



Paul Coverdell Forensic Sciences Improvement Grant Program



*FY 2007 Grant Application
Program Narrative*

Attachment 1

Paul Coverdell Forensic Science Improvement Grant Program

Proposal Abstract

Annually, the Forensic Science Division receives an average of 2076 forensic cases, takes an average of 21,015 pieces of photographic forensic evidence, lifts an average of 9057 latent prints, confiscates an average of 442 drug cases, analyzes an average of 63 drug cases, receives an average of 22 serological forensic cases, and receives an average of 19 firearms forensic cases. Due to current staffing levels and the lack of technology information system, the Forensic Science Division is only receiving forensic cases going to court and forensic cases with active leads. Confiscated evidence pending forensic analysis is being maintained in the Evidential Control Section.

Technology factors that limit the ability to provide quality and timely evidence processing include the following: no forensic laboratory information management system, low resolution (pixel count) digital camera, aged and obsolete automated fingerprint identification system (15 years old), aged fourier transform infrared spectrometer (13 years old), and aged gas chromatography flame ionization detector/mass spectrum detector (9 years old). These detrimental factors lead to excessive evidence processing time. Funding under this grant will be used to implement a forensic laboratory management information system.

The lack of a forensic laboratory management information system hinders the examiners' and criminalists' ability in processing the forensic cases in a timely manner. A great deal of the examiners' and criminalists' time is spent manually logging the crime scene reports and evidence in the various log books, preparing the multiple written reports from the submission of evidence to the delivery of results to the requesting agency, and calculating and compiling statistical data..

The Forensic Science Division needs to streamline the tracking of completed or pending crime scene reports, documentation and tracking of evidence submitted for processing, and the management evidence pending analysis that is housed in the evidential control section in order for the forensic laboratory division to improve the timeliness and quality of the forensic services provided.

The program evaluation criteria will consist of the successful implementation of a forensic laboratory information management system; improvement in maintaining the evidence chain of custody; improvement in the reporting; and improvement in the compilation of data. The program outcomes and effectiveness of the project will be based on the efficiencies that the Forensic Science Division will experience with the implementation of the forensic laboratory information management system funded in part by this grant. The anticipated outcomes of this program are the following:

- Reduction in the delay in getting the evidence into the laboratory for analysis and reporting of results to the requesting agency;
- Reduction of backlog case evidence by at least 50%; and
- Increased forensic quality of processed case evidence.

The implementation of the forensic laboratory information management system will increase the effectiveness and efficiencies of the Guam Police Department Forensic Science Division operations.

Program Narrative

Guam's government system is unique because there is only one level of Government. The Guam Police Department is the primary law enforcement agency with responsibility for Guam. The jurisdictional area is comprised of 154,805 citizens spread over a service area of 212 square miles. The department accomplishes its mission with a staff of 290 sworn officers and 22 non sworn officers and 60 administrative personnel. The department reports an average of 4,726 (5 year average beginning with 2001 to 2005) instances of major crime each year as reported in the 2005 Uniform Crime Report. The major crimes include murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. The Guam Police Department Forensic Science Division receives an average of 2,076 forensic cases per year that cumulate in over 10,000 pieces of evidence to be processed annually.

Guam Police Department Uniform Crime Report 2001 – 2005						
Offenses	2001	2002	2003	2004	2005	Average
Murder	8	2	8	9	7	7
Rape	166	172	219	161	151	174
Robbery	71	75	60	104	105	83
Aggravated Assault	289	222	207	190	125	207
Burglary	996	913	1126	1292	1468	1159
Larceny-theft	3329	2391	2459	3053	2851	2817
Motor Vehicle theft	255	221	231	311	315	267
Arson	20	8	8	16	17	14
Total	5134	4004	4318	5136	5039	4726

The Guam Police Department Forensic Science Division (Forensic Science Division) is the only U.S. Forensic Laboratory in the Western Pacific region. In addition to providing forensic services for Guam, it provides forensic services to local and federal law enforcement entities in Guam, the Commonwealth of the Northern Mariana Islands, and throughout Micronesia. The Forensic Science Division consists of two distinct sections: Crime Scene Response Section and Forensic Science Section. The former provides services in the area of

crime scene field investigation, photo lab, and latent print/fingerprint analysis, while the latter conducts analyses of drugs, serological, and firearms and tool mark evidence.

The Forensic Science Division has eighteen (18) full time personnel. The staff consist of the following: 1 Division Chief (Police Major), 1 Operations Chief (Police Lieutenant), 1 Crime Scene Response Supervisor (Police Sergeant), 2 Criminalist I (Civilians), 3 Criminalist III (Civilians), 1 Firearms Examiner (1 PO III), 1 Photo Lab (PO III), 2 Finger Print Examiner (PO III and Civilian), 5 Crime Scene Response (POI, 2 POII, and 2 POIII), and 1 Secretary III (civilian). Of the eighteen (18) full time personnel, there are four (4) qualifying full time scientists. At this time, the Forensic Science Division does not perform the following analyses: DNA analyses, complete toxicology, hair and fiber, gun shot residue, questioned document, paint and polymers, soil, mineral and glass, and arson and explosives. This evidence is collected and sent off-island to the FBI laboratory for analyses.

Problem Statement

Annually, the Forensic Science Division receives an average of 2076 forensic cases, takes an average of 21,015 pieces of photographic forensic evidence, lifts an average of 9057 latent prints, confiscates an average of 442 drug cases, analyzes an average of 63 drug cases, receives an average of 22 serological forensic cases, and receives an average of 19 firearms forensic cases. Due to current staffing levels and the lack of technology information system, the Forensic Science Division is only receiving forensic cases going to court and forensic cases with active leads. Confiscated evidence pending forensic analysis is being maintained in the Evidential Control Section.

Technology factors that limit the ability to provide quality and timely evidence processing include the following: no forensic laboratory information management system, low

resolution (pixel count) digital camera, aged and obsolete automated fingerprint identification system (15 years old), aged fourier transform infrared spectrometer (13 years old), and aged gas chromatography flame ionization detector/mass spectrum detector (9 years old). These detrimental factors lead to excessive evidence processing time. Funding under this grant will be used to implement a forensic laboratory management information system.

The lack of a forensic laboratory management information system hinders the examiners' and criminalists' ability in processing the forensic cases in a timely manner. A great deal of the examiners' and criminalists' time is spent manually logging the crime scene reports and evidence in the various log books, preparing the multiple written reports from submission to the delivery to the requesting agency. The Forensic Science Division needs to streamline the preparation and delivery of forensic reports, documentation and tracking of evidence submitted for processing and analysis, and the management of evidence pending analysis that is housed in the evidential control section in order for the forensic laboratory division to improve the timeliness and quality of the forensic services provided.

Forensic Science Division Crime Scene Response Section										
Year	Crime Scene Investigation			Photo Lab			Latent/Fingerprint Analysis			
	Forensic Cases Investigated	Forensic Cases Completed	Forensic Cases Backlog	Forensic Evidence Taken	Forensic Evidence Printed and Delivered	Forensic Evidence Backlog	Latent Prints Lifted	Latent Prints of Value	Manual Matches	Latent Prints Backlog
2004	1905	67	1838	16131	3648	12483	7644	644	14	630
2005	2137	61	2076	21091	2411	18680	9812	754	18	736
2006	2187	115	2072	25824	2611	23213	9714	694	14	680
Average Total	2076	81	1995	21015	2890	18125	9057	697	15	682
Average turn around time to process and deliver forensic evidence to the requesting agency is 5 to 6 days.										

Forensic Science Division Forensic Science Section										
Drug Analysis					Serological			Firearms and Tool Mark Analysis		
Year	Drug Cases Confiscated	Drug Cases Received	Drug Cases Analyzed	Drug Cases Backlog	Forensic Cases Received (a)	Forensic Cases Analyzed (b)	Forensic Cases Backlog (c)	Forensic Cases Received (a)	Forensic Cases Analyzed	Forensic Cases Backlog
2004		84	55	29	21	14	1	17	17	0
2005	474	70	46	498	20	12	1	26	24	2
2006	410	44	88	366	26	21	2	13	10	3
Average Total	442	57	67	432	22	16	1	19	17	2
<i>Backlog drug cases calculated based on Drug Cases Confiscated less Drug Cases Analyzed</i> Turn around time: Submission to lab to analysis: 1-2 days, 2 weeks for multiple case submissions Confiscation to Analysis: 2 years (Average) Desired turn around time: Confiscation to Analysis: 3 - 7 days					(a) Only includes cases going to court and cases active leads for investigation. Due to a reduction in manpower, only forensic evidence that is going to court is being processed at this time. Evidential Control Section maintains those forensic cases that have not been processed. (b) 2004 and 2005 includes FBI analyzed cases. (c) Cases in which only blood reference samples are submitted do not require analysis and are not considered backlog.					

Purpose of the Program

The purpose of this program is to enhance the Forensic Science Division's ability to improve the quality and timeliness of forensic science services in reducing the lag time in getting the evidence into the laboratory for analysis; in maintaining the evidence property chain of custody; in the ease of reporting; in the monitoring of case assignments and dispositions; in the compilation of statistics; and in the inventory of equipment and supplies. The funding made available under this program will enable the Forensic Science Division to implement a forensic laboratory management information system. The technology system will improve the quality and timeliness of the forensic services provided by the Forensic Science Division in reducing the examiners' and criminalists' time spent preparing the written findings on the reports; reducing current forensic case backlog by at least twenty percent; decreasing forensic evidence processing time by fifty percent; and increasing the quality of processed forensic evidence.

Program Goal and Objective

The goal of this program is to implement a Forensic Laboratory Information Management System that will enable the Forensic Science Division to improve the quality and timeliness of its evidence management.

The objective of this program is to improve the quality and timeliness of forensic services in getting the evidence into the laboratory for analysis and in the delivery of results to the requesting agency in a timely manner. The forensic laboratory information management system will be used to improve the Forensic Science Division's efficiency and operation in managing, analyzing, and tracking the evidence that enters the laboratory.

Program Implementation Plan

Upon the establishment and receipt of the grant award, the Guam Police Department's Forensic Science Division, Special Programs Section, and the Guam Police Department Management Information System Section will collaborate to purchase the forensic laboratory information management system. The Forensic Science Division will coordinate with the Guam Police Department Management Information System Section and the Government of Guam's Bureau of Information Technology to determine on the specification for the forensic laboratory information management system to be purchased. The Special Programs Section will prepare the request for proposal and bid advertisement. A group represented by the Forensic Science Division, Special Programs, and the Management Information System Section will be formed to review and evaluate the proposals, rate the proposals, and recommend a vendor with the highest ratings. Special Programs will prepare the requisition and submit it to the Department of Administration for purchase of the equipment and to ensure receipt of the application and equipment.

A combination of funding source (FY 2007 Justice Assistance Grant and FY 2006 COPS Technology Grant) along with the FY 2007 Coverdell has been identified and committed to ensure there is sufficient funding to implement the forensic laboratory information management system prior to the end of Fiscal Year 2008 (October 1, 2007 to September 30, 2008).

The following timeline is submitted to represent the proposed implementation of program activities. Actual realized implementation may vary slightly due to the establishment of the account and the additional time required in the competitive bidding process.

Program Implementation Timeline

Month 1	The Guam Police Department’s Forensic Science Division, Special Programs and MIS will coordinate for the identification of a forensic laboratory management information system.
Month 2-3	The Guam Police Department’s Forensic Science Division, Special Programs, Guam Police Department Management Information System Section, and the Bureau of Information Technology will coordinate and collaborate to prepare the specification for the forensic laboratory management information system to include software licenses, hardware, installation, and training. Upon the approved and completed specification, the Guam Police Department Forensic Science Division and Special Programs will prepare the Request for Proposal for the forensic laboratory management information system. Special Programs will prepare and submit the bid advertisement for the forensic laboratory management information system.
Month 4	Request for proposal announcement.

Month 5	Review and rating of proposals submitted for the forensic laboratory management information system.
Month 6	The Bid is awarded. The Guam Police Department will coordinate with the vendor on the purchase of the forensic laboratory management information system.
Month 7-10	The Guam Police Department will prepare for the delivery and installation of the forensic laboratory management information system.
Month 11	Forensic laboratory management information system and hardware is installed.
Month 12	User training conducted on the forensic laboratory management information system.

Evaluation Plan, Outcomes, and Effectiveness of the Program

The program evaluation criteria will consist of the following:

- Implementation of a forensic laboratory information management system;
- Improvement in maintaining the evidence chain of custody;
- Improvement in the reporting; and
- Improvement in the compilation of data.

The program outcomes and effectiveness of the project will be based on the efficiencies that the Forensic Science Division will experience with the implementation of the forensic laboratory information management system funded in part by this grant. The anticipated outcomes of this program are the following:

- Reduction in the delay in getting the evidence into the laboratory for analysis and reporting of results to the requesting agency;
- Reduction of backlog case evidence processing of a least 50%; and
- Increased forensic quality of processed case evidence.

The implementation of the forensic laboratory information management system will increase the effectiveness and efficiencies of the Guam Police Department Forensic Science Division operations.

Performance Measures

To assist in fulfilling the State Administrative Agency’s responsibilities under the Government Performance and Results Act (GPRA), Public Law 103-62, the Guam Police Department’s Forensic Science Division will provide and report data that measures the results of the program. The Performance Measures are as follows:

Objective	Performance Measures	Data Grantee Provides
To improve the quality and timeliness of forensic services and to reduce the number of backlogged cases in forensic laboratories.	<p><i>Outcome Measure</i></p> <p>Reduction in the average number of days from sample submission to a forensic science laboratory and delivery of test results to a requesting office or agency.</p> <p><i>Output Measures</i></p> <p>The number of backlogged</p>	<p>Average number of days to process a sample at the beginning of the grant period.</p> <p>Average number of days to process a sample at the end of the grant period.</p> <p>Number of backlogged cases at the beginning of the grant period.</p>

Objective	Performance Measures	Data Grantee Provides
	<p>forensic cases analyzed with FY 2007 Coverdell funds (if applicable to the grant).</p> <p>The number of forensic science or medical examiner personnel who completed appropriate training or education opportunities with Coverdell funds (if applicable to the grant).</p>	<p>Number of backlogged cases at the end of the grant period.</p> <p>Number of forensic science personnel attending training.</p> <p>Number of medical examiner personnel attending training programs.</p>

Attachment No. 2

FY 2007 Paul Coverdell Forensic Science Improvement Grant Program

Budget Narrative

State Administrative Agency Cost

Supplies

Office Supplies and Computer Supplies The State Administrative Agency will use the administrative cost to purchase the necessary office supplies to be used towards the general administration of the program.

Other Costs

Copier Machine Lease The State Administrative Agency will use the administrative cost to cover the copier machine lease for five months that is used towards the general administration of the program.

Internet Service Provider T1 Line Lease The State Administrative Agency will use the administrative cost to cover the Internet Service Provider Line Lease for five months that is used towards the general administration of the program.

Subrecipient Cost

Contractual

Forensic Laboratory Information Management Information Systems (FLIMS). The FLIMS is a software that is used in the laboratory for the management of forensic samples, laboratory users, instruments, standards and other laboratory functions. The FLIMS will improve the timeliness and quality of the Forensic Science Divisions forensic services.

The funding will be used to cover the cost for the application and licenses.

Attachment No. 3

FY 2007 Paul Coverdell Forensic Science Improvement Grant Program

Base Funds Budget Detail Worksheet and Budget Summary

A. Personnel --List each position by title and name of employee, if available. Show the annual salary rate and the percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization.
<i>Not Applicable (N/A)</i>
TOTAL PERSONNEL \$0

B. Fringe Benefits --Fringe benefits should be based on actual known costs or an established formula. Fringe benefits are for the personnel listed category (A) and only for the percentage of time devoted to the project. Fringe benefits on overtime hours are limited to FICA, Workman's Compensation, and Unemployment Compensation.
<i>Not Applicable (N/A)</i>
TOTAL FRINGE BENEFITS \$0

C. Travel -- Itemize travel expenses of project personnel by purpose (e.g., staff to training, field interviews, advisory group meetings, etc. Show the basis of computation (e.g., six people 3-day training at \$X airfare, \$X lodging, \$X subsistence). In training projects travel and meals for trainees should be listed separately. Show the number of trainees and unit cost involved. Identify the location of travel, if known. Indicate source of Travel Policies applied, Applicant or Federal Travel Regulations.												
<table border="1"><thead><tr><th><u>Purpose of Travel</u></th><th><u>Item</u></th><th><u>Computation</u></th><th><u>Cost</u></th></tr></thead><tbody><tr><td colspan="4"><i>Not Applicable (N/A)</i></td></tr><tr><td colspan="3" style="text-align: right;">TOTAL SUPPLIES</td><td>\$0</td></tr></tbody></table>	<u>Purpose of Travel</u>	<u>Item</u>	<u>Computation</u>	<u>Cost</u>	<i>Not Applicable (N/A)</i>				TOTAL SUPPLIES			\$0
<u>Purpose of Travel</u>	<u>Item</u>	<u>Computation</u>	<u>Cost</u>									
<i>Not Applicable (N/A)</i>												
TOTAL SUPPLIES			\$0									

D. Equipment-- List non-expendable items that are to be purchased. (Note: Organization's own capitalization policy for classification of equipment should be used. Expendable items should be included in the "Supplies" category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technical advances. Rented or leased equipment costs should be listed in the "Contractual" category. Explain how the equipment is necessary for the success of the project. Attach a narrative describing the procurement method to be used.

<u>Item</u>	<u>Computation</u>	<u>Cost</u>
TOTAL EQUIPMENT		\$0

E.-Supplies--List items by type (office supplies, postage, training materials, copying paper, and other expendable items such as books, hand held tape recorders) and show the basis for computation. Generally, supplies include any materials that are expendable or consumed during the course of the project.

<u>Item</u>	<u>Computation</u>	<u>Cost</u>
Office supplies to include pens, copier paper, correction fluid, binders, sheet protectors, folders, and other related office supplies; and Computer supplies to include toner cartridge, flash drive, antivirus software renewal and adobe pdf maker upgrade and other related computer supplies (Administrative Cost)	\$317 per month x 12 months	\$3,804
TOTAL SUPPLIES		\$3,804

F. Construction-- As a rule, construction costs are not allowable. In some cases, minor repairs or renovations may be allowable. Consult with the program office before budgeting funds in this category.

<u>Purpose</u>	<u>Description of Work</u>	<u>Cost</u>
<i>Not Applicable (N/A)</i>		
TOTAL CONSTRUCTION		\$0

G. Consultants/Contracts-- Indicate whether applicant's formal, written Procurement Policy or the Federal Acquisitions

Consultant Fee: For each consultant enter the name, if known, service to be provided, hourly or daily fee (8-hour day), and estimated time on the project. Consultant fees in excess of \$450 per day require additional justification and prior approval from OJP.

<u>Name of Consultant</u>	<u>Service Provided</u>	<u>Computation</u>	<u>Cost</u>
<i>Not Applicable (N/A)</i>			
Consultant Expenses			
<u>Item</u>	<u>Location</u>	<u>Computation</u>	<u>Cost</u>
<i>Not Applicable (N/A)</i>			
Contracts			
<u>Item</u>			<u>Cost</u>
Forensic Laboratory Information Management System Software and Licenses			\$86,940
<i>Government of Guam Written Procurement Policy under 5 GCA Chapter 5 Article 3</i>			
TOTAL CONSULTANTS/CONTRACTS			\$86,940

H. Other Costs-- List items (e.g., rent, reproduction, telephone, janitorial or security services, and investigative or confidential funds) by major type and the basis of the computation. For example, provide the square footage and the cost per square foot rent, and provide a monthly rental cost and how many months to rent.

Copier Machine Lease for 5 months @ \$703 per month (Administrative Cost)			\$3,515
Internet Service Provider T1 Line Lease 5 months @ \$467 (Administrative Cost)			\$2,335
TOTAL OTHER COSTS			\$5,850

I. Indirect Cost--Indirect costs are allowed only if the applicant has Federally approved indirect cost rate. A copy of the rate approval, (a fully executed, negotiated agreement), must be attached. If the applicant does not have an approved rate, one can be requested by contacting the applicant's cognizant Federal agency, which will review all documentation and approve a rate for the applicant organization, or if the applicant's accounting system permits, costs may be allocated in the direct costs categories.

<i>Not Applicable (N/A)</i>			
TOTAL INDIRECT COST			\$0

TOTAL BASE	\$96,594
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FY 2007 PAUL COVERDELL BASE BUDGET SUMMARY

<u>Budget Category</u>	<u>Amount</u>
A. Personnel	\$0.00
B. Fringe Benefits	\$0.00
C. Travel	\$0.00
D. Equipment	\$0.00
E. Supplies	\$3,804.00
F. Construction	\$0.00
G. Consultants/Contracts	\$86,940.00
H. Other	\$5,850.00
I. Indirect Cost	\$0.00
TOTAL	\$96,594.00

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
NATIONAL INSTITUTE OF JUSTICE

**FY2007 Coverdell Forensic Science Improvement
Grants Program**

Certification as to Plan for Forensic Science Laboratories –
Application from a State

On behalf of the applicant agency named below, I certify the following to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice:

The State has developed a plan for forensic science laboratories under a program intended to improve the quality and timeliness of forensic science or medical examiner services in the State, including such services provided by the laboratories operated by the State and those operated by units of local government within the State.

I have authority to make this certification on behalf of the applicant agency.



for ALBERTO A. LAMORENA V
Printed Name of Certifying Official

ACTING DIRECTOR
Title of Certifying Official

BUREAU OF STATISTICS AND PLANS
Name of Applicant Agency

GUAM
Name of Applicant State

June 15, 2007
Date

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
NATIONAL INSTITUTE OF JUSTICE


**FY2007 Coverdell Forensic Science Improvement
Grants Program**

Certification as to Generally Accepted Laboratory
Practices and Procedures

On behalf of the applicant agency named below, I certify the following to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice:

Any forensic laboratory system, medical examiner's office, or coroner's office in the State, including any laboratory operated by a unit of local government within the State, that will receive any portion of the grant amount uses generally accepted laboratory practices and procedures, established by accrediting organizations or appropriate certifying bodies.

I have authority to make this certification on behalf of the applicant agency.



Signature of Certifying Official

for ALBERTO A. LAMORENA V
Printed Name of Certifying Official

ACTING DIRECTOR
Title of Certifying Official

BUREAU OF STATISTICS AND PLANS
Name of Applicant Agency

GUAM
Name of Applicant State

June 15, 2007
Date

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
NATIONAL INSTITUTE OF JUSTICE

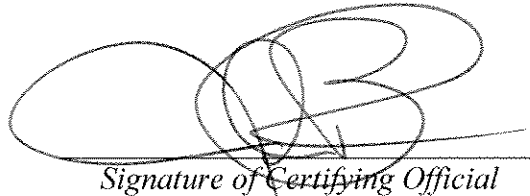
**FY2007 Coverdell Forensic Science Improvement
Grants Program**

Certification as to Use of Funds for New Facilities

On behalf of the applicant agency named below, I certify the following to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice:

The amount of the grant (if any) used for the costs of any new facility or facilities to be constructed as part of a program to improve the quality and timeliness of forensic science and medical examiner services will not exceed the limitations set forth at 42 U.S.C. § 3797m(c) and summarized in the FY 2006 Coverdell Forensic Science Improvement Grants Program Announcement.

I have authority to make this certification on behalf of the applicant agency.



Signature of Certifying Official
for ALBERTO A. LAMORENA V
Printed Name of Certifying Official

ACTING DIRECTOR
Title of Certifying Official

BUREAU OF STATISTICS AND PLANS
Name of Applicant Agency

GUAM
Name of Applicant State

June 15, 2007
Date

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
NATIONAL INSTITUTE OF JUSTICE

**FY2007 Coverdell Forensic Science Improvement
Grants Program**

Certification as to External Investigations

On behalf of the applicant agency named below, I certify the following to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice:

A government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.

I have authority to make this certification on behalf of the applicant agency.



for ALBERTO A. LAMORENA V
Printed Name of Certifying Official

ACTING DIRECTOR
Title of Certifying Official

BUREAU OF STATISTICS AND PLANS
Name of Applicant Agency

GUAM
Name of Applicant State

GUAM POLICE DEPARTMENT INTERNAL AFFAIRS UNIT
Name of Investigating Agency

June 15, 2007
Date

Government of Guam Procurement Method Narrative

Purchase Items

The items to be procured under this grant funded project will be offered to viable authorized suppliers in an open-competitive bid proposal process.

Local Purchasing Guidelines

Title 5 of the Guam Code Annotated Chapter 5 Article requires a competitive bid process for all equipment or contractual services except for situations in which sole source proprietary procurement and emergency procurement is justified due to extenuating circumstances.

PART F
DUTIES OF THE ATTORNEY GENERAL

§ 5150. Duties of the Attorney General.

§ 5150. Duties of the Attorney General.

The Attorney General, the Deputy Attorney General or such Assistant Attorneys General as the Attorney General may designate, shall serve as legal counsel and provide necessary legal services to the Policy Officer and the General Services Agency. The Attorney General shall, in addition, when he approves contracts, determine not only the correctness of their form, but their legality. In making such a determination of legality, he may require any or all agencies involved in the contract to supply him with evidence that the required procedures precedent to executing the contract were carried out. He may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of legality.

ARTICLE 3
SOURCE SELECTION AND CONTRACT FORMATION

- Part A. Definitions.
- Part B. Methods of Source Selection.
- Part C. Cancellation of Invitations for Bids or Requests for Proposals.
- Part D. Qualifications and Duties.
- Part E. Types of Contracts.
- Part F. Inspection of Plant and Audit of Records.
- Part G. Determinations and Reports.

PART A
DEFINITIONS

§ 5201. Definitions.

§ 5201. Definitions.

As used in this Chapter:

5 GCA GOVERNMENT OPERATIONS
CH. 5 GUAM PROCUREMENT LAW

(a) *Cost-Reimbursement Contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Chapter, and a fee, if any.

(b) *Established Catalogue Price* means the price included in a catalogue, price list, schedule or other form that:

(1) is regularly maintained by a manufacturer or contractor;

(2) is either published or otherwise available for inspection by customers; and

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

(c) *Invitation for Bids* means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

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

(e) *Requests for Proposals* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(f) *Responsible Bidder or Officer* means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(g) *Responsive Bidder* means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

SOURCE: GC § 6958. MPC § 3-101.

PART B
METHODS OF SOURCE SELECTION

- § 5210. Methods of Source Selection.
- § 5211. Competitive Sealed Bidding.
- § 5212. Bid Security and Performance Bond Requirement for Contractors.
- § 5213. Small Purchases.

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

- § 5214. Sole Source Procurement.
- § 5215. Emergency Procurement.
- § 5216. Competitive Selection Procedures for Services Specified in § 5121 of this Chapter.
- § 5217. Procurement from Nonprofit Corporations.
- § 5218. Procurement of Products Manufactured from Recycled Glass.
- § 5219. Unsolicited Offers.

§ 5210. Methods of Source Selection.

(a) Unless otherwise authorized by law, all territorial contracts shall be awarded by competitive sealed bidding, pursuant to § 5211 of this Article, except for the procurement of professional services and except as provided in:

- (1) Section 5212 of this Article; [see note below]
- (2) Section 5213 of this Article;
- (3) Section 5214 of this Article;
- (4) Section 5215 of this Article;
- (5) Section 5216 of this Article for services specified in § 5121 of this Chapter; or
- (6) Section 5217 of this Article.

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

SOURCE: GC § 6959. MPC § 3-202 modified. Subsections (a)(4) and (a)(5) amended, and (a)(6) added by P.L. 18-15:X:24.

NOTE: With respect to subsection (a)(1), section 5212 (regarding Competitive Sealed Proposals) was repealed in 1985 by P.L. 18-8:8. However, subsection (a) was not amended to reflect that repeal. In 2004, section 5212 was added as a new completely unrelated law (Bid Security and Performance Bond Requirement for Contractors) by P.L. 27-127:2.

COMMENT: In the past, some problems have arisen due to the requirement for competitive bidding for equipment which should have been, but was not, compatible with existing equipment. The reason alleged was that the lowest bidder had to be chosen. Of course, the proper writing of specifications could have prevented the problem and Subsection (b) makes clear that compatibility may be a legitimate part of the specifications. Changed by Committee on GGO.

§ 5211. Competitive Sealed Bidding.

(a) Conditions for Use. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in § 5210 of this Article.

(b) Invitation for Bids. An Invitation for Bids shall be issued and shall include a purchase description, a recitation of the Wage Determination most recently issued by the U.S. Department of Labor, and all contractual terms and conditions applicable to the procurement including a demonstration of compliance with §§ 5801 & 5802 of this Chapter, if applicable..

(c) Public Notice. Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations promulgated by the Policy Office. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. If a bid is given public notice which is within the time specified in the Policy Office's rules and regulations on the subject, it shall not be challenged unless the bidder can show exceptional circumstances which would render the rules and regulations inapplicable in the case of a particular bid being requested.

(d) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

(e) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Chapter. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

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(f) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulations promulgated by the Policy Office. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Territory or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer, the Director of Public Works or head of a purchasing agency.

(g) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids and whose bid amount is sufficient to comply with Article 13 of this Chapter, if applicable. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than five percent (5%), the Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency, is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(h) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

SOURCE: GC § 6959.1. MPC § 3-202; Subsection (c) modified. Subsection (b) amended by P.L. 28-165:3 (Jan. 4, 2007). Subsection (g) amended by P.L. 28-165:4 (Jan. 4, 2007).

COMMENT: See Official Comments for full commentary. Subsection (c) is modified to make sure that a dissatisfied bidder cannot challenge a bid because of lack of time where the bid is in conformance with the rules and regulations unless there has been some serious and exceptional reason for the challenge, such as where the time for bids was extended and, for some reason, one bidder was not notified. Further modified by P.L. 28-165 (Jan. 4, 2007).

§ 5212. Bid Security and Performance Bond Requirement for Contractors.

(a) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for the procurement of supplies or services when the total price is estimated by the Chief Procurement Officer to exceed Twenty-Five Thousand Dollars (\$25,000.00). Bid security shall be a bond provided by a surety company authorized to do business in Guam, or the equivalent in cash, or otherwise supplied in a form satisfactory to the government of Guam. Nothing herein prevents the requirement of such bonds on the procurement of supplies or services totaling fewer than Twenty-Five Thousand Dollars (\$25,000.00) when a written determination and justification for such requirement is included as an integral part of the Invitation for Bid solicitation package.

(b) Amount of Bid Security. Bid security shall be in an amount equal to fifteen percent (15%) of the total amount bid.

(c) Release of Bid Security. The bid security required above under any applicable Invitation for Bid shall not be released upon award of the bid, but instead shall continue in full force and effect until delivery of the supplies or services required by any contract awarded to contractor under the associated Invitation for Bid is completed.

(d) Action against Bid Security. In the event that a successful bidder fails to complete delivery of supplies or services as required in the contract between such contractor and the government of Guam, the government of Guam may proceed to procure such supplies or services from the next lowest bidder who is able to deliver such supplies or services. The government of Guam may retain so much of the bid security as may be required to compensate the government for damages arising from contractor's failure to complete delivery of such supplies or services, and the government of Guam may also bring an action in the Superior Court of Guam against the contractor for direct damages, if any, beyond the amount of the bid security posted except that no action against bid security maybe taken in such circumstances where supplies or services are terminated due to the government of Guam's failure to pay for such services or supplies on a timely basis.

(e) Rejection of Bids for Noncompliance with Bid Security Requirements. When the Invitation for Bids requires bid security, noncompliance requires that the bid be rejected unless, pursuant to

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Policy Office regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

(f) **Withdrawal of Bids.** After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids, except as provided in §§ 5211(f) of this Chapter. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

(g) **No Requirement for Performance Bond.** The bid security that shall be held until complete delivery of the supplies or services by the successful bidder is deemed to be satisfactory to adequately protect the best interest of the government of Guam, from default, and thus, no separate performance bond shall be required of the successful bidder on a contract for supplies or services.

(h) **Bond Forms.** The Policy Office shall promulgate by regulation the form of the bond or other bid security required by this Section together with any additional regulations necessary for the administration of this Section. Any person may request and obtain from the Government of Guam a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

SOURCE: Added by P.L. 27-127:2.

§ 5213. Small Purchases.

Any procurement not exceeding the amount established by regulation may be made in accordance with small purchase procedures promulgated by the Policy Office, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

SOURCE: GC § 6959.3. MPC § 3-204.

§ 5214. Sole Source Procurement.

A contract may be awarded for a supply, service, or construction item without competition when, under regulations promulgated by the Policy Office, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer above the level of the Procurement Officer determines in writing that

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there is only one source for the required supply, service or construction item.

SOURCE: GC § 6959.4. MPC § 3-205.

§ 5215. Emergency Procurements.

Notwithstanding any other provision of this Chapter, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Policy Office; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances, and further provided that the procurement agent must solicit at least three (3) informal price quotations, if time allows must give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months, and must award the procurement to the firm with the best offer, as determined by evaluating cost and delivery time. No emergency procurement or combination of emergency procurements may be made for an amount of goods or supplies greater than the amount of such goods and supplies which is necessary to meet an emergency for the thirty (30) day period immediately following the procurement. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The requirements for a written determination for the emergency shall be met if the procurements are being made on the basis of the Governor's declaration of an emergency situation by Executive Order if such Order states that emergency procurement may be resorted to for the purposes of the Order. Unless authorized by an Executive Order declaring an emergency, no emergency procurement may be made except on a certificate made under penalty of perjury by the Chief Procurement Officer, Director of Public Works or the head of a purchasing agency, as the case may be. Certified copies of the certificate shall be sent, prior to award and as a condition thereof, to the Governor and Speaker of the Legislature. The certificate shall contain the following:

- (1) a statement of the facts giving rise to the emergency;

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(2) the factual basis of the determination that an emergency procurement is necessary; and

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

In addition to any other requirement, the Governor must approve in writing all authorizations for emergency procurement.

SOURCE: GC § 6959.5. MPC § 3-206. Amended by P.L. 18-44:23.

§ 5216. Competitive Selection Procedures for Services Specified in § 5121 of this Chapter.

(a) Conditions for Use. The services specified in § 5121(a) of this Chapter shall be procured in accordance with this Section, except as authorized under §§ 5214 or 5215 of this Chapter. Services for architecture, engineering, construction, land surveying, environmental assessment and other such services shall be procured in accordance with Article 5 of this Chapter.

(b) Statement of Qualifications. Persons engaged in providing the types of services specified in § 5121(a) of this Chapter may submit statements of qualifications and expressions of interest in providing such types of services. The Procurement Officer may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(c) Public Announcement and Form of Request for Proposals. Adequate notice of the need for such services shall be given by the purchasing agency through a Request for Proposals. The Request for Proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

(d) Discussions. The head of the purchasing agency or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) Award. Award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such

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officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, the negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

SOURCE: GC § 6959.6. MPC § 3-207. Subsection (a) amended by P.L. 18-44:32.

§ 5217. Procurement from Nonprofit Corporations.

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

SOURCE: GC § 6959.7 added by P.L. 18-15:X:25.

§5218. Procurement of Products Manufactured from Recycled Glass.

Each Request for Proposal, Request for Price Quotation, Request for Bid or any other method used for the procurement of services and construction where the project includes concrete or asphalt paving, construction and repair of highways, including all secondary and tertiary roads, shall include the requirement that the individual or company submitting a response to any request for proposal, price quotation, bid or procurement includes the purchase of available recycled glass pulverized on Guam or appropriate products manufactured therefrom. In all contracts for concrete or asphalt paving, construction and repair of highways, including all secondary and tertiary roads, the administrator of the contract shall determine the suitable percentage of recycled glass to be used in the project and, as a condition of the award of the contract, shall require the contractor to identify and certify in writing the percentage of recycled glass contained in the material offered.

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SOURCE: Added by P.L. 24-100:2.

§ 5219. Unsolicited Offers.

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

(b) Processing of Unsolicited Offers. The Chief Procurement Officer, the Director of Public Works or the head of the Purchasing Agency shall consider the offer as provided in this Section. *If* an agency that receives an unsolicited offer is *not* authorized to solicit or enter into a contract for the supplies, services or construction offered, the head of such agency shall forward the offer to the Chief Procurement Officer, the Director of Public Works or the head of a Purchasing Agency, who shall consider and evaluate the offer as provided in this Section.

(c) Conditions for Consideration. To be considered for evaluation, an unsolicited offer:

(1) must be in writing;

(2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to Guam and to the government;

(3) must be unique or innovative to Guam's and the government's use; *and*

(4) may be subject to testing under terms and conditions specified by the government.

(d) Evaluation. The unsolicited offer shall be evaluated to determine its utility to Guam and to the government, and whether it would be to Guam's and the government's advantage to procure such service.

(e) Competitive Sealed Bidding Required. All unsolicited offers considered as being desirable shall be subjected to the Competitive Sealed Bidding process under § 5211. Notwithstanding any other provision of law, sole source procurement shall *not* be permissible in any procurement arising from an unsolicited offer. The criteria set forth in the Invitation for Bids shall *not* require the inclusion of any proprietary item proposed in the unsolicited offer, and the proprietary character of an unsolicited offer or the inclusion of a proprietary item in the unsolicited offer shall *not* be used to favor the offer or any other bid, nor be a determining factor in awarding a bid. Such Invitation for Bids shall *not* contain any reference to the financial offer of the unsolicited offeror, but shall contain a sufficient technical

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description to allow other parties to identify the technical concept of the offer, and to prepare bids.

SOURCE: Added by P.L. 25:31:2 as § 1518; renumbered by Compiler.

**PART C
CANCELLATION OF INVITATIONS FOR BIDS OR
REQUESTS FOR PROPOSALS**

§ 5225. Cancellation of Invitations for Bids or Requests for Proposals.

§ 5225. Cancellation of Invitations for Bids or Requests for Proposals.

An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Territory in accordance with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the contract file.

SOURCE: GC § 6960. MPC § 3-301.

**PART D
QUALIFICATIONS AND DUTIES**

§ 5230. Responsibility of Bidders and Offerors.

§ 5231. Prequalification of Suppliers.

§ 5232. Cost or Pricing Data.

§ 5233. Disclosure of Major Shareholders.

§ 5230. Responsibility of Bidders and Offerors.

(a) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Policy Office. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

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(b) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the General Services Agency, the Department of Public Works or the purchasing agency without prior written consent by the bidder or offeror, but may be disclosed to the Attorney General at any time.

SOURCE: GC § 6961. MPC § 3-401 modified.

COMMENT: Subsection (b) is modified to make it clear that the Attorney General, as counsel to the government in general and to the GSA in particular, may review all data. In the past some have argued that confidential information protected in a manner of the original MPC (not mentioning the Attorney General) was not to be revealed to the Attorney General even when the agency was requesting a legal opinion on that same information.

§ 5231. Prequalification of Suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

SOURCE: GC § 6961.1. MPC § 3-402.

§ 5232. Cost or Pricing Data.

(a) Contractor Certification. A contractor shall, except as provided in Subsection (c) of this Section, submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(1) the pricing of any contract awarded pursuant to the sole source procurement authority (§ 5214) where the total contract price is expected to exceed an amount established by Policy Office regulations; or

(2) the pricing of any change order or contract modification which is expected to exceed an amount established by Policy Office regulations.

(b) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the Territory, including profit or fee, shall be adjusted to exclude any significant sums by which the Territory finds that such price was increased because the contractor- furnished cost or pricing data was inaccurate, incomplete or not current as of the date

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agreed upon between the parties. The price shall also be adjusted to reflect the non-payment by the contractor of any taxes which would have been paid by him were it not for the exclusion provided by 11 GCA § 26203(k)(14) (Gross Receipts Tax).

(c) Cost or Pricing Data Not Required. The requirements of this Section need not be applied to contracts:

- (1) where the contract is based on adequate price competition;
- (2) where the contract price is based on established catalogue prices or market prices;
- (3) where contract prices are set by law or regulation; or
- (4) where it is determined in writing in accordance with regulations promulgated by the Policy Office that the requirements of this Section may be waived, and the reasons for such waiver are stated in writing.

SOURCE: GC § 6961.2. MPC § 3-403.

COMMENT: The words "by competitive sealed proposals (§ 5212) or" have been deleted from this section as the section authorizing such competitive sealed proposals has been repealed from this Chapter.

§ 5233. Disclosure of Major Shareholders.

As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying.

SOURCE: Added by P.L. 18-44:44.

PART E
TYPES OF CONTRACTS

- § 5235. Types of Contracts.
- § 5236. Approval of Accounting System.
- § 5237. Multi-Year Contracts.

§ 5235. Types of Contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interest of the Territory may be used; provided that the use of cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Territory than any other type or that it is impracticable to obtain the supplies, services or construction required except under such contract.

SOURCE: GC § 6962. MPC § 3-501.

§ 5236. Approval of Accounting System.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Chief Procurement Officer, the Director of Public Works, the head of a Purchasing Agency, or a designee of any such officer that:

- (a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

SOURCE: GC § 6962.1. MPC § 3-502.

§ 5237. Multi-Year Contracts.

(a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Territory provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

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(b) Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing:

(1) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) that such a contract will serve the best interests of the Territory by encouraging effective competition or otherwise promoting economies in territory procurement.

(c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

SOURCE: GC § 6962.2. MPC § 3-503.

PART F

INSPECTION OF PLANT AND AUDIT OF RECORDS

§ 5240. Right to Inspect Plant.

§ 5241. Right to Audit Records.

§ 5240. Right to Inspect Plant.

The Territory may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Territory.

SOURCE: GC § 6963. MPC § 3-601.

§ 5241. Right to Audit Records.

(a) Audit of Cost or Pricing Data. The Territory may, at reasonable times and places, audit the books and records of any person who has submitted costs or pricing data pursuant to § 5232 of this Chapter to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of

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final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) Contract Audit. The Territory shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

SOURCE: GC § 6963.1. MPC § 3-602.

PART G
DETERMINATIONS AND REPORTS

- § 5245. Finality of Determinations.
- § 5246. Reporting of Anticompetitive Practices.
- § 5247. Retention of Procurement Records.
- § 5248. Record of Procurement Actions Taken Under §§ 5214 and 5215 of this Chapter.
- § 5249. Record of Procurement Actions.
- § 5250. Certification of Record.
- § 5251. Public Record.
- § 5252. Rules for Procurement Records.
- § 5253. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.

§ 5245. Finality of Determinations.

The determinations required by §§ 5211(f), 5212(a), 5212(g), 5214, 5215, 5216(e), 5230(a), 5232(c), 5235, 5236 and 5237(b) of this Chapter are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

SOURCE: GC § 6964. MPC § 3-701.

§ 5246. Reporting of Anticompetitive Practices.

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When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Attorney General.

SOURCE: GC § 6964.1. MPC § 3-702.

COMMENT: Reference to Territorial Prosecutor deleted by Compiler because all prosecution functions have been returned to the Attorney General following the determination by the District Court, Appellate Division that the Territorial Prosecutor Act was contrary to the Organic Act and thus null and void. *Territorial Prosecutor for the Territory of Guam, People of the Territory of Guam, Petitioners, v. Superior Court of Guam, Respondent. Peter M. Perez, et al., Real Parties in Interest*, D.C. Civ. App. 82-0215, D.C. Guam, App. Div. May 26, 1983.

§ 5247. Retention of Procurement Records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Attorney General. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

SOURCE: GC § 6964.2. MPC § 3-703.

§ 5248. Record of Procurement Actions Taken Under §§ 5214 and 5215 of this Chapter.

(a) Contents of Record. The Chief Procurement Officer or the Director of Public Works shall maintain a record listing of all contracts made under § 5214 or § 5215 of this Chapter for a minimum of five (5) years. The record shall contain:

- (1) each contractor's name;
- (2) the amount and type of each contract; and
- (3) a listing of the supplies, services or construction procured under each contract.

(b) Submission to Legislature. A copy of such record shall be submitted to the Legislature on an annual basis. The record shall be available for public inspection.

SOURCE: GC § 6964.3. MPC § 3-704.

§ 5249. Record Of Procurement Actions.

Each procurement officer shall maintain a complete record of each procurement. The record shall include the following:

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(a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement;

(b) a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;

(c) sound recordings of all pre-bid conferences; negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;

(d) brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and

(e) the requesting agency's determination of need.

SOURCE: GC § 6964.4 added by P.L. 18-44:17.

§ 5250. Certification of Record.

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

SOURCE: GC § 6964.5 added by P.L. 18-44:18.

§ 5251. Public Record.

The record required by § 5249 of this Chapter is a public record and, subject to rules promulgated by the Public Auditor, any person may inspect and copy any portion of the record.

SOURCE: GC § 6964.6 added by P.L. 18-44:19. Amended by P.L. 28-068:IV:66 (Sept. 30, 2005).

§ 5252. Rules for Procurement Records.

The rules promulgated pursuant to § 5251 of this Chapter shall:

- (a) protect the integrity of the bidding process;
- (b) protect the confidentiality of trade secrets;
- (c) establish reasonable charges for copying papers;

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- (d) provide for transcription of sound recordings;
- (e) require public access to the record at the earliest possible time; and
- (f) not require that the record be complete or that the procurement award be made before inspection and copying are permitted.

SOURCE: GC § 6964.7 added by P.L. 18-44:20.

§ 5253. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.

(a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

(c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in §5253(b).

(d) Any contractor found in violation of §5253(b), after notice from

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the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

SOURCE: Added by P.L. 28-24:2. Amended by P.L. 28-98:2 (Feb. 7, 2006).

**ARTICLE 4
SPECIFICATIONS**

- § 5260. Definitions.
- § 5261. Duties of the Policy Office.
- § 5262. Duties of the Chief Procurement Officer and Director of Public Works.
- § 5263. Exempted Items.
- § 5264. Relationship With Using Agencies.
- § 5265. Maximum Practicable Competition.
- § 5266. Specifications Prepared by Architects and Engineers.
- § 5267. Publication of Source of Specifications.
- § 5268. Salient Features.
- § 5269. Purchase of Drugs by Generic Names.
- § 5270. Government to Purchase Drugs from Manufacturer.
- § 5271. Prescription of Drugs by Generic Name.

§ 5260. Definitions.

As used in this Chapter Specification means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

SOURCE: GC § 6965. MPC § 4-101.

§ 5261. Duties of the Policy Office.

The Policy Office shall promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services and construction required by the Territory.

SOURCE: GC § 6965.1. MPC § 4-202.