse decision shall issue in writing regarding the complaint. If no resolution is reached within thirty (30) days of the date the complaint was filed and no adverse decision has yet been issued in writing, the complaining party may proceed as if an adverse decision was issued in writing by the Purchasing Officer on the final day of the thirty (30) day period.
- (D) Upon the issuance of an adverse decision by the Purchasing Officer regarding the complaint, or upon the expiration of the thirty (30) day period after filing of the complaint, an action may be filed in the Superior Court of Guam for appropriate relief within fourteen (14) days of such adverse decision or expiration of time.

SECTION 12. PROCUREMENT FEES

Offerors and Bidders shall be assessed a fee in the amount set by the Purchasing Officer for the receipt of bid and/or proposal packages. The Purchasing Officer shall inform the Judicial Council of any changes to such fees within thirty (30) days of their effective date. The current fee schedule is attached as an Exhibit to these Regulations.

EXHIBIT D - Supreme Court of Guam
Promulgation Order 03-007

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OF GUAM

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IN THE SUPREME COURT OF GUAM

IN RE:) PROMULGATION ORDER NO.: 03-007
ADOPTION OF AMENDED)
PROCUREMENT)
REGULATIONS OF THE)
SUPREME COURT OF GUAM)

The Supreme Court of Guam, sitting *en banc*, hereby repeals the Procurement Regulations of the Supreme Court of Guam adopted on January 11, 2002 in Promulgation Order No. 02-001, and adopts the amended Procurement Regulations of the Supreme Court of Guam, attached hereto as Exhibit "A" and incorporated by reference, which shall be effective immediately.

SO ORDERED this 17th day of October, 2003.


BENJAMIN F. CRUZ
Justice Pro Tempore


FRANCES M. TYDINGCO-GATEWOOD
Associate Justice

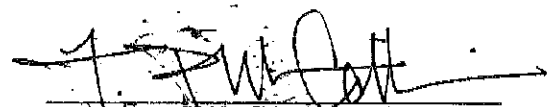

F. PHILIP CARBULLIDO
Chief Justice

EXHIBIT D - Supreme Court of Guam
Promulgation Order 03-007
EXHIBIT "A"

PROCUREMENT REGULATIONS OF THE SUPREME COURT OF GUAM¹

SECTION 1. PURPOSE

It is the purpose of these regulations to provide standard procurement policies and procedures for the Supreme Court of Guam.

SECTION 2. GENERAL POLICY

It shall be the policy of the Supreme Court to procure supplies and services from the lowest bidder or best qualified offeror, consistent with quality and service, and to conduct procurement activities in the manner that shall best serve the public interest. These rules shall not apply to the hiring of interns, law clerks, attorneys or Justices Pro Tempore by the Supreme Court, or to the contracting of services related to legal research.

SECTION 3. DEFINITIONS

- (A) "Bid" means a bid submitted in response to an Invitation to Bid or small purchase solicitation.
- (B) "Central Procurement" means the Supply Management Division of the Department of Administration.
- (C) "Procurement" means any authorized acquisition of supplies and services, including purchases, rental, lease, sale or trade by the Supreme Court, or its authorized designee(s) within the purview of these regulations, and not in conflict with applicable laws.
- (D) "Procurement Officer" means the employee authorized by the Chief Justice to procure supplies and services for the Supreme Court purchase, rental, lease or trade.
- (E) "Professional Services" means service requiring the provider to possess specialized knowledge or technical training, educational degrees or certifications, or licenses. Professional services do not include services by interns, law clerks, attorneys, or Justices Pro Tempore, or to the contracting of services related to legal research.
- (F) "Proposal" means a proposal submitted in response to a Request for Proposals or small purchase solicitation.
- (G) "Purchasing Agent" means the Executive Officer.
- (H) "Services" means any rental of facilities, remodeling, renovations or new construction of buildings, rental repair or maintenance of equipment, machinery or other personal property. Services do not include contracts with interns, law clerks, attorneys, or Justices Pro Tempore, or services related to legal research.

¹ Adopted by the Supreme Court *en banc* on October 17, 2003 in Promulgation Order 03-007.

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- (I) "Supplies" means any item or article, except real estate, which is furnished to or used by the Supreme Court including, but not limited to, printing of stationery, forms and journals; reproduction or publications and binding; repair and maintenance items, and fuel, furnishings and foodstuffs; and all materials and equipment.

SECTION 4. ADMINISTRATION

Responsibility for the administration of these regulations is vested in the Executive Officer, who shall be the Purchasing Agent, and who may, at his or her own discretion, use the services of Central Procurement.

- (A) **Duties and Responsibilities of the Purchasing Agent.** The Purchasing Agent shall:
- (1) disqualify suppliers who default in performances or who supply poor quality goods from any bidding or negotiation for a stated period of time not to exceed a maximum of one (1) year;
 - (2) disqualify suppliers who failed to comply with appropriate licensing requirements;
 - (3) regulate the storage and distribution of supplies to avoid loss and waste and account for properties and equipment, and to establish a replacement schedule to avoid costly maintenance of obsolete equipment;
 - (4) prescribe the procedures and distribute forms to be used for submitting requisitions for supplies and services, and for processing procurement transactions;
 - (5) resolve procurement disputes and breach of contract controversies at the administrative level; and
 - (6) provide such other matters as may be required to effect these regulations.
- (B) **Duties and Responsibilities of the Procurement Officer.** The Procurement Officer shall:
- (1) purchase, or contract for the purchase, of all supplies and services for the Supreme Court in accordance with the provisions of these regulations and applicable laws;
 - (2) prescribe the manner, place and date of delivery of supplies and materials procured for the Supreme Court;
 - (3) prescribe the manner of inspecting supplies and materials upon delivery of the supplies before acceptance and of making tests of samples submitted with bids to determine compliance with ordering specifications;

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- (4) determine whether a surety bid bond or cash deposit shall be submitted with any bid, or whether a surety performance bond shall be required before a contract is entered into, and if required, to prescribe the amount thereof and to enforce forfeiture of such bond or deposit upon failure of the successful bidder to enter into contract within the prescribed time or to perform the contract in a satisfactory manner; and
- (5) prescribe, on item basis, the amount of liquidated damages to assess defaulter for breach of contract.

SECTION 5. PURCHASING AND CONTRACTING PROCEDURES

The following procedures shall govern the purchase of supplies and services.

- (A) **Sealed Bids.** Procurement by sealed bid is optional for any purchase at the discretion of the Purchasing Agent and the Procurement Officer, but it is mandatory where the total cost is Ten Thousand Dollars (\$10,000.00) or more, except as otherwise provided.
 - (1) **Procedure.** The procedures to be observed when procuring by sealed bids are as follows:
 - (a) **Notice.** A public notice requesting sealed bids shall be published at least once in a newspaper of general circulation on Guam, and at least five (5) days before the final date for submission of bids. Such notice shall also be posted on a bulletin board to which the public has access, and in the Clerk's Office of the Supreme Court. The Purchasing Agent may also solicit bids by posting on the Supreme Court web site or by sending invitations by fax, e-mail, regular mail or messenger to prospective bidders. Public notice shall include a general description of supplies or services to be procured, and shall state where Invitation to Bid forms and specifications are available, and the time and place for submission and opening of bids.
 - (b) **Invitation to Bid.** The Invitation to Bid shall include instructions including place, time and date for submission and opening of bids, purchase description, evaluation factors, delivery or performance schedule, contract terms including warranty and bonding, and any other pertinent information. The Invitation to Bid shall include a form wherein a bidder shall insert the bid price.
 - (c) **Pre-Bid Conference.** A pre-bid conference may be conducted at the discretion of the Procurement Officer to explain procurement requirements. Notice of a pre-bid conference may be included in the Invitation to Bid or sent to all prospective bidders known to have obtained an Invitation to Bid.

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- (d) **Modification or Withdrawal of Bids.** Bids may be modified or withdrawn by bidders by written notice submitted prior to the date and time set for bid opening. Bidders must correct mistakes in their bids by submitting a timely modification or withdrawing and resubmitting bids. Late modifications or withdrawals will not be considered.
 - (e) **Submission of Bids.** Bids shall be submitted to the Purchasing Agent on the date and time set for submission of bids, and shall be identified as bids on the envelope in such manner as the Purchasing Agent may prescribe.
 - (f) **Opening of Bids, Public Inspection, Proprietary Information.** Bids shall be opened in public at the time and place stated in the public notice. Each bid, with the name of the bidder, shall be entered on a written record. The opened bids shall be available for public inspection except those parts of the bid that have been designated trade secrets or proprietary data. Such trade secrets or proprietary data must be clearly designated and readily separable from the bid. Prices and contractual terms shall not be deemed secret or proprietary and shall be available for public inspection.
 - (g) **Award of Contract.** The contract shall be awarded to the lowest responsible bidder. All bidders shall be informed in writing of the selection of the lowest responsible bidder as soon as practicable.
 - (h) **Tie Bids.** If bids are for the same unit price or total amount, in whole or in part, the Purchasing Agent shall have authority to award the bid to one (1) of the tie bidders by drawing lots in public, or to reject all such bids.
- (2) **Determining Lowest Responsible Bidder.** In determining the lowest responsible bidder, the Purchasing Agent shall be guided by the following:
- (a) compliance by the bidder with necessary licensing requirements;
 - (b) ability and sufficiency of financial resources of the bidder to perform promptly, or within the time specified, without delay or interference;
 - (c) quality of performance of the bidder with regard to awards previously made to the bidder;
 - (d) record of the bidder with respect to compliance with laws and regulations relating to procurement;
 - (e) quality and availability of the supplies or services offered by the bidder, and adaptability to the particular use required;

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- (f) ability of the bidder to provide future maintenance and service for the use of the subject of the award; and
 - (g) number and scope of conditions attached to the bid.
- (B) **Request for Proposals.** The provisions of this Section apply to the procurement of professional services except as otherwise provided by law. This section shall not apply to the hiring of interns, law clerks, attorneys or Justices Pro Tempore or services related to the contracting of services related to legal research. Procurement of professional services by Request for Proposals ("RFP") is optional at the discretion of the Purchasing Agent and the Procurement Officer, but it is mandatory where the total cost is Ten Thousand Dollars (\$10,000.00) or more, except as otherwise provided.
- (1) **Determination Required Prior to Use of RFPs.** For the purposes of procuring professional services, the Procurement Officer shall determine in writing, prior to issuing an RFP that the Supreme Court does not have the personnel or resources to perform the services required under the proposed contract.
 - (2) **Statement of Qualifications.** When 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 the specific service; and
 - (d) any other pertinent information requested by the Procurement Officer. Persons may amend statements of qualifications at any time by filing a new statement.
 - (3) **Procedure.** The procedures to follow for procurement by RFP are as follows:
 - (a) **Notice.** Public Notice of the RFP shall be published at least once in a newspaper of general circulation on Guam, and at least five (5) days before the final date for submission of proposals. Such notice shall also be posted on a bulletin board to which the public has access, and in the Clerk's Office of the Supreme Court. The public notice may also be posted on the Supreme Court's web site and sent by e-mail, regular mail, fax or messenger to prospective offerors. Public notice shall include a general description of

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services to be procured, and shall state where RFP forms and specifications are available, and the time and place for submission and opening of proposals.

(b) **Content of Request for Proposals.** An RFP shall be in the form specified by the Purchasing Agent and Procurement Officer and contain at least the following information:

- (i) the type of services required;
- (ii) description of the work involved;
- (iii) an estimate of when and for how long the services will be required;
- (iv) the type of contract to be used;
- (v) a date by which proposals for the performance of the services shall be submitted;
- (vi) a statement that the proposals shall be in writing;
- (vii) a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;
- (viii) the factors to be used in the evaluation and selection process and their importance; and
- (ix) 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;

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- (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; and
 - (5) a plan giving as much detail as is practical explaining how the services will be performed.
- (c) **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:
 - (i) the plan for performing the required services;
 - (ii) 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 services;
 - (iii) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
 - (iv) a record of past performance of similar work.
- (d) **Pre-Proposal Conference.** A pre-proposal conference may be conducted at the discretion of the Purchasing Agent or Procurement Officer to explain procurement requirements prior to the date set for submission of proposals. Notice of a pre-proposal conference may be included in the RFP or sent to all prospective proposers known to have obtained an RFP.
- (e) **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 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.

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- (f) **Requests for Nondisclosure of Data.** If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Purchasing Agent shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the Purchasing Agent shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals or protests, the proposal will be so disclosed.
- (g) **Discussion.** The Purchasing Officer or persons designated by the Purchasing Officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall be to:
 - (i) determine in greater detail such offeror's qualifications; and
 - (ii) 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.
- (h) **No Disclosure of Information.** During discussions with offerors, information obtained in discussions or from proposals by other offerors shall not be disclosed. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in these rules.
- (i) **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.
- (j) **Selection of the Best Qualified Offerors.** After evaluation of proposals and discussions with offerors, the Procurement Officer shall select, in the order of their respective qualification ranking, no fewer than three 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.
- (k) **Submission of Cost or Pricing Data.** The offeror determined to be best qualified shall be required to submit cost or pricing data to the Procurement Officer prior to the commencement of negotiations.
- (l) **Negotiation.** The Procurement Officer conducting the procurement or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at the compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:

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- (i) making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;
 - (ii) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 - (iii) 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.
- (m) **Award of Contract.** If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.
- (n) **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 therefor shall be placed in the file and the Purchasing Officer 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 Purchasing Officer 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 as provided above and negotiations shall commence with the next qualified offeror.
- (o) **Notice of Award.** Written notice of award shall be public information and made a part of the contract file.
- (p) **Failure to Award Contract.** Should the Procurement Officer 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 in accordance with these rules until an agreement is reached and the contract awarded.
- (q) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the award of the contract, the head of the agency conducting the procurement or a designee of such officer shall prepare a memorandum setting forth the bases of award including application of the

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evaluation factors in selecting the best qualified offerors and the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract. All memoranda shall be included in the contract file and be available for public inspection.

- (C) **Small Purchases.** Procurement for small purchases is authorized when the cost is less than Ten Thousand Dollars (\$10,000.00), subject to the following.
- (1) **Less Than Five Hundred Dollars (\$500.00).** When the total cost of a requisition is less than Five Hundred Dollars (\$500.00), procurement may be made by the Procurement Officer through petty cash if the cost is less than Twenty Dollars (\$20.00), or through open standing purchase orders issued to vendors quarterly for purchases totaling less than Five Hundred Dollars (\$500.00), or by purchases orders on as needed basis for any amount under Five Hundred Dollars (\$500.00).
 - (2) **Five Hundred Dollars (\$500.00) or More, But Less Than Two Thousand Five Hundred Dollars (\$2,500.00).** When the total cost of a requisition is Five Hundred Dollars (\$500.00) or more, but less than Two Thousand Five Hundred Dollars (\$2,500.00), procurement may be made by solicitation of informal written or oral quotations on the open market, except that the Procurement Officer with the concurrence of the Purchasing Agent, may dispense with such solicitations and negotiate directly with a vendor when, in the opinion of the Purchasing Agent, it is deemed more advantageous to the Supreme Court.
 - (3) **Two Thousand Five Hundred Dollars (\$2,500.00) or More, But Less Than Ten Thousand Dollars (\$10,000.00).** When the cost is Two Thousand Five Hundred Dollars (\$2,500.00) or more, but less than Ten Thousand Dollars (\$10,000.00), procurement may be made by solicitation of not less than three (3) informal written quotations on the open market of which a written record shall be kept, except that the Procurement Officer with the concurrence of the Purchasing Agent may dispense with such quotations and negotiate directly with a vendor when, in the opinion of the Purchasing Agent, it is deemed more advantageous to the Supreme Court.
- (D) **EXCEPTIONS.** Exceptions to the Purchasing and Contracting Procedures are as follows:
- (1) **Exceptions to Requirements for Sealed Bids.** Where the total cost is Ten Thousand Dollars (\$10,000.00) or more, exception to the requirement for a sealed bid is authorized only where at least one (1) of the following conditions exist, and the Purchasing Agent certifies this exception in writing:
 - (a) an emergency situation affecting the essential operations of the Supreme Court exists which will not allow the normal delay attendant to the sealed bid procedures;

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- (b) the procurement is for supplies or services for which it is impractical or impossible to secure competition;
 - (c) the procurement is for supplies which consist of technical equipment or component parts thereof for which procurement without sealed bids is necessary;
 - (d) the procurement is for supplies or services to be acquired from or through a federal agency when costs are known to be lower than the prevailing market prices; or
 - (e) the procurement is for supplies which are offered through bargain sales, bankruptcy or receivership sales, or other dispositions of property at lower than prevailing market prices.
- (2) Should the Supreme Court determine to purchase an existing building or buildings or real estate, for judicial use, such purchase may be handled through a process of negotiation.
- (3) **Exception to Requirement to Procure from Local Suppliers.** Whenever it is determined that the local franchised dealer or distributor is not able to furnish the required service or supply from shelf stock, the Purchasing Agent may authorize procurement direct from a manufacturer or supply distributor when the procurement is for supplies or equipment needed to meet an emergency or disaster, and the Purchasing Agent certifies this exception in writing, or when such purchase shall result in significant savings to the Supreme Court.

**SECTION 6. CANCELLATION OF SOLICITATIONS;
REJECTION OF BIDS AND PROPOSALS**

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the Supreme Court under Invitation to Bid, Request for Proposals, small purchases, or any other selection method, and rejection of bids or proposals in whole or in part.

- (A) **Policy.** Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation shall give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of government time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the Supreme Court's best interest.

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(B) **Cancellation of Solicitation; Notice.** Each solicitation issued by the Supreme Court shall state that the solicitation may be cancelled as provided in these Regulations.

(C) **Cancellation of Solicitation: Rejection of All Bids or Proposals.**

(1) **Prior to Opening.**

(a) As used in this Section, opening means the date set for opening of bids, or receipt of proposals in requests for proposals.

(b) Prior to opening, a solicitation may be cancelled in whole or in part when the Procurement Officer determines in writing that such action is in the Supreme Court's best interest for reasons including, but not limited to:

(i) the Supreme Court no longer requires the supplies, services, or construction;

(ii) the Supreme Court no longer can reasonably expect to fund the procurement; or

(iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited.

(d) The notice of cancellation shall:

(i) identify the solicitation;

(ii) briefly explain the reason for cancellation; and

(iii) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar supplies, services, or construction.

(2) **After Opening.**

(a) After opening, but prior to award, all bids or proposals may be rejected in whole or in part when the Procurement Officer and Purchasing Agent determine in writing that such action is in the Supreme Court's best interest for reasons including, but not limited to:

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- (i) the supplies, services, or construction being procured are no longer required;
 - (ii) ambiguous or otherwise inadequate specifications were part of the solicitation;
 - (iii) the solicitation did not provide for consideration of all factors or significance to the Supreme Court;
 - (iv) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - (v) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 - (vi) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- (b) A notice of rejection shall be sent to all businesses that submitted bids or proposals.
- (3) **Documentation.** The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.
- (D) **Rejection of Individual Bids or Proposals.**
- (1) **General.** This section applies to rejection of individual bids or proposals in whole or in part.
 - (2) **Notice in Solicitation.** Each solicitation issued by the Supreme Court shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the Supreme Court as provided in these Regulations.
 - (3) **Reasons for Rejection.**
 - (a) Reasons for rejecting a bid or proposal include but are not limited to:
 - (i) untimeliness;
 - (ii) the bid or proposal is not responsive, that is, it does not provide the information requested in the Invitation to Bid or Request for Proposals; or

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- (iii) the supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation to Bid or Request for Proposals.
- (4) **Notice of Rejection.** Upon written request, unsuccessful bidders or offerors shall be advised of the reasons therefor.
- (E) **All or None Bids or Proposals.** Only when provided by the solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering. Otherwise, such bids or proposals shall be deemed to be nonresponsive. If the bid or proposal is properly so limited, the Supreme Court shall not reject part of such bid or proposal and award on the remainder.
- (F) **Disposition of Bids or Proposals.** When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

SECTION 7. PROHIBITIONS

- (A) No procurement of supplies or services shall be made except in accordance with these regulations, and where authorized herein, with conditions and requirements prescribed by the Purchasing Agent. Except as may be authorized by the Purchasing Agent, no member or employee of the Supreme Court is authorized to procure supplies or services, or enter into a contract or agreement to purchase, sell, exchange or trade or tender thereof, on behalf of the Supreme Court or any unit thereof. Neither the Purchasing Agent, the Purchasing Agent's designee, nor any procurement personnel of the Supreme Court may encumber or charge the funds of the Supreme Court, absent prior written authorization from the Chief Justice. Where there has been an unauthorized procurement, the Supreme Court reserves the right, without liability, to rescind the procurement and to reject any delivery or tender of such supplies or services.
- (B) Neither the Purchasing Agent, the Purchasing Agent's designee, nor any procurement personnel of the Supreme Court shall be financially interested, directly or indirectly, in any procurement for supplies or services for any unit of the Supreme Court. Neither the Purchasing Agent, the Purchasing Agent's designee, nor any procurement personnel of the Supreme Court shall accept or receive, directly or indirectly, from any supplier, either before or after, any procurement, whether by sealed bid or open market procedures, any compensation, gift, commission, reward, rebate or other benefit, either in money or anything of value, or any promise, obligation or contract for any such future benefit or employment. The Purchasing Agent, designee or other Supreme Court employee who so violates this provision shall be subject to disciplinary action including dismissal.

SECTION 8. SURPLUS STOCK

Whenever necessary, the Purchasing Agent or his designee shall prepare reports for the Chief Justice showing stocks of all supplies, materials and equipment which are no longer used or which have become obsolete, worn out or scrapped. The Chief Justice may transfer such stock to another section or any branch of the government which has need for the item, or to a registered non-profit organization in Guam, or discard such stock if it cannot otherwise be disposed of. Departing or retiring employees may be permitted to purchase items of equipment from the Supreme Court for sentimental or commemorative purposes at a cost determined equitable by the Purchasing Agent through depreciation and the age and condition of such equipment.

SECTION 9. BID PROTESTS

- (A) Any aggrieved party, including but not limited to actual or prospective bidders, offerors or contractors, shall file a written protest with the Purchasing Agent, who shall have the authority to resolve protested solicitations and awards.
- (B) Any protest of the award of a bid or contract must be made in writing to the Purchasing Agent within fourteen (14) days of when the aggrieved party knew or should have known of the facts giving rise thereto.
- (C) The Purchasing Agent shall issue a written decision on the protest within fourteen (14) days of receipt of the written protest. If no written decision is issued, the aggrieved party may proceed as if an adverse decision has been rendered.
- (D) The aggrieved party may then file an action in the Superior Court of Guam for appropriate relief.

SECTION 10. CONTRACT DISPUTES

- (A) Any aggrieved contractor shall file a written complaint of the contract breach with the Purchasing Agent, who shall have the authority to resolve such breach of contract disputes.
- (B) The written breach of contract complaint must be filed with the Purchasing Agent within fourteen (14) days of when the aggrieved contractor knew or should have known of the facts giving rise thereto.
- (C) The Purchasing Agent shall respond in writing within fourteen (14) days of receipt of the written complaint. If no written decision is issued, the aggrieved party may proceed as if an adverse decision has been rendered.
- (D) The aggrieved party may then file an action in the Superior Court of Guam for appropriate relief.