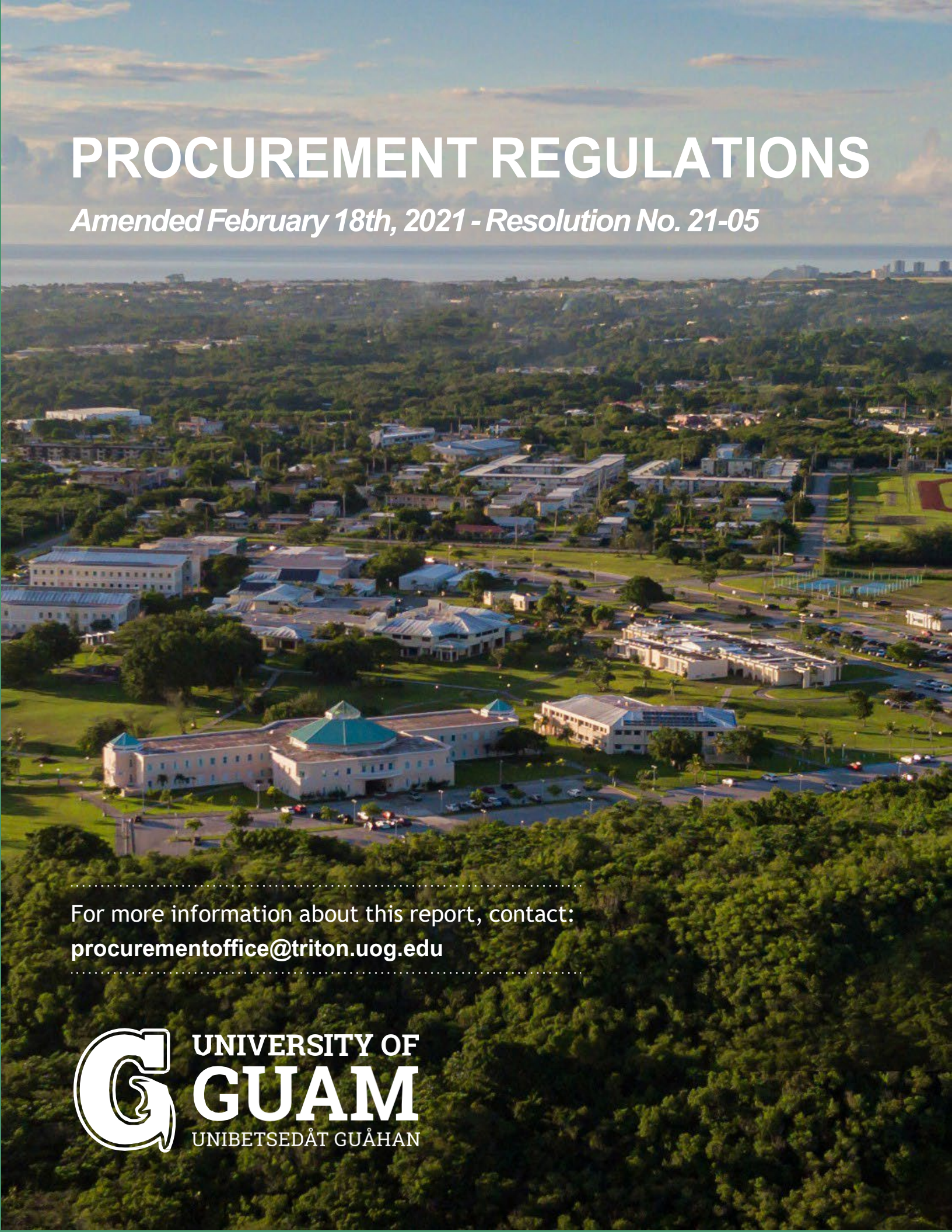
PROCUREMENT REGULATIONS

Amended February 18th, 2021 - Resolution No. 21-05



For more information about this report, contact:
procurementoffice@triton.uog.edu

UNIVERSITY OF GUAM
UNIBETSEDÅT GUÅHAN

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

Chapter 1	GENERAL PROVISIONS
Chapter 2	PROCUREMENT ORGANIZATION
Chapter 3	SOURCE SELECTION AND CONTRACT FORMATION
Chapter 4	SPECIFICATIONS
Chapter 5	PROCUREMENT OF CONSTRUCTION AND SERVICES
Chapter 6	MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES
Chapter 7	COST PRINCIPLES
Chapter 8	SUPPLY MANAGEMENT
Chapter 9	LEGAL AND CONTRACTUAL REMEDIES
Chapter 10	COMPLIANCE WITH FEDERAL REQUIREMENTS
Chapter 11	ETHICS IN PUBLIC CONTRACTING

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

Chapter 1 GENERAL PROVISIONS

Section Page

1.1. Purpose I-1

1.2. General Policies I-2

1.3. Policy Concerning Sheltered or Disabled Persons I-2

1.4. Policy in Favor of Planned Procurement I-3

1.5. Policy Favoring the Procurement and Use of Biodegradable, Reusable, Recyclable, or Recycled Products I-3

1.6. Advance Payments I-3

1.7. Local Procurement Preference I-4

1.8. Requirement of Good Faith I-5

1.9. Definitions I-5

Chapter 2 PROCUREMENT ORGANIZATION

Section Page

2.1. Creation of the Procurement Section II-1

2.2. Duties and Responsibilities II-1

2.3. Authority and Responsibility of the UOG Procurement Section II-3

2.4. Authority of the President II-3

2.4.1. Principal Contracting Officer of UOG II-4

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

2.4.2.	Power to Adopt Operational Procedures	II-4
2.4.3.	Duties	II-4
2.5.	Delegation of Procurement Authority by the President	II-5
2.5.1.	Application	II-5
2.5.2.	Decision to Delegate	II-5
2.5.3.	Compliance with the Guam Procurement Act	II-5
2.6.	Delegation of Authority to Officials in Other Divisions of UOG	II-6
2.7.	Exceptions to Delegation	II-6
2.8.	Limitations on Delegation	II-6
2.8.1.	Contract Award	II-7
2.8.2.	Authority to Debar or Suspend	II-7
2.9.	Coordination, Training and Education: Collection of Data Concerning Public Procurement	II-7
2.10.	Authority to Contract for Certain Services and Approval of Contracts	II-7
2.1 0.1 .	General Authority to Contract for Certain Services	II-8
2.10.2.	Approval of Contracts for Legal Services	II-8
2.10.3.	Approval of Contracts Generally	II-8
2.10.4.	Approval of Contracts by the Department of Revenue and Taxation	II-8
2.11.	Duties of the University of Guam's Legal Counsel	II-9

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

Chapter 3 SOURCE SELECTION AND CONTRACT FORMATION

Section	Page
3.1.	Definitions of Terms Used in this Chapter III-1
3.2.	General Provisions III-3
3.2.1.	Extension of Time for Bid or Proposal Acceptance III-3
3.2.2.	Extension of Time on Indefinite Quantity Contracts III-3
3.2.3.	One Bid Received III-3
3.2.4.	Multiple or Alternate Bids or Proposals III-4
3.2.5.	Bid and Performance Bonds for Supply Contracts or Service Contracts III-4
3.2.6.	Conditioning Bids or Proposals Upon Other Awards Not Acceptable III-5
3.3.	Relations with University's Units III-5
3.3.1.	Purchase Requisitions by University's Units III-5
3.3.1.1.	Authority to Reject III-5
3.3.1.2.	Authority to Establish Lead Times III-6
3.3.1.3.	Requesting Unit Response III-6
3.3.2.	Determination of Contractual Terms and Conditions III-6
3.4.	Unsolicited Offers III-7
3.4.1.	Defined III-7
3.4.2.	Processing of Unsolicited Offers III-7

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.4.3.	Conditions for Consideration	III-7
3.4.4.	Evaluation	III-7
3.4.5.	Confidentiality	III-8
3.5.	Novation or Change of Name	III-8
3.5.1.	No Assignment	III-8
3.5.2.	Recognition of a Successor in Interest. Novation	III-8
3.5.3.	Change of Name	III-9
3.5.4.	Reports	III-9
3.5.5.	Actions Affecting More than One Purchasing Agency	III-9
3.6.	Contracting for Installment Purchase Payments Including Interest	III-9
3.7.	Purchase of Items Separately from Construction Contract	III-10
3.8.	Methods of Source Selection	III-10
3.9.	Competitive Sealed Bidding	III-11
3.9.1.	Application	III-11
3.9.2.	Use of Competitive Sealed Bidding	III-11
3.9.3.	The Invitation for Bids	III-11
3.9.3.1.	Use	III-11
3.9.3.2.	Content	III-11
3.9.3.3.	Bid Bond for Procurement of Supplies and Services	III-12
3.9.3.4.	Performance Bond for Procurement of Supplies and Services	III-12

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.9.3.5.	Incorporation by Reference	III-14
3.9.3.6.	Acknowledge of Amendments	III-14
3.9.3.7.	Taxes	III-14
3.9.4.	Bidding Time	III-14
3.9.5.	Bidder Submissions	III-15
3.9.5.1.	Bid Form	III-15
3.9.5.2.	Telegraphic Bids, Mailgrams, and Facsimiles	III-15
3.9.5.3.	Bid Samples and Descriptive Literature	III-15
3.9.5.4.	Disclosure of Major Shareholders	III-16
3.9.6.	Public Notice	III-16
3.9.6.1.	Distribution	III-16
3.9.6.2.	Publication	III-17
3.9.6.3.	Public Availability	HI-17
3.9.7.	Bidders' Lists	III-17
3.9.7.1.	Purpose	III-17
3.9.7.2.	Deletion of Bidders	III-18
3.9.7.3.	Public Availability	III-18
3.9.8.	Pre-Bid Conferences	m - 18
3.9.9.	Amendments to Invitations for Bids	III-19

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.9.9.1.	Form Ill-19
3.9.9.2.	Distribution L11-19
3.9.9.3.	Timeliness III-19
3.9.10.	Pre-Opening Modification or Withdrawal of Bids III-19
3.9.10.1.	Procedure III-19
3.9.10.2.	Disposition of Bid Security I11-20
3.9.10.3.	Records III-20
3.9.11.	Late Bids, Late Withdrawals, and Late Modifications III-20
3.9.11.1.	Definition III-20
3.9.11.2.	Treatment III-20
3.9.11.3.	Notice III-20
3.9.11.4.	Records III-20
3.9.12.	Receipt, Opening, and Recording of Bids III-21
3.9.12.1.	Receipt III-21
3.9.12.2.	Opening and Recording of Bids III-21
3.9.12.3.	Confidential Data III-21
3.9.13.	Mistakes in Bids III-22
3.9.13.1.	General III-22
3.9.13.2.	Mistakes Discovered Before Opening III-22
3.9.13.3.	Confirmation of Bid III-22

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.9.13.4.	Mistakes Discovered After Opening but Before Award III-23
3.9.13.5.	Mistakes Discovered After Award III-24
3.9.13.6.	Determination Required III-24
3.9.14.	Bid Evaluation and Award III-25
3.9.14.1.	General III-25
3.9.14.2.	Responsibility and Responsiveness III-25
3.9.14.3.	Product Acceptability III-25
3.9.14.4.	Determination of Lowest Bidder III-26
3.9.14.5.	Local Procurement Preference III-26
3.9.14.6.	Policy in Favor of Planned Procurement III-28
3.9.14.7.	Biodegradable, Reusable, Recyclable or Recycled Products III-28
3.9.14.8.	Restrictions III-28
3.9.15.	Low Tie Bids III-29
3.9.15.1.	Definition III-29
3.9.15.2.	Award III-29
3.9.15.3.	Record III-29
3.9.16.	Documentation of Award III-29
3.9.17.	Publicizing Awards III-30
3.9.18.	Multi-Step Sealed Bidding III-30
3.9.18.1.	Definition III-30
3.9.18.2.	Conditions for Use III-30

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.9.19.	Pre-Bid Conferences in Multi-Step Sealed Bidding	III-31
3.9.20.	Procedure for Phase One of Multi-Step Sealed Bidding	III-31
3.9.20.1.	Form	III-3 1
3.9.20.2.	Amendment to the Invitation for Bids	III-32
3.9.20.3.	Receipt and Handling of Unpriced Technical Offers	III-32
3.9.20.4.	Evaluation of Unpriced Technical Offer	III-33
3.9.20.5.	Discussion of Unpriced Technical Offers	III-33
3.9.20.6.	Notice of Unacceptable Unpriced Technical Offers	III-34
3.9.21.	Mistakes During Multi-Step Sealed Bidding	III-34
3.9.22.	Procedure for Phase Two	III-34
3.9.22.1.	Initiation	III-34
3.9.22.2.	Conduct	III-35
3.10.	Procurement From Non-Profit Corporations	III-35
3.11.	Small Purchases	III-36
3.11.1.	Application	III-36
3.11.2.	Authority to Make Small Purchases	III-36
3.11.2.1.	Amount	III-36
3.11.2.2.	Delegation	III-36

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.11.2.3.	Existing University Contract for Items III-37
3.11.2.4.	Available From One Business Only III-37
3.11.2.5.	Division of Requirements III-37
3.11.3.	Competition for Small Purchases of Supplies or Services Between $2,001 and $25,000 III-37
3.11.3.1.	Procedure III-37
3.11.3.2.	Records III-38
3.11.4.	Competition for Small Purchases of Construction III-38
3.11.5.	Micro Purchases of $2,000 or Less III-38
3.11.6	Small Purchases of Services Specified in Section 2.10 (Authority to Contract for Certain Services and Approval of Contracts) and Section 5.6 (Architect-Engineer and Land Surveying Services) of These Regulations III-38
3.11.6.1.	Conditions for Use III-38
3.11.6.2.	Examination for Qualifications and Negotiations III-39
3.11.7.	Small Purchases of Part-Time Teaching and Instructor Services III-32
3.11.7.1.	Conditions for Use III-32
3.11.7.2.	Examination of Qualifications and Negotiations III-33
3.11.7.3.	Contract Provisions for Part-Time Teaching and Instructor Services
3.11.7.3.1.	Evaluation
3.11.7.3.2.	Contract Term
3.12.	Sole Source Procurement III-39
3.12.1.	Application III-39
3.12.2.	Conditions for Use of Sole Source Procurement III-40

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.12.3.	Negotiation in Sole Source Procurement	III-41
3.12.4.	Record of Sole Source Procurement	III-41
3.13.	Emergency Procurements	III-41
3.13.1.	Application	III-42
3.13.2.	Definition of Emergency Conditions	III-42
3.13.3.	Scope of Emergency Procurements	III-42
3.13.4.	Source Selection Methods	III-43
3.13.4.1.	General	III-42
3.13.4.2.	After Unsuccessful Competitive Sealed Bidding	III-42
3.13.5.	Determination and Certificate of Emergency Procurement	III-42
3.13.5.1.	Determination	III-42
3.13.5.2.	Emergency Certification	III-44
3.13.6.	Record	III-44
3.14.	Competitive Selection Procedures for Services Specified in Section 2.10 (Authority to Contract for Certain Services and Approval of Contracts) of These Regulations	III-45
3.14.1.	Application	III-45
3.14.2.	Conditions for Use of Competitive Selection Procedures	III-45
3.14.3.	Determination Required Prior to Use of Competitive Selection Procedures	III-45
3.14.4.	Statement of Qualifications	III-45
3.14.5.	Public Notice in Competitive Selection Procedures	III-47
3.14.6.	Request for Proposals	III-47
3.14.6.1.	Contents	III-47

3.14.6.2. Evaluation III-48

3.14.7. Pre-Proposal Conferences III-49

3.14.8. Receipt and Handling of Proposals III-49

3.14.8.1. Registration III-49

3.14.8.2. Requests for Nondisclosure of Data III-50

3.14.9. Discussions HI-50

3.14.9.1. Discussions Permissible III-50

3.14.9.2. No Disclosure of Information III-50

3.14.9.3. Modification or Withdrawal of Proposals III-51

3.14.10. Selection of the Best Qualified Offerors III-51

3.14.11. Submission of Cost or Pricing Data III-51

3.14.12. Negotiation and Award of Contract III-51

3.14.12.1. General III-51

3.14.12.2. Elements of Negotiation III-52

3.14.12.3. Successful Negotiation of Contract with Best Qualified Offeror III-52

3.14.12.4. Failure to Negotiate Contract with Best Qualified Offeror III-52

3.14.12.5. Notice of Award III-53

3.14.12.6. Failure to Negotiate Contract with Offerors Initially Selected as Best Qualified III-53

3.14.13. Memorandum of Evaluation and Negotiation III-53

3.14.14. Approval of Contracts for Legal Services III-54

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.14.15.	Reports III-54
3.15.	Cancellation of Invitations for Bids or Requests for Proposals III-54
3.15.1.	Scope of this Section Ill-54
3.15.2.	Policy III-54
3.15.3.	Cancellation of Solicitation. Notice III-55
3.15.4.	Cancellation of Solicitation. Rejection of All Bids or Proposals III-55
3.15.4.1.	Prior to Opening III-55
3.15.4.2.	After Opening III-56
3.15.4.3.	Documentation III-57
3.15.5.	Rejection of Individual Bids or Proposals III-57
3.15.5.1.	General III-57
3.15.5.2.	Notice in Solicitation III-57
3.15.5.3.	Reason for Rejection III-57
3.15.5.4.	Notice of Rejection III-59
3.15.6.	"All or None" Bids or Proposals III-59
3.15.7.	Disposition of Bids or Proposals III-59
3.16.	Responsibility of Bidders and Offerors III-59
3.16.1.	Application III-59
3.16.2.	Standards of Responsibility III-59
3.16.3.	Information Pertaining to Responsibility III-60

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.16.4.	Right of Nondisclosure	III-60
3.16.5.	Ability to Meet Standards	III-61
3.16.6.	Duty Concerning Responsibility	III-61
3.16.7.	Written Determination of Nonresponsibility Required	III-61
3.17.	Prequalification of Suppliers	III-61
3.17.1.	Prequalification	III-62
3.17.1.1.	General	III-62
3.17.1.2.	Qualified Products Lists	III-62
3.18.	Cost or Pricing Data	III-62
3.18.1.	Scope of Regulation on Cost or Pricing Data	III-62
3.18.2.	Requirement for Cost of Pricing Data	III-62
3.18.2.1.	Submission of Cost or Pricing Data	III-63
3.18.2.2.	Exceptions	III-64
3.18.3.	Meaning of Terms "Adequate Price Competition," "Established Catalog Prices or Market Prices," and "Prices set by Law or Regulation"	III-64
3.18.3.1.	Application	III-65
3.18.3.2.	Adequate Price Competition	III-65
3.18.3.3.	Established Catalog Prices or Market Prices	III-65
3.18.3.4.	Prices set by Law or Regulation	III-66
3.18.4.	Submission of Cost or Pricing Data and Certification	III-66

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.18.4.1.	Time and Manner	III-66
3.18.4.2.	Obligation to Keep Data Current	III-66
3.18.4.3.	Time for Certification	III-66
3.18.4.4.	Refusal to Submit Data	III-67
3.18.5.	Certification of Current Cost or Pricing Data	III-67
3.18.5.1.	Form of Certificate	III-67
3.18.5.2.	Representation as to Accuracy of Cost or Pricing Data	III-68
3.18.5.3.	Inclusion of Notice and Contract Clause	III-69
3.18.5.4.	Exercise of Option	III-69
3.18.6.	Defective Cost or Pricing Data	III-69
3.18.6.1.	Overstated Cost or Pricing Data	III-69
3.18.6.2.	Off-Setting Understated Cost or Pricing Data	III-70
3.18.6.3.	Dispute	III-70
3.18.7.	Price Analysis Techniques	III-70
3.18.8.	Cost Analysis Techniques	III-71
3.18.9.	Evaluations of Cost or Pricing Data	III-72
3.19.	Types of Contracts	III-72
3.19.1.	Scope of Section	III-72
3.19.2.	Prohibition of Contracting	III-72

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.19.3.	Policy Regarding Selection of Contract Types	III-72
3.19.3.1.	General	III-72
3.1 9.3.2.	Use of Contract Types Not Herein Described	III-73
3.19.4.	Types of Fixed-Price Contracts	III-74
3.1 9.4.1.	General	III-74
3.19.4.2.	Firm Fixed-Price Contract	III-74
3.19.4.3.	Fixed-Price Contract with Price Adjustment	III-75
3.19.5.	Types of Cost-Reimbursement Contracts	III-76
3.19.5.1.	General	III-76
3.19.5.2.	Determination Prior to Use	III-77
3.19.5.3.	Cost Contract	III-77
3.19.5.4.	Cost-Plus-Fixed Fee Contract	III-77
3.19.6.	Costs Incentive Contract	III-79
3.19.6.1.	General	III-79
3.19.6.2.	Fixed-Price Cost Incentive Contract	III-79
3.19.6.3.	Cost-Reimbursement Contract with Cost Incentive Fee	III-80
3.19.6.4.	Determinations Required	III-80
3.19.7.	Performance Incentive Contracts	III-81
3.19.8.	Time and Materials Contracts and Labor Hour Contracts	III-81
3.19.8.1.	Time and Materials Contracts	III-81

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.19.8.2. Labor Hour Contracts III-81

3.19.9. Definite Quantity and Indefinite Quantity Contracts III-82

3.19.9.1. Definite Quantity III-82

3.1 9.9.2. Indefinite Quantity III-82

3.1 9.9.3. Requirements Contracts III-82

3.19.10. Leases III-84

3.19.10.1. Description III-84

3.19.10.2. Use III-84

3.19.11. Option Provisions III-84

3.19.11.1. Contract Provision III-84

3.19.11.2. Exercise of Option III-84

3.19.11.3. Lease with Purchase Option

3.20. Approval of Accounting Systems III-85

3.21. Multi-Term Contracts III-86

3.21.1. General III-86

3.21.2. Objective III-86

3.21.3. Multi-Term Contract Regulation Inapplicable III-87

3.21.4. Conditions for Use of Multi-Term Contracts III-87

3.21.5. Solicitation for Multi-Term Contract III-88

3.21.6. Award of Multi-Term Contract III-89

3.21.7. Cancellation of Multi-Term Contract III-89

3.21.7.1. General III-89

3.21.7.2. Limitations III-90

3.22. Multiple Source Contracting III-90

3.22.1. Incremental Award III-90

3.22.1.1. General III-90

3.22.1.2. Intent to Use III-90

3.22.1.3. Determination Required III-90

3.22.2. Multiple Award III-91

3.22.2.1. General III-91

3.22.2.2. Limitations on Use III-91

3.22.2.3. Contract and Solicitation Provisions III-91

3.22.2.4. Intent to Use III-92

3.22.2.5. Determination Required III-92

3.23. Inspections III-92

3.23.1. Right to Inspect Plant III-92

3.23.1.1. Inspection of Plant Site III-92

3.23.2. Access to Plant or Place of Business III-93

3.23.3. Inspection and Testing of Supplies and Services III-93

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.23.3.1.	Solicitation and Contractual Provisions HI-93
3.23.3.2.	Procedures for Trial Use and Testing III-94
3.23.4.	Conduct of Inspections III-94
3.23.4.1.	Inspectors III-94
3.23.4.2.	Location III-94
3.23.4.3.	Time III-94
3.23.5.	Inspection of Construction Projects III-95
3.24.	Right to Audit Records III-95
3.24.1.	Audit of Cost or Pricing Data III-95
3.24.2.	Audit of Contractor or Subcontractor III-95
3.24.3.	Statutory Authority to Audit III-95
3.24.4.	Auditors: Audit Reports III-96
3.24.5.	Cost or Pricing Data Audit III-96
3.24.5.1.	General III-96
3.24.5.2.	Conditions for an Audit III-96
3.24.6.	Cost or Pricing Data Audit Report III-97
3.24.7.	Contract Audit III-97
3.24.7.1.	Types of Contracts Audited III-97
3.24.7.2.	Conditions for an Audit III-97

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

3.24.8.	Contract Audit Report	III-98
3.24.9.	Retention of Books and Records	III-98
3.24.9.1.	Relating to Cost and Pricing Data	III-98
3.24.9.2.	Relating to UOG Contracts	III-799
3.25.	Finality of Determinations	III-99
3.26.	Reporting of Anti-Competitive Practices	III-100
3.26.1.	Anti-Competitive Practices	III-100
3.26.2.	Independent Price Determination	III-100
3.26.3.	Detection of Anti-Competitive Practices	III-100
3.26.4.	Identical Bidding and Price Fixing	III-101
3.26.5.	Other Anti-Competitive Practices	III-102
3.26.5.1.	General	III-102
3.26.5.2.	Rotated Low Bids or Proposals	III-102
3.26.5.3.	Resale Price Maintenance	III-102
3.26.5.4.	Sharing of the Business	III-102
3.26.5.5.	"Tie-In" Sales	III-103
3.26.5.6.	Group Boycott	III-103
3.26.6.	Reporting Suspected Anti-Competitive Practices	III-103
3.27.	Procurement Records	III-103
3.27.1.	Retention of Procurement Records	III-103

3.27.2.	Record of Procurement Actions Takes Under Section 3.12 (Sole Source Procurement) and Section 3.13 (Emergency Procurements) III-104
3.27.2.1.	Contents of Record III-104
3.27.2.2.	Submission to Legislature III-104
3.27.3.	Record of Procurement Actions III-105
3.27.4.	Certification of Record III-105
3.27.5.	Public Record III-105
3.27.6.	Rules for Procurement Records III-106
3.28.	Responsibilities of Successful Bidder III-106
3.28.1.	Guarantee III-106
3.28.2.	Schedule for Delivery III-107
3.28.3.	Marking III-107
3.29.	Blanket Purchase Orders III-86
3.29.1.	In General III-86
3.29.2.	Establishment of Blanket Purchase Agreements III-86

Chapter IV	SPECIFICATIONS

Section	Page
4.1.	Definition of Terms Used in this Chapter IV-1
4.2.	Regulation IV-2
4.2.1.	General Purposes and Policies D/-2
4.2.1.1.	Purpose IV-2
4.2.1.2.	Use of Functional or Performance Descriptions D/-3

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

4.2.1.3.	Preference for Commercially Available Products IV-3
4.2.1.4.	Availability of Documents IV-3
4.3.	Preparation of Specifications TV-4
4.3.1.	Authority to Prepare Specifications IV-4
4.3.1.1.	Statutory Authority of the Department Director IV-4
4.3.1.2.	Authority to Contract for Preparation of Specifications IV-4
4.3.1.3.	Small Purchase and Emergency Authority IV-5
4.3.2.	Procedures for the Development of Specifications IV-5
4.3.2.1.	Provisions of General Application IV-5
4.3.2.2.	Special Additional Procedures IV-6
4.4.	Exempted Items IV-10
4.4.1.	Authority to Prepare Specifications for Exempted Items IV-10
4.5.	Relationship with Using Units IV-11
4.6.	Maximum Practicable Competition IV-11
4.6.1.	Nonrestrictiveness Requirement IV-11
4.7.	Specifications Prepared by Architects and Engineers IV-11
4.7.1.	Specifications Prepared by Other than University Personnel IV-12
4.8.	Publication of Source Specifications IV-12
4.9.	Salient Features W-12

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

4.9.1.	Inclusion of Only Essential Physical Characteristics and Functions	IV-12
4.9.2.	Specification of Features Peculiar to Products of Certain Vendors	IV-13
4.9.3.	Exclusion of Restrictions which do not Significantly Affect Technical Requirements or Performance Characteristics	IV-13
Chapter V	PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES	
Section	Page	
5.1.	Responsibility for Selection of Methods of Construction Contracting Mgmt	V-1
5.1.1.	Application of Regulation and General Policy	V-1
5.1.1.1.	Application	V-1
5.1.1.2.	Flexibility	V-21
5.1.1.3.	Selecting the Method of Construction Contracting	V-2
5.1.1.4.	Use of Regulation	V-2
5.1.2.	Lease, Buy, or Build	V-3
5.1.3.	General Description	V-3
5.1.3.1.	Use of Descriptions	V-3
5.1.3.2.	Single Prime Contractor	V-3
5.1.3.3.	Multiple Prime Contractors	V-4
5.1.3.4.	Design-Build or Turnkey	V-4

5.1.3.5. Construction Manager V-4

5.1.3.6. Sequential Design and Construction V-5

5.1.3.7. Phased Design and Construction V-5

5.1.4. Criteria For Selecting Construction Contracting Methods V-5

5.1.4.1. UOG Requirements V-5

5.1.4.2. UOG Resources V-6

5.1.4.3. Prospective Contractors V-6

5.1.4.4. President's Determination V-7

5.1.5. Single Prime Contractor V-7

5.1.5.1. Use with Sequential Design and Construction V-7

5.1.5.2. Advantages V-8

5.1.5.3. Disadvantages V-8

5.1.5.4. Use with Phased Design and Construction V-8

5.1.5.5. Advantages and Disadvantages of Use with Phased Design and Construction V-9

5.1.5.6. Contractual Provisions V-9

5.1.6. Multiple Prime Contractors V-7

5.1.6.1. Use V-9

5.1.6.2. Advantages V-10

5.1.6.3. Disadvantages V-10

5.1.6.4. Contractual Provisions V-10

5.1.7. Design-Build or Turnkey V-11

5.1.7.1. Use V-11

5.1.7.2. Advantages V-11

5.1.7.3. Disadvantages V-12

5.1.7.4. Contractual Provisions V-12

5.1.8. Construction Manager V-12

5.1.8.1. Use in Planning and Design Phases V-12

5.1.8.2. Use in Construction Phase V-13

5.1.8.3. Advantages V-13

5.1.8.4. Disadvantages V-14

5.1.8.5. Contractual Provisions V-14

5.1.9. Sequential Design and Construction V-14

5.1.9.1. Use V-14

5.1.9.2. Advantages V-14

5.1.9.3. Disadvantages V-15

5.1.10. Phased Design and Construction V-15

5.1.10.1. Use V-15

5.1.10.2. Advantages V-15

5.1.10.3. Disadvantages V-15

5.1.10.4. Contractual Provisions V-16

5.2. Bid Security V-16

5.2.1. Requirement for Bid Security V-16

5.2.2. Withdrawal of Bids V-16

5.2.3. Bid Security V-17

5.2.3.1. General V-17

5.2.3.2. Purpose V-17

5.2.3.3. Acceptable Bid Security V-17

5.2.3.4. Nonsubstantial Failure to Comply V-17

5.3. Contract Performance and Payment Bonds V-18

5.3.1. Performance Bonds V-18

5.3.1.1. General V-18

5.3.1.2. Purpose V-19

5.3.1.3. Reduction of Amount Prior to Solicitation V-19

5.3.1.4. Reduction of Amount During Performance V-19

5.3.1.5. Authority to Require Additional Bonds V-19

5.3.2. Payment Bonds V-20

5.3.2.1. General V-20

5.3.2.2. Purpose V-20

5.3.2.3. Reduction of Amount Prior Solicitation V-20

5.3.2.4. Reduction of Amount During Performance V-21

5.3.2.5. Suits on Payment Bonds. Right to Institute V-21

5.3.2.6. Suits on Payment Bonds. Where and When Brought V-22

5.3.3. Bond Forms and Copies V-22

5.3.3.1. Bid Bond V-22

5.3.3.2. Performance Bond V-22

5.3.3.3. Payment Bond V-22

5.3.3.4. Certified Copies of Bonds V-22

5.4. Contract Clauses and Their Administration V-22

5.4.1. Introduction V-23

5.4.2. Revisions to Contract Clauses V-23

5.4.3. Changes Clause V-23

5.4.4. Variations in Estimated Quantities Clause V-25

5.4.5. Suspension of Work Clause V-25

5.4.6. Differing Site Conditions Clause V-27

5.4.7. Price Adjustment Clause V-28

5.4.8. Claims Based on the President's Actions or Omissions Clause V-29

5.4.9. Default - Delay - Time Extensions Clause V-31

5.4.10. Liquidated Damages Fund V-33

5.4.11. Liquidated Damages Clause V-34

5.4.12. Termination for Convenience Clause V-35

5.4.13. Remedies Clause V-38

5.5. Fiscal Responsibility V-38

5.6. Architect-Engineer and Land Surveying Services V-39

5.6.1. Application V-39

5.6.2. Policy V-39

5.6.3. Source Selection V-40

Appendix

Chapter 5 Bid Bond, Performance Bond, and Labor and Material Payment Bond

Chapter VI MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

Section Page

6.1. Contract Clauses and Their Administration VI-1

6.1.1. Introduction VI-1

6.1.2. Variations in Contract Clauses VI-2

6.1.3. Changes Clause VI-2

6.1.3.1. Changes Clause in Fixed-Price Contracts VI-2

6.1.4. Stop Work Order Clause VI-3

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

6.1.4.1.	Use of Clause VI-4
6.1.4.2.	Use of Orders VI-4
6.1.4.3.	Clause VI-5
6.1.5.	Variation in Quantity Clause VI-6
6.1.5.1.	Definite Quantity Contracts VI-6
6.1.5.2.	Indefinite Quantity Contracts VI-7
6.1.6.	Price Adjustment Clause VI-8
6.1.7.	Claims Based on the President's Actions or Omissions Clause VI-9
6.1.8.	Termination for Default Clause VI-9
6.1.9.	Liquidated Damages Clause VI-11
6.1.9.1.	With Termination for Default Clause VI-11
6.1.9.2.	In Other Situations VI-12
6.1.10.	Termination for Convenience Clause VI-12
6.1.11.	Remedies Clause VI-17

Chapter VII COST PRINCIPLES

Section Page

7.1. Definitions VII-1

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

7.2. Applicability of Cost Principles VII-2

7.2.1. Determination of Allowability VII-2

7.2.2. Application VII-2

7.2.3. Limitation VII-2

7.3. Allowable Costs VII-3

7.3.1. General VII-3

7.3.2. Accounting Consistency VII-3

7.3.3. When Allowable VII-4

7.4. Reasonable Costs VII-4

7.5. Allocable Costs VII-5

7.5.1. General VII-5

7.5.2. Allocation Consistency VII-5

7.5.3. Direct Costs VII-6

7.5.4. Indirect Costs VII-6

7.5.4.1. Definition VII-6

7.5.4.2. Allocation VII-6

7.5.4.3. Examination VII-6

7.5.4.4. Base Period VII-7

7.6. Treatment of Specific Costs VII-7

7.6.1. Advertising VII-7

7.6.1.1. Definition VII-7

7.6.1.2. Allowable Costs VII-8

7.6.2. Bad Debts VII-8

7.6.3. Contingencies VII-8

7.6.3.1. Definition VII-8

7.6.3.2. Allowability VII-8

7.6.4. Depreciation and Use Allowances VII-9

7.6.4.1. Definition VII-9

7.6.4.2. Computation VII-9

7.6.5. Entertainment VII-9

7.6.5.1. Definition VII-10

7.6.5.2. Allowable Costs VII-10

7.6.6. Fine and Penalties VII-10

7.6.7. Gifts, Contributions, and Donations VII-10

7.6.8. Interest Costs VII-11

7.6.8.1. Allowable Costs VII-11

7.6.8.2. Imputed Interest VII-11

7.6.9. Losses Incurred Under Other Contracts VII-12

7.6.10. Material Costs VII-12

7.6.10.1. Definition VII-12

7.6.10.2. Adjustment to Costs VII-12

7.6.10.3. Cost Basis of Transfers VII-12

7.6.11. Taxes VII-13

7.6.11.1. Allowable Costs VII-13

7.6.11.2. Unallowable Costs VII-13

7.6.11.3. Tax Refunds VII-14

7.6.11.4. Direct Government Charges VII-14

7.7. Cost Requiring Prior Approval to be Allowable as Direct Costs VII-14

7.7.1. General VII-14

7.7.2. Pre-contract Costs VII-14

7.7.3. Bid and Proposal Costs VII-15

7.7.4. Insurance VII-15

7.7.4.1. Indirect Costs VII-15

7.7.4.2. Direct Costs VII-15

7.7.4.3. Losses VII-15

7.7.5. Litigation Costs VII-15

7.8. Applicable Credits VII-16

7.8.1. Definitions and Examples VII-16

7.8.2. Reducing Costs VII-16

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

7.8.3.	Refund	VII-16
7.9.	Advance Agreements	VII-16
7.9.1.	Purpose	VII-16
7.9.2.	Form Required	VII-16
7.9.3.	Limitation on Costs Covered	VII-17
7.10.	Use of Federal Cost Principles	VII-17
7.10.1.	Cost Negotiations	VII-17
7.10.2.	Incorporation of Federal Principles: Conflicts Between Principles and This Chapter	VII-17
7.11.	Authority to Deviate From Cost Principles	VII-17

Chapter VIII SUPPLY MANAGEMENT

Section		Page
8.1.	Definitions	VIII-1
8.2.	Supply Management and Disposition	VIII-2
8.2.1.	General	VIII-2
8.2.2.	Quality Assurance, Inspecting and Testing	VIII-2
8.2.3.	Inventory Management	VIII-3
8.2.4.	Warehousing and Storage	VIII-3
8.2.5.	Authority of President	VIII-3

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

8.2.6.	Report of Supplies	VIII-3
8.2.7.	Transfer of Excess and Surplus Supplies	VIII-3
8.2.8.	Disposition of Surplus Supplies	VIII-4
8.2.8.1.	General Requirements	VIII-4
8.2.8.2.	Competitive Sealed Bidding	VIII-4
8.2.8.3.	Auctions	VIII-5
8.2.8.4.	Established Markets	VIII-5
8.2.8.5.	Posted Prices	VIII-6
8.2.8.6.	Trade-in	VIII-6
8.2.9.	Disposal of Surplus Books	VIII-6
8.2.9.1.	GSA Notification	VIII-6
8.2.9.2.	Surplus Book Disposal	VIII-6
8.2.9.3.	Record	VIII-7
8.3.	Allocations of Proceeds from Sale or Disposal of Surplus Supplies	VIII-7
8.3.1.	Disposition of Proceeds	VIII-7

Chapter IX LEGAL AND CONTRACTUAL REMEDIES

Section Page

9.1.	Definitions	IX-1

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

9.2.	Protest Resolution by the President	IX-1
9.2.1.	Authority to Resolve Protested Solicitations or Awards	IX-2
9.2.2.	Complaint to Procurement Officer	IX-2
9.2.3.	Filing of Protest	IX-2
9.2.3.1.	When Filed	IX-2
9.2.3.2.	Subject of Protest	IX-2
9.2.3.3.	Form	IX-2
9.2.3.4.	Notification of the Attorney General	IX-3
9.2.4.	Requested Information: Time for Filing	IX-3
9.2.5.	Stay of Procurements During Protest	IX-3
9.2.6.	Making Information of Protests Available	IX-4
9.2.7.	Decision by the President or Designee	IX-4
9.2.7.1.	Time for Decision and Notice of Decision	IX-4
9.2.7.2.	Bid Preparation Costs	IX-5
9.2.7.3.	Fraudulent or Frivolous Protest	IX-5
9.2.8.	Request for Reconsideration	IX-5
9.2.8.1.	Request	IX-5
9.2.8.2.	Time for Filing	IX-6
9.2.8.3.	Time for Acting	IX-6

9.2.9. Effect of Judicial or Administrative Proceeding IX-6

9.2.10. Finality IX-6

9.3. Debarment or Suspension by the Director of Education IX-6

9.3.1. Authority to Debar or Suspend IX-6

9.3.1.1. Application IX-7

9.3.1.2. Authority IX-7

9.3.1.3. Causes for Debarment or Suspension IX-7

9.3.2. Suspension IX-8

9.3.2.1. Initiation IX-8

9.3.2.2. Effects of Decisions IX-9

9.3.3. Initiation of Debarment Action a-9

9.3.4. Request for Hearing EX-9

9.3.5. Notice of Hearing a-9

9.3.6. Authority of the Hearing Officer IX-9

9.3.7. Hearing Procedures IX-12

9.3.7.1. Format IX-12

9.3.7.2. Record IX-12

9.3.8. Determination of Hearing Officer. Final Decision IX-12

9.3.9. Decision IX-13

9.3.9.1. Notice of Decision IX-13

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

9.3.9.2. Finality of Decision IX-14

9.3.10. Effect of Debarment Decision IX-14

9.3.11. Maintenance of List of Debarred and Suspended Persons IX-14

9.4. Regulations Governing the Settlement and Resolution of Contract and Breach of Contract Controversies IX-14

9.4.1. Authority to Resolve Contract and Breach of Contract Controversies IX-15

9.4.1.1. General IX-15

9.4.2. Scope of Regulation IX-15

9.4.3. Delegation of Authority to Procurement Officer IX-15

9.4.3.1. Procurement Officer Authority IX-15

9.4.3.2. Prior Approval of Settlements IX-16

9.4.4. Procurement Officer's Decision IX-16

9.4.4.1. Procedures Prior to Issuing Decision IX-16

9.4.4.2. Final Decision IX-16

9.4.4.3. Failure to Timely Issue Final Decision IX-17

9.4.5. Controversies Involving University Claims Against the Contractor IX-17

9.4.6. Contract Clause IX-17

9.4.6.1. Disputes Clause IX-17

9.5. Determination that Solicitation or Award Violates Law IX-18

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

9.5.1. Applicability of this Section IX-18

9.5.2. Determination IX-18

9.5.3. Finding of Bad Faith or Fraud LX-19

9.6. Violations of Law Found Prior to Award Remedies 1X-19

9.6.1. Cancelling or Revising Solicitation or Proposed Award to Comply with the Law LX-19

9.7. Violations of Law Found After an Award Remedies IX-20

9.7.1. No Fraud or Bad Faith by Contractor IX-20

9.7.1.1. General IX-20

9.7.1.2. Ratification and Affirmation IX-20

9.7.1.3. Termination IX-21

9.7.2. Fraud or Bad Faith by the Contractor IX-21

9.7.2.1. General IX-21

9.7.2.2. Declaration of Contract Null and Void IX-22

9.7.2.3. Ratification and Affirmation IX-22

9.7.2.4. Effect of Declaring a Contract Null and Void IX-22

9.7.2.5. Effect of Ratification IX-23

9.8. Interest IX-23

9.9. Waiver of Sovereign Immunity in Connection With Contracts (Section 5480 of the Guam Procurement Act) IX-23

9.9.1. Solicitation and Award of Contracts IX-23

9.9.2. Debarment or Suspension IX-23

9.9.3. Actions Under Contracts or for Breach of Contract IX-24

9.9.4. Limited Finality for Administrative Determinations IX-24

9.9.5. Government Claims Act IX-24

9.10. Time Limitations on Actions (Section 5481 of the Guam Procurement Act) IX-24

9.10.1. Protested Solicitation and Awards IX-24

9.10.2. Debarments or Suspensions for Cause IX-25

9.10.3. Actions Under Contracts or for Breach of Contract IX-25

10.1. Compliance with Federal Requirements X-1

10.1.1. Federal Funds X-1

Chapter XI ETHICS IN PUBLIC CONTRACTING

Section Page

11.1. Defmitions of Terms Used in This Chapter XI-1

11.1.1. Definitions XI-1

11.2. Standards of Conduct XI-4

11.2.1. Statement of Policy XI-4

11.3. General Standards of Ethical Conduct XI-5

11.3.1. General Ethical Standards for Government Employees XI-5

11.3.2. General Ethical Standards for Non-Employees XI-5

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

11.3.3. Clause Regarding Government Employee and Former Government Employee Ethical Standards XI-6

11.4. Criminal Sanctions XI-6

11.5. Conflict of Interest XI-6

11.5.1. Government Employee Conflict of Interest XI-6

11.5.1.1. Conflict of Interest XI-6

11.5.1.2. Financial Interest in a Blind Trust XI-7

11.5.1.3. Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver XI-7

11.5.1.4. Notice XI-7

11.5.2. Definitional Cross-References XI-8

11.5.3. Application for a Waiver of Prohibition Against Conflict of Interest XI-8

11.5.3.1. Grant or Denial of Waiver XI-8

11.6. Disclosure of Benefit from Contract XI-9

11.6.1. Government Employee Disclosure Requirements XI-9

11.6.1.1. Disclosure of Benefit Received from Contract XI-9

11.6.1.2. Failure to Disclose Benefit Received XI-9

11.6.1.3. Notice XI-9

11.6.1.4. Definitional Cross-Reference XI-9

11.7. Gratuities and Kickbacks and Favors XI-10

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

11.7.1. Gratuities XI-10

11.7.2. Kickbacks XI-10

11.7.3. Contract Clause XI-10

11.7.4. Favors to the University XI-10

11.7.5. Defmitional Cross-Reference XI-11

11.7.6. Gratuities Prohibition XI-11

11.7.6.1. Breach XI-11

11.7.6.2. Relationship of Gratuity XI-12

11.7.6.3. Family XI-12

11.7.7. When Prohibition Against Gratuities Not Applicable XI-12

11.7.8. Payment of a Kickback XI-13

11.7.9. Contract Clause XI-13

11.8. Contingent Fees XI-14

11.8.1. Prohibition Against Contingent Fees XI-14

11.8.1.1. Contingent Fees XI-14

11.8.1.2. Representation of Contractor XI-14

11.8.1.3. Contract Clause XI-14

11.8.2. Definitional Cross-References XI-15

11.8.3. Influence Peddling XI-15

11.8.4. Relationship of Commercial Selling Business to the Prospective Contractor XI-15

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

11.8.5. Improper Influence XI-16

11.8.6. Solicitation Clause XI-16

11.8.7. Information of Contingent Fees XI-16

11.8.8. Contract Clause XI-17

11.9. Employment Prohibitions and Restrictions XI-18

11.9.1. Restrictions on Employment of Present and Former Government Employees XI-18

11.9.1.1. Contemporaneous Employment Prohibited XI-18

11.9.1.2. Restrictions on Former Government Employees in Matters Connected with their Former Duties XI-18

11.9.1.3. Disqualification of Business When a Government Employee Has a Financial Interest XI-19

11.9.1.4. Selling to the University After Termination of Employment is Prohibited XI-20

11.9.2. Permanent Disqualification of Former Government Employee XI-21

11.9.2.1. Personal and Substantial Participation XI-21

11.9.2.2. Matter Must Be a Particular Matter Involving Identifiable Parties XI-21

11.9.2.3. The Same Particular Matter Must Be Involved XI-22

11.9.3. One Year Restriction for a Former Government Employee XI-22

11.9.3.1. Official Responsibility XI-22

11.9.3.2. One Year Restriction XI-23

11.9.4. Disqualification of a Business XI-23

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

11.9.4.1.	Personal and Substantial Participation XI-23
11.9.4.2.	Official Responsibility XI-23
11.9.4.3.	Determination of Business Knowledge XI-24
11.9.5.	Prohibition Against Selling to the University XI-24
11.9.5.1.	Applicability XI-24
11.9.5.2.	"Sell" Defined XI-24
11.9.6.	Employment with a Territorial Contractor XI-25
11.10.	Use of Confidential Information XI-25
11.11.	Civil and Administrative Remedies Against Government Employees Who Breach Ethical Standards XI-26
11.11.1.	Existing Remedies Not Impaired XI-26
11.11.2.	Supplemental Remedies XI-26
11.11.3.	Right to Recover From Government Employee Value Received in Breach of Ethical Standards XI-26
11.11.4.	Due Process XI-27
11.12.	Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards XI-27
11.12.1.	Existing Remedies Not Impaired XI-27
11.12.2.	Supplement Remedies XI-27
11.12.3.	Right to Recover From Non-Employee Value Transferred in Breach of Ethical Standards XI-27

UNIVERSITY OF GUAM
PROCUREMENT REGULATIONS
TABLE OF CONTENTS

11.12.4.	Right of the University to Debar or Suspend XI-28
11.12.5.	Due Process XI-28
11.13.	Recovery of Value Transferred or Received in Breach of Ethical Standards XI-28
11.13.1.	General Provisions XI-28
11.13.2.	Recovery of Kickbacks by the University XI-29
11.14.	Ethics Enforcement XI-29
11.14.1.	Ethics: Non-Employees XI-29
11.14.2.	Ethics Commission XI-29
11.14.2.1.	Regulations XI-29
11.14.2.2.	Advisory Opinions XI-30
11.14.2.3.	Waiver XI-30
11.14.3.	Appeal of Decisions XI-30
11.14.3.1.	General XI-30
11.14.3.2.	Debarment or Suspension XI-31
11.14.3.3.	Appeal From Decision of Civil Service Commission XI-31

Appendix

Chapter 11	Regulations Governing Government of Guam Employees Ethics in Public Contracting as Promulgated by the Civil Service Commission

CHAPTER 1.

GENERAL PROVISIONS CHAPTER I

GENERAL PROVISIONS

Section

1.1. PURPOSE (GSA Section 1-101).

The purpose of the University of Guam Procurement Regulations, hereinafter referred to as the Regulations, is to provide standard policies and procedures governing the procurement, management, control, and disposal of supplies, services, and construction for the University of Guam in conformity with Title V, Chapter 5 - Guam Procurement Law, Guam Code Annotated (GCA), effective date December 14, 1992, hereinafter referred to as the Guam Procurement Act. Note that each section in this manual is referenced to the related section in the General Services Administration's Procurement Regulations (GSA), effective date November 1, 1984.

1.2. GENERAL POLICIES (GSA Section 1-102).

The following are policy statements governing the procurement management within the University of Guam:

1. Simplify, clarify, and modernize the regulations governing procurement actions;

2. Allow for the continual development of sound procurement policies and practices;

3. Provide for increased public confidence in the procedures followed in public procurement;

4. Ensure fair and equitable treatment of all persons who deal with procurement;

5. Provide for increased economy in procurement activities and maximize to the fullest extent practicable the purchasing value of public funds;

6. Foster effective broad-based competition within the free enterprise system;

7. Provide safeguards for the maintenance of a procurement system of quality and integrity; and

8. Provide for public access to all aspects of procurement consistent with the "sealed bid" procedure and the integrity of the procurement process.

1.3. POLICY CONCERNING SHELTERED OR DISABLED PERSONS (GCA Section 5001(d)).

The University of Guam shall to the extent practicable, purchase supplies and services offered by a non-profit corporation employing sheltered or disabled workers or a Government of Guam entity employing sheltered or disabled workers if the supply or service is available within the period required by the University. Purchases shall be made based on the financial prices offered by such firms.

1.4. POLICY IN FAVOR OF PLANNED PROCUREMENT (Public Law 18-44).

All procurement of supplies and services shall, where possible, be made sufficiently in advance of need for delivery or performance to promote maximum competition and good management of resources. Publication of bids and requests for proposals shall not be manipulated so as to place potential bidders at an unnecessary competitive disadvantage. Except in emergency situations, lower price bids are generally preferable to shorter delivery or performance bids.

Delivery time may be considered as a factor in making an award to a responsive bidder only if his average delivery time bid is at least ten percent (10%) shorter than the average delivery time of a lower price responsible bidder and if the price offered by the bidder offering the faster delivery or performance does not exceed one hundred five percent (105%) of the lower price bidder.

1.5. POLICY FAVORING THE PROCUREMENT AND USE OF BIODEGRADABLE, REUSABLE, RECYCLABLE, OR RECYCLED PRODUCTS (Public Law 21-22).

For the procurement of goods or supplies, when practicable, emphasis shall be placed on the purchase of products that are biodegradable, reusable, recyclable, or recycled, or any combination.

1.6. ADVANCE PAYMENTS (GSA Section 1-103/GCA Section 5007).

No procurement shall be made which shall require advance payment except for when advance payment is required for off-island vendors. Whenever practicable, the University shall make every effort to avoid making advanced payments to off- island vendors by pursuing lines of credit or alternate payment arrangements.

1.7. LOCAL PROCUREMENT PREFERENCE (GSA Section 1-104/GCA Section 5008).

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

1. A licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands;

2. A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured;

3. A business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars ($150,000), whichever is less, of supplies and items of a similar nature to those being sought; or

4. A service business actually in business, doing a substantial portion of its business on Guam, and hiring at least ninety-five percent (95%) U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off-Guam may be made if no local agent for such supplies or services may be found on Guam or if the total cost F.O.B. job-site, unloaded, of procurement from off-island is not greater than eighty-five percent (85%) of the total cost F.O.B. job-site, unloaded, of the same supplies or services when procured from a local source. Justification for off-island procurement, must be submitted in writing to the President or his designee.

1.8. REQUIREMENT OF GOOD FAITH (GSA Section 1-105).

These Regulations require all parties involved in the negotiation, performance, or administration of the University's procurement contracts to act in good faith.

1.9. DEFINITIONS (GSA Section 1-106).

Terms used in these Regulations have the following meaning ascribed to them unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular chapter in the Regulations.

1. Architect-Engineer and Land Surveying Services - are those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of Guam.

2. Blind Trust - means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or dispositions of, the property subject to the trust.

3. Business - means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity, established for profit or non-profit purposes.

4. Change Order - means a written order signed by the President or such officer's designee directing the contractor to make changes which are authorized by the changes clause of the contract. The changes clause of the contract authorizes the President or such officer's designee to make such order without the consent of the contractor.

5. Confidential Information - means any information which is available to an employee only because of the employee's status as an employee of the University of Guam and is not a matter of public knowledge nor available to the public on request.

6. Conspicuously - means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.

7. Construction - means the process of building, altering, repairing, improving, or demolishing any structure or building of the University of Guam or other improvements of any kind to any real property of UOG. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property of UOG.

8. Contract - means all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

9. Contract Modification - means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract, accomplished by mutual action of the parties to the contract.

10. Contractor - means any person having a contract with the University of Guam.

11. Construction - means the process of building, altering, repairing, improving, or demolishing any public structure or characteristic.

12. Cost-Reimbursement Contract - means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the Guam Procurement Act, and a fee, if any.

13. Data - means recorded information, regardless of form or characteristic.

14. University - means the University of Guam.

15. Designee - means a duly authorized representative of a person holding a related supervisory position.

16. Direct or Indirect Participation - means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or any other advisory capacity.

17. President - means the person appointed by the Board of Regents.

18. UOG - means the University of Guam.

19. Emergency - means a condition posing an imminent threat to public health, welfare, or safety which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection.

20. Employee - means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.

21. Entity - means any department, agency, board, commission, instrumentality, public corporation, or branch of the Government of Guam and any corporation or person expending funds appropriated from the Government of Guam.

22. Established Catalog Price - means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

23. Excess Supplies - means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the University.

24. Expendable Supplies - means all tangible supplies other than non-expendable supplies.

25. Financial Interest - means:

(a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more

than Two Thousand Five Hundred Dollars ($2,500) per year, or its equivalent;

(b) Ownership or such interest in any property or any business as may be specified by the Board of Regents; or

(c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

26. Governmental Body - means any department, commission, council, board, bureau, committee, institution, agency, government corporation, authority or other establishment or official of the Executive, Legislative or Judicial branches of the Government of Guam.

27. Grant - means the furnishing by the University of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction. A contract resulting from such an award is not a grant but a procurement contract.

28. Gratuity - means a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

29. Immediate Family - means a spouse, children, parents, brothers and sisters.

30. Invitation for Bids - means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

31. May - denotes the permissive.

32. Non-Expendable Supplies - means all tangible supplies having an original acquisition cost of over One Hundred Dollars ($100) per unit.

33. Official Responsibility - means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove,

or otherwise direct University action.

34. Person - means any business, individual, union, committee, club, other organization or group of individuals.

35. Procurement - means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

36. Purchase Description - means the words used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

37. Purchase Request - means the document used to request that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required.

38. Purchasing Agency - means any government body which is authorized by regulations, or law, to enter into contracts or administer procurement functions.

39. Procurement Officer - means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

40. Procurement Section - means the University's division which is authorized by the Guam Procurement Act or its implementing regulations, including these regulations, or by way of delegation from the President, to enter into contracts.

41. Regulation - shall have the meaning given in the Administrative Adjudication Law.

42. 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 performance in good faith.

43. Responsive Bidder - means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

44. Sell - as used means signing a bid, proposal, or contract, negotiating a contract, contracting any employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract, settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person.

45. Services - means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include any form of employment relationship with the government or collective bargaining agreements. Services also include printing and processing for printing finished products, such as books, reports, and other items which are, when delivered, in finished form and are not to be further processed by the using agency.

46. Shall - denotes the imperative.

47. Specification - means any description of the physical, salient, or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

48. Supplies - means all property, including but not limited to equipment, materials, printing of forms, stationery and the like which are designed for further use or processing by the University, insurance and leases of real property, excluding land and a permanent interest in land.

49. Procurement Section - administrator of the UOG Procurement Section.

50. Surplus Supplies - means any supplies other than expendable supplies no longer having any use to the University.

51. Using Unit - means any unit of the University which utilizes any supplies, services or construction procured under these Regulations.

CHAPTER 2.

PROCUREMENT ORGANIZATION CHAPTER II

PROCUREMENT ORGANIZATION

Section

2.1. CREATION OF THE PROCUREMENT SECTION (GSA Section 2-101).

There is established within the University of Guam the Procurement Section under the Financial Affairs Division. The Procurement Section is responsible for the processing of all UOG procurements.

2.2. DUTIES AND RESPONSIBILITIES (GSA Section 2-102).

1. Advises the President on policies, regulations, and procedures Concerning procurement administration matters.

2. Establishes regulations, consistent with Title V, Government Code of Guam (Guam Procurement Act), governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by the University.

3. Suggests regulations to the Board of Regents pertaining to the form of bonds and reduction of bond amounts.

4. Suggests regulations to the President requiring the inclusion in construction contracts of clauses providing for adjustment in prices, time of performance or other contract provisions, as appropriate.

5. Suggests regulations to the President requiring the inclusion in University construction contracts of clauses providing for appropriate remedies and covering the following subjects:

(a) Liquidated damages as appropriate;

(b) Specified excuses for delayed performance;

(c) Termination of the contract for default; and

(d) Termination of the contract in whole or in part for the convenience of the University.

6. Suggests regulations to the President putting forth cost principles.

7. Suggests regulations to the President governing the:

(a) Management of supplies during their entire life cycle;

(b) Sale, lease or disposal of surplus supplies by public auction, competitive sealed bidding or other appropriate method designated by regulation, provided that no employee of the using unit or disposing unit shall be entitled to purchase any such supplies; and

(c) Transfer of excess supplies.

8. Suggests regulations to the President to suspend a person or company from bidding and or any participation in securing a contract with the University.

9. Procures or supervises the procurement of all supplies and services needed by the University.

10. Exercises general supervision and control over all inventories of supplies belonging to the University.

11. Provides annual training to University personnel on these regulations.

12. Prepares and transmits recommendations to the Central Procurement Policy Office of the Government of Guam for special consideration of University procurement policy needs which are not addressed by existing policies promulgated by the Central Procurement Policy Office and which are within the confines of the Guam Procurement Act.

2.3. AUTHORITY AND RESPONSIBILITY OF THE UOG PROCUREMENT SECTION (GSA Section 2-103).

The centralized procurement of UOG is placed within the Procurement Section of the Financial Affairs Division of the University of Guam.

The Procurement Section shall be responsible for administering all activities as designated by the President in accordance with the provisions of the Guam Procurement Act and its amendments.

The Procurement Section shall be administered by Vice President of Financial Affairs who shall possess the qualifications in the specialized area of public procurement.

2.4. AUTHORITY OF THE PRESIDENT (GSA Section 2-104).

2.4.1. PRINCIPAL CONTRACTING OFFICER OF UOG (GSA Section 2-104(a)).

The President shall serve as the Procurement Officer of the University with respect to supplies, services and construction.

2.4.2. POWER TO ADOPT OPERATIONAL PROCEDURES (GSA Section 2-104(b)).

Consistent with the provisions of the Guam Procurement Act and the University of Guam's Procurement Regulations, the Procurement Section may recommend operational procedures governing the internal functions of procurement operations to the President.

The President shall have authority to prescribe forms to be used by the University using units in requisitioning, ordering and reporting of supplies and services (Section 5140 of the Guam Procurement Act).

2.4.3. DUTIES (GSA Section 2-104 (c)).

Except as otherwise specifically provided in the Guam Procurement Act, the President shall, in accordance with the authority delegated by the Territorial Board of Regents:

1. Procure or supervise the procurement of all supplies and services needed by the University;

2. Exercise general supervision and control over all inventories of supplies belonging to the University;

3. Establish and maintain programs for the inspection, testing and acceptance of supplies and services;

4. Procure or supervise the procurement of all construction needed by the University; and

5. Establish and maintain programs for the inspection, testing and acceptance of construction.

2.5. DELEGATION OF PROCUREMENT AUTHORITY BY THE PRESIDENT (GSA Section 2-105).

2.5.1. APPLICATION (GSA Section 2-105).

The President may delegate procurement authority to designees or to any governmental body or official.

2.5.2. DECISION TO DELEGATE, (GSA Section 2-105).

The President may delegate procurement authority or may revoke procurement authority as delegated. Factors to consider in making the decision to delegate include:

1. The expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;

2. The past experience of the potential delegate in exercising similar authority;

3. The degree of economy and efficiency to be achieved in meeting the University's requirements if authority is delegated;

4. The available resources of the University of Guam Procurement Section to

exercise the authority if it is not delegated; and

5. The consistency of delegation under similar circumstances.

2.5.3. COMPLIANCE WITH THE GUAM PROCUREMENT ACT (GSA Section 2-105).

Any designee of the President shall exercise delegated authority in accordance with the Guam Procurement Act and these Regulations.

2.6. DELEGATION OF AUTHORITY TO OFFICIALS IN OTHER DIVISIONS OF UOG (GSA Section 2-106).

The President may delegate in writing such procurement authority as may be deemed appropriate to the head of any unit of this University. Such delegation shall be in writing and shall specify:

1. The activity or function authorized;

2. Any limits or restrictions on the exercise of the delegated authority;

3. Whether the authority may be further delegated; and
4. The duration of the delegation.

2.7. EXCEPTIONS TO DELEGATION (GSA Section 2-107).

The authority conferred on the President in the following sections of the UOG Procurement Regulations shall not be delegated:

1. Section 5.3. (Contract Performance and Payment Bonds, Reduction of Bond Amounts);

2. Section 5.4.2. (Contract Clauses and Their Administration, Revision to Contract Clauses);

3. Section 6.1.2. (Contract Clauses and Their Administration, Variations in Contract Clauses);

4. Section 9.2.5. (Authority to Resolve Protested Solicitations or Awards, Stay of Procurement During Protests); and

5. Section 9.3.1.2. (Authority to Debar or Suspend, Authority).

2.8. LIMITATIONS ON DELEGATION (GSA Section 2-108).

2.8.1. CONTRACT AWARD (GSA Section 2-108(a)).

Under Section 3.9.14. (Competitive Sealed Bidding, Bid Evaluation and Award) of the UOG Procurement Regulations, the President may delegate the authority to negotiate an adjustment of the bid price for a construction project, provided that no contract may be awarded pursuant to such negotiations without the approval of the President.

2.8.2. AUTHORITY TO DEBAR OR SUSPEND (GSA Section 2-108(b)).

Under Section 9.3.1.2. (Authority to Debar or Suspend, Authority) of the UOG Procurement Regulations, the President may appoint a hearing officer to receive evidence and make a written report containing findings of fact and conclusions of the case. Thereafter, oral argument may be heard before the President, who shall issue a written decision pursuant to Section 9.3.1.2. (Authority to Debar or Suspend, Authority), of the UOG Procurement Regulations.

2.9. COORDINATION, TRAINING AND EDUCATION: COLLECTION OF DATA CONCERNING PUBLIC PROCUREMENT (GSA Section 2-III).

The President shall cooperate with the Bureau of Budget and Management Research and the Territorial Auditor, or any successor agency, in the preparation of statistical data concerning the procurement, usage and disposition of all supplies and services, and employ such trained personnel as may be necessary to carry out this function. All using units shall furnish such reports as the President may require concerning usage, needs and stocks on hand.

2.10. AUTHORITY TO CONTRACT FOR CERTAIN SERVICES AND APPROVAL OF CONTRACTS (SECTION 5121 OF THE GUAM PROCUREMENT ACT) (GSA Section 2-112).

2.10.1. GENERAL AUTHORITY TO CONTRACT FOR CERTAIN SERVICES (GSA Section 2-112(a)).

For the purpose of procuring the services of accountants, physicians, lawyers, dentists, insurance brokers and other professionals, the President may act as a purchasing agent and contract on the University's behalf for such services, subject to the provisions of the Guam Procurement Act, and these Regulations, but this Subsection shall not authorize the procuring of such services where the President or Board of Regents is otherwise prohibited from procuring such services.

2.10.2. APPROVAL OF CONTRACTS FOR LEGAL SERVICES (GSA Section 2-112(b)).

The President shall obtain approval from the Attorney General of contracts for the services of legal counsel.

2.10.3. APPROVAL OF CONTRACTS GENERALLY (GSA Section 2-112 (c)).

The President or his designee, authorized to procure the services or supplies in question, as established in these Regulations, shall execute all contracts for the University of Guam. The President may approve standard form contracts or purchase orders and once such approval of the standard form is given, contracts or purchase orders made on such form may be executed.

2.10.4. APPROVAL OF CONTRACTS BY THE DEPARTMENT OF REVENUE AND TAXATION (GCA Section 5121 (d)).

The President shall refer all University purchases for license plates, safety decals, tax forms or tax booklets to the Director of the Department of Revenue and Taxation or his designee who by law has the exclusive authority to approve and execute all contracts for such procurements.

2.11. DUTIES OF THE UNIVERSITY OF GUAM'S LEGAL COUNSEL (GSA Section 2-113).

The University's Legal Counsel, in conjunction with the Attorney General or the designated Assistant Attorney General, shall serve as legal counsel and provide necessary legal services to the Board of Regents and the President.

When approving contracts, the Legal Counsel shall, determine not only the correctness of their form, but their legality. In making such determination of legality, the Legal Counsel may require any or all of the University's units

involved in the contract to supply evidence that the required procedures precedent to executing the contract were carried out.

The President, in consultation with Legal Counsel, may prescribe the forms and format required to be followed by the units to aid in the determination of legality (Section 5150, Duties of the Attorney General, of the Guam Procurement Act).

CHAPTER 3.

SOURCE SELECTION AND CONTRACT FORMATION

Section
3.1. DEFINITIONS OF PERMS USED IN THIS CHAPTER (GSA Section 3-101).

1. Bid Sample (GSA Section 3-202.05.3(b)) - means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

2. Capability (GSA Section 3-101.01.1) - as used in Section 1.9. 42. (Definitions, Responsible Bidder or Offeror) of these Regulations, means capability at the time of the contract.

3. Cost Analysis (GSA Section 3-101.01.2) - is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

4. Cost Data (GSA Section 3-101.01.3) - are information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract.

5. Descriptive Literature (GSA Section 3-202.05.3(a))- means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and enables the University to consider whether the item meets its needs.

6. Discussions (GSA Section 3-101.01.4) - as used in the source selection process, means an exchange of information or other manner of negotiation during which the offeror and the University may alter or otherwise change the conditions, terms, and price of the proposed contract. Discussions may be conducted in connection with sole source and emergency procurement; discussions are not permissible in competitive sealed bidding (except to the extent permissible during the first phase of multi-step sealed bidding).

7. Prequalification for Inclusion on Bidders Lists (GSA Section 3-101.01.5) - means determining in accordance with Section 3.17. (Prequalification of Suppliers) that a prospective bidder or offeror satisfies the criteria established for being included on the bidders list.

8. Price Analysis (GSA Section 3-101.01.6) - is the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

9. Price Data (GSA Section 3-101.01.7) - are factual information concerning prices, including profit, for supplies, services, or construction substantially similar to those being procured. In this definition, "prices" refer to offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both prime and subcontract prices.

10. Solicitation (GSA Section 3-101.01.8) - means an Invitation for Bids, a Request for Proposals, a Request for Quotations, or any other document issued by the University for the purpose of soliciting bids or proposals to perform a University contract.

11 Suppliers (GSA Section 3-101.01.9) - as used in Section 3.17. (Prequalification of Suppliers) means prospective bidders or offerors.

3.2. GENERAL PROVISIONS (GSA Section 3-102).

3.2.1. EXTENSION OF TIME FOR BID OR PROPOSAL ACCEPTANCE (GSA Section 3-102.01).

After opening bids or proposals, the President may request bidders or offerors to extend the time during which the University may accept their bids or proposals, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.

3.2.2. EXTENSION ENSION OF TIME ON INDEFINITE QUANTITY CONTRACTS (GSA Section 3-102.02).

The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for ninety (90) working days or less and the President determines in writing that it is not practical to award another contract at the time of such extension.

3.2.3. ONE BID RECEIVED (GSA Section 3-102.03.1).

If only one responsible bid is received in response to an Invitation for Bids (including multi-step bidding), an award may be made to the single bidder if the President finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected pursuant to the provisions of Section 3.15.5. (Cancellation of Invitations for Bids or Requests for Proposals, Rejection of Individual Bids or Proposals) and:

1. New bids or offers may be solicited;

2. The proposed procurement may be cancelled; or

3. If the President or his designee determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under Section 3.12. (Sole Source Procurement) or Section 3.13. (Emergency Procurements), as appropriate.

3.2.4. MULTIPLE IPLE OR ALTERNATE BIDS OR PROPOSALS (GSA Section 3-102.04).

Unless multiple or alternate bids or proposals are specifically provided for, the solicitation shall state that such bids or proposals shall not be accepted. When prohibited, multiple or alternate bids or proposals shall be rejected, provided that if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid or proposal submitted by the bidder or offeror. The provisions of this Section shall be set forth in the solicitation, and if multiple or alternate bids or proposals are allowed, it shall specify their treatment.

3.2.5. BID AND PERFORMANCE BONDS FOR SUPPLY CONTRACTS OR SERVICE CONTRACTS (GSA Section 3-102.06).

Bid and performance bonds or other security may be required for supply contracts or service contracts as the President, or such officer's designee deems advisable to protect the interest of the University. Any such requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility. Section 5.2. (Bid Security) and Section 5.3. (Contract Performance and Payment Bonds) set forth bonding requirements applicable to construction contracts and may be considered when establishing any such requirements for supply contracts or service contracts. See Subsections 3.9.3.3. (Bid Bond for Procurement of Supplies and Services) and 3.9.3.4. (Performance Bond for Procurement of Supplies and Services) for application to supply or service contracts.

3.2.6. CONDITIONING BIDS OR PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE (GSA Section 3-102.07).

Any bid or proposal which is conditioned upon receiving award of both the particular contract being solicited and another University contract shall be deemed nonresponsive and not acceptable.

3.3. RELATIONS WITH UNIVERSITY UNITS (GSA Section 3-103).

3.3.1. PURCHASE REQUISITIONS BY UNIVERSITY UNITS (GSA Section 3-103.01).

3.3.1.1. AUTHORITY TO REJECT (GSA Section 3-103.01.1).

When the Procurement Section after consultation with the requesting unit, decides

that processing the purchase requisition is clearly not in the best interest of the University or that further review is needed, such officer shall return such purchase requisition to the requesting unit. A statement of the reasons for its return shall accompany the returned requisition. Examples of reasons a purchase requisition may be returned include, but are not limited to:

1. The request can be satisfied from existing University stocks or University contracts;

2. The request exceeds the requesting unit needs;

3. The supplies, services, or construction requested could be procured more economically at a different time without detriment to the University; or

4. The quality requested is inconsistent with University standards and usage.

Rejected purchase requisitions may be reconsidered upon approval of a written justification from the affected unit by the President, or his designee. A written determination shall be made a part of the purchase requisition file.

3.3.1.2. AUTHORITY TO ESTABLISH LEAD TIMES (GSA Section 3-103.01.2).

Upon receipt of purchase requisitions, the Procurement, or his designee, has authority to decide when the procurement will be initiated and the time for response to the solicitation, provided the requesting unit is notified if any dates this officer establishes exceed those stated by such unit in the purchase requisition or will result in deliveries under the contract being later than the delivery date stated in the purchase requisition.

3.3.1.3. REQUESTING UNIT RESPONSE (GSA Section 3-103.01.3).

Any matters relating to disagreements between a requesting unit and the Procurement Section, with respect to actions taken under Subsections 3.3.1.1. (Authority to Reject) or 3.3.1.2. (Authority to Establish Lead Times) of this Section, or with regard to any other matter concerning a purchase requisition, may be brought to the President for resolution.

3.3.2. DETERMINATION OF CONTRACTUAL TERMS AND CONDITIONS (GSA Section 3-103.02).

The President, or his designee, is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts, provided such provisions, terms, and conditions are not contrary to statutory or regulatory requirements governing the procurement.

3.4. UNSOLICITED OFFERS (GSA Section 3-104).

3.4.1. DEFINED (GSA Section 3-104.01.1).

An unsolicited offer is any offer other than one submitted in response to a solicitation.

3.4.2. PROCESSING OF UNSOLICITED OFFERS (GSA Section 3-104.01.2).

The President, or his designee, shall consider the offer as provided in this Section. If a unit that receives an unsolicited offer is not authorized to enter into a contract for the supplies, services, or construction offered, the head of such unit shall forward the offer to the President, or his designee, who shall have final authority with respect to evaluation, acceptance, and rejection of such unsolicited offers.

3.4.3. CONDITIONS FOR CONSIDERATION (GSA Section 3-104.01.3).

To be considered for evaluation, an unsolicited offer:

1. Must be in writing;

2. Must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the University;

3. Must be unique or innovative to University use;

4. Must demonstrate that the proprietary character of the offering warrants consideration of the use of sole source procurement; and

5. May be subject to testing under terms and conditions specified by the University.

3.4.4. EVALUATION (GSA Section 3-104.01.4).

The unsolicited offer shall be evaluated to determine its utility to the University and whether it would be to the University's advantage to enter into a contract based on such offer. If an award is to be made on the basis of such offer, the sole source procedures in Section 3.12. (Sole Source Procurement) shall be followed.

3.4.5. CONFIDENTIALITY (GSA Section 3-104.01.5).

Any written request for confidentiality of data contained in an unsolicited offer that is made in writing shall be honored. If an award is made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. If agreement cannot be reached on confidentiality, the University may reject the unsolicited offer.

3.5. NOVATION OR CHANGE OF NAME (GSA Section 3-105).

3.5.1. NO ASSIGNMENT (GSA Section 3-105.01.1).

No University contract is transferable, or otherwise assignable, without the written consent of the President and the Board of Regents provided, however, that a contractor may assign monies receivable under a contract after due notice to the University.

3.5.2. RECOGNITION OF A SUCCESSOR IN INTEREST. NOVATION (GSA Section 3-105.01.2).

When in the best interest of the University, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

1. The transferee assumes all of the transferor's obligations;

2. The transferor waives all rights under the contract as against the University; and

3. Unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

3.5.3. CHANGE OF NAME (GSA Section 3-105.01.3).

When a contractor requests to change the name in which it holds a contract with the University, the Administrator responsible for the contract shall, upon receipt of a document indicating such change of name (for example, an amendment to the Articles of Incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

3.5.4. REPORTS (GSA Section 3-105.01.4).

All change of name or novation agreements effected hereunder other than by the President shall be reported to such officer within thirty (30) working days of the date that the agreement becomes effective.

3.5.5. ACTIONS AFFECTING MORE THAN ONE PURCHASING AGENCY (GSA

Section 3-105.01.5).

Notwithstanding the provisions of Subsections 3.5.1. (No Assignment) through 3.5.3. (Change of Name) of this Section, when a contractor holds contracts with more than one Purchasing Agency of the Territory, the novation or change of name agreements herein authorized shall be processed through the President for contracts with the University of Guam.

3.6. CONTRACTING FOR INSTALLMENT PURCHASE PAYMENTS INCLUDING INTEREST (GSA Section 3-106.01).

Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints and shall be justified in writing by the President. The President shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary, funding, or other required prior approvals are obtained. No such agreement shall be used unless provision for installment payments is included in the solicitation document.

3.7. PURCHASE OF ITEMS SEPARATELY FROM CONSTRUCTION CONTRACT (GSA Section 3-107.01).

The President is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

3.8. METHODS OF SOURCE SELECTION (GSA Section 3-201).

Unless otherwise authorized by law, all University contracts shall be by competitive sealed bidding, pursuant to Section 3.9. (Competitive Sealed Bidding) of these Regulations, except as provided in:

1. Section 3.10. (Procurement from Non-Profit Corporations);

2. Section 3.11. (Small Purchases);

3. Section 3.12. (Sole Source Procurement);

4. Section 3.13. (Emergency Procurements);

5. Section 3.14. (Competitive Selection Procedures for Services Specified in

Section 2.10.); and

6. Section 5.6. (Architect-Engineer and Land Surveying Services);

Nothing in this Section requiring competitive bidding shall prohibit the development of specifications which require compatibility with existing supplies, equipment or data processing systems.

3.9. COMPETITIVE SEALED BIDDING (GSA Section 3-202).

3.9.1. APPLICATION (GSA Section 3-202.01).

The provisions of this Section apply to every procurement made by competitive sealed bidding, including multi-step bidding.

3.9.2. USE OF COMPETITIVE SEALED BIDDING (GSA Section 3-202.02).

Competitive sealed bidding is the preferred method for the procurement of supplies, services, or construction.

3.9.3. THE INVITATION FOR BIDS (GSA Section 3-202.03).

3.9.3.1. USE (GSA Section 3-202.03.1).

The Invitation for Bids is used to initiate a competitive sealed bid procurement.

3.9.3.2. CONTENT (GSA Section 3-202.03.2).

The Invitation for Bids shall include the following:

1. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the University, and any other special information;

2. The purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and

3. The contract terms and conditions, disclosure of major shareholders identified in Section 3.9.5.4. (Disclosure of Major Shareholders), warranty and bonding or other security requirements, as applicable.

3.9.3.3. BID BOND FOR PROCUREMENT OF SUPPLIES AND SERVICES (GSA Section 3-202.033).

1. Determination. A surety bid bond or cash deposit may be required where essential to the best interest of the University. The President shall determine whether a bid bond or cash deposit shall be required with any bid, and if required, prescribe the amount thereof and enforce forfeiture of such bond or deposit upon failure of the successful bidder to enter into a contract within the prescribed period of time. The use of a bid bond, however, is required when a performance bond is required. See Section 5.3. (Contract Performance and Payment Bonds) of these Regulations for bonding requirement in the procurement of construction.

2. Amount Required. Whenever a bid bond is required, the President in accordance with his best judgment shall determine the amount or percentage which, when applied to the bid price, will produce an amount that will provide a bid guarantee which is adequate to protect the University from loss in the event of termination of the contract for default as provided in the Bid Guarantee provision. The amount shall be not less than ten percent (10%) of the bid price.

3. Invitation for Bids Provision. When a bid guarantee is required, the invitation for bids shall contain;

   (a) A statement that identifies details which will enable bidders to determine the amount of the bid guarantee; and

   (b) A bid guarantee provision as prescribed in these Regulations.

3.9.3.4. PERFORMANCE BOND FOR PROCUREMENT OF SUPPLIES AND SERVICES (GSA Section 3-202.03.4).

1. Determination. To determine whether a performance bond shall be required before a contract is entered into, and if required, to prescribe the amount thereof and enforce forfeiture of such bond upon failure of the contractor to perform the contract in a satisfactory manner Performance bonds may be required where essential to the best interest of the University. Determinations to require performance bonds shall be made by the President on individual procurements. Examples of situations which may warrant requiring a performance bond for procurement of supplies and services are:

(a) Where substantial progress payments are made before the delivery of the end products;

(b) Where, in connection with a contract for dismantling, demolition, or removal of improvements, etc., regardless of amount, a performance bond is determined necessary to ensure completion of work and to protect the University against damage to adjoining property during the contract's performance;

(c) Performance bonds shall not be required unless the invitation for bids requires such a bond, or the requirement of such bond is in the best interest of the University; or

(d) Any other conditions deemed to be in the best interest of the University.

2. Amount required. Where the President determines to require a performance bond, he shall determine the amount that will adequately protect the University.

3. Applicability. The bonds prescribed in this Section shall be applicable if its applications on individual procurement is essential to the best interest of the University as an assurance that the successful bidder will perform the services of the contract in a satisfactory manner The bond required in this Section may be waived by the President if a determination is made in writing that the bond is not in the best interest of the University and the nature of the services or supplies being procured does not warrant the additional protection afforded by the bond.

4. Form. Bonds, as may be required by this Section, shall be issued by a surety licensed to do business in this Territory. Bonds shall be on a standard government form or standby irrevocable letter of credit or certified check or cashier's check issued by any local banks or bonding agencies licensed by the Insurance Commissioner of Guam.

3.9.3.5. INCORPORATION BY REFERENCE (GSA Section 3-202.03.5).

The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

3.9.3.6. ACKNOWLEDGMENT OF AMENDMENTS (GSA Section 3-202.03.6).

The Invitation for Bids shall require the acknowledgment of the receipt of all amendments issued.

3.9.3.7. TAXES.

Bidders are cautioned that they are subject to Guam Business Privilege Taxes, including the Gross Receipts Tax and Guam Income Taxes on local transactions. All bidders are required to comply with appropriate tax requirements. Bidders may obtain specific tax information from the Director of Revenue and Taxation.

3.9.4. BIDDING TIME (GSA Section 3-202.04).

Bidding time is the period of time between the date of distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of fifteen (15) working days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the President.

3.9.5. BIDDER SUBMISSIONS (GSA Section 3-202.05).

3.9.5.1. BID FORM (GSA Section 3-202.05.1).

The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

3.9.5.2. TELEGRAPHIC BIDS, MAILGRAMS, AND FACSIMILES (GSA Section 3-202.05.2).

The Invitation for Bids may state that telegraphic bids, mailgrams, and facsimiles will be considered whenever they are received in hand at the designated office by the time and date set for receipt of bids. Such telegraphic bids, mailgrams, or facsimiles shall contain:

1. Specific reference to the Invitation for Bids;

2. The items, quantities and prices for which the bid is submitted;

3. The time and place of delivery; and

4. A statement that the bidder agrees to all the terms, conditions, and provisions of the Invitation for Bids.

3.9.5.3. BID SAMPLES AND DESCRIPTIVE LITERATURE (GSA Section 3-202.05.3).

Bid samples and descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

The Invitation for Bids shall state that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the Invitation for Bids.

3.9.5.4. DISCLOSURE OF MAJOR SHAREHOLDERS (GCA Section 5233).

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

In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open

and available to the public for inspection and copying. Failure to submit the affidavit disclosing shareholders and the statement concerning commissions paid shall be deemed nonresponsive and cause for rejection of the bid upon opening.

3.9.6. PUBLIC NOTICE (GSA Section 3-202.06).

3.9.6.1. DISTRIBUTION (GSA Section 3-202.06.1).

Invitations for Bids or Notices of the Availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of

securing competition. Notices of Availability shall:

1. Indicate where, when, and for how long Invitations for Bids may be obtained;

2. Generally, describe the supply, service, or construction desired; and

3. May contain other appropriate information.

Where appropriate, the President may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

3.9.6.2. PUBLICATION (GSA Section 3-202.06.2).

Every procurement in excess of twenty-five thousand dollars ($25,000) shall be publicized at least once and at least seven (7) working days before the final date of submission of bids:

1. In a newspaper of general circulation on Guam;

2. In a newspaper of local circulation in the area pertinent to the procurement;

3. In industry media; or

4. In a government publication designed for giving public notices.

3.9.6.3. PUBLIC AVAILABILITY (GSA Section 3-202.06.3).

A copy of the Invitation for Bids shall be made available for public inspection at the Procurement Section.

3.9.7. BIDDERS' LISTS (GSA Section 3-202.07).

3.9.7.1. PURPOSE (GSA Section 3-202.07.1).

Bidders' lists may be compiled by the Procurement Section to provide the University with the names of businesses that may be interested in competing for various types of University contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a University contract. The University may contact other

Government procurement offices to obtain vendor listings which may be available.

3.9.7.2. DELETION OF BIDDERS (GSA Section 3-202.07.2).

Businesses that fail to respond to Invitation for Bids or Notices of Availability on three (3) consecutive procurements of similar items may be removed from the applicable bidders' list after notice to the bidder. Prospective bidders currently meeting the criteria for inclusion on the list may be reinstated on such lists at their request.

3.9.7.3. PUBLIC AVAILABILITY (GSA Section 3-202.07.3).

Names and addresses on bidders' lists shall be available upon written request for public inspection provided the lists shall not be used for private promotional, commercial, or marketing purposes.

3.9.8. PRE-BID CONFERENCES (GSA Section 3-202.08).

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference shall be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in Section 3.9.9. (Amendments to Invitation for Bids), if a pre-bid conference was required therein, or the notice of pre-bid conference shall so provide. A summary of the conference shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If a transcript is made, it shall be a public record.

3.9.9. AMENDMENTS TO INVITATIONS FOR BIDS (GSA Section 3-202.09).

3.9.9.1. FORM (GSA Section 3-202.09.1).

Amendments to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The amendments shall reference the portions of the Invitations for Bids they amend.

3.9.9.2. DISTRIBUTION (GSA Section 3-202.09.2).

Amendments shall be sent to all prospective bidders known to have received an

Invitation for Bids.

3.9.9.3. TIMELINESS (GSA Section 3-202.09.3).

Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time

shall be increased to the extent possible in the amendment or, if necessary, by telegram, telephone, or facsimile and confirmed in the amendment.

3.9.10. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS (GSA Section 3-202.10).

3.9.10.1. PROCEDURE (GSA Section 3-202.10.1).

Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening. A telegraphic modification or withdrawal received by telephone or facsimile from the receiving telegraph company office prior to the time and date set for bid opening will be effective if the telegraph company confh ins the telephone message or facsimile by sending a written copy of the

telegram showing that the message was received at such office prior to the time and date set for bid opening.

3.9.10.2. DISPOSITION OF BID SECURITY (GSA Section 3-202.10.2).

If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

3.9.10.3. RECORDS (GSA Section 3-202.10.3).

All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

3.9.11. LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS (GSA Section 3-202.11).

3.9.11.1. DEFINITION (GSA Section 3-202.11.1).

Any bid received after the time and date set for receipt of bids is late. Any

withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.

3.9.11.2. TREATMENT (GSA Section 3-202.11.2).

No late bid, late modification, or late withdrawal will be considered unless received before contract award and the bid, modification, or withdrawal would have been timely but for the action or inaction of University personnel directly serving the procurement activity.

3.9.11.3. NOTICE (GSA Section 3-202.11.3).

Bidders submitting late bids that will not be considered for award shall be so notified as soon as practicable.

3.9.11.4. RECORDS (GSA Section 3-202.11.4).

Records equivalent to those required in Section 3.9.10.3. (Pre-opening Modification or Withdrawal of Bids, Records) shall be made and kept for each late bid, late modification, or late withdrawal.

3.9.12. RECEIPT, OPENING, AND RECORDING OF BIDS (GSA Section 3-202.12).

3.9.12.1. RECEIPT (GSA Section 3-202.12.1).

Upon its receipt, each bid and modification shall be time stamped, but not opened and shall be stored in a secure place until the time and date set for bid opening.

3.9.12.2. OPENING AND RECORDING OF BIDS (GSA Section 3-202.12.2).

Bids and modifications shall be opened publicly in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the President, shall be read aloud or otherwise made available. Such information also shall be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and addresses of required witnesses shall also be recorded at the opening.

The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Subsection 3.9.12.3. (Confidential Data). Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate

public inspection of the nonconfidential portion of the bid. Prices and makes and models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

3.9.12.3. CONFIDENTIAL DATA (GSA Section 3-202.12.3).

The President or his designee shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data or if the bidder has not separated such data as required in Section 3.9.12.2. (Opening and Recording of Bids), the President shall inform the bidders in writing what portions of the bids will be disclosed and that, unless the bidder protests under Chapter 9 (Legal and Contractual Remedies) of the UOG Procurement Regulations, the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data.

3.9.13. MISTAKES IN BIDS (GSA Section 3-202.13).

3.9.13.1. GENERAL (GSA Section 3-202.13.1).

Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is

attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible, but only to the extent it is not contrary to the interest of the University or the fair treatment of other bidders.

3.9.13.2. MISTAKES DISCOVERED BEFORE OPENING (GSA Section 3.202.13.2).

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 3.9.10. (Pre-Opening Modification or Withdrawals of Bids).

3.9.13.3. CONFIRMATION OF BID (GSA Section 3-202.13.3).

When the President or his designee knows or has reason to conclude that a mistake has been made, such officer should request the bidder to confirm the bid.

Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid.unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsections 3.9.13.4. (Mistakes Discovered After Opening but Before Award) through 3.9.13.5. (Mistakes Discovered After Award) of this Section are met.

3.9.13.4. MISTAKES DISCOVERED AFTER OPENING BUT BEFORE AWARD (GSA Section 3-202.13.4).

This Subsection sets forth procedures to be applied in the three (3) situations described when mistakes in bids are discovered after the time and date set for bid opening but before award.

1. Minor Informalities. Minor informalities are matters of form, rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or

   contractual conditions is negligible. The President or his designee shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the University. Examples of minor informalities include the failure of a bidder to:

   (a) Return the number of signed bids required by the Invitation for Bids;

   (b) Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or

   (c) Acknowledge receipt of an amendment to the Invitation for Bids; but only if:

      (i) It is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

      (ii) The amendment involved had a negligible effect on price, quantity, quality, or delivery.

2. Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid is clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be

withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

3. Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:

(a) A mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

(b) The bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

3.9.13.5. MISTAKES DISCOVERED AFTER AWARD (GSA Section 3-202.13.5).

Mistakes shall not be corrected after award of the contract except where the President or his designee makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

3.9.13.6. DETERMINATION REQUIRED (GSA Section 3-202.13.6).

When a bid is corrected or withdrawn, or correction or withdrawal is denied, under Subsections 3.9.13.4. (Mistakes Discovered After Opening but Before Award) and 3.9.13.5. (Mistakes Discovered After Award) of this Section, the President or his designee shall prepare a written determination showing that the relief was granted or denied in accordance with these Regulations.

3.9.14. BID EVALUATION AND AWARD (GSA Section 3-202.14).

3.9.14.1. GENERAL (GSA Section 3-202.14.1).

The contract is to be awarded "to the lowest responsible and responsive bidder" whose bid meets the requirements and criteria set forth in the Invitation for Bids. See Section 5211(g) (Competitive Sealed Bidding, Award) of the Guam Procurement Act. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.

3.9.14.2. RESPONSIBILITY AND RESPONSIVENESS (GSA Section 3-202.14.2).

Responsibility of prospective contractors is covered by Section 3.16. (Responsibility of Bidders and Offerors) of this Chapter. Responsiveness of bids is covered by Section 5201(g) (Definitions, Responsive Bidder) of

the Guam Procurement Act, which defines "responsive bidder" as a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

3.9.14.3. PRODUCT ACCEPTABILITY (GSA Section 3-202.14.3).

The Invitation for Bids shall set forth any evaluation criterion to be used in determining product acceptability. It may require submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any of the following prior to award:

1. Inspection or testing of a product prior to award for such characteristics as quality or workmanship;

2. Examination of such elements as appearance, finish, taste, or feel; or

3. Other examinations to determine whether it conforms with any other purchase description requirements.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidders offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

3.9.14.4. DE TERMINATION OF LOWEST BIDDER (GSA Section 3-202.14.4).

Following determination of product acceptability as set forth in Subsection 3.9.14.3 (Product Acceptability) of this Section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the University in accordance with the evaluation criteria set forth in the Invitation for Bids.

Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation and cost and ownership of life cycle cost formulas. Refer to Subsections 3.9.14.5. (Local Procurement Preference) through 3.9.14.7. (Biodegradable, Reusable, Recyclable, or Recycled Products)

for additional evaluation factors.

Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:

1. Be reasonable estimates based upon information the University has available concerning future use; and

2. Treat all bids equitably.

3.9.14.5. LOCAL PROCUREMENT PREFERENCE (GSA Section 1-104/GCA Section 5008).

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

1. A licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands; or

2. A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or

3. A business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars ($150,000), whichever is less, of supplies and items of a similar nature to those being sought; or

4. A service business actually in business, doing a substantial portion of its business on Guam, and hiring at least ninety-five percent (95%) U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

A bidder who wishes to receive the local procurement preference must state that it

meets one or more of the four requirements listed above new paragraph. Procurement of supplies and services from off-Guam may be made if no local agent for such supplies or services may be found on Guam or if the total cost F.O.B. job-site, unloaded, of procurement from off-island is not greater than eighty-five percent (85%) of the total cost F.O.B. job-site, unloaded, of the same supplies or services when procured from a local source.

3.9.14.6. POLICY IN FAVOR OF PLANNED PROCUREMENT (Public Law 18-44).

All procurement of supplies and services shall, where possible, be made sufficiently in advance of need for delivery or performance to promote maximum competition and good management of resources. Publication of bids and requests for proposals shall not be manipulated so as to place potential bidders at an unnecessary competitive disadvantage. Except in emergency situations, lower price bids are generally preferable to shorter delivery or performance bids.

Delivery time may be considered as a factor in making an award to a responsive bidder only if his average delivery time bid is at least ten percent (10%) shorter than the average delivery time of a lower price responsible bidder and if the price offered by the bidder offering the faster delivery or performance does not exceed one hundred five percent (105%) of the lower price bidder.

3.9.14.7. BIODEGRADABLE, REUSABLE, RECYCLABLE OR RECYCLED PRODUCTS (Public Law 21-22).

When possible, emphasis shall be placed on the purchase of products that are biodegradable, reusable, recyclable or recycled products, or any combination. These Regulations shall provide that the cost (prior to any adjustments for local vendors) of appropriate biodegradable, reusable, recyclable, or recycled products may be as much as ten percent (10%) greater than the cost of the non-biodegradable, non-reusable, non-recyclable, or non-recycled products they are replacing.

3.9.14.8. RESTRICTIONS (GSA Section 3-202.14.5).

Nothing in this Section shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if such bidder is not also the lowest bidder as determined in Subsection 3.9.14.4. (Determination of Lowest Bidder) of this Section. Further, this Section does not

permit negotiations with any bidder except as authorized under Section 2.8.1. (Limitations on Delegation, Contract Award) of these Regulations with regard to a construction project.

3.9.15. LOW TIE BIDS (GSA Section 3-202.15).

3.9.15.1. DEFINITION (GSA Section 3-202.15.1).

Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids.

3.9.15.2. AWARD (GSA Section 3-202.15.2).

Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the President or his designee, award shall be made in any permissible manner that will discourage tie bids. If no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.

3.9.15.3. RECORD (GSA Section 3-202.15.3).

Record shall be made of all Invitation for Bids on which tie bids are received showing at least the following information:

1. The identification number of the Invitation for Bids;

2. The supply source, or construction items; and

3. A listing of all the bidders and the prices submitted.

3.9.16. DOCUMENTATION OF AWARD (GSA Section 3-202.16).

Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file.

3.9.17. PUBLICIZING AWARDS (GSA Section 3-202.17).

Written notice of award shall be sent to the successful bidder. In procurements over twenty-five thousand dollars ($25,000), each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

3.9.18. MULTI-STEP SEALED BIDDING (GSA Section 3-202.18).

3.9.18.1. DEFINITION (GSA Section 3-202.18.1).

Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the University, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

3.9.18.2. CONDITIONS FOR USE (GSA Section 3-202.18.2).

The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on the price. Multi-step sealed bidding may thus be used when it is considered desirable:

1. To invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

2. To conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

3. To accomplish Subsections 3.9.18.2. 1. and 3.9.18.2. 2. of this Section prior to soliciting priced bids; and

4. To award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

3.9.19. PRE-BID CONFERENCES IN MULTI-STEP SEALED BIDDING (GSA Section 3-202.19).

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by Section 3.9.8. (Pre-Bid Conferences) may be conducted by the President or his designee. The President or his designee may also hold a conference of all potential bidders in accordance with Section 3.9.8. (Pre-Bid

Conferences) at any time during the evaluation of the unpriced technical offers.

3.9.20. PROCEDURE FOR PHASE ONE OF MULTI-STEP SEALED BIDDING (GSA Section 3-202.20).

3.9.20.1. FORM (GSA Section 3-202.20.1).

Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 3.9.3. (The Invitation for Bids) except as hereinafter provided. In addition to the requirements set forth in Section 3.9.3., the multi-step Invitation for Bids shall state:

1. That unpriced technical offers are requested;

2. Whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;

3. That it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;

4. The criteria to be used in the evaluation of the unpriced technical offers;

5. That the University, to the extent the President or his designee finds necessary, may conduct oral or written discussions of the unpriced technical offers;

6. That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

7. That the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

3.9.20.2. AMENDMENTS TO THE INVITATION FOR BIDS (GSA Section 3-202.20.2).

After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those

submitted. If, in the opinion of the President or his designee, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids, shall be cancelled in accordance with Section 3.15.4. (Cancellation of Solicitation. Rejection of All Bids or Proposals) of this Chapter and a new Invitation for Bids issued.

3.9.20.3. RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS (GSA Section 3-202.20.3).

Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

3.9.20.4. EVALUATION OF UNPRICED TECHNICAL OFFER (GSA Section 3-202.20.4).

The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

1. Acceptable;

2. Potentially acceptable; that is, reasonably susceptible of being made acceptable; or

3. Unacceptable. The President or his designee shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The President or his designee may initiate Phase Two of the procedure if, in the President's or his designee's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the President or his designee finds that such is not the case, the President or his designee shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3.9.20.5. (Discussions of Unpriced Technical Offers) of this Section.

3.9.20.5. DISCUSSIONS OF UNPRICED TECHNICAL OFFERS (GSA Section 3-202.20.5).

The President or his designee may conduct discussions with any bidder who

submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the President or his designee shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the President or his designee. Such submission may be made at the request of the President or his designee or upon the bidder's own initiative.

3.9.20.6. NOTICE OF UNACCEPTABLE UNPRICED TECHNICAL OFFER (GSA Section 3-202.20.6).

When the President or his designee determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.

3.9.21. MISTAKES DURING MULTI-STEP SEALED BIDDING (GSA Section 3-202.21).

Mistakes may be corrected or bids may be withdrawn during Phase One at any time. During Phase Two, mistakes may be corrected or withdrawal permitted in accordance with Section 3.9.13. (Mistakes in Bids).

3.9.22. PROCEDURE FOR PHASE TWO (GSA Section 3-202.22).

3.9.22.1. INITIATION (GSA Section 3-202.22.1).

Upon the completion of Phase One, the President or his designee shall either:

1. Open priced bids submitted in Phase One (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or

2. If priced bids have not been submitted, technical discussions have been held, or amendments to the Invitations for Bids have been issued, invite each acceptable bidder to submit a price bid.

3.9.22.2. CONDUCT (GSA Section 3-202.22.2).

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

1. As specifically set forth in Section 3.9.18. (Multi-Step Sealed Bidding) through this Section;

2. No public notice need be given of this invitation to submit priced bids because such notice was previously given;

3. After award, the unpriced technical offer of the successful bidder shall be disclosed as follows. The President or his designee shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the President or his designee shall inform the bidder in writing what portions of the unpriced technical offer will be disclosed and that unless the bidder protests under Chapter 9 (Legal and Contractual Remedies) of the University of Guam's Procurement Regulations, the offer will be so disclosed. Such technical offer shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

4. Unpriced technical offers of bidders who are not awarded the contract shall not be opened to public inspection unless the President or his designee determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process; provided, however, that the provisions of Subsection 3.9.22.2. 3. (Procedure for Phase Two, Conduct) of this Section shall apply with respect to the possible disclosure of trade secrets and proprietary data.

3.10. PROCUREMENT FROM NON-PROFIT CORPORATIONS (GCA Section 5001(d)).

A contract may be awarded for a supply or service without competition when the contractor is a non-profit corporation employing sheltered or disabled workers. As a condition of the award of the contract the contractor must certify that labor on the project will be performed by disabled persons except that supervisory personnel do not have to be disabled. A contractor awarded a contract pursuant to this Section shall not be required to post any of the bonds required under Article 5 of Chapter 5 of the Guam Procurement Act.

3.11. SMALL PURCHASES (GSA Section 3-204).

3.11.1. APPLICATION (GSA Section 3-204.01).

In accordance with Section 5213 (Small Purchases) of the Guam Procurement Act, this Section is established for procurement of less than fifteen thousand dollars ($15,000) for supplies or services and less than twenty-five thousand dollars ($25,000) for construction.

3.11.2. AUTHORITY TO MAKE SMALL PURCHASES (GSA Section 3-204.02).

3.11.2.1. AMOUNT (GSA Section 3-204.02.1).

The President or his designee may use this Section if the procurement is to be less than twenty-five thousand dollars ($25,000) for supplies or services and less than one-hundred thousand dollars ($100,000) for construction, or as otherwise stipulated by federal requirements. If these methods are not used, the other methods of source selection provided in Section 5210 (Methods of Source Selection) of the Guam Procurement Act and these Regulations shall apply.

3.11.2.2. DELEGATION (GSA Section 3-204.02.2).

Delegation of authority to make small purchases is provided for under Section 2.5. (Delegation of Procurement Authority by the President) of these Regulations.

3.11.2.3. EXISTING UNIVERSITY CONTRACT FOR ITEMS (GSA Section 3-204.02.3).

Supplies, services or construction items which may be obtained under current University contracts shall be procured under such agreements in accordance with the terms of such contracts. Further, supplies or construction items available from UOG stocks shall not be procured under this Section. Operational procedures and contract terms may provide for waivers or exceptions to this Subsection.

3.11.2.4. AVAILABLE FROM ONE BUSINESS ONLY (GSA Section 3-204.02.4).

If the supply, service, or construction item is available from only one business, the sole source procurement method set forth in Section 3.12. (Sole Source Procurement) of these Regulations shall be used even if the procurement is a small purchase as specified in Subsection 3.11.2.1. (Authority to Make Small Purchases, Amount) of this Section.

3.11.2.5. DIVISION OF REQUIREMENTS (GSA Section 3-204.02.5).

Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 5210 (Methods of Source Selection) of the Guam Procurement Act and these Regulations.

3.11.3. COMPETITION FOR SMALL PURCHASES OF SUPPLIES OR SERVICES BETWEEN $2,001 AND $25,000 (GSA Section 3-204.03).

3.11.3.1. PROCEDURE (GSA Section 3-204.03.1).

Insofar as it is practical for small purchases of supplies or services between two thousand one dollars ($2,001) and twenty-five thousand dollars ($25,000), no less than three (3) businesses shall be solicited to submit written quotations or oral quotations that are recorded and placed in the procurement file. Award shall be made to the business offering the lowest acceptable quotation.

3.11.3.2. RECORDS (GSA Section 3-204.03.2).

The names of the businesses submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

3.11.4. COMPETITION FOR SMALL PURCHASES OF CONSTRUCTION (GSA Section 3-204.04).

For procurement of construction, as defined in Section 5030 (g) of the Guam Procurement Act, between two thousand one dollars ($2,001) and one hundred thousand dollars ($100,000), the procedures and records required in Section 3.11.3. (Competition for Small Purchases of Supplies or Services Between $2,001 and $25,000) shall apply. For procurement of construction two thousand dollars ($2,000) or less, Section 3.11.5. (Micro Purchases of $2,000 or Less) shall apply.

3.11.5. MICRO PURCHASES OF $2,000 OR LESS (GSA Section 3-204.05).

The President or his designee shall adopt operational procedures for making small purchases of less than two thousand dollars ($2,000). Such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the Procurement Section.

3.11.6. SMALL PURCHASES OF SERVICES SPECIFIED IN SECTION 2.10. (AUTHORITY TO CONTRACT FOR CERTAIN SERVICES AND APPROVAL OF CONTRACTS) AND SECTION 5.6. (ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES) OF THESE REGULATIONS (GSA Section 3-204.06).

3.11.6.1. CONDITIONS FOR USE (GSA Section 3-204.06.1).

If it is expected that the services of accountants, physicians, lawyers, dentists, architects, engineers, or land surveyors, licensed nurses, other licensed health professionals and other professionals can be procured for twenty-five thousand dollars ($25,000) or less but more than two thousand dollars ($2,000), the methods specified in this Section may be used in lieu of the procedures specified in Section 3.14. (Competitive Selection Procedures for Services Specified in Section 2.10.) and Section 5.6. (Architect-Engineer and Land Surveying Services) of these Regulations.

3.11.6.2. EXAMINATION FOR QUALIFICATIONS AND NEGOTIATIONS (GSA Section 3-204.06.2).

Before contacting any person to perform the required services, the President or his designee shall examine any current statements of qualifications on file with the University. Based on this examination, the President or his designee shall contact the most qualified firm and attempt to negotiate a contract-for the required services at a fair and reasonable price. If no current statements of qualifications are on file or the statements on file are inadequate to determine the most qualified firm, technical proposals or statements of qualifications shall be solicited. A minimum of three (3) firms shall be considered unless there are only one or two qualified firms; in the latter case, the President or his designee shall make written determination justifying the consideration of only one or two firms. A price or fee shall not be solicited until the most qualified firm is chosen and only the most qualified firm will be requested to submit a price. If after negotiations, a fair and reasonable price cannot be agreed to, negotiations will be terminated with such firm and negotiations begun with the next most qualified firm. The process shall continue until a contract can be negotiated at a fair and reasonable price to the University.

3.11.7. SMALL PURCHASES OF PART-TIME TEACHING AND INSTRUCTOR SERVICES

3.11.7.1. CONDITIONS FOR USE

The Pool of Part-Time Faculty Lists, recommended by faculty and then used by the University's Deans and Directors to select and hire qualified Part-Time Faculty shall also include any persons or firms deemed qualified, in accordance with the same procedures and methodology used to select Part-Time Faculty set forth in the current agreement between the University of Guam Board of Regents and the University of Guam Faculty Union, to provide Part-Time Teaching and Instructor Services as Independent Contractors. If a University Dean or Director is unable to employ a person to fill a part-time faculty position using the Pool of Part-Time Faculty List, and it is expected that services for the teaching or instruction of UOG students can be procured in accordance with the Overload and Full-Time Pay Scale approved by the University's Board of Regents for less than twenty-five-thousand-

dollars ($25,000) but more than two-thousand-five-hundred-dollars ($2,500), then the methods specified in this section may be used in lieu of the procedures specified in Section 3.9 (Competitive Sealed Bidding) and the procedures specified in Section 3.14 (Competitive Selection Procedures for Services Specified in Section 2.10 of these Regulations). Any person or firm contracted to perform Part-Time teaching or instruction services pursuant to this section shall be an independent contractor and not a University employee while performing the services required by such contract.

3.11.7.2. EXAMINATION OF QUALIFICATIONS AND NEGOTIATIONS

The Dean or Director shall evaluate the persons or firms recommended from the Division-approved Pool of Part-Time Faculty List and shall contact the most qualified person or firm and attempt to negotiate a contract for the required teaching or instructor services at a rate that is in accordance with the Overload and Full-Time Pay Scale approved by the University's Board of Regents. If there are no qualified persons or firms from the Division-approved Pool of Part-Time Faculty List, or if the attempt to negotiate a contract for the required teaching or instructor rate is unsuccessful after the Dean has exhausted negotiations with all the persons or firms listed in the Pool of Part-Time Faculty List, then the Dean or Director shall request the relevant Division Chair to solicit for technical proposals or statements of qualifications to expand the pool of Part-Time Faculty in that Division or to obtain the required teaching or instructor services. Selection criteria for Part-Time Faculty shall be consistent with professional standards and competencies established for the University of Guam faculty in instructional roles. The Division shall consider a minimum of three (3) persons or firms shall be considered unless there are only one (1) or two (2) qualified persons or firms responding to the solicitation. In the latter case, the Dean or Director, shall make a written determination justifying the consideration of only one (1) or two (2) persons or firms. If after negotiations, a rate for the required teaching or instruction services that is in accordance with the Overload and Full-Time Pay Scale approved by the University's Board of Regents cannot be agreed to, negotiations will be terminated with such person or firm and negotiations begun with the next most qualified person or firm. The process shall continue until a contract can be negotiated at a rate that is in accordance with the Overload and Full-Time Faculty Pay Scale approved by the University's Board of Regents.

3.11.7.3. CONTRACT PROVISIONS FOR PART-TIME TEACHING AND INSTRUCTOR SERVICES

Any contract for Part-Time Teaching and Instructor Services procured using Section 3.11.7 of these regulations shall include the following contract provisions.

3.11.7.3.1. EVALUATION

The persons or firms that perform the Part-Time Teaching and Instruction Services as Independent Contractors shall be evaluated and shall receive written notice of evaluation in accordance with the same procedures and methodology used to evaluate Part-Time Faculty set forth in the current agreement between the University of Guam Board of Regents and the University of Guam Faculty Union.

3.11.7.3.2. CONTRACT TERM

The initial term of any contract procured pursuant to this section shall be limited to the duration of one session or semester, and the term may include optional terms, to be exercised unilaterally by the University on condition that the person or firm performing the Part-Time Teaching or Instruction Services receives a satisfactory evaluation for the initial contract term and any optional contract term, for one additional session or semester. However, the total contract term, to include the initial contract term and any optional terms shall not to exceed one Academic Year as set forth in the University's Academic Calendar. The University of Guam Faculty Union shall receive written notice of all part-time teaching or instructional contracts awarded each semester under the terms and conditions of these procurement provisions.

3.12. SOLE SOURCE PROCUREMENT (GSA Section 3-205).

A contract may be awarded for a supply, service, or construction item without competition when the provisions of this Section are met, provided that the President or his designee above the level of University of Guam Director determines in writing that there is only one source for the required supply, service or construction item.

3.12.1. APPLICATION (GSA Section 3-205.01).

The provisions of this Section apply to all sole source procurements unless emergency conditions exist as defined in Section 3.13. (Emergency Procurement) of these Regulations.

3.12.2. CONDITIONS FOR USE OF SOLE SOURCE PROCUREMENT (GSA Section 3-205.02).

Sole source procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement:

1. Where the compatibility of equipment, accessories, or replacement parts is of paramount consideration;

2. Where a sole supplier's item is needed for trial use or testing;

3. Where a sole supplier's item is to be procured for resale;

4. Where public utility services are to be procured; or

5. Where supplies are offered through bankruptcy or receivership sales, or other disposition at lower than prevailing market prices. The determination as to whether a procurement shall be made as a sole source shall be made by the President or the designee of such officer. Such determination and the basis therefore shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a using unit that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

3.12.3. NEGOTIATION IN SOLE SOURCE PROCUREMENT (GSA Section 3-205.03).

The President or his designee shall conduct negotiations, as appropriate, as to price, delivery, and terms.

3.12.4. RECORD OF SOLE SOURCE PROCUREMENT (GSA Section 3-205.04).

For the purpose of complying with Section 5249 (Record of Procurement Actions Taken Under Section 5214 (Sole Source Procurement) and Section 5215

(Emergency Procurements)) of the Guam Procurement Act, a record listing all contracts made under sole source procurement shall be maintained for a period of five (5) years. The record shall contain:

1. The supplier's or contractor's name;

2. The amount and type of each purchase order or contract;

3. A listing of the supplies, services or construction procured under each contract; and

4. The identification number of each purchase order or contract file.

The record shall be available for public inspection.

3.13. EMERGENCY PROCUREMENTS (GSA Section 3-206).

Notwithstanding any other provision of this Chapter, the President or a designee of such officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions; provided that:

1. Such emergency procurements shall be made with such competition as is practicable under the circumstances;
2. The procurement agent must solicit at least three (3) informal price quotations;

3. If time allows, notice must given to all contractors from the qualified bidders list who have provided the needed supplies and services to the University within the preceding twelve (12) months; and

4. Award of the emergency procurement must be made to the firm with the best offer, as determined by evaluating cost and delivery time.

3.13.1. APPLICATION (GSA Section 3-206.01).

The provisions of this Section apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

3.13.2. DEFINITION OF EMERGENCY CONDITIONS (GSA Section 3-206.02).

An emergency condition is a situation which creates a threat to public health,

welfare, or safety such as may arise by reasons of floods, earthquakes, epidemics, typhoons, riots, equipment failures, and other disasters, or such other reasons as may be proclaimed by the Governor, or upon written determination of the basis for the emergency and for the selection of a particular contractor. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. The functioning of the University;

2. The preservation or protection of property; or

3. The health or safety of any person.

Purchases of assistive technologies and adaptive equipment for the disabled are defined as emergency procurements.

3.13.3. SCOPE OF EMERGENCY PROCUREMENTS (GSA Section 3-206.03).

Emergency procurements shall be limited to those supplies, services, or construction items necessary to meet the emergency.

No emergency procurement or combination of emergency procurements may be made for an amount of goods or supplies greater than the amount of such goods and supplies which is necessary to meet an emergency for the thirty (30) working day period immediately following the procurement.

3.13.4. SOURCE SELECTION METHODS (GSA Section 3-206.05).

3.13.4.1. GENERAL (GSA Section 3-206.05.1).

The procedure used shall be selected to assure that the required supplies, services or construction items are procured in accordance with the provisions of Section 3.13. (Emergency Procurements), and in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

3.13.4.2. AFTER UNSUCCESSFUL COMPETITIVE SEALED BIDDING (GSA Section 3-206.05.2).

When competitive sealed bidding is unsuccessful because bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other

circumstances will not permit the delay required to resolicit competitive sealed bidding, then an emergency procurement may be made.

3.13.5. DETERMINATION AND CERTIFICATE E OF EMERGENCY PROCUREMENT (GSA Section 3-206.06).

3.13.5.1. DETERMINATION (GSA Section 3-206.06.1).

The President or his designee shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be made part of the contract file.

The requirements for a written determination for the emergency shall be met if the procurements are being made on the basis of the Governor's declaration of an emergency situation by Executive Order if such Order states that emergency procurement may be resorted to for the purposes of the Order.

3.13.5.2. EMERGENCY CERTIFICATION (GSA Section 3-206.06.1/GCA Section 5215).

Unless authorized by an Executive Order declaring an emergency, no emergency procurement may be made except on a certificate made under penalty of perjury by the President. Certified copies of the certificate shall be sent via facsimile and messenger, prior to award and as a condition thereof, to the Governor and Speaker of the Legislature and delivered. The certificate shall contain the following:

1. A statement of the facts giving rise to the emergency;

2. The factual basis of the determination that an emergency procurement is necessary; and

3. A statement that emergency procurement is not being used solely for the purpose of avoidance of the provisions of this Chapter.

In addition to any other requirement, the Chairman of the Board of Regents or designee must approve in writing all authorizations for emergency procurement prior to the emergency procurement.

3.13.6. RECORD (GSA Section 3-206.06.2).

For the purpose of complying with Section 5249 (Record of Procurement Actions Taken Under Section 5214 (Sole Source Procurement) and Section 5215

(Emergency Procurements) of the Guam Procurement Act, a record listing all contracts made under emergency procurement shall be maintained for a period of five (5) years. The record shall contain:

1. The supplier or contractor's name;

2. The amount and type of purchase order or contract;

3. A listing of the supplies, services, or construction procured under the purchase order or contract; and

4. The identification number of the purchase order or contract file.

3.14. COMPETITIVE SELECTION PROCEDURES FOR SERVICES SPECIFIED IN SECTION 2.10. (AUTHORITY TO CONTRACT FOR CERTAIN SERVICES AND APPROVAL OF CONTRACTS) OF THESE REGULATIONS (GSA Section 3-207).

3.14.1. APPLICATION (GSA Section 3-207.01).

The provisions of this Section apply to every procurement of the services of accountants, physicians, lawyers, dentists, insurance brokers, and other professionals as specified in Section 2.10. (Authority to Contract for Certain Services and Approval of Contracts) of these Regulations.

3.14.2. CONDITIONS FOR USE OF COMPETITIVE SELECTION PROCEDURES (GSA Section 3-207.02).

The services specified in Section 2.10. (Authority to Contract for Certain Services "and Approval of Contracts) of these Regulations shall be procured in accordance with this Section, except as authorized under 3.12. (Sole Source Procurement) or 3.13. (Emergency Procurements) of this Chapter. Services for architecture, engineering, construction, land surveying, environmental assessment and other such services shall be procured in accordance with Chapter 5 (Procurement of Construction, Architect-Engineer, and Land Surveying Services) of these Regulations.

3.14.3. DETERMINATION REQUIRED PRIOR TO USE OF COMPETITIVE SELECTION PROCEDURES (GSA Section 3-207.03).

For the purposes of procuring the services specified in Section 3.14.1 (Competitive Selection Procedures for Services Specified in Section 2.10. of these

Regulations, Application), the President or his designee may, at his or her discretion, procure services for a using unit when requested. In either case, the President or his designee shall determine in writing, prior to announcing the need for any such services:

1. That the services to be acquired are services specified in Section 3.14.1. (Application);

2. That a reasonable inquiry has been conducted, which may include requesting the UOG Personnel Division to report on the availability of such personnel, and that the University of Guam has neither the personnel nor resources to perform the services required under the proposed contract;

3. The nature of the relationship to be established between the using unit and the contractor by the proposed contract; and

4. That the University has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.

3.14.4. STATEMENT OF QUALIFICATIONS (GSA Section 3-207.04).

When the services specified in Section 3.14.1. (Application) are needed on a recurring basis, the President or his designee 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:

1. Technical education and training;

2. General or special experience, certifications, licenses, and membership in professional associations, societies, or boards;

3. An expression of interest in providing a particular service specified in Section 3.14.1. (Application); and

4. Any other pertinent information requested by the President.

Persons may amend statements of qualifications at any time by filing a new statement.

3.14.5. PUBLIC NOTICE IN COMPETITIVE SELECTION PROCEDURES (GSA

Section 3-207.05).

Notice of the need for services specified in Section 3.14.1. (Application) shall be made by the President or his designee in the form of a Request for Proposals at least ten (10) working days before the proposals are due. Adequate public notice shall be given as provided in Section 3.9.6. (Public Notice), and additionally shall consist of distributing Requests for Proposals to persons interested in performing the services required by the proposed contract.

3.14.6. REQUEST FOR PROPOSALS (GSA Section 3-207.06).

3.14.6.1. CONTENTS (GSA Section 3-207.06.1).

The Request for Proposals shall be in the form specified by the President or his designee and contain at least the following information:

1. The type of services required;

2. A 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 to remain confidential;

8. A statement of the minimum information that the proposals may contain, to include;

   (a) 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;

   (b) If deemed relevant by the President or his designee, the age of the offeror's business and average number of employees over a

previous period of time, as specified in the Request for Proposals;

(c) The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

(d) 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 Request for Proposals;

(e) A plan giving as much detail as is practical explaining how the services will be performed; and

(f) The factors to be used in the evaluation and selection process and their importance.

3.14.6.2. EVALUATION (GSA Section 3-207.06.2).

Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. 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:

1. The plan for performing the required services;

2. The ability to perform the services as reflected by the 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.

3.14.7. PRE-PROPOSAL CONFERENCES (GSA Section 3-207.07).

Pre-proposal conferences, as appropriate, may be conducted in accordance with Section 3.9.8. (Pre-Bid Conferences). Such a conference may be held anytime

prior to the date established for submission of proposals, and may be mandatory if deemed appropriate by the President or his designee.

3.14.8. RECEIPT AND HANDLING OF PROPOSALS (GSA Section 3-207.08).

3.14.8.1. REGISTRATION (GSA Section 3-207.08.1).

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 University 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.

3.14.8.2. REQUESTS FOR NONDISCLOSURE OF DATA (GSA Section 3-207.08.2).

If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the President or a designee of such official 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 President or a designee of such 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 under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Act, the proposal will be so disclosed.

3.14.9. DISCUSSIONS (GSA Section 3-207.09).

3.14.9.1. DISCUSSIONS PERMISSIBLE (GSA Section 3-207.09.1).

The President or a designee shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall be to:

1. Determine in greater detail such offeror's qualifications; and

2. Explore with the offeror the scope and nature of the required services, the offeror's proposed method of perfounance, and the relative utility of alternative methods of approach.

3.14.9.2. NO DISCLOSURE OF INFORMATION (GSA Section 3-207.09.2).

Discussions shall not disclose any information derived from proposals submitted by other offerors, and the University's Procurement Section shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in the contract. (See Section 3.14.8.2., Requests for Nondisclosure of Data.)

3.14.9.3. MODIFICATION OR WITHDRAWAL OF PROPOSALS (GSA Section 3-207.09.3).

Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

3.14.10. SELECTION OF THE BEST QUALIFIED OFFERORS (GSA Section 3-207.10).

After conclusion of validation of qualifications, evaluation, and discussion as provided in Sections 3.9.20.5. (Discussions of Unpriced Technical Offers) and 3.14.9. (Discussions), the President or a designee of such 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.

3.14.11. SUBMISSION OF COST OR PRICING DATA (GSA Section 3-207.11).

The offeror determined to be best qualified shall be required to submit cost or pricing data to the President or his designee at a time specified prior to the commencement of negotiations in accordance with Section 3.18. (Cost or Pricing Data) of these Regulations.

3.14.12. NEGOTIATION AND AWARD OF CONTRACT (GSA Section 3-207.12).

3.14.12.1. GENERAL (GSA Section 3-207.12.1).

The President or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at compensation to be fair and reasonable.

3.14.12.2. ELEMENTS OF NEGOTIATION (GSA Section 3-207.12.2).

Contract negotiations shall be directed toward:

1. Making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements 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

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.

3.14.12.3. SUCCESSFUL NEGOTIATION IATION OF CONTRACT WITH BEST QUALIFIED OFFEROR (GSA Section 3-207.12.3).

If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

3.14.12.4. FAILURE TO NEGOTIATE CONTRACT WITH BEST QUALIFIED OFFEROR (GSA Section 3-207.12.4).

1. 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 President or a designee shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) working days.

2. Upon failure to negotiate a contract with the best qualified offeror, the President or designee may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided in Subsection 3.14.13.4. 1. of this Section and commence with the next qualified offeror.

3.14.12.5. NOTICE OF AWARD (GSA Section 3-207.12.5).

Written notice of award shall be public information and made a part of the contract file.

3.14.12.6. FAILURE TO NEGOTIATE E, CONTRACT WITH OFFERORS INITIALLY SELECTED AS BEST QUALIFIED (GSA Section 3-207.12.6).

Should the President or a designee be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offers may be selected based on original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with Subsections 3.14.13.2. (Elements of Negotiation) through 3.14.13.4. (Failure to Negotiate Contract with Best Qualified Offeror) of this Section until an agreement is reached and the contract awarded.

3.14.13. MEMORANDUM OF EVALUATION AND NEGOTIATION (GSA Section 3-207.13).

At the conclusion of negotiations resulting in the award of the contract, the President or a designee may prepare a memorandum setting forth the basis of award including:

1. How the evaluation factors stated in the Request for Proposals were applied to determine the best qualified offerors; and

2. 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.

3.14.14. APPROVAL OF CONTRACTS FOR LEGAL SERVICES (GSA Section 3-207.14).

As provided in Section 2.10.2. (Authority to Contract for Certain Services and Approval of Contracts, Approval of Contracts for Legal Services) of these Regulations, no contract for the services of Legal Counsel may be awarded without the approval of the Attorney General.

3.14.15. REPORTS (GSA Section 3-207.15).

The President or his designee shall submit annually to the Board of Regents a listing of all contracts awarded under Section 3.14. (Competitive Selection Procedures for Services Specified in Section 2.10. (Authority to Contract for Certain Services and Approval of Contracts) of these Regulations) of these Regulations in the preceding fiscal year. The report shall identify the parties to the contract, the contract amount, duration, and the services to be performed thereunder.

3.15. CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS (GSA Section 3-301).

3.15.1. SCOPE OF THIS SECTION (GSA Section 3-301.01).

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the University under competitive sealed bidding, small purchases, or any other selection method, and rejection of bids or proposals in whole or in part.

3.15.2. POLICY (GSA Section 3-301.02).

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 may 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 University's best interest.

3.15.3. CANCELLATION OF SOLICITATION. NOTICE (GSA Section 3-301.03).

Each solicitation issued by the University shall state that the solicitation may be cancelled as provided in these Regulations.

3.15.4. CANCELLATION OF SOLICITATION. REJECTION OF ALL BIDS OR PROPOSALS (GSA Section 3-301.04).

3.15.4.1. PRIOR TO OPENING (GSA Section 3-301.04.1).

1. Opening. As used in this Section, "opening" means the date set for opening of bids, or receipt of unpriced technical offers in multi-step sealed bidding.

2. Determination. Prior to opening, a solicitation may be cancelled in whole or in part when the President or his designee determines in writing that such action is in the University's best interest for reasons including but not

limited to:

(a) The University no longer requires the supplies, services or construction;
(b) The University no longer can reasonably expect to fund the procurement; or

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

3. Notification. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited.

4. Notice of Cancellation. The notice of cancellation shall:

(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and

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

3.15.4.2. AFTER OPENING (GSA Section 3-301.04.2).

1. Determination. After opening, but prior to award, all bids or proposals may be rejected in whole or in part when the President or his designee determines in writing that such action is in the University's best interest for reasons including, but not limited to:

(a) The supplies, services, or construction being procured are no longer required;

(b) Ambiguous or otherwise inadequate specifications were part of the solicitation;

(c) The solicitation did not provide for consideration of all factors of significance to the University;

(d) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(e) All otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

(f) 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.

2. Notice of Rejection. A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Subsection 3.15.4.1. 4. (Cancellation of Solicitation. Rejection of All Bids or Proposals, Prior to Opening, Notice of Cancellation) of this Section.

3.15.4.3. DOCUMENTATION (GSA Section 3-301.04.3).

The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

3.15.5. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS (GSA Section 3-301.05).

3.15.5.1. GENERAL (GSA Section 3-301.05.1).

This Section applies to rejection of individual bids or proposals in whole or in part.

3.15.5.2. NOTICE IN SOLICITATION (GSA Section 3-301.05.2).

Each solicitation issued by the University shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the University as provided in these Regulations.

3.15.5.3. REASON FOR REJECTION (GSA Section 3-301.05.3).

1. Bids. As used in this Subsection, "bid" means any bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding and includes submissions under Section 3.11. (Small Purchases) of these Regulations if no changes in offers are allowed after submission. Reasons for rejecting a bid include, but are not limited to:

(a) The business that submitted the bid is not responsible as determined under Section 3.16.7. (Written Determination of

Nonresponsibility Required) of this Chapter;

(b) The bid is not responsive, that is, it does not conform in all material respects to the Invitation for Bids; see Section 3.9.14.2. (Bid Evaluation and Award, Responsibility and Responsiveness) of this Chapter; or

(c) The supply, service, or construction offered in the bid is unacceptable by reason of its failure to meet the specification requirements or other acceptable criteria set forth in the Invitation for Bids. See Section 3.9.14.3. (Bid Evaluation and Award, Product Acceptability) of this Chapter.

2. Proposals. As used in this Subsection, "proposal" means any offer submitted in response to any solicitation, including an offer under Section 3.11. (Small Purchase), except a bid as defined in Subsection 3.15.5.3. 1. (Reason for Rejection, Bids) of this Section. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the University's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include, but are not limited to:

(a) The business that submitted the proposals is nonresponsible as determined under Section 3.16. (Responsibility of Bidders and Offerors) of these Regulations;

(b) The proposals ultimately (that is, after opportunity has passed for altering or clarifying the proposal) fail to meet the announced requirements of the University in some material respect; or

(c) The proposed price is clearly unreasonable.

3.15.5.4. NOTICE OF REJECTION (GSA Section 3-301.05.4).

Upon request, unsuccessful bidders or offerors shall be advised of the reasons therefor.

3.15.6. "ALL OR NONE" BIDS OR PROPOSALS (GSA Section 3-301.06).

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 University shall not reject part of such bid or proposal and award on the remainder.

3.15.7. DISPOSITION OF BIDS OR PROPOSALS (GSA Section 3-301.07).

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.

3.16. RESPONSIBILITY OF BIDDERS AND OFFERORS (GSA Section 3-401).

3.16.1. APPLICATION (GSA Section 3-401.01).

A determination of responsibility or nonresponsibility shall be governed by this Section.

3.16.2. STANDARDS OF RESPONSIBILITY (GSA Section 3-401.02.1).

Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

1. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

2. A satisfactory record of performance;

3. A satisfactory record of integrity;

4. Qualified legally to contract with the University; and

5. Supplied all necessary information in connection with the inquiry concerning responsibility.

3.16.3. INFORMATION PERTAINING TO RESPONSIBILITY (GSA Section 3-401.02.2).

The prospective contractor shall supply information requested by the President or his designeee concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the President or his designee shall base

the determination of responsibility upon any available information.

The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

3.16.4. RIGHT OF NONDISCLOSURE (GSA Section 3-401(b)).

Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the Procurement Section of the University of Guam or by the President without the prior written consent of the bidder or offeror.

3.16.5. ABILITY TO MEET STANDARDS (GSA Section 3-401.03).

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

1. Evidence that such contractor possesses such necessary items;

2. Acceptable plans to subcontract for such necessary items; or

3. A documented commitment from, or explicit arrangement with, a satisfactory source to provide necessary items.

3.16.6. DUTY CONCERNING RESPONSIBILITY (GSA Section 3-401.04).

Before awarding a contract, the President or his designee must be satisfied that the prospective contractor is responsible.

3.16.7. WRITTEN DETERMINATION OF NONRESPONSIBILITY REQUIRED (GSA Section 3-401.05).

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the President or his designee. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

3.17. PREQUALIFICATION OF SUPPLIERS (GSA Section 3-402).

Prospective suppliers may be prequalified for particular types of supplies,

services, and construction. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

3.17.1. PREQUALIFICATION (GSA Section 3-402.01).

3.17.1.1. GENERAL (GSA Section 3-402.01.1).

Prospective contractors may be prequalified for bidder lists, but distribution of the solicitation shall not be limited to prequalified contractors, nor may a prospective contractor be denied award of a contract simply because such contractor was not prequalified. The fact that a prospective contractor has been prequalified does not necessarily represent a finding of responsibility.

3.17.1.2. QUALIFIED PRODUCTS LISTS (GSA Section 3-402.01.2).

This Section is not applicable to qualified products lists which are treated in Section 4.3.2.2. (Procedures for the Development of Specifications, Special Additional Procedures) of Chapter 4 (Specifications) of these Regulations.

3.18. COST OR PRICING DATA (GSA Section 3-403).

3.18.1. SCOPE OF REGULATION ON COST OR PRICING DATA (GSA Section 3-403.01).

This Section sets forth the pricing policies which are applicable to contracts of any type and any price adjustments thereunder when cost or pricing data are required to be submitted. The provisions of this Section requiring submission of cost or pricing data do not apply to a contract let by competitive sealed bidding (including multi-step bidding) or small purchases. However, cost or pricing data may be required under a contract let by competitive sealed bidding when price adjustments are subsequently made in such a contract and, to this extent, those provisions would apply.

See Section 3.18.2. (Requirement for Cost or Pricing Data) for when the contractor may be required to submit cost or pricing data.

3.18.2. REQUIREMENT FOR COST OR PRICING DATA (GSA Section 3-403.02).

3.18.2.1. SUBMISSION OF COST OR PRICING DATA (GSA Section 3-403.02.1).

Except as provided in Subsection 3.18.2.2. (Requirement for Cost or

Pricing Data, Exceptions) of this Section, cost or pricing data is required to be submitted in support of a proposal when:

1. Any contract expected to exceed one hundred thousand dollars ($100,000) is to be awarded by sole source procurement, by competitive selection or under Chapter 5 (Procurement of Construction, Architect-Engineer and Land Surveying Services) of these Regulations;

2. The adjustment in price of any contract, including a contract awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed one hundred thousand dollars ($100,000). (For example, the requirement applies to a thirty thousand dollars ($30,000) net modification resulting from a reduction of seventy thousand dollars ($70,000) and an increase of forty thousand dollars ($40,000) when the reduction and increase are related.) However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required if considered separately are consolidated for administrative convenience. The price shall also be adjusted to reflect non-payment by the contractor of any taxes which would have been paid were it not for the exclusion provided by Section 26203(k)15 (Gross Receipts Tax, Exemptions) of Title 11, Guam Code Annotated, Chapter 26; or

3. The President or his designee makes a written determination that the circumstances warrant requiring submission of cost or pricing data; provided, however, cost or pricing data shall not be required where the contract award is made pursuant to competitive sealed bidding. However, generally cost or pricing data should not be required where the contract or modification is less than twenty-five thousand dollars ($25,000). Moreover, when less than complete cost analysis (for example, analysis of only specific factors) will provide a reasonable pricing result on awards under one hundred thousand dollars ($100,000) without the submission of complete cost or pricing data, the President or his designee shall request only that data considered adequate to support the limited extent of the cost analysis needed and need not require certification.

3.18.2.2. EXCEPTIONS (GSA Section 3-403.02.2).

Cost and pricing data need not be submitted or certified:

1. Where the contract price is based on:

   (a) Adequate price competition;

   (b) Established catalog prices or market prices, except as provided by Section 3.18.3.3. 3. (Established Catalog Prices or Market Prices); or

   (c) Prices set by law or regulation; or

2. When the President or his designee determines in writing to waive the applicable requirement for submission of cost or pricing data under Subsection 3.18.2.1. (Submission of Cost or Pricing Data) of this Section in a particular pricing action and the reasons for such waiver are stated in the determination. A copy of such determination shall be kept in the contract file and made available to the public upon request.
   If, after cost or pricing data is initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

3.18.3. MEANING OF TERMS "ADEQUATE PRICE COMPETITION", "ESTABLISHED CATALOG PRICES OR MARKET PRICES", AND "PRICES SET BY LAW OR REGULATION" (GSA Section 3-403.03).

3.18.3.1. APPLICATION (GSA Section 3-403.03.1).

As used in the exceptions set forth in Section 3.18.2.2. (Requirement for Cost or Pricing Data, Exceptions) the terms "adequate price competition", "established catalog prices or market prices", and "prices set by law or regulations" shall be construed in accordance with the following definitions.

3.18.3.2. ADEQUATE PRICE COMPETITION (GSA Section 3-403.03.2).

Price competition exists if competitive sealed bids are solicited and at least two responsible offerors independently compete for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced offers (or best and final offers) meeting the requirements of the solicitation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the President or his designee determines in writing that such competition is not adequate.

3.18.3.3. ESTABLISHED CATALOG PRICES OR MARKET PRICES (GSA Section

3-403.03.3).

1. Established Catalog Prices. See 5201 (b) (Definitions, Established Catalog Price of the Guam Procurement Act), for the definition of established catalog price. (This definition is quoted in Section 1.9. 22. of these Regulations).

2. Established Market Price. "Established Market Price" means a current price established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

3. Reasonableness of Prices. If, despite the existence of an established catalog price or market price, and after consultation with the prospective contractors, the President or his designee considers that such price is not reasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by a request for cost or pricing data limited to data pertaining to the differences in the item or services being procured and those listed in the catalog or market, requests should be so limited.

3.18.3.4. PRICES SET BY LAW OR REGULATION (GSA Section 3-403.03.4).

The price of a supply or service is set by law or regulation if the governmental body establishes the price that the offeror or contractor may charge the University and other customers.

3.18.4. SUBMISSION OF COST OR PRICING DATA AND CERTIFICATION (GSA Section 3-403.04).

3.18.4.1. TIME AND MANNER (GSA Section 3-403.04.1).

When cost or pricing data are required, they shall be submitted to the President or his designee prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the President or his designee. When the President or his designee requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall either be actually submitted or specifically identified in writing.

3.18.4.2. OBLIGATION TO KEEP DATA CURRENT (GSA Section 3-403.04.2).

The offeror or contractor is required to keep such submission current until the negotiations are completed.

3.18.4.3. TIME FOR CERTIFICATION (GSA Section 3-403.04.3).

The offeror or contractor shall certify as soon as practicable after agreement is reached on price that, to the best of his knowledge and belief, the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date prior to reaching an agreement. Certification shall be made using the certificate set forth in Section 3.18.5. (Certificate of Current Cost or Pricing Data) of these Regulations.

3.18.4.4. REFUSAL TO SUBMIT DATA (GSA Section 3-403.04.4).

A refusal by the offeror to supply the required data shall be referred to the President or his designee, whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the President or his designee who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment, subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of these Regulations.

3.18.5. CERTIFICATE OF CURRENT COST OR PRICING DATA (GSA Section 3-403.05).

3.18.5.1. FORM OF CERTIFICATE; (GSA Section 3-403.05.1).

When cost or pricing data must be certified, a certificate substantially as set forth below shall be included in the contract file along with any award documentation required under these Regulations. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

"CER1IFICATE OF CURRENT COST OR PRICING

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in Section 3.1. of the University of Guam Procurement Regulations submitted, either actually or by specific identification in writing (See Section 3.18.4.) to the President in support of_____are accurate, complete and current as of (date) (month) (year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the University which are part of the proposal.

FIRM _____

NAME _____

TITLE _____

DATE OF EXECUTION _____

(End of Certificate)

3 "

1. Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

2. The effective date shall be a mutually determined date prior to, but as close to the date when price negotiations were concluded and the contract price was agreed to as possible. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of the agreement showing that the negotiated price is not based on accurate, complete, and current data.
3. This date should be as soon after the date when the price negotiations were concluded and the contract price was agreed to as practical.

3.18.5.2. REPRESENTATION AS TO ACCURACY OF COST OR PRICING DATA (GSA Section 3-403.05.2).

Although the certificate pertains to "cost or pricing data", it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, constitute a representation as to the accuracy of the data upon which the offeror's or contractor's judgment is based. A Certificate of Current Cost or Pricing shall not substitute for examination and analysis of the offeror's or contractor's proposal.

3.18.5.3. INCLUSION OF NOTICE AND CONTRACT CLAUSE (GSA Section

3-403.05.3).

Whenever it is anticipated that a Certificate of Current Cost or Pricing may be required, notice of this requirement shall be included in the solicitation. If such a certificate is required, the contract shall include a clause giving the University a contract right to a reduction in the price as provided in Section 3.18.6. (Defective Cost or Pricing Data).

3.18.5.4. EXERCISE OF OPTION (GSA Section 3-403.05.4).

The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data was used does not require recertification or further submission of data.

3.18.6. DEFECTIVE COST OR PRICING DATA (GSA Section 3-403.06).

3.18.6.1. OVERSTATED COST OR PRICING DATA (GSA Section 3-403.06.1).

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the University is entitled to an adjustment of the contract price, including profit or fee or any exclusion of taxes pursuant to Section 26203(k)15 (Gross Receipts Tax, Exemptions) of Title 11, Guam Code Annotated, Chapter 26, to exclude any significant sum by which the price, including profit or fee or any exclusion of taxes pursuant to Section 26203(k)15 (Gross Receipts Tax, Exemptions) of Title 11, Guam Code Annotated, Chapter 26 was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data.

It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by such amount.

In establishing that the defective data caused an increase in the contract price, the President or his designee is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

3.18.6.2. OFF-SETTING UNDERSTATED COST OR PRICING DATA (GSA Section 3-403.06.2).

In determining the amount of a downward adjustment, the contractor shall be entitled to an off-setting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the University's claim for overstated cost or pricing data arising out of the same pricing action.

3.18.6.3. DISPUTE (GSA Section 3-403.06.3).

If the contractor and the President or his designee cannot agree as to the existence of the defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the President shall set an amount in accordance with Subsections 3.18.6.1. (Overstated Cost or Pricing Data) and 3.18.6.2. (Off-Setting Understated Cost or Pricing Data) of this Section and the contractor may appeal this decision as a contract controversy under Chapter 9 (Legal and Contractual Remedies) of these Regulations.

3.18.7. PRICE ANALYSIS TECHNIQUES (GSA Section 3-403.07).

Price analysis is used to determine if a price is reasonable and acceptable. It involves an evaluation of the prices for the same or similar items, services, or construction. Examples of price analysis criteria include, but are not limited to:

1. Price submissions of prospective bidders or offerors in the same current procurement;

2. Prior price quotations and contract prices charged by the bidder, offeror, or contractor;

3. Prices published in catalogs or price lists;

4. Prices available on the open market; and

5. In-house estimates of cost.

In making such analysis, consideration must be given to any differing terms and conditions.

3.18.8. COST ANALYSIS TECHNIQUES (GSA Section 3-403.08).

Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

1. Specific elements of costs;

2. The necessity for certain costs;

3. The reasonableness of amounts estimated for the necessary costs;

4. The reasonableness of allowances for contingencies;

5. The basis used for allocation of indirect costs;

6. The appropriateness of allocations of particular indirect costs to the proposed contract; and

7. The reasonableness of the total cost or price.

3.18.9. EVALUATIONS OF COST OR PRICING DATA (GSA Section 3-403.09).

Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent University price and cost estimates. They shall also include consideration of whether such costs are reasonable and allocable under the pertinent provisions of Chapter 7 (Cost Principles) of these Regulations.

3.19. TYPES OF CONTRACTS (GSA Section 3-501).

3.19.1. SCOPE OF SECTION (GSA Section 3-501.01).

This Section contains descriptions of types of contracts and limitations as to when they should be utilized by the University in its procurement.

3.19.2. PROHIBITION OF CONTRACTING (GSA Section 3.501.02).

Any contract in violation of Sections 3.19.1. (Types of Contracts, Scope of Section) through 3.22.2.5. (Multiple Source Contracting, Determination Required), described herein, shall not be authorized .

3.19.3. POLICY REGARDING SELECTION OF CONTRACT TYPES (GSA Section 3-501.03).

3.19.3.1. GENERAL (GSA Section 3-501.03.1).

The selection of an appropriate contract type depends on the factors such as the nature of supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the University or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor.

The objective when selecting a contract type is to obtain the best value in needed supplies, services, or construction in the time required and at the lowest cost or price to the University.

In order to achieve this objective, the President or his designee, before choosing a contract type, should review those elements of the procurement which directly affect the cost, time, risk, and profit incentives bearing on the performance.

Among the factors to be considered in selecting any type of contract are:

1. The type and complexity of the supply, service or construction item being procured;

2. The difficulty of estimating performance costs such as the inability of the University to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;

3. The administrative costs to both parties;

4. The degree to which the University must provide technical coordination during the performance of the contract;

5. The effect of the choice of the type of contract on the amount of competition to be expected;

6. The stability of material or commodity market prices or wage levels;

7. The urgency of the requirement; and

8. The length of contract performance.

3.19.3.2. USE OF CONTRACT TYPES NOT HEREIN DESCRIBED (GSA Section

3-501.03.2).

The provisions of this Section 3.19. (Types of Contracts) describe and define the principal contract types. Any other type of contract, except cost-plus-a-percentage of cost, may be used provided the President or his designee determines in writing that such use is in the University's best interest.

3.19.4. TYPES OF FIXED-PRICE CONTRACTS (GSA Section 3-501.04).

3.19.4.1. GENERAL (GSA Section 3-501.04.1).

A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or may be subject to contractually specified adjustments. The fixed-price contract is appropriate for use when the extent and type of work necessary to meet University requirements can be reasonably specified and the cost can be reasonably estimated, as is generally the case for construction or standard commercial products. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.

3.19.4.2. FIRM FIXED-PRICE CONTRACT (GSA Section 3-501.04.2).

A firm fix-priced contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract. It should be used whenever prices which are fair and reasonable to the University can be established at the outset. Bases upon which firm fixed-prices may be established include:

1. Adequate price competition for the contract;

2. Comparison of prices in similar prior procurements in which prices were fair and reasonable;

3. Establishment of realistic costs of performance by utilizing available cost or pricing data and identifying uncertainties in contract performance; or

4. Use of other adequate means to establish a firm price.

3.19.4.3. FIXED-PRICE CONTRACT WITH PRICE ADJUSTMENT (GSA Section 3-501.04.3).

1. General. A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract.

Adjustments allowed may be upward or downward only or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(a) Changes in the contractor's labor agreement rates as applied to industry or area wide (such as may be found in some territorial contracts);

(b) Changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and

(c) In Requirements Contracts:

(i) When a general price change applicable to all customers occurs; or

(ii) When a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

2. Restrictions. If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the University the right to reject the price increase and terminate without cost the future performance of the contract. The contract shall also require that notice of any such price increase shall be given within such time prior to its effective date as is specified in the contract. These restrictions shall not apply to fixed-price cost incentive contracts which are covered in Section 3.19.6.2. (Fixed-Price Cost Incentive Contract) and fixed-price performance incentive contracts, which are covered in Section 3.19.7. (Performance Incentive Contracts).

3.19.5. TYPES OF COST-REIMBURSEMENT CONTRACTS (GSA Section 3-501.05).

3.19.5.1. GENERAL (GSA Section 3-501.05.1).

The cost-reimbursement type contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with Chapter 7 (Cost Principles) of these Regulations and as provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed (except at its own expense) without prior approval or subsequent ratification by the President or his designee and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

This type of contract is appropriate when the uncertainties involved in contract performance are of such magnitude that the cost of contract performance cannot be estimated with sufficient certainty to realize economy by use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by University personnel during performance so as to give reasonable

assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study type contracts.

3.19.5.2. DETERMINATION PRIOR TO USE (GSA Section 3-501.05.2).

A cost-reimbursement type contract may be used only when the President or a designee of such officer determines in writing that:

1. Such a contract is likely to be less costly to the University than any other type or that it is impracticable to obtain otherwise the supplies, services, or construction;

2. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

3. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

3.19.5.3. COST CONTRACT (GSA Section 3-501.05.3).

A cost contract provides that the contractor will be reimbursed for allowable costs

incurred in performing the contract, but will not receive a fee.

3.19.5.4. COST-PLUS-FIXED FEE CONTRACT (GSA Section 3-501.05.4).

1. General. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract. The cost-plus-fixed-fee contract can be either a Completion Form or Term Form.

2. Completion Form. The Completion Form is one which describes the scope of work to be done as a clearly defined task or job with a definite goal or target expressed and with a specific end-product. This form of contract normally requires the contractor to complete and deliver the specified end-product (in certain instances, final report of research accomplishing the goal or target) as a condition for payment of the entire fixed fee established for the work and within the estimated cost if possible. However, in the event the work cannot be completed within the estimated cost, the President or his designee can elect to require more work and effort from the contractor without increase in fee, provided it increases the estimated cost.

   The Completion Form of Contract, because of differences in obligation assumed by the contractor, is to be preferred over the Term Form whenever the work itself or specific milestones can be defined with sufficient precision to permit the development of estimates within which prospective contractors can reasonably be expected to complete the work. A milestone is a definable point in a program when certain objectives can be said to have been accomplished.

3. Term Form. Term Form is one which describes the scope of work to be done in general terms and which obligates the contractor to devote a specified level of effort for a stated period of time. Under this form, the fixed fee is payable at the termination of the agreed period of time, upon certification that the contractor has exerted the level of effort specified in the contract in performing the work called for, and that such performance

is considered satisfactory by the University.

In no event should the Term Form of contract be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite period of time.

3.19.6. COST INCENTIVE CONTRACT (GSA Section 3-501.06).

3.19.6.1. GENERAL (GSA Section 3-501.06.1).

A cost incentive type of contract provides for the reimbursement to the contractor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the contractor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract) or is penalized if it exceeds target cost. The profit or fee under such a contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the contractor controls cost in the performance of the contract.

3.19.6.2. FIXED-PRICE COST INCENTIVE CONTRACT (GSA Section 3-501.06.2).

In a fixed-price cost incentive contract, the parties establish at the outset:

1. A target cost;

2. A target profit (that is, the profit which will be paid if the actual cost of performance equals the target cost);

3. A formula which provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost; and

4. A ceiling price.

After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as determined in accordance with Chapter 7 (Cost Principles) of these Regulations and as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract and, if actual costs exceed the ceiling price, the contractor suffers a loss.

3.19.6.3. COST-REIMBURSEMENT CONTRACT WITH COST INCENTIVE FEE (GSA Section 3-501.06.3).

In a cost reimbursement contract with cost incentive fee, the parties establish at the outset:

1. A target cost;

2. A target fee;

3. A formula for increase or decrease of the fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and

4. A cost ceiling which represents the maximum amount the University is obligated to reimburse the contractor.

The contractor continues performance until work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred allowable costs reimbursed in accordance with Chapter 7 (Cost Principles) of these Regulations and as provided in the contract are applied to the formula to establish the incentive fee payable to the contractor.

3.19.6.4. DETERMINATIONS REQUIRED (GSA Section 3-501.06.4).

Prior to entering into any cost incentive contract, the President or his designee shall make the written determination required by Section 5236 (Approval of Accounting System) of the Guam Procurement Act. Prior to entering any cost-reimbursement contract with cost incentive fee, the President or his designee shall make the written determination required by Section 3.19.5.2. (Types of Cost-Reimbursement Contracts, Determination Prior to Use).

3.19.7. PERFORMANCE INCENTIVE CONTRACTS (GSA Section 3-501.07).

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula which varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the University to a price decrease.

3.19.8. TIME AND MATERIALS CONTRACTS AND LABOR HOUR CONTRACTS (GSA Section 3-501.08).

3.19.8.1. TIME AND MATERIALS CONTRACTS (GSA Section 3-501.08.1).

Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior University approval and shall be entered into only after the President or his designee determines in writing that:

1. University personnel have been assigned to closely monitor the performance of the work; and

2. Under the circumstances, it would not be practicable to use any other type of contract to obtain needed supplies, services, or construction, in the time required, and at the lowest cost or price to the University.

3.19.8.2. LABOR HOUR CONTRACTS (GSA Section 3-501.08.2).

A labor hour contract provides only for the payment of labor performed. It shall contain the same ceiling as provided in Subsection 3.19.8.1. (Time and Materials Contracts) of this Section. Prior to the award of such contract, the President or his designee shall make the determination as required in Subsection 3.19.8.1. (Time and Materials Contracts) of this Section.

3.19.9. DEFINITE QUANTITY AND INDEFINITE QUANTITY CONTRACTS (GSA Section 3-501.09).

3.19.9.1. DEFINITE QUANTITY (GSA Section 3-501.09.1).

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

3.19.9.2. INDEFINI1E QUANTITY (GSA Section 3-501.09.2).

An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may

provide a minimum quantity the University is obligated to order and may also provide for a maximum quantity that limits the University's obligation to order. Each indefinite quantity contract proposed to be entered into by the University shall include a written determination by the President or his designee indicating the rationale for the use of this type of contract and the reasons why another contract form will not suffice. Such contracts will be reviewed every six (6) months for a determination of the continued need for such a contract.

3.19.9.3. REQUIREMENTS CONTRACTS (GSA Section 3-501.09.3).

A requirements contract is an indefinite quantity contract for supplies or services that obligates the University to order all the actual requirements of the designated using units during a specified period of time. The obligation to order the University's actual requirements is limited by the provisions of the Uniform Commercial Code of Guam, Section 2306 (Output, Requirements and Exclusive Dealings) (quoted below). For the protection of the University and the contractor, requirements contracts shall include the following:

1. A provision which requires the University and any other users named in the solicitation to order their actual requirements of the supplies or services covered. However, the University may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds the University's normal requirements or an amount specified in the contract;

2. Exemptions from ordering under the contract when:

   (a) The President or his designee approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the University; or

   (b) Supplies are produced or services are performed incidental to the University's own programs as may be available that can satisfy the need.

Uniform Commercial Code of Guam (13 GCA) §2306 states:

"§2306. Output, Requirements and Exclusive Dealings:

1. A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as

may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

2. A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes, unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale."

3.19.10. LEASES (GSA Section 3-501.10).

3.19.10.1. DESCRIPTION (GSA Section 3-501.10.1).

A lease is a contract for the use of equipment or other supplies or real property under which title will not pass to the University at any time. Section 3.19.11. (Option Provisions) applies to a lease with purchase option where title may pass to the University.

3.19.10.2. USE (GSA Section 3-501.10.2).

A lease may be entered into provided:

1. It is in the best interest of the University;

2. All conditions for renewal and costs of termination are set forth in the lease; and

3. The lease is not used to circumvent normal procurement procedures.

3.19.11. OPTION PROVISIONS (GSA Section 3-501.11).

3.19.11.1. CONTRACT PROVISION (GSA Section 3-501.11.1).

When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. Exercise of the option is always at the University's discretion only, and not subject to agreement or acceptance by the contractor. A written record indicating the need for this shall be made and put in file.

3.19.11.2. EXERCISE OF OPTION (GSA Section 3-501.11.2).

Before exercising any option for renewal, extension or purchase, the President or his designee should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the University than renewal or extension of the existing contract. A written record of the President's or his designee's findings and determination shall be made and maintained as part of the contract file.

3.19.11.3. LEASE WITH PURCHASE OPTION (GSA Section 3-501.11.3).

A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding, or the leased supply or facility is the only supply or facility that can meet the University's requirements, as determined in writing by an officer above the level of Director. Before exercising such an option the President or his designee shall:

1. Investigate alternative means of procuring comparable supplies or facilities; and

2. Compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the estimated, initial savings associated with exercise of a purchase option.

3.20. APPROVAL OF ACCOUNTING SYSTEMS EMS (GSA Section 3-502).

Except with respect to firm fixed-priced contracts, no contract type shall be used unless it has been determined in writing by the President or such officer's designee, that:

1. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

2. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

3.21. MULTI-TERM CONTRACTS (GSA Section 3-503).

3.21.1. GENERAL (GSA Section 3-503.01.1).

A multi-term contract is appropriate when:

1. It is in the best interest of the University to obtain uninterrupted services extending over more than one fiscal period;

2. The performance of such services involves high start-up costs;

3. A change over of service contractors involves high phase-in/phase-out costs during a transition period; or

4. Production for contract performance requires alteration in the contractor's facilities or operations involving high start-up costs.

The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be cancelled and the contractor shall be reimbursed the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies delivered or services performed under the contract.

3.21.2. OBJECTIVE (GSA Section 3-503.01.2).

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurement which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during change-over of service contractors.

3.21.3. MULTI-TERM CONTRACT REGULATION INAPPLICABLE (GSA Section 3-503.01.3).

This Section 3.21. (Multi-Term Contracts) applies only to contracts for supplies or services described in Subsection 3.21.1. (Multi-Term Contracts, General) of this Section and does not apply to any other contracting including, but not limited to contracts for construction and leases (including leases of real property).

3.21.4. CONDITIONS FOR USE OF MULTI-TERM CONTRACTS (GSA Section 3-503.02).

A multi-term contract may be used when it is determined in writing by the President or his designee that:

1. Special production of definite quantities or the furnishing of long term services are required to meet University needs; and

2. A multi-term contract will serve the best interest of the University by encouraging effective competition or otherwise promoting economies in University procurement.

The following factors are among those relevant to such determination:

(a) Firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) Lower production costs because of large quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) Stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or

(d) The cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

3.21.5. SOLICITATION FOR MULTI-TERM CONTRACT (GSA Section 3-503.03.1).

The solicitation shall state:

1. The amount of supplies or services required for the proposed contract period;

2. That a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

3. That the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the University's rights or the contractor's rights under any termination clause in the contract;

4. That the President or his designee must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

5. Whether bidders or offerors may submit prices for:

   (a) The first fiscal period only;

   (b) The entire time of performance only; or

   (c) Both the first fiscal period and the entire time of performance.

6. That a multi-term contract may be awarded and how the award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and that, in the event of cancellation as provided in Subsection 3.21.7. (Cancellation of Multi-Term Contract) of this Section, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

3.21.6. AWARD OF MULTI-TERM CONTRACT (GSA Section 3-503.03.2).

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in" that is, give such bidder or offeror an undue competitive advantage in subsequent procurements.

3.21.7. CANCELLATION OF MULTI-TERM CONTRACT (GSA Section 3-503.03.3).

3.21.7.1. GENERAL (GSA Section 3-503.03.3(a)).

"Cancellation", as used in multi-term contracting, means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available. The contract for the first fiscal period shall not be cancelled. Cancellation results when the President or his designee:

1. Notifies the contractor of non-availability of funds for contract performance for any fiscal period subsequent to the first; or

2. Fails to notify the contractor by the date set forth in the contract, unless

the parties agree to extend such date, that funds are available for performance of the succeeding fiscal period and funds which may be used for the contract have not been appropriated or otherwise made available.

3.21.7.2. LIMITATIONS (GSA Section 3-503.03.3(b)).

These provisions on cancellation of multi-term contracts do not limit the rights of the University or the contractor under any termination clause of the contract if the contract is terminated pursuant to that clause rather than cancelled as provided in this Subsection.

3.22. MULTIPLE SOURCE CONTRACTING (GSA Section 3-504).

3.22.1. INCREMENTAL AWARD (GSA Section 3-504.01).

3.22.1.1. GENERAL (GSA Section 3-504.01.1).

An incremental award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a defmite quantity and the sum of the portions is the total definite quantity required. An incremental award may be used only when awards to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.

3.22.1.2. INTENT TO USE (GSA Section 3-504.01.2).

If an incremental award is anticipated prior to issuing a solicitation, the University shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

3.22.1.3. DETERMINATION REQUIRED (GSA Section 3-504.01.3).

The President or his designee shall make a written determination setting forth the reasons for the incremental award, which shall be made a part to the procurement file.

3.22.2. MULTIPLE AWARD (GSA Section 3-504.02).

3.22.2.1. GENERAL (GSA Section 3-504.02.1).

A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror when the

University is obligated to order all of its actual requirements for the specified supplies or services from those contractors. The obligation to order the University's actual requirements is limited by the provisions of the Uniform Commercial Code of Guam, Section 2306(1) (Output, Requirements and Exclusive Dealings). (See end of Subsection 3.19.9.3. for Code quotation.)

3.22.2.2. LIMITATIONS ON USE (GSA Section 3-504.02.2).

A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 3.9. (Competitive Sealed Bidding), Section 3.11. (Small Purchases), or Section 3.13. (Emergency Procurements), as applicable. Multiple awards shall not be made when a single award will meet the University's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of using colleges or divisions.

3.22.2.3. CONTRACT AND SOLICITATION PROVISIONS (GSA Section 3-504.02.3).

All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that:

1. The University shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract;

2. The University shall reserve the right to take bids separately if the President or his designee approves a finding that the supply or service availableunder the contract will not meet a nonrecurring special need of the University; and

3. The contract shall allow the University to procure supplies produced, or services performed, incidental to the University's own programs as may be available when such supplies or services satisfy the need.

3.22.2.4. INTENT TO USE (GSA Section 3-504.02.4).

If a multiple award is anticipated prior to issuing a solicitation, the University

shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

3.22.2.5. DETERMINATION REQUIRED (GSA Section 3-504.02.5).

The President or his designee shall make a written determination setting forth the reasons for a multiple award, which shall be made a part of the procurement file.

3.23. INSPECTIONS (GSA Section 3-601).

3.23.1. RIGHT TO INSPECT PLANT (GSA Section 3-601.01).

The University may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the University.

3.23.1.1. INSPECTION OF PLANT SITE (GSA Section 3-601.01.1).

Circumstances under which the University may perform inspections include, but are not limited to, inspections of the contractor's plant or site in order to determine:

1. Whether the standards set forth in Section 3.16.2. (Standards of Responsibility) have been met or are capable of being met; or

2. If the contract is being performed in accordance with its terms.

3.23.2. ACCESS TO PLANT OR PLACE OF BUSINESS (GSA Section 3-601.02).

The University may enter a contractor's or subcontractor's plant or place of business to:

1. Inspect supplies or services for acceptance by the University pursuant to the terms of a contract;

2. Audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section 5241 (Right to Audit Records) of the Guam Procurement Act, which is quoted in Section 3.24. (Right to Audit Records); or

3. Investigate in connection with an action to debar or suspend a person from

consideration for award of contracts pursuant to Section 9.3.1. (Authority to Debar or Suspend) of these Regulations.

3.23.3. INSPECTION AND 1ESTING OF SUPPLIES AND SERVICES (GSA Section 3-601.03).

3.23.3.1. SOLICITATION AND CONTRACTUAL PROVISIONS (GSA Section 3-601.03.1).

University of Guam contracts may provide that the University may inspect supplies and services at the contractor or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or, after award, to contract requirements, and are, therefore, acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

3.23.3.2. PROCEDURES FOR TRIAL USE AND 1ESTING (GSA Section 3-601.03.2).

The President or a designee may establish operational procedures governing the testing and trial use of equipment, materials, and other supplies by any UOG unit, and the application of resulting information and data to specifications or procurements.

3.23.4. CONDUCT OF INSPECTIONS (GSA Section 3-601.04).

3.23.4.1. INSPECTORS (GSA Section 3-601.04.1).

Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the President or a designee. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

3.23.4.2. LOCATION (GSA Section 3-601.04.2).

When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

3.23.4.3. TIME (GSA Section 3-601.04.3).

Inspection or testing of supplies and services performed at the plant or place of

business of any contractor or subcontractor shall be performed at reasonable times.

3.23.5. INSPECTION OF CONSTRUCTION PROJECTS (GSA Section 3-601.05).

On-site inspection of construction projects shall be performed in accordance with the terms of the contract.

3.24. RIGHT TO AUDIT RECORDS (GSA Section 3-602).

3.24.1. AUDIT OF COST OR PRICING DATA (GSA Section 3-602(a)).

The University may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 3.18. (Cost or Pricing Data) of these Regulations, to the extent that such books and records relate to such cost or pricing data.

3.24.2. AUDIT OF CONTRACTOR OR SUBCONTRACTOR (GSA Section 3-602(b)).

The University shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract.

3.24.3. STATUTORY AUTHORITY TO AUDIT (GSA Section 3-602.01).

Pursuant to Section 5241 (Right to Audit Records) of the Guam Procurement Act, the University may, at reasonable times and places, audit the books and records of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to:

1. The cost or pricing data submitted under Section 3.18. (Cost or Pricing Data) of these Regulations; or

2. A University contract, including subcontracts, other than a firm fixed-price contract, awarded pursuant to the following sections of these Regulations:

   (a) Section 3.10. (Procurement from Non-profit Corporation);

   (b) Section 3.12. (Sole Source Procurement);

(c) Section 3.13. (Emergency Procurements);

(d) Section 3.14. (Competitive Selection Procedures for Services Specified in Section 2.10. of these Regulations);

(e) Section 5.6. (Architect-Engineer and Land Surveying Services).

3.24.4. AUDITORS: AUDIT REPORTS (GSA Section 3-602.02).

Audits requested under this Subsection shall be performed by the President or a designee. An audit report shall be prepared in accordance with Section 3.24.6. (Cost or Pricing Data Audit Report) or Section 3.24.8. (Contract Audit Report). Such report shall be made available to the party audited upon request.

3.24.5. COST OR PRICING DATA AUDIT (GSA Section 3-602.03).

3.24.5.1. GENERAL (GSA Section 3-602.03.1).

The President, or such officer's designee, may require an audit of cost or pricing data that has been submitted under Section 3.18. (Cost or Pricing Data) of these Regulations.

3.24.5.2. CONDITIONS FOR AN AUDIT (GSA Section 3-602.03.2).

An audit should be required when, with respect to the contractor, prospective contractor, subcontractor, or prospective subcontractor, there is:

1. A question as to the adequacy of accounting policies or cost systems;

2. A substantial change in the methods of levels of operation;

3. Previous unfavorable experience indicating doubtful reliability of estimating, accounting, or purchasing methods;

4. A lack of cost experience due to the procurement of new supply, or construction; or

5. Other evidence that an audit is in the University's best interests as determined by the President or such officer's designee.

3.24.6. COST OR PRICING DATA AUDIT REPORT (GSA Section 3-602.04).

When the President or such officer's designee requires an audit under Section 3.24.5. (Cost or Pricing Data Audit) the auditor shall submit a written report to the officer by an agreed upon date.

3.24.7. CONTRACT AUDIT (GSA Section 3-602.05).

3.24.7.1. TYPES OF CONTRACTS AUDITED (GSA Section 3-602.05.1).

Under the authority of Section 3.24.3. (Statutory Authority to Audit), the type of contract under which books and records should be audited is that in which:

1. Price is based on costs;

2. Price is subject to adjustment based on costs; or

3. Auditing would be appropriate to assure satisfactory performance, such as with a time and materials contract.

3.24.7.2. CONDITIONS FOR AN AUDIT (GSA Section 3-602.05.2).

The requirements of a contract audit may be warranted when a question arises in connection with:

1. The fmancial condition, integrity, and reliability of the contractor or subcontractor;

2. Any prior audit experience;

3. The adequacy of the contractor's or subcontractor's accounting system;

4. The number or nature of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;

5. The use of federal assistance funds;

6. The fluctuation of market prices affecting the contract; or

7. Any other situation when the President or a designee finds that such an audit is necessary for the protection of the University's interest.

The scope of the audit may be limited by the President or such officer's designee.

3.24.8. CONTRACT AUDIT REPORT (GSA Section 3-602.06).

Where the President or such officer's designee requires a contract audit under Section 3.24.7. (Contract Audit), the auditor shall submit a written report to the officer by an agreed upon date.

3.24.9. RETENTION OF BOOKS AND RECORDS (GSA Section 3-602.07).

3.24.9.1. RELATING TO COST AND PRICING DATA (GSA Section 3-602.07.1).

Any contractor who receives a contract, change order, or contract modification for which cost or pricing data is required under Section 3.19. (Cost or Pricing Data) of these Regulations, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

3.24.9.2. RELATING TO UOG CONTRACTS (GSA Section 3-602.07.2).

Books and records that relate to a University contract, including subcontracts, other than a firm fixed-price contract awarded under any method set forth in Section 3.24.3. (Statutory Authority to Audit) shall be maintained:

1. By a contractor, for three (3) years from the date of final payment under the prime contract, unless a shorter period is otherwise authorized in writing; and

2. By a subcontractor, for three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

3.25. FINALITY OF DETERMINATIONS (GSA Section 3-701).

The determinations required by Section 3.9.13.6. (Competitive Sealed Bidding, Mistakes in Bids, Determination Required), Section 3.12. (Sole Source Procurement), Section 3.13. (Emergency Procurement), Section 3.14. (Competitive Selection Procedures for Services Specified in Section 2.10.), Section 3.16.7. (Responsibility of Bidders and Offerors, Written Determination of Nonresponsibility Required), Section 3.18.2.2. (Cost or Pricing Data, Requirement for Cost or Pricing Data, 'Exceptions), Section 3.19. (Types of Contracts), Section 3.20. (Approval of Accounting Systems), and Section 3.21.4. (Multi-Term

Contracts, Conditions for Use of Multi-Term Contracts) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. (See Section 5245, Finality of Determinations, of the Guam Procurement Act.)

3.26. REPORTING OF ANTI-COMPETITIVE PRACTICES (GSA Section 3-702).

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Attorney General and the Territorial Prosecutor. (See Section 5246, Reporting of Anti-competitive Practices, of the Guam Procurement Act.)

3.26.1. ANTI-COMPETITIVE PRACTICES (GSA Section 3-702.01).

For the purposes of this Section, an anti-competitive practice is a practice among bidders or offerors which reduces or eliminates competition or restrains trade. An anti-competitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from illicit business actions which have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid. Indications of suspected anti-competitive practices include, but are not limited to, identical bids or proposals, rotated low bids or proposals sharing of the business, "tie-in" sales, resale price maintenance and group boycotts. See Section 3.27.5. (Other Anti-competitive Practices).

3.26.2. INDEPENDENT PRICE DETERMINATION ERMINATION (GSA Section 3-702.02).

Every solicitation shall provide that by submitting a bid or offer, the bidder or offeror certifies that the price submitted was independently arrived at without collusion.

3.26.3. DETECTION OF ANTI-COMPETITIVE PRACTICES (GSA Section 3-702.03).

In order to assist in ascertaining whether or not an anti-competitive practice may have occurred or may be occurring, the President or a designee should be alerted and sensitive to conditions of the market place and will often find it necessary to study past procurements including, as appropriate, the following:

1. A study of the bidding history of a supply, service, or construction item over a period of time sufficient to determine any significant bidding patterns or changes;

2. A review of similar University contract awards over a period of time; or

3. Consultation with outside sources of information, such as bidders or offerors who have competed for similar University business in the past, but who are no longer competing for such business.

3.26.4. IDENTICAL BIDDING AND PRICE FIXING (GSA Section 3-702.04).

The term "identical bidding" means the submission by bidders or offerors of the same total price or the same price on a particular line item. The submission of identical bids may or may not signify the existence of collusion. In some instances, price controls imposed by state or federal governments result in the submission of identical bids. Identical bids for supplies are more likely to occur in the absence of collusion if:

1. The supply is a commodity with a well-established market price or a brand name with a "suggested retail price";

2. The quantity being purchased is small in relation to the supplier's total sales;

3. Early delivery is required; or

4. Transportation expenses are low relative to total costs.

In seeking to determine whether collusion has taken place, the President or a designee should view the identical bids against present and past pricing policies of the bidders or offerors, the structure of the industry involved including comparisons of prices F.O.B. shipping point and F.O.B. destination, and nature of the supply, service, or construction involved, such as whether it is a basic chemical or metal. Identical bids may also result from resale price maintenance agreements which are described in Section 3.26.5.3. (Other Anti-competitive Practices, Resale Price Maintenance). Any other attempt by bidders or offerors to fix prices should also be reported.

3.26.5. OTHER ANTI-COMPETITIVE PRACTICES (GSA Section 3-702.05).

3.26.5.1. GENERAL (GSA Section 3-702.05.1).

The practices which are described in Subsection 3.26.5.2. (Rotated Low Bids or Proposals) through Subsection 3.26.5.6. (Group Boycott) of this Section and

which the President or a designee suspects might be anti-competitive shall be reported in accordance with Section 3.26.6. (Reporting Suspected Anti-competitive Practices).

3.26.5.2. ROTATED LOW BIDS OR PROPOSALS (GSA Section 3-702.05.2).

Rotated low bids or proposals result where all bidders or offerors participating in the collusive scheme submit bids and by agreement alternate being the lowest bidder or offeror. To aid in determining whether rotation may be occurring, the President or designee must review past similar procurements in which the same bidders or offerors have participated.

3.26.5.3. RESALE PRICE MAINTENANCE (GSA Section 3-702.05.3).

The practice of resale price maintenance consists of an agreement between a manufacturer and a distributor or a dealer to fix the resale price of a supply. The President should consider the possibility that such an agreement exists where prices offered adhere to an established pattern, such as a published price schedule, and when identical bidding occurs.

3.26.5.4. SHARING OF THE BUSINESS (GSA Section 3-702.05.4).

Sharing of the business occurs where potential bidders or offerors allocate business among themselves based on the customers or the territory involved. Thus, a Procurement Officer might discover that a potential bidder or offeror is not participating in a University procurement because a particular territory has not been allocated to such bidder or offeror by the producer or manufacturer.

3.26.5.5. "TIE-IN" SALES (GSA Section 3-702.05.5).

"Tie-in" sales are those in which a bidder or offeror attempts to sell one supply or service only upon the condition that the University purchases another particular supply or service.

3.26.5.6. GROUP BOYCOTT (GSA Section 3-702.05.6).

A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a University procurement until the boycotting competitor's conditions are met by the boycotted competitor or the University. The boycott of a competitor by other competitors may have an effect on the market structure or price of a supply, service, or construction item needed by the University.

3.26.6. REPORTING SUSPECTED ANTI-COMPETITIVE PRACTICES (GSA Section 3-702.06).

The President or a designee in consultation with the University's Legal Counsel, shall develop procedures for reporting suspected anti-competitive practices. Any Procurement Section employee who suspects that an anti-competitive practice has occurred or may be occurring shall follow these procedures.

3.27. PROCUREMENT RECORDS.

3.27.1. RETENTION OF PROCUREMENT RECORDS (GSA Section 3-703).

All procurement records shall be retained and disposed of in accordance with the records retention guidelines and schedules approved by the Attorney General. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor. (See Section 5247, Retention of Procurement Records, of the Guam Procurement Act.)

3.27.2. RECORD OF PROCUREMENT ACTIONS TAKEN UNDER SECTION 3.12. (SOLE SOURCE PROCUREMENT) AND SECTION 3.13. (EMERGENCY PROCUREMENTS) (GSA Section 3-704).

3.27.2.1. CONTENTS OF RECORD (GSA Section 3-704(a)).

The President or a degree shall maintain a record listing all contracts made under Section 3.12. (Sole Source Procurement) or Section 3.13.

(Emergency Procurements) of these Regulations for a minimum of five (5) years. The record shall contain:

1. Each contractor's name;

2. The amount and type of each contract; and

3. A listing of the supplies, services, or construction procured under each contract.

(See Section 5248(a) (Record of Procurement Actions Taken Under §§5214 and 5215 of this Chapter, Contents of Record) of the Guam Procurement Act.)

3.27.2.2. SUBMISSION TO LEGISLATURE (GSA Section 3-704(b)).

A copy of such record may be submitted to the Legislature on an annual basis. The record shall be available for public inspection. (See Section 5248(b) (Record of Procurement Actions Taken Under §§5214 and 5215 of this Chapter, Submission to Legislature) of the Guam Procurement Act.)

3.27.3. RECORD OF PROCUREMENT ACTIONS (GCA Section 5249).

The President or a designee shall maintain a complete record of each procurement. The record may include the following:

1. The date, time, subject matter and names of participants at any meeting including government employees that are in any way related to a particular procurement;

2. A log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;

3. Sound recordings of all pre-bid conferences, negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;

4. Brochures and submittals of potential vendors, manufacturers or contractors, all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and

5. The requesting college's or division's determination of need.

3.27.4. CERTIFICATION OF RECORD (GCA Section 5250).

No procurement award shall be made unless the President or a designee certifies that he has maintained the record required by Subsection 3.27.3. (Procurement Records, Record of Procurement Actions) of this Section and that it is complete and available for public inspection. The certificate is itself a part of the record.

3.27.5. PUBLIC RECORD (GCA Section 5251).

The record required by Subsection 3.27.3. (Procurement Records, Record of Procurement Actions) of this Section is a public record and, subject to rules promulgated by the Procurement Appeals Board, any person may inspect and copy any portion of the record.

3.27.6. RULES FOR PROCUREMENT RECORDS (GCA Section 5252).

The rules promulgated pursuant to Subsection 3.27.5. (Procurement Records, Public Record) of this Section shall:

1. Protect the integrity of the bidding process;

2. Protect the confidentiality of trade secrets;

3. Establish reasonable charges for copying papers;

4. Provide for transcription of sound recordings;

5. Require public access to the record at the earliest possible time; and

6. Not require that the record be complete or that the procurement award be made before inspection and copying are permitted.

3.28. RESPONSIBILITIES OF SUCCESSFUL BIDDER.

3.28.1. GUARANTEE.

The successful bidder must guarantee equipment offers for labor and against any defective parts, workmanship and performance for a period of not less than one (1) year after date of receipt and agree to service the equipment during the duration of the guarantee period. All parts found defective not caused by misuse, negligence, or accident within the guarantee period shall be replaced without any cost (including labor) to

UOG. UOG reserves the right to require service at any time during the duration of the guarantee period. The bidder must also honor the manufacturer's warranty which must be submitted with the bid.

3.28.2. SCHEDULE FOR DELIVERY.

Successful bidder is to notify the President or such officer's designee, twenty-four (24) hours prior to the delivery of any item under the Invitation for Bids. UOG will not accept any delivery after regular working hours or on any days other than normal working days.

3.28.3. MARKING.

For all supply deliveries, each outside container shall be marked with UOG's contract or purchase order number, item number, brief item description, quantity, and the name of the unit identified to "Mark For" on the contract or purchase order. Letter marking shall not be less than 3/4" in height.

3.29 BLANKET PURCHASE ORDERS

3.29.1. In General.

a. A blanket purchase agreement (1) 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.

b. BPAs should be authorized and approved by the Dean or Director or other person authorized to make purchases for the University after a written determination is made that a blanket purchase is in the best interest of the University.

c. The use of BPAs does not exempt the unit from the responsibility for keeping obligations and expenditures within available funds.

3.29.2. Establishment of Blanket Purchase Agreements.

a. The following are circumstances under which BPAs may be approved:

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

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

b. A BPA shall be established with a purchase order.

c. A BPA shall show accounting and appropriation data.

d. BPAs should be made with firms from which numerous individual purchases will likely be made in the given period. For example, if past experience has shown that certain firms are dependable and have prices considerably lower than other firm as dealing in the same commodities, and if numerous purchases at or below the small purchase amount limitations are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.

e. All competitive sources should be given an equal opportunity to furnish supplies or services under BPAs.

Therefore, if not impossible, then to the extent practical, BPAs for items of the same type should be placed concurrently with at least three separate suppliers to assure equal opportunity.

f. If it is determined that BPA's would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details. However, quotations for the price of the supplies and services themselves are generally unnecessary.

g, A BPA may be limited to furnishing individual items or commodity group; or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

h. BPAs shall contain the following terms and conditions:

1. Description of Agreement A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the department's authorized representative during the specified period and within a stipulated aggregate amount, if any.

2. *Extent of Obligation.* A statement that the government is obligated only to the extent of authorized purchases actually made under the BPA.

3. *Pricing.* A statement that the prices to the Government of Guam shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

4. *Purchase limitation* A statement that specifies the dollar limitation for each individual purchase under the BPA.

5. *Notice of individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to supplier by the requesting department.

6. *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA Number.

(iii) Date of Purchase.

(iv) Itemized list of supplies or services furnished.

(v) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(vi) Date of delivery or shipment.

7. *Invoices.* One of the following statements (except that the statement in paragraph (h)(7)(iii) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that-

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

§3112.13. Purchases under Blanket Purchase Agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or by regulation.

(b) Individual purchases under BPAs shall not exceed $25,000 for supplies or services or $100,000 for construction.

(c) The existence of a BPA does not justify purchasing from only one source. Whenever possible, the appropriate authority must provide for equal distribution of the blanket purchase to at least three separate vendors.

(d) If there is an insufficient number of BPAs to ensure maximum practicable competition for a particular purchase, the appropriate authority shall

(1) solicit information from other sources and make the purchases as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if:

(i) Recurring requirements for the same or similar items or services seem likely,

(ii) Qualified sources are willing to accept BPA's and

(iii) It is otherwise practical to do so.

§3112.14. Review Procedures.

(a) The Authorized Authority, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The authorized official that entered into the BPA for the University shall –

(i) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time, and

(ii) Maintain awareness of changes in market conditions, sources of supply, and any other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

§3112.15 Completion of Blanket Purchase Agreements. An individual BPA is considered complete when the purchases under it equal the total dollar limitation, if any, or when its stated time period expires.

CHAPTER 4.

SPECIFICATIONS

CHAPTER IV

SPECIFICATIONS

Section

4.1. DEFINITION OF TERMS USED IN THIS CHAPTER (GSA Section 4-101).

1. Brand Name Specification (GSA Section 4-101.01.1) - means a specification limited to one or more items by manufacturers' names or catalog numbers.

2. Brand Name or Equal Specification (GSA Section 4-101.01.2) - means a specification which uses one or more manufacturer's name or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet UOG requirements, and which provides for the submission of equivalent products.

3. Qualified Products List (GSA Section 4-101.01.3) - means an approved list of supplies, services, or construction items described by model or catalog numbers, which prior to competitive solicitation, the University has determined will meet the applicable specification requirements.

4. Specification (GSA Section 4-101.01.4) - means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery (Section 5260 of the Guam Procurement Act). Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout these Regulations.

5. Specification for a Common or General Use Item (GSA Section 4-101.01.5) - means a specification which has been developed and approved for repeated use in procurements in accordance with the provisions of Section 4.3.2.2. 1. (Procedures for the Development of Specifications, Special Additional Procedures) of these Regulations.

4.2. REGULATION (GSA Section 4-201).

This Chapter sets forth regulations governing the preparation, maintenance, and content of specifications for suppliers, services, and construction required by the University, pursuant to Section 5261 (Duties of the Policy Office) of the Guam Procurement Act.4.2.1.
GENERAL PURPOSES AND POLICIES (GSA Section 4-201.01).

4.2.1.1. PURPOSE (GSA Section 4-201.01.1).

The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the University's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the University that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the University's requirements.

4.2.1.2. USE OF FUNCTIONAL OR PERFORMANCE DESCRIPTIONS (GSA Section 4-201.01.2).

Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the University. To facilitate the use of such criteria, using units shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

4.2.1.3. PREFERENCE FOR COMMERCIALLY AVAILABLE PRODUCTS (GSA Section 4-201.01.3).

It is the general policy of this University to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

4.2.1.4. AVAILABILITY OF DOCUMENTS (GSA Section 4-201.02).

Except as provided in Subsection 4.3.2.2. 4.(d) (Procedures for the Development of Specifications, Special Additional Procedures, Qualified Products List) regarding testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

4.3. PREPARATION OF SPECIFICATIONS (GSA Section 4-202).

The President shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the University, in accordance with Section 5262 of the Guam Procurement Act.

4.3.1. AUTHORITY TO PREPARE SPECIFICATIONS (GSA Section 4-202.01).

4.3.1.1. STATUTORY AUTHORITY OF THE University DIRECTOR (GSA Section 4-202.01.1).

The President is authorized in Section 5113(c) (Authority of the Chief Procurement Officer and the Director of Public Works, Duties) of the Guam Procurement Act, to prepare specifications subject to the authority granted Purchasing Agencies in Section 5263 (Exempted Items) of the Guam Procurement Act. (See Section 4.4, Exempted Items, of these Regulations.) The President may delegate in writing the authority to prepare and utilize specifications to using units for any type of supplies, services, or construction provided such delegations may be revoked by the Board of Regents.

4.3.1.2. AUTHORITY TO CONTRACT FOR PREPARATION OF SPECIFICATIONS (GSA Section 4-202.01.2).

1. Specifications for supplies or services. When a written determination is made by the President authorized to prepare such specifications that there

will be no substantial conflict of interest involved and it is otherwise in the best interest of the University, a contract to prepare specifications for UOG use in procurement of supplies or services may be entered into provided such officer retains the authority to finally approve the specifications.

2. Specifications for construction. Whenever it is determined under Section 5302 (Responsibility for Selection of Methods of Construction Contracting Management) of the Guam Procurement Act that the appropriate method of construction contracting management involves allowing specifications to be prepared by other than UOG personnel, a contract may be entered into for such preparation provided the President retains the authority to finally approve the specifications.

4.3.1.3. SMALL PURCHASE AND EMERGENCY AUTHORITY (GSA Section 4-202.01.3).

If a specification for general or common use or qualified products list exists for an item to be procured under Section 3.11. (Small Purchases), it shall be used except as otherwise provided by the President. If no such specification exists, purchasing and using units are hereby granted the authority to prepare specifications for use in such purchases. In an emergency under Section 3.13. (Emergency Procurements), any necessary specifications may be utilized by the purchasing or using unit without regard to the provisions of this Chapter.

4.3.2. PROCEDURES FOR THE DEVELOPMENT OF SPECIFICATIONS (GSA Section 4-202.02).

4.3.2.1. PROVISIONS OF GENERAL APPLICATION (GSA Section 4-202.02.1).

1. Application of Section. This Section applies to all persons who may prepare a specification for UOG use, including the President, UOG Procurement Section, the head of a using unit, and the designees of such officers.

2. Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the University's requirements.

3. Contractual Terms Not to be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of

delivery, payment, liquidated damages, or qualification of bidders.

4. Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with Subsection 4.3.2.2. 1. (Special Additional Procedures, Specification for Common or General Use Items) of this Section or a qualified products list has been developed in accordance with Subsection 4.3.2.2. 4. (Special Additional Procedures, Qualified Product List) of this Section for a particular supply, service, or construction item, it shall be used unless the President makes a written determination that its use is not in the University's best interest and that another specification shall be used.

4.3.2.2. SPECIAL ADDITIONAL PROCEDURES (GSA Section 4-202.02.2).

1. Specifications for Common or General Use Items.

(a) Preparation and Utilization. A specification for common or general use shall, to the extent practicable, be prepared to be utilized when:

(i) A supply, service, or construction item is used in common by several using units or used repeatedly by one using unit and the characteristics of the supply, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurements is significant;

(ii) The University's recurring needs require uniquely designed or specially produced items;

(iii) The President authorized to prepare such specifications finds it to be in the University's best interest; or

(iv) In the event a using unit requests the preparation of a specification for a common or general use item, the President shall prepare such a specification if such officer determines the conditions in Subsections 4.3.2.2. 1.(a)(i), (ii), or (iii) of this Section have been met.

(b) Comments on the Draft. The President preparing a specification for a common or general use item shall provide the using units, and a reasonable number of manufacturers and suppliers as such officer deems appropriate, an opportunity to comment on the draft

specification.

(c) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the President.

(d) Revisions. Revisions to specifications for common or general use items which do not change the technical elements of the specifications, but which are necessary for clarification may be made upon approval of the President. Interim revisions for a particular procurement which change the technical elements of the specification may be made by the President. All other revisions shall be made in accordance with Subsections 4.3.2.2. 1.(b) and 4.3.2.2. 1.(c) of this Section.

(e) Cancellation. A specification for a common or general use item may be cancelled by the President.

2. Brand Name or Equal Specification.

(a) Applicability of this Subsection. This Subsection 4.3.2.2. 2. shall apply whenever brand names are used in specifications except as provided in Subsection 4.3.2.2. 3. of this Section.

(b) Use. Brand name or equal specifications may be prepared to be used when the President determines in writing that:

(i) No specification for a common or general use item or qualified products list is available;

(ii) Time does not permit the preparation of another form of specification, not including a brand name specification;

(iii) The nature of the product or the nature of the University's requirements makes use of a brand name or equal specification suitable for the procurement; or

(iv) Use of a brand name or equal specification is in the University's best interest.

(c) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three (3) or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those

designated will be considered for award.

(d) Required Characteristics. Unless the President determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(e) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

3. Brand Name Specification.

(a) Use. Use of a brand name specification is restrictive to competition. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. When a "brand name" is used, the President should make a written determination that only the identified brand name item or items will satisfy the University's needs.

(b) Competition. The President shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3.12. (Sole Source Procurement).

(c) Reports. The Procurement Section shall submit (monthly) reports to the President stating any brand name specification used; the number of suppliers solicited; the identity of these suppliers; the supplier awarded the contract; and the contract price.

4. Qualified Products List.

(a) Use. A qualified products list may be developed with the approval of the President, when testing or examination of the

supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy UOG requirements.

(b) Comments, Final Approval, Revisions, and Cancellation. Comments on, final approval of, and revisions to the proposed criteria and methodology for establishing and maintaining a qualified products list, and the cancellation thereof, shall follow the procedure of Subsection 4.3.2.2. 1.(b) through 4.3.2.2. 1.(e) of this Section applicable to specifications for common or general use items.

(c) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(d) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

4.4. EXEMPTED ITEMS (GSA Section 4-203).

Specifications for supplies, services, or construction items procured under Section 5121 (Authority to Contract for Certain Services and Approval of Contracts), or exempted pursuant to Section 5124 (Exemptions) of the Guam Procurement Act, may be prepared by the University in accordance with the provisions of this Chapter and regulations promulgated hereunder.

4.4.1. AUTHORITY TO PREPARE SPECIFICATIONS FOR EXEMPTED ITEMS (GSA Section 4-203.01).

Section 4.4. (Exempted Items) of these Regulations grants the University authority to prepare specifications for the services of accountants, physicians, lawyers, and dentists and other professionals, and for works of art for museum and public

display; published books, books or other regular publications published by any government agency, maps, periodicals, and technical pamphlets; and architect-engineer and land surveying services as defined in Section 5301 of the Guam Procurement Act.

4.5. RELATIONSHIP WITH USING UNIT (GSA Section 4-204).

The President shall obtain expert advice and assistance from personnel of using units in the development of specifications and may delegate in writing to a using unit the authority to prepare and utilize its own specification (Section 5264, Relationship with Using Agency, of the Guam Procurement Act).

4.6. MAXIMUM PRACTICABLE COMPETITION (GSA Section 4-205).

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the University's needs, and shall not be unduly restrictive (Section 5265 of the Guam Procurement Act).

4.6.1. NONRESTRICTIVENESS REQUIREMENT (GSA Section 4-205.01).

All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a single source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

4.7. SPECIFICATIONS PREPARED BY ARCHITECTS AND ENGINEERS (GSA Section 4-206).

The requirement of this Chapter regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts (Section 5266 of the Guam Procurement Act).

4.7.1. SPECIFICATIONS PREPARED BY OTHER THAN University PERSONNEL (GSA Section 4-206.01).

The requirements of this Chapter shall apply to all specifications prepared by other than UOG personnel, including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen of specifications for public contracts. Contracts for the preparation of specifications by other than UOG personnel shall require the specification writer to adhere to such

requirements. When persons other than UOG personnel prepare specifications, the University shall not be relieved from the comment and review requirements of this Chapter.

4.8. PUBLICATION OF SOURCE SPECIFICATIONS (GCA Section 5267).

The specifications contained in any Invitation for Bids or Request for Proposals, and any amendment thereto, for the procurement of supplies shall identify the person responsible for drafting the specifications and any persons, technical literature or manufacturer's brochures relied upon by the responsible person in drafting the specifications.

4.9. SALIENT FEATURES (GCA Section 5268).

4.9.1. INCLUSION OF ONLY ESSENTIAL PHYSICAL CHARACTERISTICS AND FUNCTIONS (GCA Section 5268(a)).

Specifications shall not include requirements, such as but not limited to restrictive dimensions, weights or materials, which unnecessarily restrict competition, and shall include only the essential physical characteristics and functions required to meet the University's minimum needs.

4.9.2. SPECIFICATION OF FEATURES PECULIAR TO PRODUCTS OF CERTAIN VENDORS (GCA Section 5268(b)).

Purchase descriptions shall not specify a product having features which are peculiar to the products of one manufacturer, producer or distributor unless it has been determined in writing by the Director of the using unit that those particular features are essential to its requirements and specifying the reason that similar products lacking those features would not meet minimum requirements for the item.

4.9.3. EXCLUSION OF RESTRICTIONS WHICH DO NOT SIGNIFICANTLY AFFECT TECHNICAL REQUIREMENTS OR PERFORMANCE CHARACTERISTICS (GCA Section 5268(c)).

Purchase descriptions shall describe the salient technical requirements or desired performance characteristics of supplies or services to be procured without including restrictions which do not significantly affect the technical requirements or performance characteristics.

CHAPTER 5.

PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Section

5.1. RESPONSIBILITY FOR SELECTION OF METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT (GSA Section 5-201).

5.1.1. APPLICATION OF REGULATION AND GENERAL POLICY (GSA Section 5-201.01).

5.1.1.1. APPLICATION (GSA Section 5-201.01.1)

This Section contains provisions applicable to the selection of the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.

5.1.1.2. FLEXIBILITY (GSA Section 5-201.01.2).

It is intended that the President have sufficient flexibility in formulating the project delivery approach in a particular project to fulfill the University's needs. In each instance, consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining

both the design and construction of the project. The methods for achieving those purposes set forth in this Section are not to be construed as an exclusive list.

5.1.1.3. SELECTING THE METHOD OF CONSTRUCTION CONTRACTING (GSA Section 5-201.01.3).

In selecting the construction contracting method, the President or designee should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill UOG requirements.

5.1.1.4. USE OF REGULATION (GSA Section 5-201.01.4).

This Regulation is intended to guide UOG personnel in selecting the appropriate contracting method. It is not intended to create any third party rights.

5.1.2. LEASE, BUY, OR BUILD (GSA Section 5-201.02).

Before initiating a construction project, consideration shall be given to leasing or buying existing building space as well as to constructing new space. As appropriate, the President should participate in deciding whether to lease, buy, or build. Factors to consider when choosing between these three alternatives include, but are not limited to:

1. Whether the University's requirements will be continuing or temporary;

2. The need for UOG control over the building;

3. The adequacy of available space to fit UOG needs;

4. To the extent they are reasonably known or ascertainable, the life-cycle costs associated with leasing, buying, or building;

5. Which method can most timely meet and continue to meet UOG requirements;

6. The need to physically separate and distinguish UOG facilities from private facilities;

7. The dislocation of existing tenants, both commercial and residential, that may result; and

8. Environmental affects.

5.1.3. GENERAL DESCRIPTION (GSA Section 5-201.03).

5.1.3.1. USE OF DESCRIPTIONS (GSA Section 5-201.03.1).

The following descriptions are to provide a common vocabulary for use in the context of this regulation and for general discussion concerning the construction contracting activities of the University. The methods described are not all mutually exclusive and often may be combined in one project. These descriptions are not intended to be fixed with respect to all construction projects of the University. In each project these descriptions may be adapted to fit the circumstances of that project. However, the President or designee should endeavor to ensure that these terms are described adequately in appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the descriptions provided in these Regulations should be explicitly noted.

5.1.3.2. SINGLE PRIME CONTRACTOR (GSA Section 5-201.03.2).

The single prime contractor method of contracting is typified by one business (general contractor) contracting with the University to timely complete an entire construction project in accordance with plans and specifications provided by the University. Often these plans and specifications are prepared by a private architectural firm under contract to the University. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

5.1.3.3. MULIIIPLE PRIME CONTRACTORS (GSA Section 5-201.03.3).

Under the multiple prime contractor method, the University or the University's agent contracts directly with a number of specialty contractors to complete portions of the project in accordance with UOG plans and specifications. The University or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.

5.1.3.4. DESIGN-BUILD OR TURNKEY (GSA Section 5-201.03.4).

In a design-build or turnkey project, a business contracts directly with the University to meet the University's requirements as described in a set of performance specifications by constructing a facility to its own plans and

specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

5.1.3.5. CONSTRUCTION MANAGER (GSA Section 5-201.03.5).

A construction manager is a person experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and ability to coordinate the design and construction of the project, including the administration of change orders. The University contracts with a qualified construction manager to act for the University in the construction project as specified in the construction management contract. All constuction managers must be licensed by the PEALS (Professional Engineers, Architects, and Land Surveyors) Board.

5.1.3.6. SEQUENTIAL DESIGN AND CONSTRUCTION (GSA Section 5-201.03.6).

Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.

5.1.3.7. PHASED DESIGN AND CONSTRUCTION (GSA Section 5-201.03.7).

Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as "fast-track construction ".

5.1.4. CRITERIA FRIA FOR SELECTING CONSTRUCTION CONTRACTING METHODS (GSA Section 5-201.04).

5.1.4.1. UOG REQUIREMENTS (GSA Section 5-201.04.1).

Before choosing the construction contracting method to use, a careful assessment must be made by the President or designee of requirements the project must satisfy and those other characteristics that would be desirable. In addition to those set forth in Subsections 5.1.4.2. (UOG Resources) and 5.1.4.3. (Prospective Contractor) of this section, some of the factors to consider are:

1. When the project must be ready to be occupied;

2. The type of project - for example, school rooms, offices, or heavy or specialized construction;

3. The extent to which the University's requirements and the ways in which they are to be met are known;

4. The location of the project and whether a contractor's site may be used; and

5. The size, scope, complexity, and economics of the project.

5.1.4.2. UOG RESOURCES (GSA Section 5-201.04.2).

1. The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including:

   (a) Whether the budget is fixed or flexible; and

   (b) What the source of funding is, for example, general or special appropriation, federal assistance monies, public improvement bonds, or general obligation bonds.

2. Proper selection of a contracting method depends upon a realistic appraisal of the availability, qualifications, and experience UOG personnel can bring to the project and, of equal importance, how much time such personnel can devote to the project.

3. When examining resources for a proposed construction project, the availability of outside consultants may be considered. Such consultants may be able to handle tasks and supply valuable expertise otherwise unavailable to the University.

5.1.4.3. PROSPECTIVE CONTRACTORS (GSA Section 5-201.04.3).

Choice of the proper construction contracting method entails not only the internal examination described in Subsections 5.1.4.1. (UOG Requirements) and 5.1.4.2.

(UOG Resources) of this Section, but must take into account the characteristics, experience, and availability of the contractors who can work on the project. The design firms the University may contract with to prepare the plans and specifications must be evaluated as a group to determine whether they can efficiently divide the work into specialty packages if multiple prime contractors are to be used, or design the project in phases appropriate to the use of phased design and construction. Prospective construction contractors must also be

appraised as a group to determine whether they have the capability and willingness to bid on the construction project as designed and as required by the contracting method chosen. Similarly, if the contracting method involves the use of consultants, an evaluation of the availability of qualified consultants should also be made. If the design-build method or some variation of it is considered, the availability of firms capable of both designing and constructing the facility must be ascertained. In respect to all of the potential contractors, it is important to consider the amount of competition current in the market for the particular type of UOG contract and whether a price can be obtained that is fair and reasonable when considered together with the benefit to the University potentially obtainable from such a contract.

5.1.4.4. PRESIDENT'S DE 1 ERMINATION (GSA Section 5-201.04.4).

The President or designee shall make a determination that shall describe the construction contracting method chosen and set forth the facts and conclusions which led to the selection of that method. This determination need only support the contracting method selected. It shall, however, demonstrate that the University's requirements, its resources, and the various groups of potential contractors were all considered in making the selection.

5.1.5. SINGLE PRIME CONTRACTOR (GSA Section 5-201.05).

5.1.5.1. USE WITH SEQUENTIAL DESIGN AND CONSTRUCTION (GSA Section 5-201.05.1).

When sequential design and construction is used with a single prime contractor, comprehensive plans and specifications that are precise enough to allow prospective prime (general) contractors to submit a competitive sealed bid should be prepared. The contractor awarded the contract takes responsibility for the coordination of the specialty subcontractors and timely completion of the project at the price specified in the contract. The architect-engineer, the University project manager, and if used, the construction manager shall monitor the progress of the project and otherwise represent the University's interest all as set forth in the pertinent contracts.

5.1.5.2. ADVANTAGES (GSA Section 5-201.05.2).

The primary advantage of the single prime contractor method is that the University can look to one prime contractor who has principal responsibility for completing the project. The single prime contractor method may also give the University contractual insulation from many subcontractor claims. Also, when sequential design and construction is used, the University is given a fixed price for

completion of the entire project before the construction has begun.

5.1.5.3. DISADVANTAGES (GSA Section 5-201.05.3).

The single prime contractor method removes specialty contractors from direct UOG control. This method is likely to entail including in the cost of the total project the prime contractor's potential markup on each specialty contract. On the other hand, the prime contractor's services in managing these contractors may well offset any possible markup by eliminating the need for a construction manager.

5.1.5.4. USE WITH PHASED DESIGN AND CONSTRUCTION (GSA Section 5-201.05.4).

A single prime contractor may also be used with phased design and construction through the letting by the University of the early construction phases to specialty contractors, and the letting of a portion of the project to a prime contractor when the plans and specifications are sufficiently complete to allow bids to be made. If found advantageous after letting the prime contract, the University may transfer or assign to the contractor the administration of the specialty contracts it let earlier, as provided in the contract.

5.1.5.5. ADVANTAGES AND DISADVANTAGES OF USE WITH PHASED DESIGN AND CONSTRUCTION (GSA Section 5-201.05.5).

Using a single prime contractor with phased design and construction has the advantages of having a single prime contractor responsible for the entire job and also allowing construction to begin before all of the design is completed. The disadvantages are that the University or its construction manager must supervise and coordinate the work of the early specialty contractors, and the prime contractor will not be able to choose those early specialty contractors and may have to work with someone the prime contractor would not have chosen. As a consequence, the University may be exposed to more claims based upon assertions of mismanagement, and the prime contractor bids may be proportionately higher than they would have been otherwise.

5.1.5.6. CONTRACTUAL PROVISIONS (GSA Section 5-201.05.6).

The rights, duties, and responsibilities of the University representatives, the architect-engineer, the general prime contractor, and, if applicable, the construction manager and any specialty contractors who contract with the University must be carefully detailed. If phased design and construction is used, administration of on-going specialty contracts let before the prime contract will have to be transferred or assigned to the prime contractor. The terms of this

assignment or transfer (including the duties of the University to ensure that the specialty contractors are at a certain point of completion at the time of assignment), what liability to the specialty contractors remains with the University after assignment, if any, and what duties and responsibilities the general prime contractor has with respect to the assigned specialty contractors must all be set forth in the specialty contracts and the contract with the prime contractor.

5.1.6. MULTIPLE PRIME CONTRACTORS (GSA Section 5-201.06).

5.1.6.1. USE (GSA Section 5-201.06.1).

Multiple prime contractors may be used with sequential design and construction by splitting the plans and specifications into packages pertinent to recognized trade specialties. The University may undertake to manage and coordinate their work or contract with a construction manager to do so. The contracts may provide that responsibility for successful completion of the entire project rests with the University, the University's agent, or one of the multiple prime contractors. The contracts shall specify where this responsibility shall rest. Multiple prime contractors may be used effectively with phased design and construction only if the architect-engineer's work is closely coordinated with the specialty contractors' work. The specialty contractors may either contract directly with the University or with its construction manager.

5.1.6.2. ADVANTAGES (GSA Section 5-201.06.2).

The multiple prime contractors method can lessen the prime contractor's markup, if any, on the specialty contractors' contracts and gives the University much greater control over the contractors doing the work. It permits the University to be more involved in the selection of specialty contractors, allows the University to prescribe how they will compete for the contract, and gives the University more flexibility in deciding when to enter the construction market and with what size contracts.

5.1.6.3. DISADVANTAGES (GSA Section 5-201.06.3).

The multiple prime contractor method places all the risks of managing and coordinating the construction work with the University. The University or its representatives must actively and aggressively supervise the project to ensure timely and successful completion. A contract that merely requires specialty contractors to cooperate and to coordinate their work is insufficient. To undertake this responsibility successfully requires vesting clear authority in a University representative to quickly make decisions essential to the continuation of the project.

5.1.6.4. CONTRACTUAL PROVISIONS (GSA Section 5-201.06.4).

Whenever multiple prime contractors are used, the contract between the University and each prime contractor must clearly state the scope of each contractor's responsibility, when the portions of its work are to be completed, and provide a system of timely reports on progress of the contractor's work and problems encountered. The contract should also specify that each contractor is liable for damages caused other contractors and the University whether because of delay or otherwise. Such clauses should not, however, attempt to relieve the University of liability where it fails to properly coordinate and manage the project. Further, the duties and authority of the University representative, the architect-engineer, and, if one is employed, the construction manager with respect to the specialty contractors should be clearly delineated in all the parties' contracts.

5.1.7. DESIGN-BUILD OR TURNKEY (GSA Section 5-201.07).

5.1.7.1. USE (GSA Section 5-201.07.1).

The design-build or turnkey method gives the contractor maximum control of the construction project consistent with UOG needs. The University prepares a set of performance specifications including functional criteria, any life-cycle cost considerations, and other evaluation factors. The University shall also specify the degree of detail necessary in a design proposal. The contractor is selected on the basis of its design proposal, proposed price, and other stated evaluation criteria. It may be appropriate to use a multi-step process to lessen the number of firms submitting final design proposals to reduce administrative burden and to keep preparation costs down. In appropriate circumstances, it may be advantageous to provide in the solicitation for payment to all or any of the firms of proposal preparation costs or a stipulated stipend to ensure adequate continuing competition. After award, the contractor completes the design, subject to review by the University or its architect-engineer as set forth in the contract, and constructs the project. The contractor may propose whether to phase the project. Upon completion, the University either accepts or rejects the project depending on how well the contractor has met the specifications.

5.1.7.2. ADVANTAGES (GSA Section 5-201.07.2).

In the design-build method, a fixed price for the project is established early. Another advantage is that the contractor designs and builds the project with its own forces. Consequently, the duty and risk of proper management of project design and construction lies with the contractor. It also allows the contractor to

design and perform in a manner best suited to its operations and experience. It may give the University earlier completion of the project. This method is most appropriate when the University will not need to be deeply involved in the project's design and construction.

5.1.7.3. DISADVANTAGES (GSA Section 5-201.07.3).

Less control over the design and construction process is one of the disadvantages in design-build. The contract is awarded on the basis of a design proposal, not a complete set of plans and specifications. The University's needs may not be met if the specifications are deficient, if the contractor's design proposals are not carefully evaluated, and if the design and construction process is not carefully monitored to ensure that both the specifications and the design proposals are being followed.

5.1.7.4. CONTRACTUAL PROVISIONS (GSA Section 5-201.07.4).

Careful preparation of the specifications evaluation criteria is crucial to successful use of the design-build method. The contract documents should also delineate clearly the University's rights to inspect plans and specifications and the construction work in progress. They should also indicate precisely what constitutes completion of the project by the contractor.

5.1.8. CONSTRUCTION MANAGER (GSA Section 5-201.08).

5.1.8.1. USE IN PLANNING AND DESIGN PHASES (GSA Section 5-201.08.1).

A construction manager may bring valuable practical construction perspective to the University in both the planning and design phases of the project. For purposes of this Section, the planning phase encompasses the activities involved in determining UOG requirements, selecting the construction contracting management method, selecting an architect-engineer, and establishing progress schedules. During design, the construction manager reviews plans and makes suggestions to cut construction costs that may relate to the practicality of construction, market conditions in the construction industry, and items which should be ordered early. A construction manager would also assist in phasing the design and construction process.

5.1.8.2. USE IN CONSTRUCTION RUCTION PHASE (GSA Section 5-201.08.2).

Once construction commences the construction manager's role may be limited to monitoring construction progress, and inspecting and otherwise representing the University's interest if sequential design and construction with a single prime

contractor is used. If the project is constructed by the phased design construction method or the multiple prime contractors method, the construction manager will be responsible for the supervision and management of their work and may let contracts to the specialty contractors pursuant to the management contract with the University. To the extent the construction manager is the University's representative, the manager may assist in the final inspection and acceptance of the project by the University.

5.1.8.3. ADVANTAGES (GSA Section 5-201.08.3).

The construction manager adds construction expertise to the University's team. Several benefits of this are:

1. The selection of the construction contract management technique, project design, and other crucial decisions in the early phases of the project can be made with a better understanding of their impact upon construction; and

2. The construction manager can manage the work of the various construction contractors as the University's representative instead of using a single prime contractor whose interests may not coincide with those of the University. In this way, the University may gain more control of the actual construction project.

5.1.8.4. DISADVANTAGES (GSA Section 5-201.08.4).

The construction manager's fee is added cost to the construction project. On smaller construction projects, construction management may not be cost effective.

5.1.8.5. CON1RACTUAL PROVISIONS (GSA Section 5-201.08.5).

It is imperative that the construction management contract clearly set forth the duties and authority of the construction manager in respect to all the participants in the project. The contract should also attempt to define the possible liability of the University and the construction manager for failure to properly coordinate the specialty contractors' work.

5.1.9. SEQUENTIAL DESIGN AND CONSTRUCTION (GSA Section 5-201.09).

5.1.9.1. USE (GSA Section 5-201.09.1).

The initial step in using sequential design and construction is to gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. This team may include a

construction manager who, in addition to reviewing the plans as they develop, may assist in separating them into packets if multiple prime contractors are to be used. Except for redesign necessitated by changes in UOG requirements or problems encountered during construction, design is complete at the time construction has begun.

5.1.9.2. ADVANTAGES (GSA Section 5-201.09.2).

A project using sequential design and construction proceeds in clearly defined steps which may aid in financing and gaining any necessary approvals as well as aiding in managing the entire project. Complex or unique projects can be completely thought through and planned before construction has begun. Also, before any construction has begun, a fixed price for the project can be established.

5.1.9.3. DISADVANTAGES (GSA Section 5-201.09.3).

Sequential design and construction requires a longer time to complete the project than phased design and construction. The complete package of drawings and specifications also freezes design decisions months or years before occupancy which will reduce flexibility.

5.1.10. PHASED DESIGN AND CONSTRUCTION (GSA Section 5-201.10).

5.1.10.1. USE (GSA Section 5-201.10.1).

Phased design and construction may be used when the architect-engineer, working with the construction manager, if one is used, can settle on the major design decisions and then do the detail design work in the sequence necessary to construct the project. This design process then allows construction to begin before design is complete for the entire project (of course, design is complete on those portions being constructed.) Construction should only be begun after the University's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. (It may be possible to start site preparation prior to this stage.) A construction manager is often necessary to assist in packaging the various specialty contracts and to manage the work under these contracts.

5.1.10.2. ADVANTAGES (GSA Section 5-201.10.2).

Phased design and construction can result in reduced project completion time. It can also allow reduction in the scope of the project if prices on early portions indicate the project may exceed the budget. In a sequential project such redesign might delay the entire project. It also gives the

University added flexibility in deciding when to let the various specialty contracts to take advantage of market conditions.

5.1.10.3. DISADVANTAGES (GSA Section 5-201.10.3).

In phased design and construction, portions of the project are begun before later portions are completely designed. Major changes in these later portions may necessitate costly changes in the early portions and result in costly delays to many other specialty contractors. The University bears the risks both for at least some coordination of specialty contractors and for ensuring that design of later portions does not adversely affect earlier ones. Neither of these risks need be assumed by the University in sequential design and construction.

5.1.10.4. CONTRACTUAL PROVISIONS (GSA Section 5-201.10.4).

The contract must clearly establish the architect-engineer's duty to design to allow phasing, and the contracts with the specialty contractors must clearly delineate their scope of work and duties to other contractors and the University. Further, the management's rights of the University and its construction manager, if one is used, must be set forth.

5.2. BID SECURITY (GSA Section 5-301).

5.2.1. REQUIREMENT FOR BID SECURITY (GSA Section 5-301.01).

Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the President or designee to exceed Twenty-Five Thousand Dollars ($25,000). Bid security shall be a bond provided by a surety company authorized to do business in this Territory, or the equivalent in cash, or otherwise supplied in a form satisfactory to the University. Nothing herein prevents the requirement of such bonds on construction contracts under Twenty-Five Thousand Dollars ($25,000) when the circumstances warrant (Section 5303 of the Guam Procurement Act).

5.2.2. WITHDRAWAL OF BIDS (GSA Section 5-301.02).

After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids, except as provided in Section 5211(f) of the Guam Procurement Act (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

5.2.3. BID SECURITY (GSA Section 5-301.03).

5.2.3.1. GENERAL (GSA Section 5-301.03.1).

Invitation for Bids on UOG construction contracts shall require the submission of bid security in an amount equal to at least fifteen percent (15%) of the amount of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, in accordance with Section 3.9.14.2. (Bid Evaluation and Award, Responsibility and Responsiveness) of these Regulations except as provided by Subsection 5.2.3.4.(Nonsubstantial Failure to Comply) of this Section.

5.2.3.2. PURPOSE (GSA Section 5-301.03.2).

Bid security protects the University against the failure or refusal of the low bidder to supply the necessary performance and payment bonds, as required, and to proceed with performance under the contract.

5.2.3.3. ACCEPTABLE BID SECURITY (GSA Section 5-301.03.3).

Acceptable bid security shall be limited to:

1. An annual or one-time bid bond in a form satisfactory to the University underwritten by a company licensed to issue bid bonds in this Territory; or

2. A bank certified check or cash.

5.2.3.4. NONSUBSTANTIAL FAILURE TO COMPLY (GSA Section 5-301.03.4).

If a bid does not comply with the security requirements of this Section, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the President or the designee of such officer to be nonsubstantial where:

1. Only one (1) bid is received, and there is not sufficient time to rebid the contract;

2. The amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

3. The bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Section 3.9.13. (Mistakes in Bids) of these Regulations, if the bidder increases the amount of guarantee to required limits within forty-eight (48) hours after the bid

opening.

5.3. CONTRACT PERFORMANCE AND PAYMENT BONDS (GSA Section 5-302).

5.3.1. PERFORMANCE BONDS (GSA Section 5-302.01).

5.3.1.1. GENERAL (GSA Section 5-302.01.1).

A performance bond satisfactory to the University executed by a surety company authorized to do business in this Territory or otherwise secured in a manner satisfactory to the University is required for all construction contracts in excess of Twenty-Five Thousand Dollars ($25,000) in the amount of one hundred percent (100%) of the contract price. The performance bond shall be delivered by the contractor to the University at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section 3.9.14.2. (Bid Evaluation and Award, Responsibility and Responsiveness) of these Regulations.

5.3.1.2. PURPOSE (GSA Section 5-302.01.2).

A performance bond indemnifies the University against loss resulting from the failure of the contractor to perform a construction contract in accordance with the plans and specifications.

5.3.1.3. REDUCTION OF AMOUNT PRIOR TO SOLICITATION (GSA Section 5-302.01.3).

The President or designee may reduce the amount of the performance bond required prior to solicitation to not less than fifty percent (50%) of the contract price if, after completing appropriate analysis, it is determined in writing by the President to be less costly or more advantageous to the University to self-insure a part of the performance of the contractor. An analysis may be made for groups of contracts (for example, contracts in excess of $10 million) or may be made on particular contracts, as the President or designee chooses. A copy of the analysis shall be available for public inspection.

5.3.1.4. REDUCTION OF AMOUNT DURING PERFORMANCE (GSA Section 5-302.01.4).

If permitted by the contract and solicitation, the President or designee may reduce the amount of the performance bond as work is completed if such officer

determines in writing that such reduction is in the best interest of the University.

5.3.1.5. AUTHORITY TO REQUIRE ADDITIONAL BONDS (GCA Section 5304(c)).

Nothing in this Section shall be construed to limit the authority of the University to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsections

5.3.1.1. (Performance Bonds, General) and 5.3.2.1. (Payment Bonds, General). (Section 5304(c) (Contract Performance and Payment Bonds, Authority to Require Additional Bonds) of the Guam Procurement Act)

5.3.2. PAYMENT BONDS (GSA Section 5-302.02).

5.3.2.1. GENERAL (GSA Section 5-302.02.1).

A payment bond satisfactory to the University, executed by a surety company authorized to do business in this territory or otherwise secured in a manner satisfactory to the University is required for all construction contracts in excess of twenty-five thousand dollars ($25,000), in the amount of one hundred percent (100%) of the contract price. The payment bond shall be delivered by the contractor to the University at the same time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section 3.9.14.2 (Bid Evaluation and Award, Responsibility and Responsiveness) of these Regulations.

5.3.2.2. PURPOSE (GSA Section 5-302.02.2).

A payment bond guarantees payment and protection for those furnishing labor and materials to the contractor or its subcontractors for the work bonded.

5.3.2.3. REDUCTION OF AMOUNT PRIOR TO SOLICITATION (GSA Section 5-302.02.3).

Prior to solicitation the President or designee may reduce the amount of the payment bond to not less than fifty percent (50%) of the contract price if a written determination is made that it is in the best interest of the University to do so. Factors to be considered in order to make such a determination include, but are not limited to:

1. The value and number of subcontracts to be awarded by the contractor; and

2. The value of the contract.

5.3.2.4. REDUCTION OF AMOUNT DURING PERFORMANCE (GSA Section 5-302.02.4).

During performance, the President or designee may reduce the required coverage of the payment bond as payments are made by the contractor.

5.3.2.5. SUITS ON PAYMENT BONDS. RIGHT TO INSTITUTE (GCA Section 5304(d)).

Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, under which a payment bond is furnished under this Section, and who has not been paid in full at the end of ninety (90) working days after the day on which the last of the labor was done or performed or material was furnished or supplied, shall have the right to sue on the payment bond for the amount unpaid at the time of institution of such suit.

Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right to sue upon giving written notice to the contractor within ninety (90) working days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating:

1. The amount claimed; and

2. The name of the party to whom the material was furnished or supplied or for who the labor was done or performed.

Such notice shall be delivered in person or sent by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

5.3.2.6. SUITS ON PAYMENT BONDS. WHERE AND WHEN BROUGHT (GCA Section 5304(e)).

Suits instituted upon a payment bond shall be brought in the Superior Court. The suit must be instituted within one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing suit.

5.3.3. BOND FORMS AND COPIES (GSA Section 5-303).

5.3.3.1. BID BOND (GSA Section 5-303.01.1).

See Appendix at end of the Chapter for the standard form the required Bid Bond should follow.

5.3.3.2. PERFORMANCE BOND (GSA Section 5-303.01.2).

See Appendix at end of the Chapter for the standard form the required Performance Bond should follow.

5.3.3.3. PAYMENT BOND (GSA Section 5-303.01.3).

See Appendix at end of the Chapter for the standard form the required Payment Bond should follow.

5.3.3.4. CERTIFIED COPIES OF BONDS (GSA Section 5-303.02).

Any person may request and obtain from the University a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original (Section 5305(b), Bond

Forms and Copies, Certified Copies of Bonds, of the Guam Procurement Act).

5.4. CONTRACT CLAUSES AND THEIR ADMINIS1 RATION (GSA Section 5-401).

5.4.1. INTRODUCTION (GSA Section 5-401.01).

The contract clauses presented in this Section are promulgated for use in construction contracts in accordance with Section 5306 (Contract Clauses and Their Administration) of the Guam Procurement Act. Alternative clauses are provided in one instance to permit accommodation of differing contract situations.

5.4.2. REVISIONS TO CONTRACT CLAUSES (GSA Section 5-401.02).

The clauses set forth in this Section may be varied for use in a particular contract when, pursuant to the provisions of Section 5306(d) (Contract Clauses and Their Administration, Modification of Required Clauses) of the Guam Procurement Act, the President makes a written determination describing the circumstances justifying the variation or variations. Any material variations from these clauses

shall be described in the solicitation documents in substantially the following foi

"Clause No. _____, entitled _____, is not a part of the general terms and conditions of this contract, and has been replaced by Special Clause No. _____, entitled _____. Your attention is specifically directed to this clause."

5.4.3. CHANGES CLAUSE (GSA Section 5-401.03).

"CHANGES

1. Change Order. The President or designee, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

   (a) Changes in the work within the scope of the contract; and

   (b) Changes in the time of performance of the contract that do not alter the scope of the contract.

2. Adjustments of Price or Time of Performance. If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

   Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the University promptly and duly makes such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

3. Time Period for Claim. Within thirty (30) days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the President or designee in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the University

is prejudiced by the delay in notification.

4. Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

5. Claims Not Barred. In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim arising under the contract, if pursued in accordance with the clause entitled "Claims Based on a President's Actions or Omissions Clause" or for breach of contract."

5.4.4. VARIATIONS IN ESTIMATED QUANTITIES CLAUSE (GSA Section 5-401.04).

The following clause shall be inserted only in those construction contracts which contain estimated quantity items:

"VARIATIONS IN ESTIMATED ED QUANTITIES

1. Variations Requiring Adjustments. Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the President or designee shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date when, in the judgment of the President or designee, the findings of fact justify such an extension.

2. Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

5.4.5. SUSPENSION OF WORK CLAUSE (GSA Section 5-401.05).

"SUSPENSION OF WORK

1. Suspension for Convenience. The President or designee may order the

contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as may be appropriate for the convenience of the University.

2. Adjustment of Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the President or designee in the administration of this contract, or by the failure of the President to act within the time specified in this contract (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

   (a) That performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or

   (b) For which an adjustment is provided for or excluded under any other provision of this contract.

3. Time Restriction on Claim. No claim under this clause shall be allowed:

   (a) For any costs incurred more than twenty (20) days before the contractor shall have notified the President or designee in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

   (b) Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

4. Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

5.4.6. DIFFERING SITE CONDITIONS CLAUSE (GSA Section 5-401.06).

Set forth below are alternative differing site conditions clauses to be used as appropriate.

(ALTERNATIVE A)
"DIFFERING SITE CONDITIONS: PRICE ADJUSTMENTS

1. Notice. The contractor shall promptly, and before such conditions are disturbed notify the President or designee of:

   (a) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

   (b) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

2. Adjustments of Price or Time for Performance. After receipt of such notice, the President or designee shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

3. Timeliness of Claim. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time prescribed therefor may be extended by the President or designee in writing.

4. No Claim After Final Payment. No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.

5. Knowledge. Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids."

(END OF ALTERNATIVE A)

(ALTERNATIVE B)
"SITE CONDITIONS CONTRACTOR'S RESPONSIBILITY

The contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this contract to the contrary notwithstanding."

END OF ALIERNATIVE B)

5.4.7. PRICE ADJUSTMENT CLAUSE (GSA Section 5-401.07).

"PRICE ADJUSTMENT

1. Price Adjustment Methods. Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

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

   (b) By unit prices specified in the contract or subsequently agreed upon;

   (c) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

   (d) In such other manner as the parties may mutually agree; or

   (e) In the absence of an agreement between the parties, by a unilateral determination by the President of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the President in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the UOG Procurement Regulations and subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Act.

2. Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of Section 3.19. (Cost or Pricing Data) of the UOG Procurement Regulations."

5.4.8. CLAIMS BASED ON THE PRESIDENT'S OR DESIGNEE'S ACTIONS OR OMISSIONS CLAUSE (GSA Section 5-401.08).

"CLAIMS BASED ON THE PRESIDENTS OR DESIGNEE'S ACTIONS OR OMISSIONS

1. Notice of Claim. If any action or omission on the part of the President or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials. By so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:

(a) The contractor shall have given written notice to the President or designee of such officer:

(i) Prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

Within thirty (30) days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

(iii) Within such further time as may be allowed by the President or designee in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The President or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable at the discretion of the President or designee of such officer.

(b) The notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(c) The contractor maintains and, upon request, makes available to the President or designee within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

2. Limitations of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any UOG officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

3. Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

5.4.9. DEFAULT - DELAY - TIME EXTENSIONS ENSIONS CLAUSE (GSA Section 5-401.09).

The conditions contained in Sections 5.4.9 (Default - Delay - Time Extensions Clause) through 5.4.10 (Liquidated Damages Fund) do not apply to supply or other types of contracts where notice that liquidated damages will apply immediately upon notification of breach or default of the contract is provided in the bid terms or conditions, or in the purchase order itself. Instead, these conditions apply to construction contracts.

"TERMINATION FOR DEFAULT, NONPERFORMANCE OR DELAY - DAMAGES FOR DELAY - TIME EXTENSIONS

1. Default. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof or fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within fourteen (14) days after receipt of written notice from the President or designee to commence and continue correction of such refusal or failure with diligence and promptness, the President or designee may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the University may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary

therefor. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the University resulting from the contractor's refusal or failure to complete the work within the specified time.

2. Liquidated Damages upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the University so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

3. Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the University does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

4. Time Extension. The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

   (a) The delay in the completion of the work arises from causes such as: acts of God; acts of a public enemy; acts of the University or any other territorial entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the University; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnished to the President or designee proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

   (b) The contractor, within ten (10) days from the beginning of any such delay (unless the President or designee grants a further period of time before the date of final payment under the contract), notifies the Procurement Section in writing of the causes of delay. The President or designee shall ascertain the

facts and the extent of the delay and extend the time for completing the work when, in the judgment of the President or designee, the findings of fact justify such an extension.

5. Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstance, this contract does not contain a clause providing for termination for convenience of the University, the contract shall be adjusted to compensate for such termination and the contract modified accordingly.

6. Additional Rights and Remedies. The rights and remedies of the University provided in this clause are in addition to any other rights and remedies provided by law or under this contract."

5.4.10. LIQUIDATED DAMAGES FUND.

Funds received as a result of liquidated damages assessed to vendors as described herein shall be deposited into an account called UOG LIQUIDATED DAMAGES ACCOUNT. The funds shall be expended upon the written authorization of the President for the following purposes:

1. Supplies, equipment and services necessary to support the procurement process;

2. Training which would enhance the performance of the personnel of the Procurement Section within the University and the support staff of the University who are entrusted with the accounting, inventory and other assets of the University;

3. An independent audit for transactions of the Procurement Section; and

4. Other needs as determined by the President or designee.

5.4.11. LIQUIDATED DAMAGES CLAUSE (GSA Section 5-401.10).

The following clause may be used in construction contracts when it is difficult to determine with reasonable accuracy, damage to the University due to delays

caused by late contractor performance or non-performance.

"LIQUIDATED DAMAGES

When the contractor fails to complete the work or any portion of the work within the time or times fixed in the contract or any extension thereof, and is given notice of delay or nonperformance as specified in paragraph (1) Termination for Default, Non-performance or Delay Clause of this contract and fails to cure in the time specified, the contractor shall pay to the University One Thousand Dollars ($1,000) per day for contracts less than One Hundred Thousand Dollars ($100,000) and Two Thousand Dollars ($2,000) per day for contracts One Hundred Thousand Dollars ($100,000) and over per calendar day from the date set for cure of the delay pursuant to the clause of this contract entitled Termination for Default, Non-performance or Delay-Damages for Delay-Time Extension."

5.4.12. TERMINATION FOR CONVENIENCE CLAUSE (GSA Section 5-401.11).

" TERMINATION FOR CONVENIENCE

1. Termination. The President or designee may, when the interests of the University so require, terminate this contract in whole or in part, for the convenience of the University. The President or designee shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

2. Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The President or designee may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the University. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

3. Right to Construction and Supplies. The President or designee may require the contractor to transfer title and deliver to the University in the manner and to the extent directed by the President or designee:

   (a) Any completed construction; and

(b) Such partially completed construction, supplies, materials, parts, tools, dies, jigs, plans, drawings, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall protect and preserve property in the possession of the contractor in which the University has an interest. If the President or designee does not exercise this right, the contractor shall use its best efforts to sell such construction, supplies, and construction materials in accordance with the standards of 13 GCA §2706 (UCC). (See end of Subsection 6.1.10. 4.(d) for code quotation.) This in no way implies that the University has breached the contract by exercise of the Termination for Convenience Clause.

4. Compensation.

(a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 3.19. (Cost or Pricing Data) of the UOG Procurement Regulations, bearing on such claim. If the contractor fails to file a termination claim within one (1) year from the effective date of termination, the President or designee may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The President or designee and the contractor may agree to a settlement, provided that the contractor has filed a termination claim supported by cost or pricing data submitted as required by Section 3.19. (Cost or Pricing Data) of the UOG Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the University, the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the President or designee shall pay the contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this Paragraph:

With respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

(A) The cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) The cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(i)(A) of this Paragraph; and

(C) The reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this Paragraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the UOG Procurement Regulations."

5.4.13. REMEDIES CLAUSE (GSA Section 5-401.12).

"REMEDIES

Any dispute arising under or out of this contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the UOG Procurement Regulations."

5.5. FISCAL RESPONSIBILITY (GSA Section 5-402).

Every contract modification, change order, or contract price adjustment under a construction contract with the University in excess of Five Thousand Dollars ($5,000) shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the President shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section (Section 5307, Fiscal Responsibility, of the Guam Procurement Act).

5.6. ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES (GSA Section 5-501).

5.6.1. APPLICATION (GSA Section 5-501.01).

The provisions of these Regulations apply to every procurement of services within the scope of the practice of architecture, professional engineering, or land surveying

as defined by the laws of this territory, except as authorized by Section

3.11. (Small Purchases), 3.12. (Sole Source Procurement), and Section 3.14. (Emergency Procurement) of the UOG Procurement Regulations.

5.6.2. POLICY (GSA Section 5-501.02).

It is the policy of this University to:

1. Give public notice of all requirements for architect, engineer and land surveying services; and

2. Negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

5.6.3. SOURCE SELECTION (GSA Section 5-501.03).

For the purpose of acquiring the services described in this Section, the provisions of Section 3.15. (Competitive Selection Procedures for Services, specified in Section 2.10. of these Regulations) of the UOG Procurement Regulations shall be followed.

APPENDIX

CHAPTER 5

BID BOND, PERFORMANCE BOND, AND LABOR AND MATERIAL PAYMENT BOND

BID BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Principal, hereinafter called the Principal, and Bonding Company, a duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety, are held and firmly bound unto the University of Guam for the sum of _____ Dollars ($ _____), for payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description)

_____

_____

_____

NOW THEREFORE, if the University of Guam shall accept the bid of the Principal and the Principal shall enter into a Contract with the University of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the University of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the University of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____ , 20

_____

(Principal)
(Seal)

_____

(Witness)

_____ _____

(Title)

_____ _____

(Surety)

_____ _____

(Title)

_____

(Surety)
(Seal)

(Title)

BY:

(Resident General Agent)

(Principal)
(Seal)

PERFORMANCE BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) as Principal, hereinafter called Contractor, and (Surety), a duly admitted insurer under the laws of the Territory of Guam as Surety, hereinafter called Surety, are held and firmly bound unto the
University of Guam as Obligee, in the amount of (Full Amount) Dollars ($), for the

payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated, _____ 20 _, entered into a contract with

the University of Guam for (describe project and insert project number) in accordance with drawings and specifications prepared by (here insert full name and address or legal title of architect) which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension provided the same is within the scope of the Contract. Whenever Contractor shall be and is declared by the University of Guam to be in default under the Contract, the University of Guam having performed UOG obligations thereunder, the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or

2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the University of Guam and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the University of Guam and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph shall mean the total amount payable by the University of Guam to the Contractor under the Contract and any amendments thereto, less the amount properly paid by the University of Guam to the Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the University of Guam or successors of the University of Guam.

Signed and sealed this _____ day of _____, 20

_____

(Witness)

(Title)

(Surety)

(Title)

(Bonding Company)

BY :

(Title)

(Principal)
(Seal)

(Resident General Agent)

_____

LABOR AND MATERIAL PAYMENT BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) as Principal, hereinafter called Principal, and (Bonding Company), a duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called Surety, are held and firmly bound unto the University of Guam as Obligee, hereinafter called the University, for the use and benefit of
claimants as herein below defined, in the amount of (Full Amount) Dollars ($) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ 20 _, entered into a contract with the University for (describe project and insert project number) in accordance with drawings and specifications prepared by (here insert full name and address or legal title of architect) which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.

2. The above-claimed Principal and Surety hereby jointly and severally agree with the University that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The University shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

   (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the University, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place the

Principal maintains an office or conducts its business.

(b) After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.

(c) Other than in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____ , 20

_____
(
Principal)
(Seal)

_____

(Witness)

_____ _____

(Title)

_____ _____

(Surety)

_____ _____

_____

(Title)

_____
(Bonding Company)

(Title)

(Resident General Agent)

_____

CHAPTER 6.

MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

CHAPTER VI

MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

Section

6.1. CONTRACT CLAUSES AND THEIR ADMINISTRATION RATION (GSA Section 6-101).

6.1.1. INTRODUCTION (GSA Section 6-101.01).

The following contract clauses are available for use in supply and service contracts at the discretion of the President, or the designee of such officer, in accordance with Section 5350 (Contract Clauses and Their Administration) of the Guam Procurement Act. Alternative clauses are provided in some instances to permit accommodation of differing contract situations.

6.1.2. VARIATIONS IN CONTRACT CLAUSES (GSA Section 6-101.02).

If the clauses set forth in this Chapter are utilized, they may be varied for use in a particular contract when, pursuant to the provisions of Section 5350(d) (Contract Clauses and Their Administration, Modification of Clauses) of the Procurement

Act, the President makes a written determination describing the circumstances justifying the variation or variations.

Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"Clause No. _____, entitled _____ is not a part of the general terms and conditions of this contract and has been replaced by Special Clause No._____, entitled _____

6.1.3. CHANGES CLAUSE (GSA Section 6-101.03).

6.1.3.1. CHANGES CLAUSE IN FIXED-PRICE CONTRACTS (GSA Section 6-101.03.1).

In fixed-price contracts the following clause may be inserted:

"CHANGES

1. Change Order. By a written order, at any time, and without notice to surety, the President may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

   (a) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the University in accordance therewith;

   (b) Method of shipment or packing; or

   (c) Place of delivery.

2. Adjustments of Price or Time for Performance. If any such change order increases or decreases the contractor's cost of, or the time required for performance of any part of the work under this contract whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

   Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the University promptly and duly makes such provisional adjustment in

payment or time for
performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation or an extension of time for completion.

3. Time Period for Claim. Within thirty (30) days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the President in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the University is prejudiced by the delay in notification.

4. Claims Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

5. Other Claims not Barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim arising under the contract if pursued in accordance with item (1) Notice of Claim under the clause entitled "Claims Based on the President's Actions or Omissions", or for breach of contract."

6.1.4. STOP WORK ORDER CLAUSE (GSA Section 6-101.04).

6.1.4.1. USE OF CLAUSE (GSA Section 6-101.04.1).

The clause set forth in Subsection 6.1.4.3. (Clause, Stop Work Order) of this Section is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state-of-the-art, production modifications, engineering changes, or realignment of programs.

6.1.4.2. USE OF ORDERS (GSA Section 6-101.04.2).

1. Approval. Because stop work orders may result in increased costs by reason of standby costs, such orders shall be issued only with prior approval from the President or the designee of such officer.

2. Appropriate Use. Generally, use of a stop work order will be limited to situations in which it is advisable to suspend work pending a decision to proceed by the University and a supplemental agreement providing for such suspension is not feasible. A stop work order may not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

3. Length and Content. Stop work orders shall not exceed ninety (90) consecutive days and shall include, as appropriate:

(a) A clear description of the work to be suspended;

(b) Instructions as to the issuance of further orders by the contractor for material or services;

(c) Guidance as to action to be taken on subcontracts; and

(d) Other instructions and suggestions to the contractor for minimizing costs.

4. Discussion with Contractor. Promptly after issuance, stop work orders should be discussed with the contractor and should be modified, if necessary, in the light of such discussions.

5. Termination of Contract, Cancellation or Extension of Stop Work Order. As soon as feasible after a stop work order is issued:

(a) The contract will be terminated; or

(b) The stop work order will be cancelled or extended in writing beyond the period specified in the order.

In any event, some such action must be taken before the specified stop work period expires. If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

6.1.4.3. CLAUSE (GSA Section 6-101.04.3).

"STOP WORK ORDER

1. Order to Stop Work. The President may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all

reasonable steps to
minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the President shall either:

(a) Cancel the stop work order; or

(b) Terminate the work covered by such order as provided in the "Termination for Default Clause" or the "Termination for Convenience Clause" of this contract.

2. Cancellation or Expiration of the Order. If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule, or the contract price shall be modified in writing accordingly, if:

(a) The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(b) The contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the President decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

3. Termination of Stopped Work. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

4. Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

6.1.5. VARIATION IN QUANTITY CLAUSE.

6.1.5.1. DEFINITE QUANTITY CONTRACTS (GSA Section 6-101.05.1).

The following clause is authorized for use in defmite quantity supply or service contracts:

"V
ARIATION IN QUANTITY

Upon the agreement of the parties, the quantity of supplies or services or both specified in this contract may be increased by a maximum of ten percent (10%) provided:

1. The unit prices will remain the same (except for any price adjustments otherwise applicable); and

2. The President makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."

6.1.5.2. INDEFINITE QUANTITY CONTRACTS (GSA Section 6-101.05.2).

No clause is provided here because in indefinite quantity contracts the flexibility as to the University's obligation to order and the contractor's obligation to deliver should be designated to meet using unit needs while making the contract as attractive as possible to potential contractors, thereby attempting to obtain maximum practicable competition in order to assure the best economy for the University. However, in each case, the contract should state:

1. The minimum quantity, if any, the University is obligated to order and the contractor to provide;

2. Whether there is a quantity the University expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract;

3. Any maximum quantity the University may order and the contractor must provide; and

4. Whether the University is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in Section 3.22. (Multiple Source Contracting) of these Regulations, that the University will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

6.1.6. PRICE ADJUSTMENT CLAUSE (GSA Section 6-101.06).

"PRICE ADJUSTMENT

1. Price Adjustment Methods.
Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

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

(b) By unit prices specified in the contract or subsequently agreed upon;

(c) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(d) In such other manner as the parties may mutually agree; or

(e) In the absence of agreement between the parties, by a unilateral determination by the President of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the President in accordance with generally accepted accounting principles and applicable sections promulgated under Chapter 7 (Cost Principles), subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the UOG Procurement Regulations.

2. Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3.18. (Cost or Pricing Data) of the UOG Procurement Regulations."

6.1.7. CLAIMS BASED ON THE PRESIDENT'S ACTIONS OR OMISSIONS CLAUSE (GSA Section 6-101.07).

The clause set forth in Section 5.4.8. (Claims Based on the President's Actions or Omissions Clause) of these Regulations may be used in supply or service contracts.

6.1.8. TERMINATION FOR DEFAULT CLAUSE (GSA Section 6-101.08).

This section applies to construction contracts and not to supply or other type of contracts where notice that liquidated damages will apply immediately upon notification of breach or default of the contract is provided in the bid terms or conditions, or in the purchase order itself.

"T
ERMINATION FOR DEFAULT

1. Default. If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, or otherwise fails to timely satisfy the contract provisions or commits any other substantial breach of this contract, the President may notify the contractor in writing of the delay or non-performance and, if not cured in ten (10) days or any longer time specified in writing by the President, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, the President may procure similar supplies or services in a manner and upon terms deemed appropriate by the President. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

2. Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the President, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the University has an interest.

3. Compensation. Payment for completed supplies delivered and accepted by the University shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and the President; if the parties fail to agree, the President shall set an amount subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the UOG Procurement Regulations. The University may withhold from amounts due the contractor such sums as the President deems to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders and to reimburse the University for the excess costs incurred in procuring similar goods and services.

4. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the President within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the University or any other

governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the President shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the University under the clause entitled "Termination for Convenience" in fixed price contracts or "Termination" in cost-reimbursement contracts. (As used in this Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

5. Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the University, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the UOG Procurement Regulations.

6. Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract."

6.1.9. LIQUIDATED DAMAGES CLAUSE (GSA Section 6-101.09).

6.1.9.1. WITH TERMINATION FOR DEFAULT CLAUSE (GSA Section 6-101.09.1).

The following clause is authorized for use in supply or service contracts when it is

difficult to determine with reasonable accuracy the amount of damage to the University due to delays caused by late contractor performance or non-performance and the contract contains the "Termination for Default Clause" set forth in Section 6.1.8. of this Chapter.

"LIQUIDATED DAMAGES

When the contractor is given notice of delay or nonperformance as specified in Paragraph (1) (Default) of the "Termination for Default Clause" of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of two percent (2%) of outstanding order per calendar day from the date set for cure until either the University reasonably obtains similar supplies or services if the contractor is terminated for default or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the 'Termination for Default Clause' of this contract, liquidated damages shall not be due the University. The contractor remains liable for damages caused other than by delay."

6.1.9.2. IN OTHER SITUATIONS (GSA Section 6-101.09.2).

If the contract will not have a "Termination for Default Clause" or liquidated damages are to be assessed for reasons other than delay, the President may approve the use of any appropriate liquidated damages clause.

6.1.10. TERMINATION FOR CONVENIENCE CLAUSE (GSA Section 6-101.10).

"'TERMINATION FOR CONVENIENCE

1. Termination. The President may, when the interest of the University so requires, terminate this contract in whole or in part, for the convenience of the University. The President shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

2. Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified.

   The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and

orders connected with the
terminated work. The President may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the University. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

3. Right to Supplies. The President may require the contractor to transfer title and deliver to the University in the manner and to the extent directed by the President:

   (a) Any completed supplies; and

   (b) Such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

   The contractor shall, upon direction of the President, protect and preserve property in the possession of the contractor in which the University has an interest. If the President does not exercise this right, the contractor shall use its best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, Section 2706 (UCC §2706 is quoted at the end of this Section 6.1.10. 4.(d)). Utilization of this Section in no way implies that the University has breached the contract by exercise of the Termination for Convenience Clause.

4. Compensation.

   (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by Section 3.18. (Cost or Pricing Data) of the UOG Procurement Regulations bearing on such claim. If the contractor fails to file a termination claim within one (1) year from the effective date of termination, the President may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

   (b) The President and the contractor may agree to a settlement, provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by Section 3.18. (Cost or Pricing Data) of the UOG Procurement Regulations and that

the settlement does
not exceed the total contract price plus settlement costs reduced by payments previously made by the University, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the President shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) Contract prices for supplies or services accepted under the contract;

(ii) Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) (Contractor's Obligation) of this clause. These costs must not include costs paid in accordance with Subparagraph (c) (ii) of this Paragraph;

(iv) The reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the

contracto
r reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) (Right to Supplies) of this Clause, and the contract price of work not terminated.

(d) Costs claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the UOG Procurement Regulations."

13 GCA §2706 (UCC) states:

"§2706. Seller's Resale Including Contract for Resale.

1. Under the conditions stated in Section 2703 on seller's remedies, the seller may re-sell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this division (Section 2710), but less expenses saved in consequence of the buyer's breach.

2. Except as otherwise provided in Subsection (3) or unless otherwise agreed, resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

3. Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to re-sell.

4. Where the resale is at public sale:

   (a) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

   (b) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are

perishable or
threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) If the goods are not to be within the view of those attending the sale, the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) The seller may buy.

5. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

6. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection (3) of Section 2711)."

6.1.11. REMEDIES CLAUSE (GSA Section 6-101.12).

The clause set forth in Section 5.4.13. (Remedies Clause) of these Regulations may be used in supply or service contracts.

CHAPTER 7.

COST PRINCIPLES
CHAPTER VII

COST PRINCIPLES

Section

7.1. DEFINITIONS (GSA Section 7-101.01).

1. Actual Costs (GSA Section 7-101.01.1) - are all direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs only.

2. Cost Objectives (GSA Section 7-101.01.2) - is any unit of work such as a function, an organizational subdivision, or a contract for which provision is made to accumulate and measure separately the cost of processes, products, jobs, capitalized projects, and similar items. A final cost objective is one that has allocated to it both

direct and indirect costs and, in the contractor's accumulation system, is one of the final accumulation points.

7.2. APPLICABILITY OF COST PRINCIPLES (GSA Section 7-101.02).

7.2.1. DETERMINATION OF ALLOWABILITY (GSA Section 7-101.02.1(a)).

The cost principles and procedures contained in this Chapter shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs provided that any deviation from these cost principles may be made as provided in Section 7.11. (Authority to Deviate from Cost Principles) of this Chapter.

7.2.2. APPLICATION (GSA Section 7-101.02.1(b)).

The cost principles and procedures contained in this Chapter may be used as guidance in:

1. The establishment of contract cost estimates and prices under contracts awarded on the basis of Sole Source Procurement (Section 3.12.), Competitive Selection Procedures for Services Specified in Section 2.10. (Section 3.14.), and Architect-Engineer and Land Surveying Services (Section 5.6.) of these Regulations;

2. The establishment of price adjustments for contract changes including contracts that have been let on the basis of competitive sealed bidding or otherwise based on adequate price competition;

3. The pricing of termination for convenience settlements; and

4. Any other situation in which cost analysis is used. Cost analysis is defined in Section 3.1. 3. (Defmitions, Cost Analysis) of these Regulations.

7.2.3. LIMITATION (GSA Section 7-101.02.2).

These cost principles regulations are not applicable to:

1. The establishment of prices under contracts awarded on the basis of competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this Chapter does apply to the establishment of adjustments of price for changes made to such contracts;

2. Prices which are fixed by law or regulation; and

3. Prices which are based on established catalog prices, as defined in Section 1.9. 22. (Established Catalog Price) of these Regulations, or established market prices.

7.3. ALLOWABLE COSTS (GSA Section 7-101.03).

7.3.1. GENERAL (GSA Section 7-101.03.1).

Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable to the extent provided in the contract and, if inconsistent with these cost principles, approved as a deviation under Section 7.11. (Authority to Deviate from Cost Principles) of these Regulations.

The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits such as discounts, rebates, refunds, and property disposal income.

7.3.2. ACCOUNTING CONSISTENCY (GSA Section 7-101.03.2).

All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to its other activities. In pricing a proposal, a contractor shall estimate costs in a manner consistent with its cost accounting practices used in accumulating and reporting costs.

7.3.3. WHEN ALLOWABLE (GSA Section 7-101.03.3).

The contract shall provide that costs shall be allowed to the extent they are:

1. Reasonable, as defined in Section 7.4. (Reasonable Costs);

2. Allocable, as defined in Section 7.5. (Allocable costs);

3. Lawful under any applicable law;

4. Not unallowable under Section 7.6. (Treatment of Specific Costs) or Section 7.7. (Costs Requiring Prior Approval to be Allowable as Direct

Costs); and

5. In the case of costs invoiced for reimbursement, actually incurred or accrued and accounted for in accordance with generally accepted accounting principles.

7.4. REASONABLE COSTS (GSA Section 7-101.04).

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business in that industry. In determining the reasonableness of a given cost, consideration shall be given to:

1. Requirements imposed by the contract terms and conditions;

2. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

3. The restraints inherent in, and the requirements imposed by such, factors as generally accepted sound business practices, arms' length bargaining, and federal and state laws and regulations;

4. The action that a prudent business manager would take under the circumstances, including general public policy and considering responsibilities to the owners of the business, employees, customers, and the University;

5. Significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

6. Any other relevant circumstances.

7.5. ALLOCABLE COSTS (GSA Section 7-101.05).

7.5.1. GENERAL (GSA Section 7-101.05.1).

A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

1. Is incurred specifically for the contract;

2. Benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

3. Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective may not be evident.

7.5.2. ALLOCATION CONSISTENCY (GSA Section 7-101.05.2).

Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these Regulations. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

7.5.3. DIRECT COSTS (GSA Section 7-101.05.3).

A direct cost is any cost which can be identified specifically with a particular final cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

7.5.4. INDIRECT COSTS (GSA Section 7-101.05.4).

7.5.4.1. DEFINITION (GSA Section 7-101.05.4(a)).

An indirect cost is one identified with no specific final cost objective or with more than one final cost objective. Indirect costs are those remaining to be allocated to the several final cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct cost of minor dollar amount may be treated as indirect cost, provided that such treatment produces substantially the same results as treating the cost as a direct cost.

7.5.4.2. ALLOCATION (GSA Section 7-101.05.4(b)).

Indirect costs shall be accumulated into logical cost groups (or pools), with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the

groups and the method of
distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

7.5.4.3. EXAMINATION (GSA Section 7-101.05.4(c)).

The contractor's method of distribution may require examination when:

1. Any substantial difference exists between the cost patterns of the work performed under the contract and contractor's other work;

2. Any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

3. Indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

7.5.4.4. BASE PERIOD (GSA Section 7-101.05.4(d)).

The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

7.6. TREATMENT OF SPECIFIC COSTS (GSA Section 7-101.06).

7.6.1. ADVERTISING (GSA Section 7-101.06.1).

7.6.1.1. DEFINITION (GSA Section 7-101.06.1(a)).

Advertising costs are those incurred in using any advertising media when the advertiser has control over the form and content of what will appear, the media in which it will appear, or when it will appear. Advertising media includes newspapers, magazines, radio, television, direct mail, trade papers, billboards, window displays, conventions, exhibits, free samples, and the like. All advertising costs except those set forth in Subsection 7.6.1.2. of this Section are

unallowable.

7.6.1.2. ALLOWABLE COSTS (GSA Section 7-101.06.1(b)).

The only allowable advertising costs are those for:

1. The recruitment of personnel;

2. The procurement of scarce items;

3. The disposal of scrap or surplus materials; and

4. The listing of a business's name and location in a classified directory.

7.6.2. BAD DEBTS (GSA Section 7-101.06.2).

Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, uncollected employee advances, and related collection and legal costs. All bad debt costs are unallowable.

7.6.3. CONTINGENCIES (GSA Section 7-101.06.3).

7.6.3.1. DEFINITION (GSA Section 7-101.06.3(a)).

Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in Subsection 7.6.3.2. (Allowability) of this Section.

7.6.3.2. ALLOWABILITY (GSA Section 7-101.06.3(b)).

For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this Subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability

insurance premiums are allowable as an indirect charge.

7.6.4. DEPRECIATION AND USE ALLOWANCES (GSA Section 7-101.06.4).

7.6.4.1. DEFINITION (GSA Section 7-101.06.4(a)).

Depreciation and use allowances, that is, the allowance made for fully depreciated assets, are allowable to compensate contractors for the use of buildings, capital improvements, and equipment or for the provision of such facilities on a standby basis for subsequent use when such facilities are temporarily idle because of suspensions or delays not caused by the contractor, not reasonably foreseeable, and not otherwise avoidable when the contract was awarded. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

7.6.4.2. COMPUTATION (GSA Section 7-101.06.4(b)(c)(d))

The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the University will accept any method which is accepted by the Internal Revenue Service.

In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the effect of any increased maintenance or decreased efficiency.

7.6.5. ENTERTAINMENT (GSA Section 7-101.06.5).

7.6.5.1. DEFINITION (GSA Section 7-101.06.5(a)).

Entertainment costs include costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

7.6.5.2. ALLOWABLE COSTS (GSA Section 7-101.06.5(b)).

Nothing herein shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging costs; except that where a net profit is generated by such services, it shall be treated as a credit as provided in Section 7.8. (Applicable Credits). This Section shall not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

7.6.6. FINES AND PENALTIES (GSA Section 7-101.06.6).

Fines and penalties include all costs incurred as the result of violations of, or failure to comply with, federal and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the President. To the extent that worker's compensation is considered by local law to constitute a fine or penalty, it shall not be an unallowable cost under this Subsection.

7.6.7. GIFTS, CONTRIBUTIONS, AND DONATIONS (GSA Section 7-101.06.7).

A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

7.6.8. INTEREST COSTS (GSA Section 7-101.06.8).

7.6.8.1. ALLOWABLE COSTS (GSA Section 7-101.06.8(a)).

Interest is generally an unallowable cost for purposes of determining the original contract price. Compensation for any interest expense incurred in connection with

work originally contemplated under
the contract will be deemed to be included in the fee or profit negotiated on the contract.

7.6.8.2. IMPUTED INTEREST (GSA Section 7-101.06.8(b)).

Imputed interest on a contractor's expenditures made to pay allowable costs which are allocable to the performance of work required by change orders, suspension of work, or other acts of the University requiring additional work over and above that required by the original contract (hereinafter called "Additional Work") shall be an allowable cost. Imputed interest is an allowable cost in relation to such Additional Work in a negotiated settlement, if one can be agreed upon, or to the extent that it is determined administratively or judicially that the University is liable for such Additional Work. Such imputed interest shall be computed on expenditures from the date or dates on which the contractor made expenditures for the performance of such Additional Work until the date of payment therefor by the University. The rate of interest shall be the prevailing prime rate charged by banks in this Territory as determined by the Territorial Auditor or Comptroller, at the time or times the contractor made such expenditures for Additional Work. Imputed interest on the costs of Additional Work shall not be allowable to the extent that it is otherwise recovered as profit, fee, or as interest on contractor claims pursuant to Section 9.8. (Interest) of these Regulations.

7.6.9. LOSSES INCURRED UNDER OTHER CONTRACTS (GSA Section 7-101.06.9).

A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

7.6.10. MATERIAL COSTS (GSA Section 7-101.06.10).

7.6.10.1. DEFINITION (GSA Section 7-101.06.10(a)).

Material costs are the costs of all supplies, including raw materials, parts, and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to Subsection 7.6.10.2. and Subsection 7.6.10.3. (Material Costs, Cost Basis of Transfers) of this Section. In determining material costs,

consideration shall be given to
reasonable spoilage, reasonable inventory losses, and reasonable coverages.

7.6.10.2. ADJUSTMENTS TO COSTS (GSA Section 7-101.06.10(b)).

Material costs shall include adjustments for all available discounts, refunds, rebates, and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

7.6.10.3. COST BASIS OF TRANSFERS (GSA Section 7-101.06.10(c)).

Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor (determined in accordance with this Chapter), except the transfer may be made at the established price provided the price of materials is not determined to be unreasonable by the President, the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions, and the price is established either:

1. By the established catalog price, as defined in Section 1.9. 22. (Definitions, Established Catalog Price), of these Regulations; or

2. By the lowest price offer obtained as a result of competitive sealed bidding conducted with other businesses that normally produce the item in similar quantities.

7.6.11. TAXES (GSA Section 7-101.06.11).

7.6.11.1. ALLOWABLE COSTS (GSA Section 7-101.06.11(a)).

Except as limited in Subsection 7.6.11.2. (Unallowable Costs) of this Section, all allocable taxes which the contractor is required to pay and

which are paid and accrued in accordance with generally accepted accounting principles are allowable.

7.6.11.2. UNALLOWABLE COSTS (GSA Section 7-101.06.11(b)).

The following costs are unallowable:

1. Federal, local income taxes and federal excess profit taxes;

2. All taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

3. Any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the President; and

4. Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

7.6.11.3. TAX REFUNDS (GSA Section 7-101.06.11(c)).

Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

7.6.11.4. DIRECT GOVERNMENT CHARGES (GSA Section 7-101.06.11(d)).

Direct government charges for services, such as water, or capital improvements, such as sidewalks, are not considered taxes and are allowable costs.

7.7. COST REQUIRING PRIOR APPROVAL TO BE ALLOWABLE AS DIRECT COSTS (GSA Section 7-101.07).

7.7.1. GENERAL (GSA Section 7-101.07.1).

The costs described in Subsection 7.7.2. (Pre-Contract Costs) through 7.7.5. (Litigation Costs) of this Section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the President. In other situations the allowability of these costs shall be determined in accordance with general standards set out in these cost principles.

7.7.2. PRE-CONTRACT COSTS (GSA Section 7-101.07.2).

Pre-contract costs are those incurred in anticipation of, and prior to, the effective

date of the contract. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

7.7.3. BID AND PROPOSAL COSTS (GSA Section 7-101.07.3).

Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs in accordance with these cost principle regulations. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

7.7.4. INSURANCE (GSA Section 7-101.07.4).

7.7.4.1. INDIRECT COSTS (GSA Section 7-101.07.4(a)).

Ordinary and necessary insurance costs are normally allowable as indirect costs. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

7.7.4.2. DIRECT COSTS (GSA Section 7-101.07.4(b)).

Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract. Direct insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance.

7.7.4.3. LOSSES (GSA Section 7-101.07.4(c)).

Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

7.7.5. LITIGATION COSTS (GSA Section 7-101.07.5).

Litigation costs include all filing fees, legal fees, expert witness fees, and all other

costs involved in litigating claims in court or before an administrative board. Litigation costs incident to the contract are allowable as indirect costs in accordance with these cost principle regulations except that costs incurred in litigation by or against the University are unallowable.

7.8. APPLICABLE CREDITS (GSA Section 7-101.08).

7.8.1. DEFINITIONS AND EXAMPLES (GSA Section 7-101.08.1).

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for over payments or erroneous charges, and income from employee recreational or incidental services and food sales.

7.8.2. REDUCING COSTS (GSA Section 7-101.08.2).

Credits shall be applied to reduce related direct or indirect costs.

7.8.3. REFUND (GSA Section 7-101.08.3).

The University shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

7.9. ADVANCE AGREEMENTS (GSA Section 7-101.09).

7.9.1. PURPOSE (GSA Section 7-101.09.1).

Both the University and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the solicitation and the contract the treatment to be accorded special or unusual costs which are expected to be incurred.

7.9.2. FORM REQUIRED (GSA Section 7-101.09.2).

Advance agreements may be negotiated either before or after contract award, depending upon when the parties realize the cost may be incurred, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.

7.9.3. LIMITATION ON COSTS COVERED (GSA Section 7-101.09.3).

An advance agreement shall not provide for any treatment of costs inconsistent with these costs principle regulations unless a determination has been made pursuant to Section 7.11. (Authority to Deviate from Cost Principles) of these Regulations.

7.10. USE OF FEDERAL COST PRINCIPLES (GSA Section 7-101.10).

7.10.1. COST NEGOTIATIONS (GSA Section 7-101.10.1).

In dealing with contractors operating according to federal cost principles, the President, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to Subsection

7.10.2. (Incorporation of Federal Principles: Conflicts between Principles and this Chapter) of this Section.

7.10.2. INCORPORATION OF FEDERAL PRINCIPLES: CONFLICTS BETWEEN FEDERAL PRINCIPLES AND THIS CHAP IER (GSA Section 7-101.10.2).

All requirements set forth in federal assistance instruments applicable to contracts let by the University under a federal assistance program must be satisfied. Therefore, to the extent that the cost principles which are specified in the assistance instrument conflict with the cost principles issued pursuant to Chapter 7 (Cost Principles) of these Regulations, the former shall control.

7.11. AUTHORITY TO DEVIATE FROM COST PRINCIPLES (GSA Section 7-101.11).

When the best interest of the University would be served by a deviation, the President may deviate from the cost principles set forth in these regulations; provided that a written determination shall be made by such officer specifying the reasons for the deviation. A copy of such determination shall be filed promptly with the President and such determination shall be effective only upon approval by the President and upon incorporation into the contract. However, all costs to be reimbursed must be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles, and a deviation shall not contravene this principle.

CHAPTER 8.

SUPPLY MANAGEMENT
CHAPTER VIII

SUPPLY MANAGEMENT

Section

8.1. DEFINITIONS (GSA Section 8-101).

1. Excess Supplies - means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

2. Expendable Supplies - means all tangible supplies other than non-expendable supplies.

3. Non-Expendable Supplies - means all tangible supplies having an original acquisition cost of over One Hundred Dollars ($100.00) per unit and a probable useful life of more than one (1) year.

4. Supplies - for purposes of this Chapter, means tangible personal property owned by the University.

5. Surplus Supplies - means any supplies other than expendable supplies no

longer having any use to
the University. This includes obsolete supplies, scrap materials and non-expendable supplies that have completed their useful life cycle.

8.2. SUPPLY MANAGEMENT AND DISPOSITION (GSA Section 8-201).

8.2.1. GENERAL (GSA Section 8-201.01).

Objectives of the University's supply management program include:

1. Preventing waste;

2. Continuing utilization of supplies; and

3. Obtaining a fair return of value upon disposal of supplies.

In order to achieve these objectives, sound inspection, testing, warehousing, and inventory practices are called for, and effective means of transferring and disposing of property must be employed.

8.2.2. QUALITY ASSURANCE, INSPECTING AND TESTING (GSA Section 8-201.02).

The President shall take such steps as deemed desirable to ascertain or verify that supplies, services, or construction items procured by such officer conform to specifications. In performing this duty, the President may:

1. Establish inspection and testing facilities;

2. Employ inspection personnel;

3. Enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities; and

4. Contract with others for inspection or testing work as needed. The

President may delegate authority for inspection and testing to using units.

8.2.3. INVENTORY MANAGEMENT (GSA Section 8-201.03).

The President shall have general supervision of all inventories of tangible personal property, whether warehoused or in use, belonging to the University or any of its

units. This responsibility shall not, however, relieve any unit of accountability for tangible personal property and other supplies under its control. All warehouses and similar storage areas shall be inventoried at least annually.

8.2.4. WAREHOUSING AND STORAGE (GSA Section 8-201.04).

The President shall exercise general supervision of any receiving, storage, and distribution facilities and services maintained and operated by the University of Guam or using units.

8.2.5. AUTHORITY OF PRESIDENT (GSA Section 8-201.05).

No using unit shall transfer, sell, trade-in, or otherwise dispose of supplies owned by the University without written authorization of the President. Such authorization shall then be sent with appropriate documents to the Chief Procurement Officer of the General Services Administration.

8.2.6. REPORT OF SUPPLIES (GSA Section 8-201.06).

Using units shall notify the President, on such forms and at such times as that officer may prescribe, of all excess supplies. In so doing, a using unit may suggest a dollar value per item or per lot that it desires to receive from any transfer or disposition of such excess supplies, but the suggestion shall not constitute the minimum sale or transfer amount. Any such figures shall not be public information prior to transfer or sale.

8.2.7. TRANSFER OF EXCESS AND SURPLUS SUPPLIES (GSA Section 8-201.07).

Insofar as feasible and practical, the President shall transfer excess supplies to other territorial agencies and other units of government. The price of the supply transferred shall be the fair market price based, where possible, on previous sales of similar products in the open market, or on an appraised value, and shall be one mutually agreed upon between the owning unit and the recipient, and approved by the President. If agreement cannot be reached, the President shall establish the price. When a supply is transferred to a political subdivision of the Territory, the recipient shall agree in writing not to transfer title or otherwise dispose of the supply within twelve (12) months without prior approval of the President.

8.2.8. DISPOSITION OF SURPLUS SUPPLIES (GSA Section 8-201.08).

8.2.8.1. GENERAL REQUIREMENTS (GSA Section 8-201.08.1).

Except as provided in Section
8.2.9. (Disposal of Surplus Books), surplus supplies shall be offered through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the President may employ such other means, including appraisal, provided such officer makes a written determination that such procedure is advantageous to the University. Only United States Postal money orders, certified checks, or cashiers' checks shall be accepted for sales of surplus property except cash or a personal check may be accepted for petty cash sales of less than $100. A copy of all sales notifications or invoices shall be sent to the Comptroller, Division of Accounts, Department of Administration.

8.2.8.2. COMPETITIVE SEALED BIDDING (GSA Section 8-201.08.2).

1. Soliciting and Opening. When making sales by competitive sealed bidding, notice of the sales should be given at least ten (10) working days before the date set for opening bids. Notice shall be given by mailing a Request for Sale Bids to prospective bidders, including those bidders on lists maintained for this purpose, and by making the Request for Sale Bids publicly available. Newspaper advertisement may also be used. The Request for Sale Bids shall:

   (a) List the supplies offered for sale;

   (b) Designate their location and how they may be inspected; and

   (c) State the terms and conditions of sale and instructions to bidders including the place, date, and time set for bid opening.

   Bids shall be opened publicly.

2. Award. Award shall be made in accordance with the provisions of the Request for Sale Bids to the highest responsive bidder, provided that the price offered by such bidder is acceptable to the President. Where such price is not acceptable, the President may reject the bids in whole or in part and negotiate the sale provided the negotiated sale price is higher than the highest responsive and responsible bidder's price, or such officer may resolicit bids.

8.2.8.3. AUCTIONS (GSA Section 8-201.08.3).

Supplies may be sold at auction. When appropriate, an experienced auctioneer should be used to cry the sale and assist in preparation of the sale. The solicitation to bidders should stipulate, at a minimum:

1. All the terms and conditions of any sale;

2. That a deposit may be required in order to participate in the bidding;

3. That the purchaser must remove within a stated time all surplus supplies purchased; and

4. That the University retains the right to reject any and all bids.

8.2.8.4. ESTABLISHED MARKETS (GSA Section 8-201.08.4).

Established markets are places where supplies such as livestock and produce are regularly sold in wholesale lots and prices are set by open competition. Surplus supplies may be sold in established markets for such supplies.

8.2.8.5. POSTED PRICES (GSA Section 8-201.08.5).

Supplies may be sold at posted prices as determined by the President when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the President.

8.2.8.6. TRADE-IN (GSA Section 8-201.08.6).

Surplus supplies may be traded-in only when the President determines the trade-in value is expected to exceed the value estimated to be obtained through the sale or other disposition of such supplies.

8.2.9. DISPOSAL OF SURPLUS BOOKS (Public Law 21-86).

8.2.9.1. GSA NOTIFICATION.

Before disposing of any books or materials, the General Services Administration (GSA) shall first be notified of the surplus nature of such books and materials and shall have thirty (30) working days within which to act on such notice.

8.2.9.2. SURPLUS BOOK DISPOSAL.

After the thirty (30) working day period indicated in Section 8.2.9.1 (GSA Notification), public school principals are authorized to dispose of identified surplus "out of adoption" books in the order following to any of the parties or agencies listed below:

1. Public school students, but not more than five (5) books per student per year;

2. The Guam Public Library;

3. Other public schools and Guam's private schools;

4. The University of Youth Affairs;

5. The Federated States of Micronesia, the Republic of Belau, the Republic of the Marshall Islands, and the Commonwealth of the Northern Marianas Islands;

6. Public schools in the Republic of the Philippines; and

7. Guam non-profit corporations, including, but not limited to recycling centers.

Such school principals shall eliminate these surplus books by donating them to any of the foregoing parties or agencies, in accordance with rules to be established by the Territorial Board of Regents. Books which are no longer salvageable shall be discarded.

8.2.9.3. RECORD.

School principals shall notify the President after the identification of the surplus books of their intention to dispose of the books as provided in this Section.

The University shall appropriately record the disposition of all books and materials discarded or otherwise disposed of under the provisions of this Section.

8.3. ALLOCATIONS OF PROCEEDS FROM SALE OR DISPOSAL OF SURPLUS SUPPLIES (GSA Section 8-301).

8.3.1. DISPOSITION OF PROCEEDS (GSA Section 8-301.01).

Net proceeds from the disposition of excess or surplus supplies shall be credited

1. The granting agency, if procurement of the supplies were funded through Federal grants;

2. The UOG General Fund; or

3. As otherwise provided by law.

CHAPTER 9.

LEGAL AND CONTRACTUAL REMEDIES
CHAPTER IX

LEGAL AND CONTRACTUAL REMEDIES

Section

9.1. DEFINITIONS (GSA Section 9-101.01.1).

1. Interested Party (GSA Section 9-101.01.2) - means an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract and who files a protest.

2. Prospective Bidder, Contractor, or Offeror (GSA Section 9-401.01(5)) - for the purpose of this Chapter a "prospective" bidder, contractor, or offeror is one who will actually submit a bid, contract or otherwise offer his services if, in the actions permitted by this Chapter, such person would prevail.

9.2. PROTEST RESOLUTION BY THE PRESIDENT (GSA Section 9-101).

9.2.1. AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS OR AWARDS (GSA Section 9-101.01).

The President shall have the authority, prior to the commencement of an action in

court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

9.2.2. COMPLAINT TO PROCUREMENT OFFICER (GSA Section 9-101.02).

Complainants should seek resolution of their complaints initially with the President. Such complaints may be made verbally or in writing.

9.2.3. FILING OF PROTEST (GSA Section 9-101.03).

9.2.3.1. WHEN FILED (GSA Section 9-101.03.1).

Protest shall be made in writing to the President and shall be filed in duplicate within fourteen (14) working days after the protestor knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the President. Protests filed after the fourteen (14) working day period shall not be considered.

9.2.3.2. SUBJECT OF PROTEST (GSA Section 9-101.03.2).

Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.

9.2.3.3. FORM (GSA Section 9-101.03.3).

To expedite handling of protests, the envelope should be labeled "Protest". The written protest shall include as a minimum the following:

1. The name and address of the protestor;

2. Appropriate identification of the procurement, and, if a contract has been awarded, its number;

3. A statement of reasons for the protest; and

4. Supporting exhibits, evidence, or documents to substantiate any claims. If supporting documents are not available within the filing time, the expected availability date shall be indicated.

9.2.3.4. NOTIFICATION OF THE ATTORNEY GENERAL (GSA Section 9-101.03.4).

The President shall submit a copy of the protest to the Attorney General within

three (3) working days of the receipt of the written protest.

9.2.4. REQUESTED INFORMATION: TIME FOR FILING (GSA Section 9-101.04).

Any additional information requested by any of the parties should be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the President may result in resolution of the protest without consideration of any information which is untimely filed pursuant to such request.

9.2.5. STAY OF PROCUREMENTS DURING PRO'T'EST (GSA Section 9-101.05).

When a protest has been filed within fourteen (14) working days and before an award has been made, the President shall make no award of the contract until the protest has been settled, unless:

1. The President makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the University; and

2. Absent a declaration of emergency by the Governor, the protestant has been given at least two (2) working days notice (exclusive of territorial holidays); and
3. If the protest is pending before the President or the Court, the President or Court has confirmed such determination; or if no such protest is pending, no protest to the President of such determination is filed prior to expiration of the two (2) day period specified in Item (2) above.

9.2.6. MAKING INFORMATION OF PROTESTS AVAILABLE (GSA Section 9-101.06).

To avoid interference with the University's review and evaluation, the President, after such protest has been evaluated, shall upon written request, make available to any interested party, information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information.

9.2.7. DECISION BY THE President (GSA Section 9-101.07).

If the protest is not resolved by mutual agreement, the President, shall promptly issue a decision in writing. The decision shall:

1. State the reasons for the action taken; and

2. Inform the protestant of its right to administrative and judicial review.

9.2.7.1. TIME FOR DECISION AND NOTICE OF DECISION (GSA Section 9-101.07.1).

A decision on a protest shall be made by the President as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, those set forth in Subsection 9.2.7.2. (Bid Preparation Costs) of this Section, and Section 9.5. (Determination that Solicitation or Award Violates Law), Section 9.6. (Violation of Law Found Prior to Award. Remedies), and Section 9.7. (Violation of Law Found After an Award. Remedies) of these Regulations. A copy of the decision as contained in this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

9.2.7.2. BID PREPARATION COSTS (GSA Section 9-101.07.2).

In addition to any other relief, the President shall award the protestant the reasonable costs incurred in connection with the solicitation and protest, including the bid preparation costs, excluding attorney fees, if:

1. The protestant should have been awarded the contract under the solicitation but was not; or

2. There is a reasonable likelihood that the protestant may have been awarded the contract but for the breach of any ethical obligation imposed herein or the willful or reckless violation of any applicable procurement law or regulation.

9.2.7.3. FRAUDULENT OR FRIVOLOUS PRO PEST (GCA Section 5425(h), Authority to Resolve Protested Solicitations and Awards, Entitlement to Costs).

The President shall have the power to assess reasonable costs other than attorney fees incurred by the University against a protestant upon its finding that the protest was made fraudulently, frivolously or solely to disrupt the procurement process.

9.2.8. REQUEST FOR RECONSIDERATION (GSA Section 9-101.08).

9.2.8.1. REQUEST (GSA Section 9-101.08.1).

Reconsideration of a decision of the President may be requested by the protestor,

appellant, any interested party who submitted comments during consideration of the protest, or any agency involved in the protest.

The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

9.2.8.2. TIME FOR FILING (GSA Section 9-101.08.2).

Requests for reconsideration of a decision of the President shall be filed within fifteen (15) working days after receipt by the protestant of the notice of decision.

9.2.8.3. TIME FOR ACTING (GSA Section 9-101.08.3).

A request for reconsideration shall be acted upon as expeditiously as possible. The President may uphold the previous decision or reopen the case as such officer deems appropriate.

9.2.9. EFFECT OF JUDICIAL OR ADMINISTRATIVE PROCEEDINGS (GSA Section 9-101.09).

If an action concerning the protest has commenced in court, the President shall not act on the protest, but refer the protest to the Attorney General. This Section shall not apply where a court requests, expects, or otherwise expresses interest in the decision of the President.

9.2.10. FINALITY (GCA Section 5425(0).

Unless a person adversely affected by the decision commences an action in the Superior Court, a decision of the President is final in accordance with Sections 9.2.3.(Filing of Protest) through 9.2.9. (Effect of Judicial or Administrative Proceeding).

9.3. DEBARMENT OR SUSPENSION BY THE President (GSA Section 9-102).

9.3.1. AUTHORITY TO DEBAR OR SUSPEND (GSA Section 9-102.01).

9.3.1.1. APPLICATION (GSA Section 9-102.01.1).

This Subsection applies to all debarments or suspensions of persons from consideration for award of contract imposed by the President.

9.3.1.2. AUTHORITY (GCA Section 5426(a)).

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the President, after consultation with the using unit and the Attorney General, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than two (2) years. The President, after consultation with the using unit and the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

9.3.1.3. CAUSES FOR DEBARMENT OR SUSPENSION (GCA Section 5426(b)).

The causes for debarment or suspension include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under territorial or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a UOG contractor;

3. Conviction under federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions, as set forth below, of a character which is regarded by the President to be so serious as to justify debarment action:

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

   (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

5. Any other cause the President determines to be so serious and compelling as to affect responsibility as a UOG contractor, including debarment by

another governmental entity for any cause listed in these Regulations; and

6. For violation of the ethical standards set forth in Chapter 11.

7. Filing a frivolous or fraudulent petition, protest or appeal under Section 5425(e) (Authority to Resolve Protested Solicitations and Awards, Appeal), 5426(f) (Authority to Debar or Suspend), and 5427(e) (Authority to Resolve Contract and Breach of Contract Controversies, Finality of Decision) of the Guam Procurement Act.

9.3.2. SUSPENSION (GSA Section 9-102.02).

9.3.2.1. INITIATION (GSA Section 9-102.02.1).

After consultation with the affected using unit, the Attorney General, and, where practicable, the contractor or prospective contractor who is to be suspended, and upon written determination by the President that probable cause exists for debarment or suspension as set forth above, a contractor or prospective contractor shall be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor.

Such notice shall state that:

1. The suspension is for the period it takes to complete an investigation into possible debarment, including any appeals of a debarment decision, but not for a period in excess of three (3) months;

2. Bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and

3. If a hearing has not been held, the suspended person may request a hearing in accordance with Section 9.3.4. (Request for Hearing) of these Regulations.

9.3.2.2. EFFECTS OF DECISIONS (GSA Section 9-102.02.2).

A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the officer who issued the notice of suspension or by a court, but otherwise shall only be ended when the suspension has been in effect for three (3) months or a debarment decision takes effect.

9.3.3. INITIATION OF DEBARMENT ACTION (GSA Section 9-102.03).

Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the contractor or prospective contractor. This notice shall:

1. State that debarment is being considered;

2. Set forth the reasons for the action;

3. State that, if the contractor or prospective contractor so requests, a hearing will be held, provided such request is received by the President within ten (10) working days after the contractor or prospective contractor receives notice of the proposed action; and

4. State that the contractor or prospective contractor may be represented by counsel.

Within ten (10) working days from mail date, such notice shall be personally delivered to vendor's place of business.

Such notice shall also be sent to the Attorney General and the affected using unit. The affected using unit is that unit that has used the supplies, services or construction supplied by the contractor. If more than one affected using unit is involved, the President may designate one or more representatives to be consulted in respect to this action.

9.3.4. REQUEST FOR HEARING (GSA Section 9-102.04).

A contractor or prospective contractor that has been notified of a suspension or proposed debarment action may request in writing that a hearing be held. In the case of a proposed debarment action, such request must be received by the official proposing the action within ten (10) working days of receipt of notice of the proposed action under Section 9.3.3. (Initiation of Debarment Action). If no request is received within the 10 working day period, a final determination may be made as set forth in Section 9.3.8. (Determination of Hearing Officer. Final Decision) after consulting with the Attorney General and the affected using unit.

9.3.5. NOTICE OF HEARING (GSA Section 9-102.05).

If a hearing is requested, the President may appoint a hearing officer to conduct the hearing and recommend a final decision. Otherwise, the President shall act as a hearing officer. The hearing officer shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail, return receipt requested, and shall state the nature and purpose of the proceedings. Copies shall be sent to the Attorney General and the using unit.

9.3.6. AUTHORITY OF THE HEARING OFFICER (GSA Section 9-102.06).

The hearing officer, in the conduct of the hearing, has the power, among others, to:

1. Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;

2. Require parties to state their positions with respect to the various issues in the proceeding;

3. Require parties to produce for examination those relevant witnesses and documents under their control;

4. Rule on motions and other procedural items on matters pending before such officer;

5. Regulate the course of the hearing and conduct of participants therein;

6. Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

7. Fix time limits for submission of written documents in matters before such officer;

8. Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:

   (a) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

   (b) Excluding all testimony of an unresponsive or evasive witness;

   (c) Expelling any party or person from further participation in the hearing; and

   (d) Taking official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.

9.3.7. HEARING PROCEDURES (GSA Section 9-102.07).

9.3.7.1. FORMAT (GSA Section 9-102.07(a)).

Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements and the Administrative Adjudication Act.
The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The hearing officer may require evidence in addition to that offered by the parties.

Opening statements may be made unless a party waives this right.

9.3.7.2. RECORD (GSA Section 9-102.07(b)).

A hearing may be recorded, but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record.

9.3.8. DETERMINATION OF HEARING OFFICER. FINAL DECISION (GSA Section 9-102.08).

The hearing officer shall prepare a written determination recommending a course of action. The hearing officer's determination shall:

1. Recite the evidence relied upon;

2. When debarment is recommended or ordered, recite:

   (a) The reasons for such action; and

   (b) To what extent affiliates are affected; and

Such determination shall be given to the President. Copies shall also be sent to the contractor or prospective contractor, the Attorney General, and the affected using unit. The contractor or prospective contractor shall have ten (10) working days to file comments upon the hearing officer's determination. The President may request oral argument. After consultation with the affected using unit and the

Attorney General, the President shall issue a final decision.

9.3.9. DECISION (GCA Section 5426(c)).

The President shall issue a written decision. The decision shall:

1. Recite the evidence relied upon;

2. State the reasons for the action taken;

3. State to what extent affiliates are affected; and

4. Inform the debarred or suspended person involved of its rights to judicial review as provided in this Chapter.

9.3.9.1. NOTICE OF DECISION (GCA Section 5426(d)).

A copy of the decision under Section 9.3.9. (Decision) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

In addition, all purchasing agencies and political subdivisions of the Territory shall be notified of the suspension or debarment.

9.3.9.2. FINALITY OF DECISION (GCA Section 5426(e)).

A decision under Section 9.3.9. (Decision) shall be final and conclusive, unless fraudulent or the debarred or suspended person commences an action in court.

9.3.10. EFFECT OF DEBARMENT DECISION (GSA Section 9-102.09).

A debarment decision will take effect upon issuance and receipt by the contractor or prospective contractor. After the debarment decision takes effect, the contractor shall remain debarred:

1. For at least one (1) year but not to exceed two (2) years;

2. Until a court orders otherwise;

3. Until the President determines in writing that the contractor is the sole source of equipment or supplies needed on an emergency basis; or

4. Until the debarment period specified in the decision expires.

9.3.11. MAINTENANCE OF LIST OF DEBARRED AND SUSPENDED PERSONS (GSA Section 9-102.10).

The President shall maintain and update a list of debarred and suspended persons including notices from all purchasing agencies of the Territory. All purchasing agencies and political subdivisions of the Territory shall be supplied with the list as necessary. The President shall send updates of this list to all purchasing agencies and political subdivisions of the Territory at the beginning of each fiscal year or more frequently as needed. Such list shall be available to the public upon request. Any and all debarments or suspensions determined by another government or autonomous agency will be honored.

9.4. REGULATIONS GOVERNING THE SETT LEMENT AND RESOLUTION OF CONTRACT AND BREACH OF CONTRACT CONTROVERSIES (GSA Section 9-103).

9.4.1. AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES (GSA Section 9-103.01).

9.4.1.1. GENERAL (GSA Section 9-103.01.1).

The Guam Procurement Act establishes procedures and remedies to resolve contract and breach of contract controversies between the Territory and a contractor. It is the University's policy, consistent with this Act, to try to resolve all controversies by mutual agreement without litigation. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences by mutual agreement and are encouraged. If such informal discussions do not resolve the controversy, individuals who have not participated substantially in the matter in controversy may be brought in to conduct discussions if this is feasible. Independent committees and panels which review controversies expeditiously and informally with a view to fair settlement possibilities also are encouraged at this stage.

9.4.2. SCOPE OF REGULATION (GSA Section 9-103.02).

Section 5427 (Authority to Resolve Contract and Breach of Contract Controversies) of the Guam Procurement Act is applicable to controversies between the University and a contractor which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract

modification, reformation, or rescission. The word "controversy" is meant to be broad and all-encompassing. It includes the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

9.4.3. DELEGATION OF AUTHORITY TO PROCUREMENT OFFICER (GSA Section 9-103.03).

9.4.3.1. PROCUREMENT OFFICER AUTHORITY (GSA Section 9-103.03.1).

Subject to Subsection 9.4.3.2. (Prior Approval of Settlements) of this Section, unless a provision of the contract specifies that the authority to settle and resolve controversies and to issue decisions is reserved to the President, such authority is hereby delegated to the Procurement Officer. Within this Regulation, therefore, "Procurement Officer" denotes the person with such authority whether that is the President or a designee of such officer.

9.4.3.2. PRIOR APPROVAL OF SETTLEMENTS (GSA Section 9-103.03.2).

The settlement or resolution of controversies involving claims is subject to the Government Claims Act.

9.4.4. PROCUREMENT OFFICER'S DECISION (GSA Section 9-103.04).

9.4.4.1. PROCEDURES PRIOR TO ISSUING DECISION (GSA Section 9-103.04.1).

When a controversy cannot be resolved by mutual agreement, the Procurement Officer shall, after written request by the contractor for a final decision, promptly issue a written decision. Before issuing a final decision, the Procurement Officer shall:

1. Review the facts pertinent to the controversy; and

2. Secure any necessary assistance from legal, fiscal, and other advisors.

9.4.4.2. FINAL DECISION (GSA Section 9-103.04.2).

The Procurement Officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:

1. A description of the controversy;

2. A reference to pertinent contract provisions;

3. A statement of the factual areas of agreement or

4. A statement of the Procurement Officer's decision, with supporting rationale; and
5. A paragraph substantially as follows:

"This is the final decision of the Procurement Officer. You may obtain judicial review of this decision by bringing an action in the Superior Court of Guam."

9.4.4.3. FAILURE TO TIMELY ISSUE FINAL DECISION (GSA Section 9-103.04.3).

If the Procurement Officer does not issue a written decision within sixty (60) working days after written request by the contractor for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

9.4.5. CONTROVERSIES INVOLVING University CLAIMS AGAINST THE CONTRACTOR (GSA Section 9-103.05).

All controversies involving claims assessed by the University against a contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the President.

9.4.6. CONTRACT CLAUSE (GSA Section 9-103.06.2).

Each contract between the University and contractor shall contain a paragraph substantially similar to Subsection 9.4.6.1. (Disputes Clause) of this Section.

9.4.6.1. DISPUTES CLAUSE (GSA Section 9-103.07).

Language substantially similar to the following clause shall be inserted in all UOG contracts:

"DISPUTES

1. All controversies between the University and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within sixty (60) working days after written request by the contractor for a final decision concerning the controversy; provided, however, that if the Procurement Officer does not issue a written decision within sixty (60) working days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

2. The Procurement Officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

3. Any such decision shall be final and conclusive, unless fraudulent, or the contractor brings an action seeking judicial review of the decision in the Superior Court of Guam.

The contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this contract pending final resolution by the Superior Court of any controversy arising under, or by virtue of, this contract by the University; provided, however, that in any event the contractor shall proceed diligently with the performance of the contract where the President has made a written determination that continuation of work under the contract is essential to the public's health and safety."

9.5. DETERMINATION THAT SOLICITATION OR AWARD VIOLATES LAW (GSA Section 9-201).

9.5.1. APPLICABILITY OF THIS SECTION (GSA Section 9-201.01).

The provisions of this Section apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law (Section 5450, Applicability of this Part, of the Guam Procurement Act).

9.5.2. DETERMINATION (GSA Section 9-201.01.2).

A solicitation or award may be in violation of the law due to actions of UOG employees, bidders, offerors, contractors, or other persons. After consultation with the Attorney General, the President may determine that a solicitation or contract award is in violation of the provisions of the Guam Procurement Act and the UOG Procurement Regulations. Similarly, after consultation with the Attorney General, the President may determine that a solicitation or award violates Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act or regulations promulgated thereunder. Any such determination shall be made in writing after an opportunity to be heard is given, and such determination is subject to appropriate appeal. The courts designated in Section 5480 (Waiver of Sovereign Immunity in Connection with Contracts) of the Guam Procurement Act, may find that a solicitation or award is in violation of the law.

9.5.3. FINDING OF BAD FAITH OR FRAUD (GSA Section 9-201.01.3).

Bad faith or Baud shall not be assumed. Specific findings showing reckless

disregard of clearly applicable laws or regulations must support a finding of bad faith. A finding of fraud must be supported by specific findings showing knowing, willful acts in disregard of such laws or regulations.

9.6. VIOLATIONS OF LAW FOUND PRIOR TO AWARD. REMEDIES (GSA Section 9-202.01).

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of the law, then the solicitation or proposed award shall be:

1. Cancelled; or

2. Revised to comply with the law (Section 5451, Remedies Prior to an Award, of the Guam Procurement Act).

9.6.1. CANCELLING OR REVISING SOLICITATION OR PROPOSED AWARD TO COMPLY WITH THE LAW (GSA Section 9-202.01.1).

A finding by the Procurement Officer, after consultation with the Attorney General, that the solicitation or proposed award is in violation of law will constitute a cogent and compelling reason to cancel or revise a solicitation or proposed award. Such cancellation shall be made in accordance with Section 3.15. (Cancellation of Invitations for Bids or Requests for Proposals) of these Regulations.

9.7. VIOLATIONS OF LAW FOUND AFTER AN AWARD. REMEDIES (GSA Section 9-203.).

9.7.1. NO FRAUD OR BAD FAITH BY CONTRACTOR (GSA Section 9-203.01.1).

9.7.1.1. GENERAL (GSA Section 9-203.01.2).

Upon finding after award that a UOG employee has made an unauthorized award of a contract or that a solicitation or contract award is otherwise in violation of law where there is no finding of fraud or bad faith, the President may ratify or affirm the contract or terminate it in accordance with this Section after consultation with the Attorney General.

9.7.1.2. RATIFICATION AND AFFIRMATION (GSA Section 9-203.01.3).

1. Without Prejudice. If the violation can be waived without prejudice to the University or other bidders or offerors, the preferred action is to ratify and

affirm the contract.

2. With Prejudice. If the violation cannot be waived without prejudice to the University or other bidders or offerors:

(a) If performance has not begun and if there is time for resoliciting bids or offers, the contract shall be terminated.

(b) If performance has not begun and if there is not time for resoliciting bids or offers either formally, or informally under the emergency authority, the contract may be amended appropriately, ratified, and affirmed.

(c) If performance has begun, the President shall determine in writing whether it is in the best interest of the University to terminate or to amend, ratify, and affirm the contract. Termination is the preferred remedy. The following factors are among those pertinent in determining the University's best interest:

(i) The University's costs to terminate;

(ii) The possibility of returning supplies delivered under the contract and thus decreasing the costs of termination;

(iii) The progress made toward performing the whole contract; and

(iv) The possibility of obtaining a more advantageous contract by resoliciting.

9.7.1.3. TERMINATION (GSA Section 9-203.01.4).

Unless a determination is made to ratify and affirm the contract under Subsection 9.7.1.2. (Ratification and Affirmation) of this Section, contracts based on awards or solicitation that were in violation of law shall be terminated. If the contract is terminated, the University shall, where possible and by agreement with the supplier, return the supplies delivered for a refund, at no cost to the University, or at a minimal restocking charge. If a termination claim is made, settlement shall be made in accordance with the contract. If there are no applicable termination provisions in the contract, settlement shall be made on the basis of actual costs directly or indirectly allocable to the contract through the time of termination. Such costs shall be established in accordance with generally accepted accounting

principles. Profit shall be proportionate only to the performance completed up to the time of termination and shall be based on projected gain or loss on the contract as though performance were completed. Anticipated profits are not allowed.

9.7.2. FRAUD OR BAD FAITH BY THE CONTRACTOR (GSA Section 9-203.02).

9.7.2.1. GENERAL (GSA Section 9-203.02.1).

Upon finding after award that a solicitation or award is in violation of law and that the recipient of the contract acted fraudulently or in bad faith, the President may, after consulting with the Attorney General, declare the contract null and void or ratify and affirm it in accordance with this Section.

9.7.2.2. DECLARATION OF CONTRACT NULL AND VOID (GSA Section 9-203.02.2).

The contract shall be declared null and void unless ratification and affirmation is found to be in the University's best interest under Subsection 9.7.2.3. (Ratification and Affirmation) of this Section.

9.7.2.3. RATIFICATION AND AFFIRMATION (GSA Section 9-203.02.3).

The contract shall not be modified, ratified, and affirmed unless it is determined in writing that there is a continuing need for the supplies, services, or construction under the contract and:

1. There is no time to reward the contract under emergency procedures or otherwise; or

2. The contract is being performed for less than it could be otherwise performed.

9.7.2.4. EFFECT OF DECLARING A CONTRACT NULL AND VOID (GSA Section 9-203.02.4).

In all cases where a contract is voided, the University shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract and the University is entitled to recover the greater of:

1. The difference between payments made under the contract and the contractor's actual costs up until the contract was voided; or

2. The difference between payments under the contract and the value to the

University of the supplies, services, or construction it obtained under the contract.

The University may, in addition, claim damages under any applicable legal theory.

9.7.2.5. EFFECT OF RATIFICATION (GSA Section 9-203.02.5).

The University shall be entitled to any damages it can prove under any theory including, but not limited to, contract and tort regardless of its ratification and affirmation of the contract.

9.8. INTEREST EREST (GSA Section 9-301/9-103.06.1).

Pursuant to Section 5475 (Interest) of the Guam Procurement Act, interest on amounts ultimately determined to be due to a contractor or the University shall be payable at the statutory rate applicable to judgments from the date the claim arose during the date of decision or judgment, whichever is later.

9.9. WAIVER OF SOVEREIGN IMMUNITY IN CONNECTION WITH CONTRACTS (SECTION 5480 OF THE GUAM PROCUREMENT ACT) (GSA Section 9-401).

9.9.1. SOLICITATION AND AWARD OF CONTRACTS (GSA Section 9-401.01(1)).

The Superior Court of Guam shall have jurisdiction over an action between the University and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the statutes, regulations, and the terms and conditions of the solicitation. The Superior Court shall have such jurisdiction in actions at law or in equity, and whether the actions are for monetary damages or for declaratory or other equitable relief.

9.9.2. DEBARMENT OR SUSPENSION (GSA Section 9-401.01(2)).

The Superior Court shall have jurisdiction over an action between the University and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the statutes and regulations. The Superior Court shall have such jurisdiction, in action at law or in equity, and whether the actions are for declaratory or other equitable relief.

9.9.3. ACTIONS UNDER CONTRACTS OR FOR BREACH OF CONTRACT (GSA Section 9-401.01(3)).

The Superior Court shall have jurisdiction over an action between the University and a contractor, for cause of action which arises under, or by virtue of, the contract, whether the action is at law or in equity, whether the action is on the contractor or for a breach of the contract, and whether the action is for monetary damages or declaratory or equitable relief, but shall be subject to Section 526 (Injunction) of the Code of Civil Procedure, and as it may be amended or re-codified from time to time.

9.9.4. LIMITED FINALITY FOR ADMINIS I RATIVE DETERMINATIONS (GSA Section 9-401.01(4)).

In any judicial action under this Section, factual or legal determinations by the employees, agents, or other persons appointed by the University shall have no finality and shall not be conclusive, notwithstanding any contract provision or regulation, except to the extent provided in Section 5425 (Authority to Resolve Protested Solicitations and Awards) of the Guam Procurement Act. See also Section 3.25. (Finality of Determinations) of these Regulations.

9.9.5. GOVERNMENT CLAIMS ACT (GSA Section 9-401.01(6)).

All actions permitted by this Section shall be conducted as provided in the Government Claims Act.

9.10. TIME LIMITATIONS ON ACTIONS (SECTION 5481 OF THE GUAM PROCUREMENT ACT) (GSA Section 9-402).

9.10.1. PRO'I ESTED SOLICITATIONS AND AWARDS (GSA Section 9-402(1)).

Any action under Section 9.9.1. (Waiver of Sovereign Immunity in Connection with Contracts, Solicitation and Award of Contracts) of these Regulations shall be initiated as follows:

1. Within thirty (30) working days after aggrieved person knows or should have known of the facts giving rise to the action; or

2. Within fourteen (14) working days after receipt of a final administrative decision pursuant to Section 5425(c) (Authority to Resolve Protested Solicitations and Awards, Decision) of the Guam Procurement Act.

9.10.2. DEBARMENTS OR SUSPENSIONS FOR CAUSE (GSA Section 9-402(2)).

Any action under Section 5480(b) (Waiver of Sovereign Immunity in Connection with Contracts, Debarment or Suspension) of the Guam Procurement Act shall be commenced within six (6) months after receipt of the decision of the President under Section 9.3.9. (Debarment or Suspension by the President, Decision) of this

Chapter.

9.10.3. ACTIONS UNDER CONTRACTS OR FOR BREACH OF CONTRACT (GSA Section 9-402(3)).

Any action commenced under Section 9.4. (Regulations Governing the Settlement and Resolution of Contract and Breach of Contract Controversies) of this Chapter shall be commenced within six (6) months of the date the claim arose or within six (6) months of the date the claimant knew or should have known that a claim existed against the parties of Contract.

CHAPTER 10.

COMPLIANCE WITH FEDERAL REQUIREMENTS
CHAPTER X

COMPLIANCE WITH FEDERAL REQUIREMENTS

Section

10.1. COMPLIANCE WITH FEDERAL REQUIREMENTS (GSA Section 10-101).

10.1.1. FEDERAL FUNDS (GSA Section 10-101.01).

Where a procurement involves the expenditure of federal assistance or contract funds, or other federal funds as defined by Section 20 of the Organic Act of Guam (48 U.S.C. §1423j), all persons within the Government of Guam shall comply with such federal law and regulations which are applicable and which may be in conflict with or may not be reflected in these Regulations (Section 5501, Federal Funds, of the Guam Procurement Act).

CHAPTER 11.

ETHICS IN PUBLIC CONTRACTING
CHAPTER XI

ETHICS IN PUBLIC CONTRACTING

Section

11.1. DEFINITIONS OF TERMS USED IN THIS CHAPTER (GSA Section 11-101).

11.1.1. DEFINITIONS (GSA Section 11-101.01).

1. Bona Fide Employee (GSA Section 11-101.01.1) - means employed by a prospective contractor and subject to the prospective contractor's supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain UOG contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:

   (a) Whether the employment is continuous;

   (b) Whether the person is subject to the supervision and control of the prospective contractor;

   (c) Whether the size of any contingent fee is reasonable in relation to the services performed;

(d) Whether the method of payment of the contingent fee is customary in the trade; and

(e) Whether the person is employed solely by the prospective contractor.

2. Bona Fide Established Commercial Selling Agency (GSA Section 11-101.01.2) - means a business that neither exerts nor proposes to exert improper influence to solicit or obtain UOG contracts. hi determining whether a business is a bona fide established commercial selling business, the following factors should be considered:

(a) Whether the business is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such;

(b) Whether the business uses its own name and is characterized by the customary indicia of the conduct of a regular business;

(c) The degree to which the business' activities are directed toward the solicitation of contracts of the University;

(d) Whether the size of any contingent fee is reasonable in relation to the services performed; and

(e) Whether the method of payment to the contingent fee is customary in the trade.

3. Business Employee (GSA Section 11-101.01.3) - means a person, whether compensated or not, who performs personal services for a business.

4. Employee (GSA Section 11-101.01.4) - as defined in Section 1.9. 20. (Definitions, Employee) of Chapter 1 (General Provisions) of UOG's Procurement Regulations is hereinafter referred to as "government employee". All UOG employees are considered government employees.

As used throughout this Chapter, the term "government employee" shall include:

(a) A person elected to Territorial office;

(b) A non-elected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the Territory;

(c) A non-compensated or minimally compensated person who is performing personal services for the Territory; and

(d) The term "government employee" does not include a person who, as an independent contractor, performs professional, scientific, technical, or advisory services for a Territorial agency or the University and who receives a fee, honorarium, or similar consideration for the services performed.

5. Financial Interest (GSA Section 11-101.01.5) - as defined in Section 1.9. 25. (Definitions, Financial Interest) of Chapter 1 (General Provisions) of UOG's Procurement Regulations means:

(a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than Two Thousand Five Hundred Dollars ($2,500) per year, or its equivalent;

(b) Ownership or such interest in any property or any business as may be specified by the President; or

(c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

6. Gratuity (GSA Section 11-101.01.6) - as defined in Section 1.9. 28. (Definitions, Gratuity) of Chapter 1 (General Provisions) of these Regulations, means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. In this Chapter, a gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment. "Nominal value", as used in this definition of gratuity, means actual worth or actual cost, whichever is greater, which does not exceed $25 individually or cumulatively.

7. Immediate Family (GSA Section 11-101.01.7) - as defined in Section 1.9. 29. (Definitions, Immediate Family) of Chapter 1 of UOG's Procurement Regulations means a spouse, children, parents, brothers and sisters.

11.2. STANDARDS OF CONDUCT (GSA Section 11-201).

This Regulation prescribes the standards of conduct for government employees in general and establishes specific standards of conduct for non-government employees. Regulations governing standards of conduct for government employees as promulgated by the Civil Service Commission are made a part of these Regulations as an Appendix to this Chapter.

11.2.1. STATEMENT OF POLICY (GSA Section 11-201.01).

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

UOG employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the University procurement organization.

To achieve the purpose of this Chapter, it is essential that those doing business with the University also observe the ethical standards prescribed herein. (Section 5625 (Standards of Conduct, Statement of Policy) of the Guam Procurement Act.)

11.3. GENERAL STANDARDS OF ETHICAL CONDUCT.

11.3.1. GENERAL ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES (GCA Section 5626(a)).

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the government employee's duties is a breach of a public trust.

In order to fulfill this general prescribed standard, government employees must also meet the specific standards set forth in Sections 5628 (Employee Conflict of Interest) through Section 5633 (Use of Confidential Information) of the Guam Procurement Act (Section 5626 (General Standards of Ethical Conduct) of the Guam Procurement Act).

11.3.2. GENERAL ETHICAL STANDARDS FOR NON-EMPLOYEES (GSA Section 11-202).

Any effort to influence any public employee to breach the standards of ethical conduct set forth in Section 5628 (Employee Conflict of Interest) through Section 5633 (Use of Confidential Information) of the Guam Procurement Act is also a breach of ethical standards.

11.3.3. CLAUSE REGARDING GOVERNMENT EMPLOYEE AND FORMER GOVERNMENT EMPLOYEE ETHICAL STANDARDS (GSA Section 11-202.02).

The following clause shall be conspicuously set forth in every contract and solicitation therefore:

> "REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES

The bidder, offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 (Ethics in Public Contracting) of the University of Guam Procurement Regulations."

11.4. CRIMINAL SANCTIONS (GSA Section 11-203).

To the extent that violations of the ethical standards of conduct set forth in this Chapter constitute violations of Title 9 Guam Code Annotated (Crimes and Corrections), they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Chapter (Section 5627 (Criminal Sanctions) of the Guam Procurement Act).

11.5. CONFLICT OF INTEREST (GSA Section 11-204).

11.5.1. GOVERNMENT EMPLOYEE CONFLICT OF INTEREST (GSA Section 11-204).

11.5.1.1. CONFLICT OF INTEREST (GSA Section 11-204(1)).

It shall be a breach of ethical standards for any government employee to participate directly or indirectly in a procurement when the government employee knows that:

1. The government employee or any member of the government employee's immediate family has a financial interest pertaining to the procurement;

2. A business or organization in which the government employee, or any

member of the government employee's immediate family, has a financial interest pertaining to the procurement; or

3. Any other person, business, or organization with whom the government employee or any member of the government employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

11.5.1.2. FINANCIAL INTEREST IN A BLIND TRUST (GSA Section 11-204(2)).

Where a government employee or any member of the government employee's immediate family holds a financial interest in a blind trust, the government employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Civil Service Commission.

11.5.1.3. DISCOVERY OF ACTUAL OR POTENTIAL CONFLICT OF INTEREST, DISQUALIFICATION, AND WAIVER (GSA Section 11-204(3)).

Upon discovery of an actual or potential conflict of interest, a government employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The government employee may, at the same time, apply to the Civil Service Commission in accordance with Section 5676(c) (Ethics Commission, Waiver) of the Guam Procurement Act for an advisory opinion as to what further participation, if any, the government employee may have in the transaction.

11.5.1.4. NOTICE (GSA Section 11-204(4)).

Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission (Section 5628(d) (Employee Conflict of Interest, Notice) of the Guam Procurement Act).

11.5.2. DEFINITIONAL CROSS-REFERENCES (GSA Section 11-204.01).

The following terms used in Subsection 11.5.1. (Government Employee Conflict of Interest) are defined in the following Sections of these Regulations:

1. "Financial interest," as defined in Section 1.9. 25. (Definitions, Financial Interest); and

2. "Immediate family," as defined in Section 1.9. 29. (Definitions, Immediate Family).

11.5.3. APPLICATION FOR A WAIVER OF PROHIBITION AGAINST CONFLICT

OF INTEREST (GSA Section 11-204.04).

11.5.3.1. GRANT OR DENIAL OF WAIVER (GSA Section 11-204.04.2).

Under Section 5676(c) (Ethics Commission, Waiver) of the Guam Procurement Act, on written request of a government employee the Civil Service Commission may grant a government employee or the President may grant a contractor a written waiver of the conflict of interest and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the University so require or when the ethical conflict is insubstantial or remote. Prior to granting or denying a waiver, the Civil Service Commission with regard to government employees and the President with regard to a contractor, shall make such investigation as it may deem appropriate and which is not in violation of the government employee's or the contractor's rights, privileges, and immunities. Factors to be considered by the Civil Service Commission or the President when determining whether to grant a waiver shall include:

1. The degree of involvement of the government employee or a contractor in the particular procurement;

2. The size and character of the financial interest of the government employee or a member of such employee's immediate family or a contractor which relates to the particular procurement;

3. The likelihood of the appearance of impropriety;

4. The availability of suppliers or contractors, if any, with which a contract would not present conflict; and

5. The extent to which the University's interest will be affected by a waiver.

11.6. DISCLOSURE OF BENEFIT FROM CONTRACT (GSA Section 11-205).

11.6.1. GOVERNMENT EMPLOYEE DISCLOSURE REQUIREMENTS (GSA Section 11-205.01).

11.6.1.1. DISCLOSURE OF BENEFIT RECEIVED FROM CONTRACT (GSA Section 11-205.03).

Any government employee who has, or obtains any benefit from, any Territorial contract with a business in which the government employee has a financial interest shall report such benefit to the Civil Service Commission; provided, however, that this Section shall not apply to a contract with a business where the government employee's interest in the business has been placed in a disclosed

blind trust.

11.6.1.2. FAILURE TO DISCLOSE BENEFIT RECEIVED (GCA Section 5629(b)).

Any government employee who knows or should have known of such benefit, and fails to report such benefit to the Civil Service Commission is in breach of the ethical standards of this Section.

11.6.1.3. NOTICE (GCA Section 5629(c)).

Notice of this requirement shall be provided in accordance with regulations promulgated by the Civil Service Commission.

11.6.1.4. DEFINITIONAL CROSS-REFERENCE (GSA Section 11-205.01.1).

The term "Financial Interest" is defined in Section 1.9. 25. (Definitions, Financial Interest) of Chapter 1 (General Provisions) of these Regulations.

11.7. GRATUITIES AND KICKBACKS AND FAVORS (GSA Section 11-206).

11.7.1. GRATUITIES (GSA Section 11-206(1)).

It shall be a breach of ethical standards for any person to offer, give, or agree to give any government employee or former government employee, or for any government employee or former government employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

11.7.2. KICKBACKS (GSA Section 11-206(2)).

It shall be a breach of ethical standards for any payment, gratuity, or offer or employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

11.7.3. CONTRACT CLAUSE (GSA Section 11-206(3)).

The prohibition against gratuities and kickbacks and favors to the University prescribed in this Section shall be conspicuously set forth in every contract and

solicitation therefor.

11.7.4. FAVORS TO THE University (GCA Section 5630(d)).

For purposes of this Section, a favor is anything, including raffle tickets, of more than de minimus value and whether intended for the personal enjoyment of the receiver or for the University or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the University or for any employee or agent of the University to solicit or accept from any person or entity or agent thereof, a favor or gratuity on behalf of the University whether or not such favor or gratuity may be considered a reimbursable expense of the University, during the pendency of any matter related to the procurement including contract performance and warranty periods.

11.7.5. DEFINITIONAL CROSS-REFERENCE (GSA Section 11-206.01).

The following terms used in this Section are defined in the following Sections of the President Procurement Regulations:

1. "Gratuity" as defined in Section 1.9. 28. (Definitions, Gratuity); and

2. "Purchase request" as defined in Section 1.9. 37. (Definitions, Purchase Request).

11.7.6. GRATUITIES PROHIBITION (GSA Section 11-206.02).

11.7.6.1. BREACH (GSA Section 11-206.02.1).

It is a breach of Section 11.7.1. (Gratuities and Kickbacks and Favors, Gratuities) of these Regulations:

1. For any person to offer, give, or agree to give any government employee or former government employee a gratuity or offer of employment; or

2. For any government employee or former government employee to solicit, demand, accept, or agree to accept a gratuity or an offer of employment; provided that the gratuity or offer of employment is in relation to a particular matter in accordance with Subsection 11.7.6.2. (Relationship of Gratuity) of this Section, and pertains to any programs requirement, contract, subcontract, or solicitation or proposal therefor.

11.7.6.2. RELATIONSHIP OF GRATUITY (GSA Section 11-206.02.2).

The gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:

1. Decision;
2. Approval;
3. Disapproval;
4. Recommendation;
5. Preparation of any part of a program requirement or a purchase request;
6. Action to influence the content of any specifications or procurement standard;
7. Rendering of advice;
8. Investigation;
9. Auditing; or
10. Other advisory capacity.

11.7.6.3. FAMILY (GSA Section 11-206.02.3).

This prohibition extends to the giving of gratuities to anyone on the government employee's or former government employee's behalf such as a member of the government employee's immediate family.

11.7.7. WHEN PROHIBITION AGAINST GRATUITIES NOT APPLICABLE (GSA Section 11-206.03).

Section 11.7.1. (Gratuities and Kickbacks and Favors, Gratuities) of these Regulations does not prohibit:

1. The solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the University

and is based upon a personal or family relationship.

2. The participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;

3. Acceptance only on current customary terms or finance of a loan from a bank or other financial institution for proper and usual activities of government employees, such as home mortgage loans; or

4. Acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value as described in Section 11.1.1.6. (Definitions, Gratuity) of this Chapter.

11.7.8. PAYMENT OF A KICKBACK (GSA Section 11-206.04).

The prohibition against kickbacks set forth in Section 11.7.2. (Gratuities and Kickbacks and Favors, Kickbacks) of these Regulations applies whether a kickback is made prior to or after the award of a UOG contract or order.

11.7.9. CONTRACT CLAUSE (GSA Section 11-206.05).

The following clause shall be conspicuously set forth in every contract and solicitation therefor:

"REPRESENTATION REGARDING GRATUITIES,
KICKBACKS AND FAVORS

The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks and favors set forth in Section 11.7. (Gratuities and Kickbacks and Favors) of the President Procurement Regulations."

11.8. CONTINGENT FEES (GSA Section 11-207).

11.8.1. PROHIBITION AGAINST CONTINGENT FEES (GSA Section 11-207.01).

This Section is quoted from Section 5631 (Prohibition Against Contingent Fees) of the Guam Procurement Act.

11.8.1.1. CONTINGENT FEES (GSA Section 11-207.01(1)).

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a UOG contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

11.8.1.2. REPRESENTATION OF CONTRACTOR (GSA Section 11-207.01(2)).

Every person, before being awarded a UOG contract, shall represent in writing, that such person has not retained anyone in violation of Subsection 11.8.1.1. (Contingent Fees) of this Section. Failure to do so constitutes a breach of ethical standards.

11.8.1.3. CONTRACT CLAUSE (GSA Section 11-207.01(3)).

The representation prescribed in Subsection 11.8.1.2. (Representation of Contractor) of this Section shall be conspicuously set forth in every contract and solicitation thereof.

11.8.2. DEFINITIONAL CROSS-REFERENCES (GSA Section 11-207.01).

The following terms used in this Section are defined in Section 11.1.1. (Definitions) of these Regulations.

1. "Bona fide employee" as defined in Section 11.1.1.1. (Definitions, Bona Fide Employee);

2. "Bona fide established commercial selling agency" as defined in Section 11.1.1.2. (Definitions, Bona Fide Established Commercial Selling Agency); and

3. "Business employee" as defined in Section 11.1.1.3. (Definitions, Business Employee).

11.8.3. INFLUENCE PEDDLING (GSA Section 11-207.02).

The prohibition in Section 11.8.1.1. (Prohibition Against Contingent Fees, Contingent Fees) of these Regulations covers influence peddling and particularly that which might occur when a former UOG official is hired on contingent basis by a business seeking UOG contracts.

11.8.4. RELATIONSHIP OF COMMERCIAL SELLING BUSINESS TO THE PROSPECTIVE CONTRACTOR (GSA Section 11-207.03).

The relationship between a bona fide established commercial selling business and the prospective contractor should be characterized by the following:

1. The fees charged by the business are commensurate with the nature and extent of the business' services actually rendered to the prospective contractor;

2. The business has adequate knowledge of the supply, service or construction item of the prospective contractor which it represents to judge whether the item may be able to meet the University's requirements; and

3. The relationship between the business and the prospective contractor is or is contemplated to be continuing.

11.8.5. IMPROPER INFLUENCE (GSA Section 11-207.04).

A business employee or commercial selling business should be conclusively presumed not to be bona fide if the President determines that improper influence has been or is being used to secure a UOG contract.

11.8.6. SOLICITATION CLAUSE (GSA Section 11-207.05).

Every solicitation for a supply, service, or construction item shall conspicuously set forth the following provision to be completed and submitted with every prospective contractor's bid or proposal:

"PROSPECTIVE CONTRACTOR'S
REPRESENTATION REGARDING CONTINGENT FEES

The prospective contractor represents as part of such contractor's bid or proposal that such contractor has/has not (circle applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract."

11.8.7. INFORMATION ON CONTINGENT FEES (GSA Section 11-207.06).

Any prospective contractor who has completed the clause set forth in Section 11.8.6. (Solicitation Clause) in the affirmative and is the apparently successful bidder or offeror shall submit the following information:

1. The full name and business address of the business or person retained, and the type of business organization;

2. The relationship of the business or person to the prospective contractor;

3. The terms of the retention agreement or copy of such agreement;

4. If such person is a business employee:

   (a) The duration of employment;

   (b) Whether that employee is on the contractor's payroll for purposes of social security and federal or local income tax withholding; and

   (c) Whether that employee represents other businesses and, if so, the names and addresses of such businesses;

5. Whether the business or person represents the prospective contractor on:

   (a) Both government and commercial business;

   (b) Only government business; or

   (c) Only the present contract;

6. The extent of the duties of the business or person; and

7. The duration the business or person has been engaged in a particular type of work and has performed this type of work for the contractor.

11.8.8. CONTRACT CLAUSE (GSA Section 11-207.07).

The following clause shall be conspicuously set forth in every contract and solicitation therefor:

"REPRESENTATION REGARDING CONTINGENT FEES

The contractor represents that it has not retained a person to solicit or secure a UOG contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business."

11.9. EMPLOYMENT PROHIBITIONS AND RESTRICTIONS (GSA Section 11-208).

11.9.1. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER GOVERNMENT EMPLOYEES (GSA Section 11-208.01).

This Section is quoted from Section 5632 (Restrictions on Employment of Present and Former Employees) of the Guam Procurement Act with modifications as it pertains to the University.

11.9.1.1. CONTEMPORANEOUS EMPLOYMENT PROHIBITED (GSA Section 11-208.01).

Except as may be permitted by Regulations pursuant to Title 5 GCA or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to Title 5 GCA, it shall be a breach of ethical standards for any government employee who is participating directly or indirectly in the procurement process to become or be, while such a government employee, the government employee of any person contracting with the governmental body by whom the government employee is employed. Notice of this provision shall be in accordance with regulations promulgated by the Civil Service Commission.

11.9.1.2. RESTRICTIONS ON FORMER GOVERNMENT EMPLOYEES IN MATTERS CONNECTED WITH THEIR FORMER DUTIES (GSA Section 11-208.01(1)).

1. Permanent Disqualification of Former Government Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former government employee knowingly to act as a principal, or as an agent for anyone other than the University, in connection with any:

   (a) Judicial or other proceeding, application, request for ruling, or other determination;

   (b) Contract;

   (c) Claim; or

   (d) Charge or controversy

   in which the government employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while a government employee, where the University is a party or has a direct and substantial interest.

2. One Year Representation Restriction Regarding Matters for Which a Former Government Employee was Officially Responsible. It shall be a breach of ethical standards for any former government employee, within one (1) year after cessation of the former government employee's official responsibility, knowingly to act as principal, or as an agent for anyone other than the University, in connection with any:

   (a) Judicial or other proceeding, application, request for a ruling, determination;

   (b) Contract;

   (c) Claim; or

   (d) Charge or controversy;

   in matters which were within the former government employee's official responsibility, where the University is a party or has a direct or substantial interest.

11.9.1.3. DISQUALIFICATION OF BUSINESS WHEN A GOVERNMENT EMPLOYEE HAS A FINANCIAL INTEREST (GSA Section 11-208.01(2)).

It shall be a breach of ethical standards for a business in which a government employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the University, in connection with any:

1. Judicial or other proceeding, application, request for a ruling, or other determination;

2. Contract;

3. Claim; or

4. Charge or controversy;

in which the government employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the government employee's official responsibility, where the University is a party or has a direct and substantial interest.

11.9.1.4. SELLING TO THE UNIVERSITY AFTER TERMINATION OF EMPLOYMENT IS PROH1BI l'ED (GSA Section 11-208.01(3)).

It shall be a breach of ethical standards for any former government employee, unless the former government employee's last annual salary did not exceed $12,000, to engage in selling or attempting to sell supplies, services other than personal services, or construction to the University for ninety (90) calendar days following the date employment ceased.

The term "Sell" as used herein means:

1. Signing a bid, proposal, or contract;

2. Negotiating a contract, contracting any government employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or

3. Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract, therefore, is subsequently negotiated by another person.

This Section, however, is not intended to preclude a former government employee from accepting employment with private industry solely because the former government employee's employer is a contractor with this University, nor shall a former government employee be precluded from serving as a consultant to this University.

11.9.2. PERMANENT DISQUALIFICATION OF FORMER GOVERNMENT EMPLOYEE (GSA Section 11-208.02).

11.9.2.1. PERSONAL AND SUBSTANTIAL PARTICIPATION (GSA Section 11-208.02.1).

For the government employee to have "participated personally and substantially" in a matter, such employee's involvement must have been more than merely ministerial in nature. Factors to be considered in determining personal and substantial participation of a former government employee while a government employee shall include but are not limited to:

1. The former government employee's degree of involvement in the particular matter;

2. The degree of involvement of the former government employee with a subordinate who had substantial participation in the matter;
3. The effect or appearance of the involvement of the former government employee; and

4. The relative time spent on the particular matter by the former government employee.

11.9.2.2. MATTER MUST BE A PARTICULAR MATTER INVOLVING IDENTIFIABLE PARTIES (GSA Section 11-208.02.2).

The activities listed in Section 11.9.1.2. 1. (Restrictions on Employment of Present and Former Government Employees, Permanent Disqualification of Former Government Employee Personally Involved in a Particular Matter) of these Regulations generally describe matters in which issues are defined and parties are identified, such as specific proceedings affecting the legal rights of parties, or isolated transactions or related sets of transactions between identifiable parties.

Matters of general application, such as regulation and policy formulation, are not intended to be covered under those activities listed under Section 11.9.1.2. 1. (Restrictions on Employment of Present and Former Government Employees, Permanent Disqualification of Former Government Employee Personally Involved in a Particular Matter). Therefore, only a particular matter involving an identifiable party or parties is subject to the permanent prohibition set forth under Section 11.9.1.2. 1. (Restrictions on Employment of Present and Former Government Employees, Permanent Disqualification for Former Government Employee Personally Involved in a Particular Matter).

11.9.2.3. THE SAME PARTICULAR MATTER MUST BE INVOLVED (GSA Section 11-208.02.3).

The prohibition set forth in Section 11.9.1.2. 1. (Restrictions on Employment of Present and Former Government Employees, Permanent Disqualification of Former Government Employee Personally Involved in a Particular Matter) of these Regulations applies only with regard to those same particular matters in which the former government employee participated personally and substantially while a government employee. In determining whether two particular matters are the same, the following factors should be considered:

1. The factual basis of the matters;

2. The relationship of the issues involved in each matter;

3. The identity of the parties involved in each matter; and

4. The continued existence of an important UOG interest.

11.9.3. ONE YEAR RESTRICTION FOR A FORMER GOVERNMENT EMPLOYEE

(GSA Section 11-208.03).

11.9.3.1. OFFICIAL RESPONSIBILITY (GSA Section 11-208.03.1).

1. Definitions. Section 5601(h) (Definitions, Official Responsibility) of the Guam Procurement Act, which defines "official responsibility" is quoted in Section 1.9. 33. (Definitions, Official Responsibility) of these Regulations.

2. Scope. The scope of a University employee's official responsibility is determined by the Territory's statutes, regulations, executive orders, case law, or job descriptions, or may result from the lawful delegation of another University employee's duties.

3. Requirement That Matters Have Been Actually Pending. In order for a matter to have been within a former University employee's official responsibility, it must have in fact been assigned to or under consideration by persons under the former University employee's official responsibility.

11.9.3.2. ONE YEAR RESTRICTION (GSA Section 11-208.03.2).

The one-year restriction set forth in Section 11.9.1.2. 2. (Restrictions on Employment of Present and Former University Employees, Restrictions on Former University Employees in Matters Connected with Their Former Duties) of the University Procurement Regulations is measured from the time the former University employee's official responsibility ended in a particular matter.

11.9.4. DISQUALIFICATION OF A BUSINESS (GSA Section 11-208.04).

11.9.4.1. PERSONAL AND SUBSTANTIAL PARTICIPATION (GSA Section 11-208.04.1).

"Personal and substantial participation" is discussed in Section 11.9.2.1. (Permanent Disqualification of Former University Employee, Personal and Substantial Participation) of this Chapter.

11.9.4.2. OFFICIAL RESPONSIBILITY (GSA Section 11-208.04.2).

Section 5601(h) (Definitions, Official Responsibility) of the Guam Procurement Act, which defines "official responsibility", is quoted in Section 1.9. 33. (Definitions) and is discussed in Section 11.9.3.1. (One Year

Restriction for a Former University Employee, Official Responsibility) of this Chapter.

11.9.4.3. DETERMINATION OF BUSINESS KNOWLEDGE (GSA Section 11-208.04.3).

In ascertaining whether a business has knowledge that a University employee has a financial interest in that business for the purpose of applying the prohibition in Section 11.9.1.3. (Restrictions on Employment of Present and Former University Employees, Disqualification of a

Business When a University Employee Has a Financial Interest) of these Regulations, the factors to be considered should include the following:

1. The size of the business;

2. The percentage of ownership in the business by the University employee;

3. The nature of the dealings of the University employee with the business regarding such University employee's financial interest; and

4. Such other evidence as may be relevant and material.

11.9.5. PROHIBITION AGAINST SELLING TO THE UNIVERSITY (GSA Section 11-208.05).

11.9.5.1. APPLICABILITY (GSA Section 11-208.05.1).

Section 11.9.1.4. (Restrictions on Employment of Present and Former University Employees, Selling to the University After Termination of Employment is Prohibited) of these Regulations, prohibits a former University employee whose annual salary exceeded $12,000 from selling or attempting to sell to any governmental body of the Territory within ninety (90) calendar days following the date employment ceases. This prohibition applies to any present or former UOG employee.

11.9.5.2. "SELL" DEFINED (GSA Section 11-208.05.2).

Section 11.9.1.4. (Restrictions on Employment of Present and Former University Employees, Selling to the University After Termination of Employment is Prohibited) of these Regulations, defines "sell" for the purpose of prohibiting selling to the University to mean:

1. Signing a bid, proposal or contract;

2. Negotiating a contract;

3. Contracting any University employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract;

4. Settling disputes concerning performance of a contract; and

5. Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person.

Requests for information are not included within the term "Sell".

11.9.6. EMPLOYMENT WITH A TERRITORIAL CONTRACTOR RACTOR (GSA Section 11-208.06).

The ninety (90) calendar days prohibition against selling contained in Section 11.9.1.4. (Restrictions on Employment of Present and Former University Employees, Selling to the University After Termination of Employment is Prohibited) of these Regulations shall not prohibit a former University employee from obtaining employment with a contractor, but such University employee shall not sell to the University as defined in Section 11.9.5.2. (Prohibition Against Selling to the University, "Sell" Defined).

11.10. USE OF CONFIDENTIAL INFORMATION (GSA Section 11-209).

It shall be a breach of ethical standards for any University employee or former University employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person (quoted from Section 5633 (Use of Confidential Information) of the Guam Procurement Act).

11.11. CIVIL AND ADMINISTRATIVE REMEDIES AGAINST UNIVERSITY EMPLOYEES WHO BREACH ETHICAL STANDARDS (GSA Section 11-301).

11.11.1. EXISTING REMEDIES NOT IMPAIRED (GCA Section 5650(a)).

Civil and administrative remedies against University employees which are in existence on the effective date of these Regulations shall not be impaired.

11.11.2. SUPPLEMENTAL REMEDIES (GCA Section 5650(b)).

In addition to existing remedies for breach of the ethical standards of this Chapter or Regulations promulgated hereunder, the Civil Service Commissions may, in connection with employees of the University of Guam, direct the appointing authority to issue any one or more of the following:

1. Oral or written warnings or reprimands;

2. Suspension with or without pay for specified periods of time; and

3. Termination of employment;

but the Civil Service Commission members who made such recommendation shall not sit upon any appeal from the resulting adverse action and the Governor shall appoint members pro tempore, without the consent of the Legislature, to hear such appeals.

11.11.3. RIGHT TO RECOVER FROM UNIVERSITY EMPLOYEE VALUE RECEIVED IN BREACH OF ETHICAL STANDARDS (GCA Section 5650(c)).

The value of anything received by a University employee in breach of the ethical standards of this Chapter or Regulations promulgated hereunder shall be recoverable by the Territory as provided in Section 5652 (Recovery of Value Transferred or Received in Breach of Ethical Standards) of the Guam Procurement Act.

11.11.4. DUE PROCESS (GCA Section 5650(d)).

All procedures under this Section shall be in accordance with existing law and regulations regarding adverse actions and University employee discipline promulgated pursuant to Title 4 Guam Code Annotated.

11.12. CIVIL AND ADMINISTRATIVE REMEDIES AGAINST NON-EMPLOYEES WHO BREACH ETHICAL STANDARDS (GSA Section 11-302).

This Section 11.12. (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards) is quoted from Section 5651 (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards) of the Guam Procurement Act, but modified to specify UOG references.

11.12.1. EXISTING REMEDIES NOT IMPAIRED (GSA Section 11-302(1)).

Civil and administrative remedies against non-employees which are in existence on the effective date of these Regulations shall not be impaired.

11.12.2. SUPPLEMENTAL REMEDIES (GSA Section 11-302(2)).

In addition to existing remedies for breach of the ethical standards of this Chapter or Regulations promulgated hereunder, the President, in connection with non-employees, may impose any one or more of the following:

1. Written warnings or reprimands;

2. Termination of transactions; and

3. Debarment or suspension from being a contractor or subcontractor under UOG contracts.

11.12.3. RIGHT TO RECOVER FROM NON-EMPLOYEE VALUE TRANSFERRED IN BREACH OF ETHICAL STANDARDS (GSA Section 11-302(3)).

The value of anything transferred in breach of the ethical standards of this Chapter or Regulations promulgated hereunder by a non-employee shall be recoverable by the University as provided in Section 5652 (Recovery of Value Transferred or Received in Breach of Ethical Standards) of the Guam Procurement Act as quoted in Section 11.13. (Recovery of Value Transferred or Received in Breach of Ethical Standards) of these Regulations.

11.12.4. RIGHT OF THE UNIVERSITY TO DEBAR OR SUSPEND (GSA Section 11-302(4)).

Debarment or suspension may be imposed by the President in accordance with the procedures set forth in Section 9.3.1. (Authority to Debar or Suspend) of these Regulations for breach of the ethical standards of this Chapter, provided that such action may not be taken without the concurrence of the Attorney General.

11.12.5. DUE PROCESS (GSA Section 11-302(5)).

All procedures under this Section shall be in accordance with the Administrative Adjudication Law.

11.13. RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS (GSA Section 11-303).

This Section 11.13. (Recovery of Value Transferred or Received in Breach of Ethical Standards) is quoted from Section 5652 (Recovery of Value Transferred or Received in Breach of Ethical Standards) of the Procurement Act with the insertion of UOG for Territory.

11 .13.1. GENERAL PROVISIONS (GSA Section 11-303(1)).

The value of anything transferred or received in breach of the ethical standards of this Chapter or Regulations promulgated hereunder by a University employee or non-employee may be recovered from both the University employee and non-employee.

11.13.2. RECOVERY OF KICKBACKS BY THE UNIVERSITY (GSA Section 11-303(2)).

Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the University and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

11.14. ETHICS ENFORCEMENT (GSA Section 11-401).

11 .14.1. ETHICS: NON-EMPLOYEES (GSA Section 11-401.01).

In addition to the authority and duties of the President, such officer is hereby given the functions required under this Chapter with regard to non-employees and the Civil Service Commission is hereby given the functions required with regard to University employees.

This Section 11.14.1. (Ethics: Non-Employees) is quoted from Section 5675 (Ethics: Non-Employees) of the Guam Procurement Act, but modified for UOG.

11.14.2. ETHICS COMMISSION (GSA Section 11-401.01.1).

This Section 11.14.2. (Ethics Commission) is quoted from Section 5676 (Ethics Commission) of the Guam Procurement Act with specifications to the University.

11.14.2.1. REGULATIONS (GSA Section 11-401.01.1(a)).

The Civil Service Commission shall promulgate regulations to implement this Chapter with regard to University employees. The President shall promulgate regulations to implement this Chapter with regard to non-employees, contractors and subcontractors and the President shall do so in accordance with the applicable

provisions of the Administrative Adjudication Law of this Territory.

11.14.2.2. ADVISORY OPINIONS (GSA Section 11-401.01.1(b)).

On written request of University employees, the Civil Service Commission may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. The President may render such opinions to contractors regarding the appropriateness of the course of conduct to be followed by the contractors in proposed transactions. Such requests and advisory opinions must be duly published in the manner in which regulations of this University are published. Compliance with requirements of a duly promulgated advisory opinion of the Civil Service Commission or President shall be deemed to constitute compliance with the ethical standards of this Chapter.

11.14.2.3. WAIVER (GSA Section 11-401.01.1(c)).

On written request of a University employee, the Civil Service Commission may grant a University employee, or the President may grant a contractor, a written waiver from the application of Section 11.5.1. (University Employee Conflict of Interest) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the University so require or when the ethical conflict is insubstantial or remote.

11.14.3. APPEAL OF DECISIONS (GSA Section 11-401.01.2).

This Section 11.14.3. (Appeal of Decisions) is quoted from Section 5677 (Appeal of Decisions) of the Guam Procurement Act with specifications to the University.

11.14.3.1.. GENERAL (GSA Section 11-401.01.2(a)).

Except as provided under Subsections 11.14.3.2. (Debarment or Suspension) and 11.14.3.3. (Appeal from Decision of Civil Service Commission) of this Section, a decision of the President under Section 9.10. (Time Limitations on Actions) of these Regulations shall be reviewable in accordance with the Administrative Adjudication Law of this Territory. The opinions of the Civil Service Commission shall be reviewable in the same manner, but only in connection with their duty to render opinions.

11.14.3.2. DEBARMENT OR SUSPENSION (GSA Section 11-401.01.2(b)).

A decision of the President regarding debarment or suspension under Section 9.3.1. (Authority to Debar or Suspend) of these Regulations shall be reviewable as provided in Section 9.3.1. (Authority to Debar or Suspend) of these Regulations.

11.14.3.3. APPEAL FROM DECISION OF CIVIL SERVICE COMMISSION (GSA Section 11-401.01.2(c)).

An appeal from the decision of the Civil Service Commission under Section 11.11. (Civil and Administrative Remedies Against University Employees Who Breach Ethical Standards) of this Chapter shall be taken before members, either permanent or pro tempore, who had no part in the decision being appealed from in accordance with the rules of the Civil Service Commission governing adverse actions in general. Further review by the Superior Court, where permitted, shall be pursuant to the provisions of Title 4 GCA.

APPENDIX

CHAPTER 11

REGULATIONS GOVERNING GOVERNMENT OF GUAM EMPLOYEES ETHICS IN PUBLIC CONTRACTING AS PROMULGATED BY THE CIVIL SERVICE COMMISSION

REGULATIONS GOVERNING GOVERNMENT
OF GUAM EMPLOYEES ETHICS IN PUBLIC CONTRACTING AS
PROMULGATED BY THE CIVIL SERVICE COMMISSION

RESOLUTION CSC-002-84

BE IT RESOLVED BY THE CIVIL SERVICE COMMISSION:

WHEREAS, Public Law 16-124 created the Guam Procurement Act and established ethical standards for Government of Guam employees involved in public contracting or the procurement or disposal of supplies, services, or construction; and

WHEREAS, Chapter 11 of the Guam Procurement Act designates the Civil Service Commission as the Ethics Commission for Government of Guam employees, and mandates the Commission to establish and adopt regulations for enforcement of the ethical standards; and

WHEREAS, the Civil Service Commission, in conjunction with the General Services Agency, conducted a public hearing on the proposed regulations on June 13, 1984; and

WHEREAS, the proposed regulations are ready for adoption;

NOW, THEREFORE, BE IT RESOLVED, that the Civil Service Commission hereby duly adopts the attached document entitled, "Government of Guam Guam Procurement Act Chapter 11 Ethics Regulations".

DULY AND REGULARLY ADOPTED THIS 19th DAY OF JUNE, 1984.

/s/	/s/
VICENTE P. PEREZ	JUNE S. REGALDO
Chairperson	Vice Chairperson

/s/
WILLIS S. CANNON
Commissioner

/s/
E.L. "BILL" GIBSON
Commissioner

/s/
FRANK T. LIZAMA
Commissioner

/s/
LUCIA A. VALENTIN
Commissioner

GOVERNMENT OF GUAM
GUAM PROCUREMENT ACT

CHAPTER 11
ETHICS REGULATIONS

REGULATION

11-1. PURPOSE AND SCOPE.

To provide regulations relating to ethical standards for Government of Guam employees involved in public contracting, in accordance with the Guam Procurement Act (P.L. 16-124). These regulations apply to all governmental bodies and employees covered by the Act.

11-2. NOTICE.

The head of any governmental body covered by the Guam Procurement Act shall give notice of this Chapter to all employees within the organization who are involved in the procurement or disposal of supplies, services, or construction; such head should explain and discuss the provisions to covered employees at least annually.

11-2.1. GOVERNMENT EMPLOYEE STATEMENT.

Each covered government employee shall be given a copy of this Chapter by the head of the governmental body by which such employee is employed, and shall be required to sign a statement, supplied by the Civil Service Commission, that such employee is familiar with and will abide by the Guam Procurement Act and this Chapter.

11-2.2. FILING OF GOVERNMENT EMPLOYEE STATEMENTS.

Each government employee statement shall be filed with the Civil Service Commission. As a condition of employment, new government employees shall file such statement within ten days of the first day of such employee's employment. Incumbent employees shall file such statement within ten days of the effective date of this Chapter. This statement shall constitute the notice required by §5628 (Employee Conflict of Interest, Notice), §5629 (Employee Disclosure Requirements, Notice) and §5632 (Restrictions on Employment of Present and Former Employees, Contemporaneous Employment Prohibited) of the Guam Procurement Act.

11-3. DEFINITIONS

(a) "Blind Trust" means an independently managed trust in which the

employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

(b) **"Confidential Information"** means any information which is available to an employee only because of the employee's status as an employee of this Territory and is not a matter of public knowledge or available to the public on request.

(c) **"Conspicuously"** means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.

(d) **"Direct or Indirect Participation"** means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(e) **"Financial Interest"** means:

(1) Ownership of any interest or involvement in any relationship from which, or as a result of which a person within the past year has received, or is presently or in the future entitled to receive, more than Two Thousand Five Hundred Dollars ($2,500) per year, or its equivalent;

(2) Ownership or such interest in any property or any business as may be specified by the Ethics Commission; or

(3) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(f) **"Gratuity"** means a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. In this Chapter, a gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment. "Nominal value", as used in §5601(f) of the Guam Procurement Act, means actual worth, actual costs, whichever is greater, which does not exceed $25 individually or cumulatively.

(g) **"Immediate Family"** means a spouse, children, parents, brothers and sisters or other relationships identified by the Civil Service Commission as falling within the term "immediate" family. In deciding whether a relationship is covered by this Chapter, the Commission will consider all relevant factors.

(h) **"Official Responsibility"** means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct territorial action.

(i) **"Purchase Request"** means that document whereby a using agency requests that a contract be entered into for a specified need, and may include but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Guam Procurement Act.

(j) **"Employee"** means an individual drawing a salary from a government body, whether elected or not, and any non-compensated individual performing personal services for any government body. "Employee" is synonymous with "government employee" as used in this Chapter. The terms shall include:

(1) A person elected to Territorial office;

(2) A nonelected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the Territory; and

(3) A non-compensated or minimally compensated person who is performing personal services for the Territory.

The term "government employee" does not include a person who, as an independent contractor, performs professional, scientific, technical, or advisory service for a territorial agency and who receives a fee, honorarium, or similar consideration for the services performed.

(k) **"Governmental Body"** means any department, commission, council, board, bureau, committee, institution, agency, government corporation, authority or other establishment or official of the executive branch of the Government of Guam, except the Guam Community College, the University of Guam, the Department of Education, the Guam Memorial Hospital Authority and other bodies exempted by statute after the effective date of this Chapter.

1 1 -4. STANDARDS OF CONDUCT.

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

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the territorial procurement organization. To achieve the purpose of this regulation, it is essential that those doing business with the Territory also observe the ethical standards prescribed herein.

1 1 -4.2 GENERAL STANDARDS OF ETHICAL CONDUCT.

(a) General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust.

In order to fulfill this general prescribed standard, an employee must also meet the specific standards set forth in these regulations.

1 1 -4.3 EMPLOYEE CONFLICT OF INTEREST.

(a) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) A business or organization in which the employee, or any member of the employee's immediate family has a financial interest pertaining to the procurement; or

(3) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Civil Service.

I I -4. I STATEMENT OF POLICY.

insubstantial or remote. Prior to granting or denying a waiver, the Civil Service Commission shall make such investigation as it may deem appropriate and which is not in violation of the government employee's rights, privileges, and immunities.

Factors to be considered by the Civil Service Commission when determining whether to grant a waiver shall include:

(1) The degree of involvement of the government employee in the particular procurement;

(2) The size and character of the financial interest of the government employee or a member of such employee's immediate family which relates to the particular procurement;

(3) The likelihood of the appearance of impropriety;

(4) The availability of suppliers of contractors, if any, with which a contract would not present a conflict; and

(5) The extent to which the Territory's interest will be affected by a waiver.

(h) Negotiating for Employment With Contractor. Section 5628 (Employee Conflict of Interest) of the Guam Procurement Act covers instances in which a government employee involved in procurement is actively negotiating for employment with a contractor or prospective contractor and applies to the Civil Service Commission for a waiver of the conflict of interest prohibition regarding any further participation in that procurement: offers of employment under certain circumstances may also be gratuities which are prohibited by §5630 (Gratuities and Kickbacks) of the Act.

11-4.4 EMPLOYEE DISCLOSURE REQUIREMENTS.

(a) Disclosure of Benefit Received from Contract. Any employee who has, or obtains any benefit from, any Territorial contract with a business in which the employee has a financial interest shall report such benefit to the Civil Service Commission; provided, however, that this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.