



DEPARTMENT OF EDUCATION

OFFICE OF THE SUPERINTENDENT

www.gdoe.net
501 Mariner Avenue
Barrigada, Guam 96913



JON J.P. FERNANDEZ
Superintendent of Education

STANDARD OPERATING PROCEDURES

SOP#: 200-047

I. SUBJECT Ethics in Public Contracting

II. INQUIRIES Office of Supply Management ("Procurement Office")

III. PURPOSE

These Standard Operating Procedures ("SOP") for Ethics in Public Contracting prescribe the standards of conduct for government employees, officers and agents of the Guam Department of Education related to public contracting. Standards of conduct for government employees are governed by applicable local and federal statutes and regulations.

IV. APPLICABILITY

Except as otherwise provided by law, these Procedures shall apply to the management of all Guam Department of Education ("GDOE", "Department") purchases, paid with GDOE local funds or out of monies under the control of GDOE; for example, US Department of Education ("USEd") grant funds and other US federal grant funds.

When a procurement involves the expenditure of federal assistance or contract funds, or other federal funds, 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 Guam law.

V. REFERENCES

To fully understand what is required for the proper procurement of goods, services and construction, the Standard Operating Procedures contained throughout this document must be consulted and carefully followed. A working knowledge of the prerequisites contained below will also be helpful.

- a. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in particular, 2 CFR §§200.318-200.326
- b. USEd Special Conditions issued annually in June (Note: June 2018 letter states "specific" conditions instead of "special")
- c. Guam Code Annotated, Title 4, Chapter 15 Standard of Conduct
- d. Guam Code Annotated, Title 5, Division 1, Chapter 5, Guam Procurement Law, Article 11
- e. Guam Administrative Rules and Regulations, Title 2, Division 4, Procurement Regulations, Chapter 11

VI. KEY TERMS

The words defined below are commonly used terms in discussions about ethics in procurement. The following terms are not intended to be legal definitions.

Ethics: Rules, principles, and standards for deciding what is morally right or wrong when doing business.

Breach: An act of breaking or failing to observe a law, agreement or code of conduct.

Government/Public Employee: Someone who works for the government. Being a Government/Public Employee is a public trust.

The Term Government/Public 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; and
- c. a non-compensated or minimally compensated person who is performing personal services for the territory.

The Term Government/Public Employee *does not include* a person (non- employee) 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.

Non-employee: means a person who is not an employee of the government.

Conflict of Interest: A situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

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.

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.

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

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.

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 (\$2,500.00) per year, or its equivalent;
- b. Ownership or such interest in any property or any business as may be specified by the Ethics Commission; or
- c. Holding a position in a business such as an office, director, trustee, partner, employee, or the like, or holding any position of management.

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.

Immediate Family: Means a spouse, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family.

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.

Purchase Request / Requisition: 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 for the purchase request.

VII. STATEMENT OF POLICY

Public employment is a public trust. It is the policy of the Guam Department of Education to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by GDOE. 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 Department's procurement organization. To achieve the purpose of these standards, it is essential that those doing business with GDOE also observe these standards prescribed herein.

An employee, officer or agent of the Guam Department of Education must not participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest.

A. General Standards of Ethical Conduct for Government / Public Employees

1. **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 public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth herein:

- a. **Employee 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:
 - i. The employee or any member of the employee's immediate family has a financial interest or other interest in or a tangible personal benefit pertaining to the procurement;
 - ii. 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
 - iii. 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 Commission ("CSC"). A copy of the disclosure should be provided to the GDOE Supply Management Office.
- c. **Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver** – Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification to the GDOE Supply Management Administrator and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Civil

Service Commission in accordance to their (CSC) Waiver requirements for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

d. Notice – Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission (“CSC”).

2. Employee Disclosure Requirements:

a. Disclosure of Benefit Received from Contract

- i. 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 (“CSC”); 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. A copy of the disclosure should be provided to the GDOE Supply Management Office.
- ii. Failure to Disclose Benefit Received – Any employee who knows or should have known of such benefit, and fails to report such benefit to the Civil Service Commission (“CSC”) is in breach of the ethical standards of this Section.
- iii. Notice – Notice of this requirement shall be provided in accordance with regulations promulgated by the Civil Service Commission (“CSC”).

b. Reporting of Gifts

- i. Reporting of Gifts. - 4 GCA §15202 requires every employee to file a gifts disclosure statement with the Guam Ethics Commission on June 30 of every year for any gifts to the employee, the employee’s spouse or dependent child valued singly or in the aggregate from a single source in excess of \$200 whether the gift is in money, services, gifts or any other form for January 1 to December 31 of the preceding year. A copy of the disclosure should be provided to the GDOE Supply Management Office.
- ii. Source of Gifts. - The source of the gift or gifts have interest that may be affected by the official action or lack of action of the employee.

3. Gratuities and Kickbacks:

- a. Gratuities – It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former 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 of a contract or subcontract; or to any solicitation or proposal therefor.
- b. Kickbacks – It shall be a breach of ethical standards for any payment, gratuity or offer of 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 for the award of a subcontract or order.
- c. Contract Clause – The prohibition against gratuities, kickbacks and favors to the Territory prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor; see Appendix B-3, Affidavit re Gratuities or Kickbacks.

- d. **Favors to the Territory** – 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 department 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 Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.
- e. **Reporting**. Employees should immediately report any attempts by contractors or potential contractors to provide gratuities, kickbacks or favors to the Supply Management Administrator. The SMA will forward such reports to the legal counsel for further action.

4. Prohibition against Contingent Fees:

- a. **Contingent** – It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial 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.
- b. **Representation of Contractor** – Every person, before being awarded a territorial contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (a) of this Section. Failure to do so constitutes a breach of ethical standards.
- c. **Contract Clause** – The representation prescribed in Subsection (b) of this Section shall be conspicuously set forth in every contract and solicitation therefor.

5. Restrictions on Employment of Present and Former Employees

- a. **Contemporaneous Employment Prohibited** – Except as may be permitted by regulations pursuant to Title 5, Division 1, Chapter 5, Article 11 Ethics in Public Contracting, or pursuant to Title 4 - Public Officers & Employees - GCA, or rulings of the Civil Service Commission, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission.
- b. **Restrictions on Former Employees in Matters connected with their former duties.**
 1. **Permanent Disqualification of Former Employee Personally Involved in a Particular Matter** – It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than the Territory, in connection with any:
 - i. judicial or other proceedings, application, request for a ruling, or other determination;
 - ii. contract;
 - iii. claim; or
 - iv. charge or controversy;in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the Territory is a party or has a direct and substantial interest.
 2. **One Year Representation Restriction Regarding Matters for Which a Former Employee was Officially Responsible** – It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility, knowingly

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the Territory is a party or has a direct and substantial interest.

to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- i. judicial or other proceeding, application, request for a ruling or other determination;
- ii. contract;
- iii. claim; or
- iv. charge or controversy; in matters which were within the former employee's official responsibility, where the Territory is a party or has direct or substantial interest.

c. **Disqualification of Business when an Employee has a Financial Interest** – It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Territory, 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 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 employee's official responsibility, where the Territory is a party or has a direct and substantial interest.

d. **Selling to the Territory after Termination of Employment is Prohibited** - It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed Twelve Thousand Dollars (\$12,000.00), to engage in selling or attempting to sell supplies, services other than personal services, or construction to the Territory for ninety (90) days following the date employment ceased.

The term sell as used herein means – Signing a bid, proposal, or contract; negotiating a contract, contracting any employee for the purpose of obtaining, negotiating or discussing changes in specification, 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 therefor is subsequently negotiated by another person; provided, however, that this section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this Territory, nor shall a former employee be precluded from serving as a consultant to this Territory.

6. **Use of Confidential Information** – It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

VIII. PROCEDURES

A. Financial Disclosure Form.

1. At least annually, all GDOE Management (Superintendent, Deputies), employees of the Procurement Office, as well as Administrators or Program Coordinators regularly involved in procurement of goods and contracts shall fill out a Financial Disclosure Statement and submit the signed form to the Procurement Office.
2. Should a conflict of interest become known subsequent to the submission of the annual form, the relevant party (GDOE management or employee) shall update and submit the updated Financial Disclosure Statement to the Procurement Office.
3. These forms will be reviewed by the Supply Management Administrator upon receipt and maintained by Procurement Office. It is recommended that the forms be filled out and collected during the annual procurement training.

4. Any conflicts of interests should be noted and the conflicted party will be prohibited from participating in the procurement or management of the relevant contract.
5. If it is later determined that a conflict of interest exists, the matter should be forwarded to the legal counsel to determine if criminal or civil actions should be taken.

B. Mandatory Contract Clauses & Affidavits as Part of the Formal Solicitation Process,

1. The Procurement Office will work with legal counsel to ensure that all mandatory contract clauses required by law are included in the proposed contracts in the solicitation packets as well as in the final contract with vendors.
2. The Procurement Office will ensure that the required affidavits are part of the solicitation packets and were submitted as required with bids or proposals.

C. Evaluator Affirmations and Disclosures Form.

1. Employees participating in evaluations of bids or proposals shall sign the Evaluator Affirmations and Disclosures Form prior to the evaluation.
2. These forms will be reviewed by the Supply Management Administrator or the Buyer Supervisor upon receipt.
3. Any conflicts of interests should be noted and the conflicted party prohibited from participating in the procurement, evaluation, or management of the relevant contract.
4. Any disclosures of collusion will be forwarded to the legal counsel to determine if criminal or civil actions should be taken.
5. This form will be part of the procurement file.

IX. ROLES and RESPONSIBILITIES

The following are the key personnel in the Procurement process. The specific responsibilities and expectations of these individuals are delineated as follows:

A. Procurement Office:

The role of the Procurement Office is to provide leadership, guidance, and enforcement of the policies, regulations and procedures as stipulated in this document. The Procurement Office is the main point of contact for all questions or concerns regarding the Department's procurement activities.

B. End User:

Schools and Divisions are the ultimate End Users of the procured services, supplies, materials and equipment. End Users are responsible for initiating the purchase requisitions in the MUNIS system and for causing their approval. End Users may assign particular individuals for initiating requisitions in MUNIS.

C. Vendor:

The vendor is approved by the GDOE Procurement Office to provide goods, services, and/or construction to GDOE schools and divisions.

D. Superintendent of Education (Chief Procurement Officer for GDOE):

The Superintendent of Education, as head of the Guam Department of Education, shall have general supervision of all procurement activity within the Guam Department of Education (GDOE), its schools and divisions. This responsibility shall not, however, relieve any school or division of accountability for the procurement roles under its control.

The Superintendent:

1. Shall ensure that all of those in a management capacity below him/her enforce the requirements contained in these Standard Operating Procedures.
2. Shall be responsive to violations and shall take the appropriate action.

E. Third Party Fiduciary (TPFA):

The TPFA is responsible for providing guidance, management leadership, and accountability of USEd funded procurements. They have the final approval of all US Department of Education funds awarded to the Department.

X. NON COMPLIANCE

The Superintendent, Deputy Superintendent of Finance & Administrative Services, and the Supply Management Administrator will be advised of any violations to procurement procedure. Non-compliance of any of the regulations set-forth in this document may result in disciplinary action, up to and including termination.

For questions or concerns regarding compliance, contact the Procurement Office.

XI. CONTACT INFORMATION

The Office of Supply Management is located at:

501 Mariner Avenue, Suite 116
Barrigada, Guam 96913-1608

TELEPHONE: (671) 475-0438
FAX: (671) 472-5001
EMAIL: procurement@gdoe.net
WEBSITE: www.gdoe.net/procurement

XII. PROCUREMENT FORMS

Attached in Appendix A are relevant Guam laws:

- A-1 4 GCA Chapter 15 Standard of Conduct for Elected Officers, Appointed Officers, and Public Employees of the Government of Guam.
- A-2 5 GCA Chapter 5 Article 11 Ethics in Public Contracting

The following forms are provided in Appendix B:

- B-1 Financial Disclosure Statement
- B-2 Affidavit Re Non Collusion
- B-3 Affidavit Re Gratuities or Kickbacks
- B-4 Affidavit Re Ethical Standards
- B-5 Evaluator Affirmations and Disclosures

The Procurement Office will maintain complete, printable copies of the forms.

XIII. INTERNAL CONTROL

The Supply Management Administrator and Buyer Supervisors are charged with ensuring the validity of these procedures and their compliance. The Internal Audit Office ("IAO") will periodically validate these SOPs and recommend improvements where needed.

XIV. TRAINING

The Supply Management Administrator will ensure training is conducted and available for all GDOE and Private, Non-Public ("PNP") End Users (school administrators, division heads and staff) in these procurement procedures at least annually.

In compliance with 5GCA, Div. 1, § 5141, all Buyers will complete required procurement training offered by the Guam Community College. The Supply Management Administrator will seek opportunities for Procurement Office staff to be trained and updated on procurement methods and regulations.

XV. REPORTS

The Supply Management Administrator will report any disclosures of financial interests, gratuities, gifts, and other reportable events in this SOP to the Deputy Superintendent of Finance & Administrative Services at least annually. Any disclosures that may concern criminal activities or activities that might impair a procurement should be provided to legal counsel for determination if further action is needed.

XVI. PENALTY

Failure to adhere to this SOP may result in disciplinary action, up to and including termination, in accordance with the Department of Education Personnel Rules & Regulations.

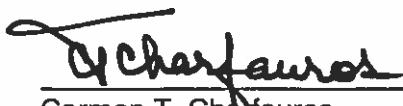
XVII. EFFECTIVE DATE

Upon date of approval and signature, unless otherwise noted.

XVIII. CHANGES

A formal review of this SOP should be conducted at least once every two years to determine if updates are necessary. Changes to this policy shall be effectuated by the Superintendent of Education.

Approved by:



Carmen T. Charfauros
Supply Management Administrator

1/28/19

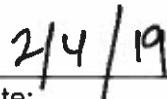
Date:



Taling M. Taitano
Deputy Superintendent of Finance and
Administrative Services

1/28/2019

Date:



Jon J.P. Fernandez
Superintendent of Education

2/4/19

Date:

APPENDIX A

**A-1 4 GCA Chapter 15 Standard of Conduct
for Elected Officers, Appointed Officers, and
Public Employees of the Government of
Guam**

**A-2 5 GCA Chapter 5 Article 11 Ethics in
Public Contracting**

APPENDIX A-1

**4 GCA Public Officers & Employees
Ch. 15 STANDARD OF CONDUCT**

CHAPTER 15

**STANDARD OF CONDUCT FOR ELECTED OFFICERS,
APPOINTED OFFICERS, AND PUBLIC EMPLOYEES OF THE
GOVERNMENT OF GUAM**

NOTE: Chapter 15 was added by P.L. 23-105-1.

- Article 1. General Provisions.**
- Article 2. Specified Standards.**
- Article 3. Guam Ethics Commission.**
- Article 4. Administration and Enforcement.**

**ARTICLE 1
GENERAL PROVISIONS**

- § 15100. Construction.**
- § 15101. Applicability.**
- § 15102. Definitions.**

§ 15100. Construction.

This Chapter shall be liberally construed by the courts of this Territory to promote the highest standards of ethical conduct within the Territorial government.

§ 15101. Applicability.

This Chapter shall apply to every employee as defined herein.

§ 15102. Definitions.

When used in this Chapter, these key words shall have the indicated meaning:

- (a) *business* includes any corporation, partnership, any sole proprietorship, any trust or foundation, or any other individual or organization carrying on any business whether or not operated for profit;
- (b) *compensation* means any money, thing of value or economic benefit conferred on or received by any person subject to this Chapter, in return for services rendered or to be rendered by himself or another;
- (c) *controlling interest* means any proprietary or ownership interest in a business or other undertaking;

**4 GCA Public Officers & Employees
Ch. 15 Standard of Conduct**

(d) *employee* means any nominated, appointed, or elected officer or individual employed with a territorial agency as defined herein, including members of boards or commissions, and persons under personal services contracts;

(e) *employment* means any rendering of services for compensation;

(f) *financial interest* means an interest held by an individual, his or her spouse, natural, adopted, or dependent children, parents, parents-in-law, siblings, or siblings-in-law which is:

- (1) an ownership interest in a business;
- (2) a creditor interest in an insolvent business;
- (3) an employment, or prospective employment for which negotiations have begun;
- (4) an ownership interest in personal or real property;
- (5) a loan or other debtor interest; or
- (6) a directorship or officership in a business.

(g) *judicial officers* includes the Justices of the Supreme Court, whether full- or part-time, and Judges of the Superior Court, including Judges pro tem and referees;

(h) *legislator* means any duly elected members of the Guam Legislature;

(i) *official act or official action* means a decision, recommendation, approval, disapproval, or other action, including inaction which involves the use of discretionary and non-discretionary authority;

(j) *official authority* includes administrative, judicial or legislative powers of decision, recommendation, approval, disapproval, or other discretionary or non-discretionary action; and

(k) *territorial agency or agency* shall mean every branch of government, public corporations, all government of Guam departments, bureaus, and line agencies, autonomous and semi-autonomous agencies, instrumentalities, entities or sub-entities thereof, the Mayor's Council, and Mayors' Offices.

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

SOURCE: Section 15102 added by P.L. 23-105:1 (July 8, 1996). Subsection (i) amended by P.L. 30-030:2 (June 16, 2009).

**ARTICLE 2
SPECIFIED STANDARDS**

- § 15201. Gifts.**
- § 15202. Reporting of Gifts.**
- § 15203. Confidential Information.**
- § 15204. Fair Treatment.**
- § 15205. Conflicts of Interest.**
- § 15206. Contracts.**
- § 15207. Contracts Voidable.**
- § 15208. Requirements of Disclosure.**
- § 15209. Disclosure Files; Disposition.**
- § 15210. Restrictions on Post Employment.**
- § 15211. Violation.**

§ 15201. Gifts.

No employee shall solicit, accept, or receive, directly or indirectly, any gift valued singly or in the aggregate from a single source in excess of \$200, whether in the form of money, prize, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, when a reasonable person would infer that the gift is intended to influence the employee in the performance of that individual's official duties or is intended as a reward for any official action on that individual's part.

§ 15202. Reporting of Gifts.

(a) Every employee shall file a gifts disclosure statement with the Guam Ethics Commission on June 30 of each year if all the following conditions are met:

- (1) The employee, or spouse or dependent child of an employee, received directly or indirectly from any source any gift or gifts valued singly or in the aggregate from a single source in excess of \$200, whether the gift is in the form of money, services, goods, or in any other form;
- (2) The source of the gift or gifts have interests that may be affected by the official action or lack of action by the employee; and

4 GCA Public Officers & Employees
CH. 15 STANDARD OF CONDUCT

(3) The gift is not exempted by subsection (d) from reporting requirements under this section.

(b) The report shall cover the period from January 1 of the preceding calendar year through December 31 of the year of the report.

(c) The gifts disclosure statement shall contain the following information:

- (1) A description of the gift;
- (2) A good faith estimate of the value of the gift;
- (3) The date the gift was received; and
- (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

(d) Excluded from the reporting requirements of this section are the following:

- (1) Gifts received by will or intestate succession;
- (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- (3) Gifts from a spouse, fiancé, fiancée, any relative within three degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
- (4) Political campaign contributions that comply with territorial law. This section shall not exempt the recipient of campaign contributions from the reporting requirements of the Election Code.
- (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
- (6) Gifts that within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
- (7) Exchange of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of an employee to file a gifts disclosure statement as

**4 GCA Public Officers & Employees
Ch. 15 STANDARD OF CONDUCT**

required by this section shall be a violation of this chapter.

§ 15203. Confidential Information.

No employee shall disclose information which is considered a private document by existing law, and which the employee acquires in the course of official duties, or use the information for personal gain or for the benefit of someone else.

§ 15204. Fair Treatment.

No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or herself, a spouse, children, or others, including but not limited to the following:

- (a) seeking other employment or contract for services by the use or attempted use of the individual's office or position;
- (b) accepting, receiving, or soliciting compensation for the performance of official duties or responsibilities except as provided by law;
- (c) using government time, equipment, or other facilities for private business purposes;
- (d) soliciting, selling, or otherwise engaging in a financial transaction with a subordinate or a person or business whom the employee inspects or supervises in official capacity.
- (e) Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or making statements or taking action in the exercise of legislative functions. Every legislator shall file with the Guam Ethics Commission a full and complete public disclosure of the nature and extent of the legislator's interest on any legislative transaction which primarily affects only the legislator or legislators involved or their spouses and not the community as a whole or a segment thereof. Disclosure must be made at time of introduction of such legislation, or when the legislator shall first have knowledge of such legislation.

§ 15205. Conflicts of Interest.

- (a) No employee shall take any official action directly affecting:
 - (1) business or other undertaking in which the employee has a

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

financial interest; or

(2) private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to be disqualified on any matter described in item (1) or (2) of this Subsection may be in violation of this Subsection even if the individual has complied with the disclosure requirements of § 15208; and a person whose position on a board, commission or committee is mandated by statute, resolution or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which such person has a financial interest; provided that the financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.

(c) No employee shall assist any person or business or act in a representative capacity before any territorial agency for any compensation in any transaction involving the Territory.

(d) No employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the employee has participated or will participate as an employee, nor shall the employee assist any person, or business, or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the Legislature or territorial agency of which the individual is an employee.

(e) No employee shall assist any person or business or act in a representative capacity before a territorial agency for a fee or other compensation, on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that agency unless such employee has complied with the disclosure requirements of § 15208.

(f) Nothing herein shall preclude an employee from having outside business interests or employment so long as such interests or employment do not interfere with performance of official duties and is not otherwise in direct conflict with this Chapter.

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

(g) All employees, as defined in this Section, who know, or with reasonable investigation should know, that the employee has a financial interest in any decision pending before that employee or the agency of which the employee is a member shall not vote for or against, discuss, decide, in any way participate in considering the matter, or seek to influence the votes or decisions of others on such matter.

Prior to any determination of the matter, the employee shall verbally disclose at the meeting, if any, the nature of such interest, and shall have such disclosure placed in the official records of the agency. Should an employee be absent from that meeting or a portion of that meeting, the employee is required to verbally disclose the nature of the conflict at the next attended meeting and said disclosure shall be placed in the official records of the agency. Further, the employee must complete a Disclosure of Conflicts of Interest form with the Guam Election Commission within three (3) working days upon the employee's recognition of said conflict.

(h) A legislator who casts a vote with respect to any bill on the floor of the Guam Legislature in which the legislator has a financial interest shall prepare a written statement that identifies the bill, the legislator's vote and the nature of the legislator's financial interest. The legislator shall file the statement with the Office of the Speaker and a copy immediately provided to the Clerk of *Lihiestaturan Guahan* prior to voting. The statement shall be posted on *Lihiestaturan Guahan*'s website.

(i) The Guam Election Commission shall be the main repository for the Disclosure of Conflicts of Interest forms and shall create such form to be distributed to all departments, agencies, boards and commissions. Such form shall include, but not be limited to, the name of the employee, the entity represented, and a statement of disclosure describing the matter or decision pending before the employee, and the nature and description of the conflict.

SOURCE: Section 15205 added by P.L. 23-105:1 (July 8, 1996). Subsections (g), (h), and (i) added by P.L. 30-030:3 (June 16, 2009).

§ 15206. Contracts.

(a) A territorial agency shall not enter into any contract with an employee or with a business in which an employee has a controlling interest, unless the contract has been awarded through an open, public process. A territorial agency may, however, enter into such contract without resort to competitive bidding process when, in the opinion of the General

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

Services Agency or the procurement officer of that branch of government, the property or services does not fall within the purview of competitive bidding; provided that written justification for the non-competitive award of such contract be made a matter of public record and shall be filed with the Guam Ethics Commission at least ten (10) days before such contract is entered into.

With regards to members of boards, commissions, and committees, this Subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a territorial agency in which the board, commission, or committee to which the individual is appointed has jurisdiction.

(b) A territorial agency shall not enter into a contract with any person or business which is represented or assisted in a material manner in the matter by a person who has been an employee of that agency within the preceding twelve (12) months and who participated while in territorial office or employment in a material manner in the matter with which the contract is directly concerned.

§ 15207. Contracts Voidable.

In addition to any other penalty provided by law, any contract entered into by the Territory in violation of this Chapter, is voidable by the Territory; provided that in any act to void a contract pursuant to this Section, the interests of third parties who may be damaged thereby, shall be taken into account, and the action to void the transaction is initiated within ninety (90) days after the determination of a violation under this Chapter. The Attorney General shall have the authority to enforce this provision.

§ 15208. Requirements of Disclosure.

(a) All financial disclosure reports required to be filed with the Guam Election Commission pursuant to Chapter 13 of Title 4, Guam Code Annotated, shall be reported to the Guam Ethics Commission within three working days of filing with the Guam Election Commission.

(b) The Guam Election Commission shall require additional information on its financial disclosure reports, as may be requested by the Ethics Commission in accordance with this Section, and the Ethics Commission may request such information directly of the employee if it is not forthcoming from the Election Commission.

(c) Failure of an employee to file a disclosure of financial interests as

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

required by this Chapter shall be a violation of this Chapter.

§ 15209. Disclosure Files; Disposition.

(a) All financial disclosure statements filed by an employee shall be maintained by the Guam Ethics Commission during the term of office of the employee, and for a period of three years thereafter. Upon the expiration of the three-year period, the financial disclosure statement and all copies thereof shall be destroyed.

(b) Nothing herein shall bar the Guam Ethics Commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation.

§ 15210. Restrictions on Post Employment.

(a) No former employee shall disclose any information which by law is not available to the public and which the employee acquired in the course of official duties or use the information for personal gain or the benefit of anyone.

(b) No former employee shall, within twelve (12) months after termination from employment, assist any person or business, or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular territorial agency with which the employee had actually served.

(c) This Section shall prohibit any agency from contracting with a former employee to act on a matter on behalf of the Territory within the period of limitations stated herein, unless exempted by law.

§ 15211. Violation.

(a) Any territorial action obtained in violation of this chapter for employees is voidable in the same manner as voidable contracts as provided for under § 15207, and the Territory, by the Attorney General, may pursue all legal and equitable remedies available to it.

(b) The Territory, by the Attorney General, may recover any fee, compensation, gift, or profit received by such person as a result of a violation of these standards by an employee or former employee. Action to recover under the Subsection (b) shall be brought within two (2) years of such violation under this Chapter.

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

**ARTICLE 3
GUAM ETHICS COMMISSION**

§ 15301. Guam Ethics Commission Established; Composition.

There shall be within the government of Guam, a commission to be known as the 'Guam Ethics Commission'. The Commission shall consist of seven (7) members to be appointed by *I Maga Lahi*. Each appointee shall be a United States citizen and a bona fide resident of Guam. No person who has ever been convicted of a felony shall be eligible to serve on the Commission. Members of the Commission shall not be an employee, as defined herein, or have any member of their immediate family employed by the government of Guam. All appointments to the Guam Ethics Commission shall be confirmed by *I Liheslatura*.

The Chairman of the Commission shall be elected by the majority of the Commission. The term of office of each member shall be for four (4) years, provided that of the original members, two (2) shall hold office for two (2) years, two (2) shall hold office for three (3) years, and one (1) shall hold office for four (4) years. The determination of these members' length of office shall be by lot drawn by the members at their initial meeting. No person shall be appointed consecutively to more than two (2) terms as a member of the Commission.

Members shall serve without compensation, except that they shall receive a stipend of Fifty Dollars (\$50.00) per meeting not to exceed four (4) meetings per calendar month, and shall be compensated for all normal expenses of travel, and for the cost of meals while in session.

Vacancies shall be filled for the remainder of the unexpired term in the same manner as the original appointments. *I Maga Lahi* may remove or suspend any member of the Commission for cause, upon the filing of a written finding with the Commission and upon service of a copy of the written findings on the member removed or suspended.

SOURCE: Amended by P.L. 27-1413.

**ARTICLE 4
ADMINISTRATION AND ENFORCEMENT**

**4 GCA PUBLIC OFFICERS & EMPLOYEES
Ch. 15 STANDARD OF CONDUCT**

- § 15401. Duties of Commission; Complaint, Hearing, Determination.
- § 15402. Filing of False Charges.
- § 15403. Procedure.
- § 15404. Disciplinary Action for Violation.
- § 15405. Cooperation.
- § 15406. Concurrent Jurisdiction.
- § 15407. Staff.
- § 15408. Prohibition From Political Activity.
- § 15409. Applicability of Ethics in Government Program.
- § 15410. Ethics in Government Program Guidelines.
- § 15411. Judicial Branch.
- § 15412. Repeal.
- § 15413. Severability.

§ 15401. Duties of Commission; Complaint, Hearing, Determination.

(a) The Commission shall have the following powers and duties:

(1) It shall prescribe a form for the financial disclosures required by § 15208 and shall establish an orderly procedure for implementing the requirements of that Section.

(2) It shall render advisory opinions upon the request of any employee or former employee as to whether the facts and circumstances of a particular case constitutes or will constitute a violation of the code of ethics. The opinion rendered, until amended or revoked, shall be binding on the Commission in any subsequent charges concerning the employee or former employee who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the employee or former employee in the request for an advisory opinion.

(3) It shall initiate, receive and consider charges concerning alleged violations of this Chapter, initiate or make investigations, and hold hearings.

(4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the Commission and require the production for examination of any books, papers or electronic records relative to any matter under investigation or in question before the Commission. Before the Commission shall exercise any of the powers

**4 GCA Public Officers & Employees
C.R. 15 Standard of Conduct**

authorized herein with respect to any investigation or hearings, it shall by formal resolution, supported by a vote of five or more members of the Commission, define the nature and scope of its inquiry.

(5) It may, from time to time, make, amend, and repeal such rules and regulations, not inconsistent with this Chapter as in the opinion of the Commission, seem appropriate for the carrying out of this Chapter for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the Commission. The rules and regulations, shall be adopted in conformance with the Administrative Adjudication Law, and shall have the force and effect of law.

(6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this Chapter in all proceedings commenced within three (3) years of an alleged violation of this Chapter by an employee, or a former employee. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this Chapter. A proceeding shall be deemed commenced by the signing of a charge by five (5) or more members of the Commission.

(7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and employees on matters of ethics in government employment.

(b) Charges concerning the violation of this Chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the Commission must be signed by five (5) or more members of the Commission. The Commission shall notify in writing every person against whom a charge is received and afford him an opportunity to explain the conduct alleged to be in violation of this Chapter. The Commission may investigate, after compliance with this Section, such charges and render an informal advisory opinion to the alleged violator. The Commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply

4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT

with such informal advisory opinion or if a majority of the members of the Commission determine that there is a probable cause for belief that a violation of this Chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator in accordance with the rules for personal service found in Guam Rules of Civil Procedure. The person so charged shall have twenty (20) days after service thereof to respond in writing to the charge and statement.

(c) Any Commission member or any individual, including the individual making the charge, who without permission of the Commission, divulges information obtained from the Commission or who reveals confidential actions of or what happened in closed proceedings before the Commission concerning the charge prior to the issuance of the complaint or other final action by the Commission, except as permitted by this Chapter, shall be guilty of a misdemeanor.

(d) If after twenty (20) days following personal service, a majority of the members of the Commission conclude that there is reason to believe that a violation of this Chapter has been committed, then the Commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books, papers, records, or electronic recordings relative to the proceedings, (3) to be represented by counsel, and (4) to have the right of cross-examination. All witnesses shall testify under oath and the hearings shall be closed to the public unless the party complained against requests an open hearing. The Commission shall not be bound by the strict rules of evidence but the Commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited into the General Fund.

(e) The Commission shall make its findings and render its decision based on a preponderance of the evidence. A decision of the Commission pertaining to the conduct of any employee shall be in writing and signed by five (5) or more of the members of the Commission. Deliberations of the Commission shall be closed to the public and to all parties.

4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT

(f) The Commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The Commission shall make sufficient deletions in the summaries to prevent disclosing the identify of persons involved in the decisions or opinions.

§ 15402. Filing of False Charges.

(a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any Guam official, Guam employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in Title 9 of Guam Code Annotated (Crimes and Corrections).

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and court costs incurred in relation to that person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above, and shall also pay an equal amount to the general fund of the Territory.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

§ 15403. Procedure.

(a) When the Commission, after due hearings, believes that there is cause for the possible filing of criminal charges, it shall refer the complaint to the Attorney General's Office or appropriate authority for its disposition.

(b) With respect to former employees, the Commission may, with the consent of five (5) or more members of the Commission, issue a public statement of its findings and conclusions, and the Attorney General may exercise whatever legal or equitable remedies are available to the Territory.

(c) When after due hearing, the Commission finds that the violation committed by an employee is non-criminal in nature, the Commission will remand the case to the agency where the employee is employed with the

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

recommendation that the agency impose the corresponding punishment in accordance with the agency's personnel rules and regulations.

§ 15404. Disciplinary Action for Violation.

In addition to any other powers the Civil Service Commission or other government agency may have to discipline employees, the appropriate agency involved may reprimand, put on probation, demote, suspend, or discharge any employee found to have violated this Chapter.

§ 15405. Cooperation.

The Guam Ethics Commission may request and shall receive from every governmental agency cooperation and assistance in the performance of its duties.

§ 15406. Concurrent Jurisdiction.

In addition to any provision contained in this Chapter, the Legislature and the Judicial Branch may each prescribe further rules of conduct covering its members and may investigate and discipline its employees for any violation of this Chapter, or its own Rules, or both.

§ 15407. Staff.

The Guam Ethics Commission may employ such persons as it deems necessary for the performance of its functions. They shall submit an annual budget request to the Legislature for its required operations.

§ 15408. Prohibition from Political Activity.

Members of the ethics commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment.

§ 15409. Applicability of Ethics in Government Program.

(a) Any person who is an elected official of the government of Guam shall attend an ethics in government program within ninety (90) days of taking office. Additionally, elected officials shall undergo refresher ethics in government program at least once every four (4) years. The Guam Ethics Commission ("Commission") may grant permission for an elected official to attend a later program for good cause shown. The Commission shall award a certificate of completion to those completing the program.

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

(b) Any person who is appointed to a position as board or commission member, including autonomous agencies, director, deputy director, or by whatever title denotes the head and first assistant of a government of Guam agency, department, public corporation, authority, or any other entity of the executive branch, shall attend an ethics in government program within the first six (6) months of his or her appointment. Additionally, appointed officials shall undergo refresher ethics in government program at least once every four (4) years. The Commission may grant permission for an appointed official to attend a later program for good cause shown. The Commission shall award a certificate of completion to those completing the program.

SOURCE: Added by P.L. 23-105:1 (July 8, 1996). Repealed and reenacted by P.L. 23-076:1 (Nov. 25, 2005), effective Jan. 1, 2007.

§ 15410. Ethics in Government Program Guidelines.

The ethics in government program shall be provided by the University of Guam ("UOG") or other providers. The Public Auditor shall develop standards for the ethics program until the Guam Ethics Commission is appointed and functioning, at which time the Commission shall assume authority to develop the standards. The providers shall repeat the course as necessary to accommodate those who are required to attend. The course shall not exceed four (4) hours and shall be available in a single day and its scheduling shall accommodate the different work schedules of the persons affected by this Act.

(a) The program topics shall include, but not be limited to:

- (1) Guam statutes concerning ethics;
- (2) Guam statutes concerning lobbying;
- (3) Group participation in discussing, analyzing, and solving general ethics-related dilemmas;
- (4) Guam procurement laws and regulations;
- (5) Guam contracting laws and regulations;
- (6) Parliamentary procedure;
- (7) Fiduciary responsibility;
- (8) Personnel policy;
- (9) Government finance; and

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 15 STANDARD OF CONDUCT**

(10) Open Government Law and Sunshine Reform Act of 1999.

(b) The cost of tuition, books and training materials for the ethics in government program of the officials specified in §15409(b) of this Chapter, shall be paid by the agency that employs the official.

SOURCE: Repealed and reenacted by P.L. 28-076-3 (Nov. 25, 2005), effective Jan. 1, 2007.

§ 15411. Judicial Branch.

The Chief Justice of the Supreme Court shall have jurisdiction and governance over all justices and judges of the judicial branch in matters of ethics as covered in this Chapter 15.

SOURCE: P.L. 28-076-4 (Nov. 25, 2005), effective Jan. 1, 2007.

§15412. Repeal.

Those portions of the Guam Code Annotated and the Government Code of Guam, which are in conflict with any section of this Chapter, are hereby *repealed*.

SOURCE: Added by P.L. 28-076-5 (Nov. 25, 2005), effective Jan. 1, 2007.

§ 15413. Severability.

If any part of this Chapter 15 shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof, and shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

SOURCE: Added by P.L. 28-076-6 (Nov. 25, 2005), effective Jan. 1, 2007.

APPENDIX A-2

5 GCA GOVERNMENT OPERATIONS CH. 5 GUAM PROCUREMENT LAW

(f) In the event of noncompliance with the order of the Court, the Superior Court may punish for contempt, the responsible employees or officer.

SOURCE: GC § 6971.1 added by P.L. 18-044-17 (Nov. 14, 1986).

ARTICLE 10 COMPLIANCE WITH FEDERAL REQUIREMENTS

§ 5501. Federal Funds.

§ 5501. Federal Funds.

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, 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 this Chapter.

SOURCE: GC § 6979. MPC § 11-301 modified.

COMMENT: The only modification is to reflect the limitation on the power of the Legislature to appropriate contained in Section 20 of the Organic Act which reads:

"Appropriations, ... and except such appropriations as shall be made from time to time by the Congress of the United States, shall be by the Legislature."

ARTICLE 11 ETHICS IN PUBLIC CONTRACTING

Subarticle A. Definitions.

Subarticle B. Standards of Conduct.

Subarticle C. Remedies.

Subarticle D. Ethics Enforcement.

SUBARTICLE A DEFINITIONS

5 GCA GOVERNMENT OPERATIONS
CH. 5 GUAM PROCUREMENT LAW

§ 5601. Definitions.

§ 5601. Definitions.

As used in this Chapter:

(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

**5 CCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW**

(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.

(g) Immediate Family means a spouse, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepchildren, stepchildren and stepparents shall also be regarded as immediate family.

(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 this Chapter.

SOURCE: GC § 6910, MPC § 13-101. Subsection (g) amended by P.L. 31-016:1 (Apr. 18, 2011).

**SUBARTICLE B
STANDARDS OF CONDUCT**

- § 5625. Statement of Policy.
- § 5626. General Standards of Ethical Conduct.
- § 5627. Criminal Sanctions.
- § 5628. Employee Conflict of Interest.

5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW

- § 5629. Employee Disclosure Requirements.
- § 5630. Gratuities and Kickbacks.
- § 5631. Prohibition Against Contingent Fees.
- § 5632. Restrictions on Employment of Present and Former Employees.
- § 5633. Use of Confidential Information.

§ 5625. Statement of Policy.

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 Chapter, it is essential that those doing business with the Territory also observe the ethical standards prescribed herein.

SOURCE: GC § 6980.1 MPC § 12-201.

§ 5626. 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 a public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in §§ 5628 through 5633 of this Chapter.

(b) General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and §§ 5628 through 5633 of this Chapter is also a breach of ethical standards.

5 CCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW

SOURCE: GC § 6980.1. MPC § 12-201

§ 5627. Criminal Sanctions.

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of Title 9 of the 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.

SOURCE: GC § 6980.3. MPC § 12-203 modified to refer to appropriate portions of Guam law.

§ 5628. 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 Commission.

(c) **Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.** Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from

**5 GCA GOVERNMENT OPERATIONS
CH. 5 GUAM PROCUREMENT LAW**

further participation in the transaction involved. The employee may, at the same time, apply to the Civil Service Commission in accordance with § 5676(c) of this Chapter for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(d) Notice. Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission.

SOURCE: GC § 6980.4. MPC § 12-204 modified.

COMMENT: Modification is to refer employees to the Civil Service Commission for opinions on conflicts of interest, since this Chapter does not create a separate Ethics Commission, but continues the general supervision of employment matters with the Civil Service Commission and gives the Policy Office responsibility for opinions requested by non-employees. Change by Committee on GGO.

§ 5629. 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.

(b) Failure to Disclose Benefit Received. Any 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.

(c) Notice. Notice of this requirement shall be provided in accordance with regulations promulgated by the Civil Service Commission.

SOURCE: GC § 6980.5. MPC § 12-205 modified to reflect participation of Civil Service Commission.

§ 5630. Gratuities and Kickbacks.

(a) Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to

5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW

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.

(b) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of 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 for the award of a subcontract or order.

(c) Contract Clause. The prohibition against gratuities, kickbacks and favors to the Territory prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

(d) Favors to the Territory. For purposes of this Section, a favor is anything, including raffle tickets, of more than de minimis value and whether intended for the personal enjoyment of the receiver or for the department 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 Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.

5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW

SOURCE: GC § 6980.6. MPC § 12-206. Subsection (c) amended by P.L. 18-044:16 (Nov. 14, 1986). Subsection (d) added by P.L. 18-044:15 (Nov. 14, 1986).

§ 5631. Prohibition Against Contingent Fees.

(a) **Contingent Fees.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial 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.

(b) **Representation of Contractor.** Every person, before being awarded a territorial contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (a) of this Section. Failure to do so constitutes a breach of ethical standards.

(c) **Contract Clause.** The representation prescribed in Subsection (b) of this Section shall be conspicuously set forth in every contract and solicitation therefor.

SOURCE: GC § 6980.7. MPC § 13-207.

§ 5632. Restrictions on Employment of Present and Former Employees.

(a) **Contemporaneous Employment Prohibited.** Except as may be permitted by regulations pursuant to this Chapter or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to this Chapter, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission.

(b) **Restrictions on Former Employees in Matters Connected with Their Former Duties.**

(1) **Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.** It shall be a

**5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW**

breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- (A) judicial or other proceeding, application, request for a ruling, or other determination;
- (B) contract;
- (C) claim; or
- (D) charge or controversy;

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the Territory is a party or has a direct and substantial interest.

(2) One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- (A) judicial or other proceeding, application, request for a ruling or other determination;
- (B) contract;
- (C) claim; or
- (D) charge or controversy, in matters which were within the former employee's official responsibility, where the Territory is a party or has a direct or substantial interest.

(c) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

5 GCA GOVERNMENT OPERATIONS
CH. 5 GUAM PROCUREMENT LAW

(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 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 employee's official responsibility, where the Territory is a party or has a direct and substantial interest.

(d) **Selling to the Territory After Termination of Employment is Prohibited.** It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed Twelve Thousand Dollars (\$12,000.00), to engage in selling or attempting to sell supplies, services other than personal services, or construction to the Territory for ninety (90) days following the date employment ceased.

The term sell as used herein 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 therefor is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this Territory, nor shall a former employee be precluded from serving as a consultant to this Territory.

SOURCE: GC § 6930.8. MPC § 12-203 with salary amount added locally.

2012 NOTE: In maintaining the general codification scheme of the GCA the Compiler changed the hierarchy of subsections beginning with "Lowercase Roman Numerals" to "Uppercase Letters" in subsections

5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW

(b)(1)-(3).

§ 5633. Use of Confidential Information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

SOURCE: GC § 6980.9. MPC § 12-209.

SUBARTICLE C
REMEDIES

§ 5650. Civil & Administrative Remedies Against Employees

Who Breach Ethical Standards.

§ 5651. Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.

§ 5652. Recovery of Value Transferred or Received in Breach of Ethical Standards.

§ 5650. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.

(a) Existing Remedies Not Impaired. Civil and administrative remedies against employees which are in existence on the effective date of this Chapter shall not be impaired.

(b) Supplemental Remedies. 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 government 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;

5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW

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.

(c) Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of the ethical standards of this Chapter or regulations promulgated hereunder shall be recoverable by the Territory as provided in § 5652 of this Chapter.

(d) Due Process. All procedures under this Section shall be in accordance with existing law and regulations regarding adverse actions and employee discipline promulgated pursuant to Title 4 Guam Code Annotated.

SOURCE: GC § 6981. MPC § 12-301 modified.

COMMENT: Since Guam has an established Civil Service Commission strengthened by P.L. 16-23, this system is continued. Just as the Civil Service Commission is not intended to be the body making actual decisions as to an employee's discipline, so this Section gives the CSC the power to require the appointing authority to take certain action, conforming to the appointing authority's powers in other matters dealing with employees. Since, under existing law, an employee can appeal such a decision, the CSC is authorized to hear the appeal, but with members, either permanent or temporary, who did not participate in the original decision. There is no constitutional problem with having the staff of the Commission present the case to both the first Commission hearing (where it makes the binding recommendation) and to the second where the appeal is heard. Change by Committee on GGO.

§ 5651. Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.

(a) Existing Remedies Not Impaired. Civil and administrative remedies against non-employees which are in existence on the effective date of this Chapter shall not be impaired.

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this Chapter or regulations promulgated hereunder, the Procurement Policy Office, in connection with non-employees, may impose any one or more of the following:

**5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW**

- (1) written warnings or reprimands;
- (2) termination of transactions; and
- (3) debarment or suspension from being a contractor or subcontractor under territorial contracts.

(c) Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards. 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 Territory as provided in § 5652 of this Chapter.

(d) Right of the Territory to Debar or Suspend. Debarment or suspension may be imposed by the Procurement Policy Office in accordance with the procedures set forth in § 5426 of this Chapter for breach of the ethical standards of this Chapter, provided that such action may not be taken without the concurrence of the Attorney General.

(e) Due Process. All procedures under this Section shall be in accordance with the Administrative Adjudication Law.

SOURCE: GC § 6981.1 MPC § 12-302 modified.

COMMENT: The modifications are that (a) the Policy Office acts as the Ethics Commission with respect to non-employees, in order to avoid the creation of yet another commission and (b) that procedures are to be under the Administrative Adjudication Law rather than some undefined and variable "due process" requirement. Change by Committee on GGO.

§ 5652. Recovery of Value Transferred or Received in Breach of Ethical Standards.

(a) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Chapter or regulations promulgated hereunder by an employee or a non-employee may be recovered from both the employee and non-employee.

(b) Recovery of Kickbacks by the Territory. 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

**5 CCA GOVERNMENT OPERATIONS
CH. 5 GUAM PROCUREMENT LAW**

the price of the subcontract or order and ultimately borne by the Territory 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.

SOURCE: GC § 6981.1 MPC § 13-303.

**SUBARTICLE D
ETHICS ENFORCEMENT**

- § 5675. Ethics: Non-Employees.
- § 5676. Ethics Commission.
- § 5677. Appeal of Decisions.

§ 5675. Ethics: Non-Employees.

In addition to the authority and duties of the Policy Office established under § 5101 of this Chapter, such office 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 employees.

SOURCE: GC § 6981.

COMMENT: In the interests of continuing the employment structure already established and in not creating unnecessary commissions, the Civil Service Commission has jurisdiction over ethics violations by employees and the Policy Office has jurisdiction over non-employees. Change by Committee on GGO.

§ 5676. Ethics Commission.

(a) **Regulations.** The Civil Service Commission shall promulgate regulations to implement this Chapter with regard to employees. The Procurement Policy Office shall promulgate regulations to implement this Chapter with regard to non-employees, contractors and subcontractors and the Procurement Policy Office shall do so in accordance with the applicable provisions of the Administrative Adjudication Law of this Territory.

5 GCA GOVERNMENT OPERATIONS
Ch. 5 GCA PRODUCTION LAW

(b) **Advisory Opinions.** On written request of 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 Policy Office 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 Territory are published. Compliance with requirements of a duly promulgated advisory opinion of the Civil Service Commission or Policy Office shall be deemed to constitute compliance with the ethical standards of this Chapter.

(c) **Waiver.** On written request of an employee, the Civil Service Commission may grant an employee, or the Policy Office may grant a contractor, a written waiver from the application of § 5628 of this Chapter 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 Territory so require or when the ethical conflict is insubstantial or remote.

SOURCE: GC § 69821. MPC § 12-401 modified.

COMMENT: Modification changes the reference to the applicable bodies responsible for the decisions. Change by Committee on GGO.

§ 5677. Appeal of Decisions.

(a) **General.** Except as provided under Subsections (b) and (c) of this Section, a decision of the Policy Office under § 5481 of this Chapter 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.

(b) **Debarment or Suspension.** A decision of the Policy Office regarding debarment or suspension under 5481(b) of this Chapter shall be reviewable as provided in 5481(b) of this Chapter.

(c) An appeal from the decision of the Civil Service Commission under § 5650 of this Chapter shall be taken before

**5 GCA GOVERNMENT OPERATIONS
Ch. 5 GUAM PROCUREMENT LAW**

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 Guam Code Annotated.

SOURCE: GC § 6981.2 MPC § 12-402 modified.

COMMENT: Modification reflects the split in Ethics Commission responsibilities between the Policy Office and Civil Service Commission. Change by Committee on GGO.

**ARTICLE 12
PROCUREMENT APPEALS**

SOURCE: The entire Article 12, Procurement Appeals Board, was added as § 6983, et seq. of the Government Code by P.L. 18-044, effective on January 4, 1987. Amended by P.L. 16-90-2 and 3. Entire Article was repealed and reenacted by P.L. 18-064:IV-65 (Sept. 30, 2005) replacing the Procurement Appeals Board with the Public Auditor.

- § 5701. Rules of Procedure.
- § 5702. Decisions of the Public Auditor.
- § 5703. Jurisdiction of the Public Auditor.
- § 5704. Standard of Review.
- § 5705. Suspension or Disbarment Proceedings.
- § 5706. Contract and Breach of Contract Controversies.
- § 5707. Appeals and Review of Public Auditor Decisions.
- § 5708. Discontinuance of Contractor' Appeal.
- § 5709. Transfer of Authority.

§ 5701. Rules of Procedure.

(a) The Public Auditor shall adopt rules of procedure, which, to the fullest extent possible, will provide for the expeditious resolution of controversies in accordance with the requirements of this Chapter.

(b) The Public Auditor shall have the authority to appoint a hearing officer, who shall take written, oral or otherwise

APPENDIX B

B-1 Financial Disclosure Statement

B-2 Affidavit Re Non Collusion

B-3 Affidavit Re Gratuities or Kickbacks

B-4 Affidavit Re Ethical Standards

B-5 Evaluator Affirmations and Disclosures

Appendix B-1

FINANCIAL DISCLOSURE STATEMENT

For the Calendar Year ended _____

Instructions:

1. In accordance with SOP 200-047, all GDOE Board, Management (Superintendent, Deputies), employees of the Procurement Office, as well as Administrators or Program Coordinators regularly involved in procurement of goods and contracts must fill out a Financial Disclosure Statement annually file a statement of financial disclosure if any of the items below are applicable. Employees shall report items they received from January 1st through December 31st of the previous year.
2. This Financial Disclosure Statement is due annually to the Supply Management Office no later than the 31st day of January following the reporting year. Answer each item below and indicate "none" where appropriate.
3. Did you or any member of your immediate family (i.e. spouse, children, parents, siblings, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law, stepsiblings, stepchildren and stepparents) conduct business, in any capacity for or with the GDOE, other than employment with GDOE?

Yes No. If yes, please describe below:

4. Provide answers to the following:

- a. List the names of sources of any gifts in excess of two hundred dollars (\$200.00), either individually or in aggregate, received as a result of employment with the GDOE, from anyone pursuing business with the government (exclude gifts from members of your immediate family) during the calendar year noted above. If none, please indicate "none".

- b. List all tickets to sporting, recreational, educational or cultural events, lodging, parking privileges, and travel expenses received from any public entity, business, or individual doing business with the GDOE (exclude gifts from members of your immediate family) during the calendar year noted above. If none, please indicate "none".

Financial Disclosure Statement

Note: Additional listings for either 4(a) or 4(b) may be attached on a separate sheet. All attachments must clearly identify the financial disclosure statement heading as outlined above. Each page should include the name of the reporting individual, the date of the report, and the page number.

Each employee is provided a copy of SOP 200-047, 4 G.C.A. Chapter 15, Articles 1, 2 and 3 and hereby acknowledges he or she has read and understood the Standard of Conduct for Elected Officers, Appointed Officers, and Public Employees of the Government of Guam.

I attest that the information contained herein is true, complete and correct, to the best of my knowledge.

Signature	
Name	
Title	
Date	

Appendix B-2

AFFIDAVIT RE NON-COLLUSION

CITY OF _____)
ISLAND OF GUAM)
SS.)

[state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company]

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other offeror or person, to put in a sham proposal or to restrain from making an offer. The offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of offeror or of any other offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other offeror, or to secure any advantages against the government of Guam or any other offeror, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126(b).
3. I make this statement on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:

Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this ____ day of _____, 20 ____.

NOTARY PUBLIC
My commission expires _____.

Appendix B-3

AFFIDAVIT RE GRATUITIES OR KICKBACKS

CITY OF _____)
ISLAND OF GUAM) SS.
)

first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [state name of offeror company]. Affiant is _____ [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal.
2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAK Division 4 § 11107(c). Further, affiant promises, on behalf of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(c).
3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the offeror's proposal.
4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:

Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation

Subscribed and sworn to before me

this _____ day of _____, 20 ____.

NOTARY PUBLIC

My commission expires _____.

Appendix B-4

AFFIDAVIT RE ETHICAL STANDARDS

CITY OF _____)
ISLAND OF GUAM)
SS.)

[State Name of witness signing below], being first
duly sworn, deposes and says that:

The affiant is _____ [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees of offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GCR Division 4 § 11103(b).

Signature of one of the following:

Offeror. if the offeror is an individual;
Partner. if the offeror is a partnership;
Officer. if the offeror is a corporation.

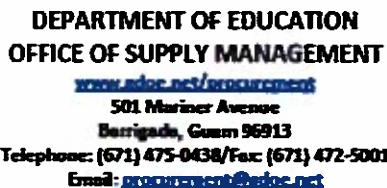
Subscribed and sworn to before me
this _____ day of _____, 20____.

NOTARY PUBLIC
My commission expires

Appendix B-5



JON J. FERNANDEZ
Superintendent of Education



The seal of the Department of Education is circular. It features a graduation cap at the bottom, a palm tree on the left, and a building on the right. The words "DEPARTMENT OF EDUCATION" are written around the bottom of the circle.

EVALUATOR AFFIRMATIONS AND DISCLOSURES

I, _____, an evaluator of the following project:

Project Name: _____

RFP Number: _____

I note the following proposals have been submitted:

I make the following affirmations:

1. I or members of my immediate family do not have any financial interests in the companies listed above.
2. I or members of my immediate family have not received any gratuities, kickbacks, favors, or gifts from any of the companies listed above.
3. I or members of my immediate family are not an employees or principals of any of the companies listed above.
4. I or members of my immediate family are not negotiating with the companies listed above to become an employee or principal.
5. I have not provided any information of a confidential nature related to this procurement to the companies listed above.
6. I or members of my immediate family have not colluded, conspired, connived or agreed, directly or indirectly to put in a sham proposal or conspired in any manner, directly or indirectly, sought by an

Evaluator Affirmations & Disclosures

Page 2 of 2

agreement or collusion, or communication or conference, to profit or to secure any advantage against the Government of Guam in the proposed contract.

7. I further affirm that all information related to this evaluation shall be kept confidential until such time that the Guam Department of Education has determined to publicly announce the results.

I certify that to the best of my knowledge that the aforementioned statements are true and correct except for the items listed below. It is understood that any willful misrepresentation or fraud are subject to applicable penalties.

Exceptions / Disclosures:

Signature of Evaluator

Date