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IN THE SUPREME COURT OF GUAM

RE:) PROMULGATION ORDER NO.: 02-001
)
PROCUREMENT POLICY OF THE)
SUPREME COURT OF GUAM)

The Supreme Court of Guam, sitting *en banc*, hereby adopts and promulgates the following regulations governing procurement.

SUPREME COURT OF GUAM PROCUREMENT REGULATIONS

PURPOSE.

Section 1. It is the purpose of these regulations to provide standard procurement policies and procedures for the Supreme Court of Guam.

GENERAL POLICY.

Section 2. It shall be the policy of the Supreme Court of Guam to procure supplies and services from the lowest bidder, consistent with quality and service, and to conduct procurement activities in the manner that shall best serve the public interest.

DEFINITIONS.

Section 3. As used in this Rule:

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

1 (b) "Services" means any rental or facilities, remodeling, renovations or new construction
2 of building, rental repair or maintenance of equipment, machinery or other personal property, but
3 does *not* include contracts for professional or personal services, or other services incident to
4 employment.

5 (c) "Procurement" means any authorized acquisition of supplies and services, including
6 purchases, rental, lease, sale or trade by the Supreme Court of Guam, or its authorized designee(s)
7 within the purview of these regulations, and not in conflict with applicable laws.

8 (d) "Purchasing Agent" means the Executive Officer.

9 (e) "Procurement Officer" means the employee authorized by the Chief Justice to
10 procure supplies and service for the Supreme Court of Guam by purchase, rental, lease or trade;
11 *and*

12 (f) "Central Procurement" means the Supply Management Division of the Department
13 of Administration.

14 **ADMINISTRATION.**

15 **Section 4.** Responsibility for the administration of these regulations is vested in the Executive
16 Officer, who shall be the Purchasing Agent, and who may, at the Executive Officer's own discretion, use
17 the services of Central Procurement.

18 (a) **Duties and Responsibilities of the Purchasing Agent.** The Purchasing Agent shall:

19 (i) disqualify suppliers who default in performances or who supply poor quality
20 goods from any bidding or negotiation for a stated period of time *not* to exceed a
21 maximum of one (1) year;

22 (ii) disqualify suppliers who failed to comply with appropriate licensing
23 requirements;

24 (iii) regulate the storage and distribution of supplies to avoid loss and waste and
25 account for properties and equipment, and to establish a replacement schedule to avoid
26 costly maintenance of obsolete equipment;
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1 (iv) prescribe the procedures and distribute forms to be used for submitting
2 requisitions for supplies and services, and for processing procurement transactions;

3 (v) resolve procurement disputes and breach of contract controversies at the
4 administrative level; *and*

5 (vi) provide such other matters as may be required to effect these regulations.

6 **(b) Duties and Responsibilities of the Procurement Officer.** The Procurement Officer
7 shall:

8 (i) purchase or contract for the purchase of all supplies and services for the
9 Supreme Court of Guam in accordance with the provisions of these regulations and
10 applicable laws;

11 (ii) prescribe the manner, place and date of delivery of supplies and materials
12 procured for the Supreme Court of Guam;

13 (iii) prescribe the manner of inspecting supplies and materials upon delivery of the
14 supplies *before* acceptance and of making tests of samples submitted with bids to
15 determine compliance with ordering specifications;

16 (iv) determine whether a surety bid bond or cash deposit shall be submitted with
17 any bid, or whether a surety performance bond shall be required *before* a contract is
18 entered into, and if required, to prescribe the amount thereof and to enforce forfeiture of
19 such bond or deposit upon failure of the successful bidder to enter into a contract within
20 the prescribed time or to perform the contract in a satisfactory manner; *and*

21 (v) prescribe, on an item basis, the amount of liquidated damage to assess
22 defaulter for breach of contract.

23 **PURCHASING AND CONTRACTING PROCEDURES.**

24 **Section 5.** The following procedures shall govern procurement of Supplies and Services.

25 (a) **Sealed Bids.** Procurement by sealed bid is optional for any purchase at the discretion
26 of the Purchasing Agent and the Procurement Officer, but it is mandatory where the total cost is
27 Ten Thousand Dollars (\$10,000.00) or more, *except* as otherwise provided.
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1 (i) **Procedure.** The procedure to be observed when procuring by sealed bids is
2 as follows:

3 (a) A public notice requesting sealed bids shall be published at least once
4 in a newspaper of general circulation on Guam, and at least five (5) days *before*
5 the final date for submission of bids. Such notice shall include a general description
6 of supplies or services to be procured, and shall state where bid forms and
7 specifications are available, and the time and place for the opening of bids. Such
8 notice shall also be posted on a bulletin board to which the public has access, and
9 in the Clerk's Office of the Supreme Court of Guam. The Purchasing Agent may
10 also solicit bids by sending invitations by mail or messenger to prospective
11 suppliers.

12 (b) Bids shall be submitted to the Purchasing Agent, and shall be identified
13 as bids on the envelope in such manner as the Purchasing Agent may prescribe.

14 (c) Bids shall be opened in public at the time and place stated in the public
15 notice.

16 (d) Each bid, with the name of the bidder, shall be entered on a record and
17 the record of the successful bidder shall, after the award, be open to public
18 inspection.

19 (e) Bids shall be awarded to the lowest responsible bidder.

20 (f) The Purchasing Agent shall have the authority to reject all bids, in
21 whole or in part, if the Purchasing Agent determines it to be in the public interest.

22 (g) If bids are for the same unit price or total amount, in whole or in part,
23 the Purchasing Agent shall have authority to award the bid to one (1) of the tie
24 bidders by drawing lots in public, or to reject all such bids.

25 (ii) **Determining Lowest Responsible Bidder.** In determining the lowest
26 responsible bidder, the Purchasing Agent shall be guided by the following:
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- (a) compliance by the bidder with necessary licensing requirements;
- (b) ability and sufficiency of financial resources of the bidder to perform promptly, or within the time specified, without delay or interference;
- (c) quality of performance of the bidder with regard to awards previously made to the bidder;
- (d) record of the bidder with respect to compliance with laws and regulations relating to procurement;
- (e) quality and availability of the supplies or services offered by the bidder, and adaptability to the particular use required;
- (f) ability of the bidder to provide future maintenance and service for the use of the subject of the award; *and*
- (g) number and scope of conditions attached to the bid.

(b) **Open Market Procedure.** Procurement on the open market is authorized when the cost is *less than* Ten Thousand Dollars (\$10,000.00), *subject* to the following.

(i) **Less Than Five Hundred Dollars (\$500.00).** When the total cost of a requisition is *less than* Five Hundred Dollars (\$500.00), procurement may be made by the Procurement Officer through petty cash *if* the cost is *less than* Twenty Dollars (\$20.00), or through “open” standing purchase orders issued to vendors quarterly for purchases totaling *less than* Five Hundred Dollars (\$500.00), or by purchase orders on an “as needed” basis for any amount under Five Hundred Dollars (\$500.00).

(ii) **Five Hundred Dollars (\$500.00) or More, But Less Than Two Thousand Five Hundred Dollars (\$2,500.00).** When the total cost of a requisition is Five Hundred Dollars (\$500.00) or more, but *less than* Two Thousand Five Hundred Dollars (\$2,500.00), procurement may be made by solicitation of informal written or oral quotations on the open market, *except* that the Procurement Officer with the concurrence of the Purchasing Agent, may dispense with such solicitations and negotiate directly with a vendor when, in the opinion of the Purchasing Agent, it is deemed more advantageous to the Supreme Court of Guam.

1 (iii) **Two Thousand Five Hundred Dollars (\$2,500.00) or More, But Less**
2 **Than Ten Thousand Dollars (\$10,000.00)**. When the cost is Two Thousand Five
3 Hundred Dollars (\$2,500.00) or more, but *less than* Ten Thousand Dollars (\$10,000.00),
4 procurement may be made by solicitation of *not less than* three (3) informal written
5 quotations on the open market of which a written record shall be kept, *except* that the
6 Procurement Officer with the concurrence of the Purchasing Agent may dispense with such
7 quotations and negotiate directly with a vendor when, in the opinion of the Purchasing
8 Agent, it is deemed more advantageous to the Supreme Court of Guam.

9 (c) **Exceptions**. The *exceptions* to the Purchasing and Contracting Procedures are as
10 follows:

11 (i) **Exceptions to Requirements for Sealed Bids**. Where the total cost is Ten
12 Thousand Dollars (\$10,000.00) or more, exception to the requirement for a sealed bid is
13 authorized *only* where at least one (1) of the following conditions exist, and the Purchasing
14 Agent certifies this exception in writing:

15 (a) an emergency situation affecting the essential operations of the
16 Supreme Court of Guam exists which will not allow the normal delay attendant to
17 the sealed bid procedures;

18 (b) the procurement is for supplies or services for which it is impractical
19 or impossible to secure competition;

20 (c) the procurement is for supplies which consist of technical equipment
21 or component parts thereof for which procurement without sealed bids is
22 necessary;

23 (d) the procurement is for supplies or services to be acquired from or
24 through a federal agency when costs are known to be lower than the prevailing
25 market prices; *or*

26 (e) the procurement is for supplies which are offered through bargain
27 sales, bankruptcy or receivership sales, or other dispositions of property at lower
28 than the prevailing market prices.

1 (ii) Should the Supreme Court of Guam determine to purchase an existing building
2 or buildings or real estate, for judicial use, such purchase may be handled through a
3 process of negotiation.

4 (iii) **Exception to Requirement to Procure from Local Suppliers.** Whenever
5 it is determined that the local franchised dealer or distributor is *not* able to furnish the
6 required service or supply from shelf stock, the Purchasing Agent may authorize
7 procurement direct to a manufacturer or supply distributor when the procurement is for
8 supplies or equipment needed to meet an emergency or disaster, and the Purchasing Agent
9 certifies this exception in writing, or when such purchase shall result in significant savings
10 to the Supreme Court of Guam.

11 **PROHIBITIONS.**

12 **Section 6.** (a) No procurement of supplies or services shall be made, except in
13 accordance with these regulations, and where authorized herein, with conditions and requirements
14 prescribed by the Purchasing Agent. Except as may be authorized by the Purchasing Agent, no
15 member or employee of the Supreme Court of Guam is authorized to procure supplies or services,
16 or enter into a contract or agreement to purchase, sell, exchange or trade or tender thereof, on
17 behalf of the Supreme Court of Guam or any unit thereof. Neither the Purchasing Agent, the
18 Purchasing Agent's designee, nor any procurement personnel of the Supreme Court of Guam may
19 encumber or charge the funds of the Supreme Court, absent prior written authorization from the
20 Chief Justice. Where there has been an unauthorized procurement, the Supreme Court of Guam
21 reserves the right, without liability, to rescind the procurement and to reject any delivery or tender
22 of such supplies or services.

23 (b) Neither the Purchasing Agent, the Purchasing Agent's designee, nor any procurement
24 personnel of the Supreme Court of Guam shall be financially interested, directly or indirectly, in any
25 procurement for supplies or services for any unit of the Supreme Court of Guam. Neither the
26 Purchasing Agent, the Purchasing Agent's designee, nor any procurement personnel of the
27 Supreme Court of Guam shall accept or receive, directly or indirectly, from any supplier, either
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1 before or after, any procurement, whether by sealed bid or open market procedures, any
2 compensation, gift, commission, reward, rebate or other benefit, either in money or anything of
3 value, or any promise, obligation or contract for any such future benefit or employment. The
4 Purchasing Agent, Purchasing Agent's designee or any other Supreme Court employee who so
5 violates this provision shall be subject to disciplinary action including dismissal.

6 7 **SURPLUS STOCK.**

8 **Section 7.** Whenever necessary, the Executive Officer or his designee shall prepare reports for
9 the Chief Justice showing stocks of all supplies, materials and equipment which are no longer used or which
10 have become obsolete, worn out or scrapped. The Chief Justice may transfer such stock to another section
11 or any branch of the government which has need for the item, or to a registered non-profit organization in
12 Guam, or discard such stock if it cannot otherwise be disposed of. Departing or retiring employees may
13 be permitted to purchase items of equipment from the Supreme Court of Guam for sentimental or
14 commemorative purposes at a cost determined equitable through depreciation and the age and condition
15 of such equipment

16 17 **BID PROTESTS.**

18 **Section 8. Award of Contract or Bid Protests.**

19 (a) Any aggrieved party (actual or prospective bidder, offeror or contractor) shall file a
20 written protest with the Purchasing Agent, who shall have the authority to resolve protested
21 solicitations and awards.

22 (b) Any protest of the award of the bid or contract must be made in writing to the
23 Purchasing Agent within fourteen (14) days of when the aggrieved party knew or should have
24 known of the facts giving rise thereto.

25 (c) The Purchasing Agent shall issue a written decision on the protest within fourteen (14)
26 days of receipt of the written protest. If no written decision is issued, the aggrieved party may
27 proceed as if an adverse decision has been rendered.

1 (d) The aggrieved party may then file an action in the Superior Court of Guam for
2 appropriate relief.

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4 **CONTRACT DISPUTES.**

5 **Section 9. Breach of Contract Controversies.**

6 (a) Any aggrieved contractor shall file a written complaint of the contract breach with the
7 Purchasing Agent, who shall have the authority to resolve such breach of contract disputes.

8 (b) The written breach of contract complaint must be filed with the Purchasing Agent
9 within fourteen (14) days of when the aggrieved contractor knew or should have known of the facts
10 giving rise thereto.

11 (c) The Purchasing Agent shall respond in writing within fourteen (14) days of receipt of
12 the written complaint. If no written decision is issued, the aggrieved party may proceed as if an
13 adverse decision has been rendered.

14 (d) The aggrieved party may then file an action in the Superior Court of Guam for
15 appropriate relief.

16 **SO ORDERED** this 9th day of January, 2002.

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19 _____
20 F. PHILIP CARBULLIDO
21 Associate Justice

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19 _____
20 PETER C. SIGUENZA, JR.
21 Chief Justice

22 do hereby certify that the foregoing
23 is a full true and correct copy of the
24 original on file in the office of the
25 clerk of the Supreme Court of Guam
26 Dated at Hagatña, Guam

27 JAN 11 2002

28 Imelda B. Duenas
Deputy Clerk, Supreme Court of Guam