JUDICIAL COUNCIL RESOLUTION NO. JC-06-011

RELATIVE TO AMENDING THE JUDICIARY'S PROCUREMENT REGULATIONS ADOPTED ON MARCH 19, 2004

WHEREAS, on March 19, 2004 Judicial Council adopted Resolution 04-007, a copy of which is attached hereto as Exhibit "A," promulgating the Judicial Council of Guam's Procurement Regulations which are attached to Resolution 04-007 as its Exhibit A; and

WHEREAS, it has come to the attention of the Judicial Council that its Procurement Regulations define the term "Procurement" to include "trade;" and

WHEREAS, it is the intent of the Judicial Council that its Procurement Regulations apply only in situations where the expenditure of funds by the Judiciary is involved; and

WHEREAS, consideration of the procurement laws followed by the Executive Branch of the government of Guam, codified at Chapter 5 of Title 5 of the Guam Code Annotated, indicates that such law does not include "trade" in its definition of the term procurement (*see* Title 5 GCA § 5030(o)) and further states that the procurement chapter "shall apply to every expenditure of public funds . . . . Nothing in this Chapter or in regulations promulgated hereunder shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement." (*see* Title 5 GCA § 5004(b)); and

WHEREAS, the Judicial Council notes by way of illustration and comparison to the federal system that the procurement process followed by the United States government defines procurement by referring to the term "acquisition" which is defined as "the acquiring by contract with appropriated funds of supplies or services . . . ."; and

WHEREAS, the Judicial Council believes it is in the best interest of the administration of justice to amend its Procurement Regulations to remove the term "trade" from its definition of procurement and to expressly articulate that its Procurement Regulations apply to situations involving the expenditure of funds under the custody and control of the Judiciary;

///
///
///
///

NOW THEREFORE IT IS HEREBY RESOLVED, that Section 4(3) of the Judicial Council of Guam's Procurement Regulations adopted on March 19, 2004 is hereby amended to read as follows:

"(3) "Procurement' means any authorized acquisition of supplies and services through the expenditure of Judiciary funds, including purchases, rental or lease by the Judicial Council or its authorized designee(s) within the purview of these regulations, and not in conflict with applicable laws."

DULY ADOPTED this 6th day of April, 2006 at a duly noticed meeting of the Judicial Council of Guam.

F. PHILIP CARBULLIDO, Chairman

Dated: 4-7-06

ATTEST:

ANNABELLE C. MAJILLO, Secretary

Dated: 4/7/06

BEFORE THE 2004 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC04-007

RELATIVE TO THE ADOPTION OF PROCUREMENT REGULATIONS APPLICABLE TO THE SUPREME COURT OF GUAM AND THE SUPERIOR COURT OF GUAM

WHEREAS, pursuant to Public Law 27-31, the Judicial Council is authorized to adopt procurement policy and rules for the operation of the Courts to include the Supreme and Superior Courts; and

WHEREAS, the Judicial Council, through Resolution No. JC07-2003, created the Task Force on Judicial Consolidation ("Task Force") to identify and recommend court unification measures resulting in a net benefit to the users of the court system; and

WHEREAS, the Task Force has undertaken review of current procurement rules, regulations and policies of the Supreme and Superior Courts of Guam; and

WHEREAS, the Task Force has prepared Draft Judicial Council of Guam Procurement Regulations to replace both the current Superior Court Procurement and Supply Management Policy, as amended by Judicial Council Resolution No. 02-99, and the current Procurement Regulations of the Supreme Court of Guam; and

WHEREAS, the Consolidation Task Force submitted its recommended Draft Judicial Council of Guam Procurement Regulations to the Judicial Council for consideration; and

WHEREAS, the Judicial Council entertained a motion to adopt the Judicial Council of Guam Procurement Regulations, a copy of which is attached hereto as Exhibit "A" and incorporated by reference, to replace both the current Superior Court Procurement and Supply Management Policy, as amended by Judicial Council Resolution No. 02-99, and the current Procurement Regulations of the Supreme Court of Guam;

NOW THEREFORE BE IT RESOLVED, that the Judicial Council of Guam Procurement Regulations attached as Exhibit A are hereby adopted to replace both the current Superior Court Procurement and Supply Management Policy, as amended by Judicial Council Resolution No. 02-99, and the current Procurement Regulations of the Supreme Court of Guam.

BE IT FURTHER RESOLVED, that any procurement of services or supplies undertaken by the Supreme Court of Guam or Superior Court of Guam prior to the effective date of this Resolution and currently pending as of the effective date of this Resolution shall not be subject to the Procurement Regulations adopted by this Resolution but rather will be subject to the Procurement Regulations of the respective Court in existence prior to the effective date of this Resolution;

"EXHIBIT A"

BE IT ALSO FURTHER RESOLVED, that the preliminary informational investigation pursued by the Administrator of the Courts as of the effective date of this Resolution regarding additional parking for the Unified Judiciary is not a currently pending procurement as the procurement process has not formally begun and therefore such procurement of additional parking shall be undertaken pursuant to the Procurement Regulations as adopted by this Resolution.

DULY ADOPTED this 19th day of March, 2004 at a duly noticed meeting of the Judicial Council of Guam.

F. PHILIP CARBULLIDO, Chairman

Dated: 3/19/04

ATTEST:

JULIE M. LUJAN-TORRES, Secretary

Dated: 3/19/04

EXHIBIT A

JUDICIAL COUNCIL OF GUAM PROCUREMENT REGULATIONS

SECTION 1. PURPOSE

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

SECTION 2. GENERAL POLICY

It shall be the policy of the Judiciary to procure supplies and services from the lowest bidder or best qualified offeror, consistent with quality and service, and to conduct procurement activities in the manner that shall best serve the public interest. These rules shall not apply to the hiring of interns, law clerks, attorneys, marriage counselors, therapists, psychiatrists, psychologists, interpreters, or Judges and Justices Pro Tempore by the Judiciary; to the contracting of services related to legal research, or to expenditures pursuant to court order in matters before the various courts of Guam.

SECTION 3. LOCAL PROCUREMENT PREFERENCE

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

SECTION 4. DEFINITIONS

(1) "Bid" means a bid submitted in response to an Invitation to Bid or small purchase solicitation.

(2) "Central Procurement" means the Supply Management Division of the Department of

Administration.

(3) "Procurement" means any authorized acquisition of supplies and services, including purchases, rental, lease, sale or trade by the Judicial Council, or its authorized designee(s) within the purview of these regulations, and not in conflict with applicable laws.

(4) "Professional Services" means service requiring the provider to possess specialized knowledge or technical training, educational degrees or certifications, or licenses. Professional services do not include services by interns, law clerks, attorneys, marriage counselors, psychiatrists, psychologists, therapists, interpreters or Judges or Justices Pro Tempore, or to the contracting of services related to legal research.

(5) "Proposal" means a proposal submitted in response to a Request for Proposals or small purchase solicitation.

(6) "Purchasing Officer" means the Administrator of the Courts.

(7) "Services" means any rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services; remodeling, renovations or new construction of buildings or facilities; the printing of stationery, forms and journals; or rental, lease, repair or maintenance of equipment, machinery or other personal property. Services do not include contracts with interns, law clerks, attorneys, marriage counselors, therapists, psychiatrists, psychologists, interpreters or Judges or Justices Pro Tempore, or services related to legal research.

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

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

(10) "Responsive Bidder or Offeror" means a person who has submitted a bid or proposal which conforms in all material respects to the Invitation to Bid or Request for Proposals.

SECTION 5. ADMINISTRATION

Responsibility for the administration of these regulations is vested in the Administrator of the Courts, who shall be the Purchasing Officer, and who may, at his or her own discretion, delegate or

assign various actions required by these regulations to qualified persons unless such delegation or assignment of specific actions is expressly prohibited herein, provided that if any actions are so delegated or assigned the Purchasing Officer nonetheless remains responsible for the administration of these regulations. Further, in carrying out the administration of these regulations, the Purchasing Officer may, at his or her own discretion, use the services of the Central Procurement Office of Guam.

(A) **DUTIES AND RESPONSIBILITIES OF THE PURCHASING OFFICER.** The Purchasing Officer shall undertake the necessary actions to:

(1) disqualify suppliers for a stated period of time not to exceed a maximum of three (3) years who default in performances or who supply poor quality goods from any bidding or negotiation, which action shall not be delegated nor assigned by the Purchasing Officer;

(2) disqualify suppliers who fail to comply with appropriate licensing requirements, which action shall not be delegated nor assigned by the Purchasing Officer;

(3) regulate the storage and distribution of supplies to avoid loss and waste and account for properties and equipment, and establish a replacement schedule to avoid costly maintenance of obsolete equipment;

(4) prescribe the procedures and forms to be used for submitting requisitions for supplies and services, and for processing procurement transactions;

(5) resolve procurement disputes and breach of contract controversies at the administrative level;

(6) purchase, or contract for the purchase of, all supplies and services for the Judiciary in accordance with the provisions of these regulations and applicable laws;

(7) prescribe the manner, place and date of delivery of supplies and materials procured for the Judiciary;

(8) prescribe the manner of inspecting supplies and materials upon delivery before acceptance and the manner of tests of samples submitted with bids to determine compliance with ordering specifications;

(9) determine whether a surety bid bond or cash deposit shall be required with any bid, or whether a surety performance bond shall be required before a contract is entered into, and if required, to prescribe the amount thereof and to enforce forfeiture of such

bond or deposit upon failure of the successful bidder to enter into a contract within the prescribed time or to perform the contract in a satisfactory manner, which action shall not be delegated nor assigned by the Purchasing Officer;

(10) prescribe, on an item basis, the amount of liquidated damages to assess defaulter for breach of contract, which action shall not be delegated nor assigned by the Purchasing Officer; and

(11) undertake such other actions as may be required to effect these regulations.

SECTION 6. PURCHASING AND CONTRACTING PROCEDURES

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

(A) **COMPETITIVE SEALED BIDS.** Procurement by competitive sealed bids is optional for any purchase at the discretion of the Purchasing Officer, but it is mandatory where the total cost is Fifteen Thousand Dollars ($15,000.00) or more, except as otherwise provided.

(1) **Procedure.** The procedures to be observed when procuring by sealed bids are as follows:

(a) **Notice.** A public notice requesting sealed bids shall be published in a newspaper of general circulation on Guam at the time of bid issuance. A final notice shall be published at least five (5) business days before the final date for submission of bids. Such notice shall also be posted on a bulletin board to which the public has access. The Purchasing Officer may also solicit bids by posting on the Judiciary web site or by sending invitations by fax, e-mail, regular mail or messenger to prospective bidders. Public notice shall include a general description of supplies or services to be procured, and shall state where Invitation to Bid forms and specifications are available, and the time and place for submission and opening of bids. The Purchasing Officer may require payment of a fee or a deposit for the supplying of the Invitation to Bid forms and specifications.

(b) **Invitation to Bid.** The Invitation to Bid shall include instructions including place, time and date for submission and opening of bids, purchase description, evaluation factors, delivery or performance schedule, contract terms including warranty and bonding, and any other pertinent information.

The Invitation to Bid shall include a form wherein a bidder shall insert the bid price.

(c) **Pre-Bid Conference.** A pre-bid conference may be conducted at the discretion of the Purchasing Officer to explain procurement requirements. Notice of a pre-bid conference may be included in the Invitation to Bid or sent to all prospective bidders known to have obtained an Invitation to Bid.

(d) **Amendments to Invitations to Bid.** Amendments to Invitations to Bid shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. Amendments shall be sent to all prospective bidders known to have received an Invitation to Bid. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids.

(e) **Modification or Withdrawal of Bids.** Bids may be modified or withdrawn by bidders by written notice submitted prior to the date and time set for bid opening. Bidders must correct mistakes in their bids by submitting a timely modification or withdrawing and resubmitting bids. Late modifications or withdrawals will not be considered.

(f) **Submission of Bids.** Bids shall be submitted to the Purchasing Officer on the date and time set for submission of bids, and each bid shall be identified as a bid on its envelope in such manner as the Purchasing Officer may prescribe.

(g) **Opening of Bids, Public Inspection, Proprietary Information.** Bids shall be opened in public at the time and place stated in the public notice. Each bid, with the name of the bidder, shall be entered on a written record. The opened bids shall be available for public inspection except those parts of each bid that have been designated as trade secrets or proprietary data. Such trade secrets or proprietary data must be clearly designated and readily separable from the bid. Prices and contractual terms shall not be deemed secret or proprietary and shall be available for public inspection.

(h) **Award of Contract.** The contract shall be awarded to the lowest responsible and responsive bidder. All bidders shall be informed in writing of the selection of the lowest responsible and responsive bidder as soon as practicable.

(i) **Tie Bids.** If bids are for the same unit price or total amount, in whole or in

part, the Purchasing Officer shall have authority to award the bid to one (1) of the tie bidders by drawing lots in public, or to reject all such bids.

(2) **Determining Lowest Responsible and Responsive Bidder.** In determining the lowest responsible and responsive bidder, the Purchasing Officer shall be guided by the following:

(a) compliance by the bidder with necessary licensing requirements;

(b) ability and sufficiency of financial resources of the bidder to perform promptly, or within the time specified, without delay or interference;

(c) quality of performance of the bidder with regard to awards previously made to the bidder;

(d) record of the bidder with respect to compliance with laws and regulations relating to procurement;

(e) quality and availability of the supplies or services offered by the bidder, and adaptability to the particular use required;

(f) ability of the bidder to provide future maintenance and service for the use of the subject of the award; and

(g) number and scope of conditions attached to the bid.

(B) **COMPETITIVE SEALED PROPOSALS.** Procurement by competitive sealed proposals is optional at the discretion of the Purchasing Officer, but it is mandatory where the total cost is Fifteen Thousand Dollars ($15,000.00) or more and procurement by competitive sealed bids is not practicable, except as otherwise provided.

(1) **General Discussion.** Procurement by competitive sealed bids is the preferred method of procurement, except that the preferred method of procurement for any rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services, shall be by competitive sealed proposal. Furthermore, if procurement by competitive sealed bids is not practicable for procurement of other than the rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services, competitive sealed proposals should be used. The competitive sealed proposal method differs from the competitive sealed bids method in two important ways:

(a) it permits discussions with competing offerors and changes in their proposals, including price if price is identified as an evaluation factor in the particular procurement; and

(b) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

(2) **Procedures.** The procedures to be observed when procuring by competitive sealed proposals are as follows:

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

(b) **Notice.** Public notice of the RFP shall be given in the same manner as provided for notice of an Invitation to Bid.

(c) **Pre-Proposal Conferences.** Pre-proposal conferences may be conducted in accordance with Pre-Bid Conferences. Any such conference should be held prior to submission of initial proposals.

(d) **Amendments to Request for Proposals.** Amendments to Request for Proposals may be made in accordance with Amendments to Invitations to Bid.

(e) **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

(f) **Receipt and Handling of Proposals.** Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more procurement officials. A Register of Proposals shall be established which shall include, for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection.

(g) **Evaluation.** Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. The following factors may be appropriate to use in conducting the evaluation if services are being procured, although the relative importance of these and other factors will vary according to the services being procured. The minimum factors are:

1. the plan for performing the required services;

2. ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

3. the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and

4. a record of past performance of similar work.

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

1. **Discussion.** The Purchasing Officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions may include but are not limited to:

   i. determining in greater detail such offeror's qualifications; and

   ii. exploring with the offeror the scope and nature of the required services if services are being procured, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

2. **No Disclosure of Information.** During discussions with offerors, information obtained in discussions or from proposals by other

offerors shall not be disclosed. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in these rules.

(i) **Selection of the Best Qualified Offerors.** After evaluation of proposals and discussions with offerors, the Purchasing Officer shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

(j) **Submission of Cost or Pricing Data.** The offeror determined to be best qualified shall be required to submit cost or pricing data to the Purchasing Officer prior to the commencement of negotiations.

(k) **Negotiation.** The Purchasing Officer conducting the procurement or a designee of such officer shall negotiate a contract with the best qualified offeror at the compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:

1. making certain that the offeror has a clear understanding of the scope of work, and specifically, if services are being procured, the essential requirements involved in providing the required services;

2. if services are being procured, determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

3. agreeing upon compensation which is fair and reasonable, and, if services are being procured, doing so while taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

(l) **Award of Contract.** If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

(m) **Failure to Negotiate Contract With Best Qualified Offeror.** If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file and the Purchasing Officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) business days. Upon failure to negotiate a

contract with the best qualified offeror, the Purchasing Officer may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided above and negotiations may commence with the next most qualified offeror.

(n) **Notice of Award.** Written notice of award shall be public information and made a part of the contract file.

(o) **Failure to Award Contract.** Should the Purchasing Officer be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on their original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with these rules until an agreement is reached and the contract awarded.

(p) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the award of a contract, the Purchasing Officer shall prepare a memorandum setting forth the bases of the award including application of the evaluation factors in selecting the best qualified offerors and the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract. All memoranda shall be included in the contract file and be available for public inspection.

(C) **REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES.** The provisions of this Section apply to the procurement of professional services except as otherwise provided by law. This section shall not apply to the hiring of interns, law clerks, attorneys, Judges or Justices Pro Tempore, marriage counselors, therapists, psychiatrists, psychologists, interpreters or services related to the contracting of services related to legal research. Procurement of professional services by Request for Proposals ("RFP") is optional at the discretion of the Purchasing Officer, but it is mandatory where the total cost is Fifteen Thousand Dollars ($15,000.00) or more, except as otherwise provided.

(1) **Determination Required Prior to Use of RFPs.** For the purposes of procuring professional services, the Purchasing Officer shall determine in writing, prior to issuing an RFP, that the Judiciary does not have the personnel or resources to perform the services required under the proposed contract. This determination shall not be delegated nor assigned by the Purchasing Officer.

(2) **Statement of Qualifications.** When professional services are needed on a recurring basis, the Purchasing Officer shall actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format which shall include the following information:

(a) technical education and training;

(b) general or special experience, certifications, licenses, and membership in professional associations, societies or boards;

(c) an expression of interest in providing the specific service; and

(d) any other pertinent information requested by the Purchasing Officer, provided that a person may amend a statement of qualifications at any time by filing a new statement.

(3) **Procedure.** The procedures for procurement of professional services by RFP are as follows:

(a) **Notice.** Public notice of the RFP shall be given in the same manner as provided for notice of Invitation to Bid.

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

1. the type of services required;

2. description of the work involved;

3. an estimate of when and for how long the services will be required;

4. the type of contract to be used;

5. a date by which proposals for the performance of the services shall be submitted;

6. a statement that the proposals shall be in writing;

7. a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which

may remain confidential;

8. the factors to be used in the evaluation and selection process and their importance; and

9. a statement of the minimum information that the proposal shall contain, to include:

   i. the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

   ii. if deemed relevant by the Purchasing Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;

   iii. the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

   iv. a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a period of time, as specified in the RFP; and

   v. a plan giving as much detail as is practical explaining how the services will be performed.

(c) **Evaluation.** Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. The following factors may be appropriate to use in conducting the evaluation. The relative importance of these and other factors will vary according to the type of professional services being procured. The minimum factors are:

1. the plan for performing the required services;

2. ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

3. the personnel, equipment, and facilities to perform the services

currently available or demonstrated to be made available at the time of contracting; and

4. a record of past performance of similar work.

(d) **Pre-Proposal Conference.** A pre-proposal conference may be conducted at the discretion of the Purchasing Officer or Purchasing Officer to explain procurement requirements prior to the date set for submission of proposals. Notice of a pre-proposal conference may be included in the RFP or sent to the known prospective proposers.

(e) **Receipt and Handling of Proposals.** Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more procurement officials. A Register of Proposals shall be established which shall include, for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection.

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

(g) **Discussion.** The Purchasing Officer or persons designated by the Purchasing Officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall include, but are not limited to:

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

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

(h) **No Disclosure of Information.** During discussions with offerors, information obtained in discussions or from proposals by other offerors shall not be disclosed. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in these rules.

(i) **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

(j) **Selection of the Best Qualified Offerors.** After evaluation of proposals and discussions with offerors, the Purchasing Officer shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

(k) **Submission of Cost or Pricing Data.** The offeror determined to be best qualified shall be required to submit cost or pricing data to the Purchasing Officer prior to the commencement of negotiations.

(l) **Negotiation.** The Purchasing Officer conducting the procurement or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at the compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:

1. making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;

2. determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

3. agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

(m) **Award of Contract.** If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

(n) **Failure to Negotiate Contract With Best Qualified Offeror.** If compensation, contract requirements, or contract documents cannot be agreed

upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file and the Purchasing Officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) business days. Upon failure to negotiate a contract with the best qualified offeror, the Purchasing Officer may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided above and negotiations may commence with the next qualified offeror.

(o) **Notice of Award.** Written notice of award shall be public information and made a part of the contract file.

(p) **Failure to Award Contract.** Should the Purchasing Officer be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on their original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with these rules until an agreement is reached and the contract awarded.

(q) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the award of a contract, the Purchasing Officer shall prepare a memorandum setting forth the bases of award including application of the evaluation factors in selecting the best qualified offerors and the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract. All memoranda shall be included in the contract file and be available for public inspection.

(D) <u>SMALL PURCHASES.</u> Procurement for small purchases is authorized when the cost is less than Fifteen Thousand Dollars ($15,000.00), subject to the following.

(1) **Less Than One Thousand Dollars ($1,000.00).** When the total cost of a requisition is less than One Thousand Dollars ($1,000.00), procurement may be made by the Purchasing Officer through Blanket Purchase Agreements or, if the cost is less than Forty Dollars ($ 40.00), through petty cash.

(2) **One Thousand Dollars ($1,000.00) or More, But Less Than Five Thousand Dollars ($5,000.00).** When the total cost of a requisition is **One Thousand Dollars ($1,000.00)** or more, but less than **Five Thousand Dollars ($5,000.00),** procurement may be made by solicitation of informal written or oral quotations on the open

market, except that the Purchasing Officer may dispense with such solicitations and negotiate directly with a vendor when, in the opinion of the Purchasing Officer, it is deemed more advantageous to the Judiciary.

(3) **Five Thousand Dollars ($5,000.00) or More, But Less Than Fifteen Thousand Dollars ($15,000.00).** When the cost is Five Thousand Dollars ($5,000.00) or more, but less than Fifteen Thousand Dollars ($15,000.00), procurement may be made by solicitation of not less than three (3) informal written quotations on the open market of which a written record shall be kept, except that the Purchasing Officer may dispense with such quotations and negotiate directly with a vendor when, in the opinion of the Purchasing Officer, it is deemed more advantageous to the Judiciary.

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

(1) Where the total cost is Fifteen Thousand Dollars ($15,000.00) or more, exception to the requirements of this Section 6 is authorized only where at least one (1) of the following conditions exist, and the Purchasing Officer certifies this exception in writing, which action shall not be delegated nor assigned:

(a) an emergency situation affecting the essential operations of the Judiciary or the General Public exists which will not allow the normal delay attendant to the sealed bid procedures;

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

(c) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

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

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

(2) **Exception to Requirement to Procure from Local Suppliers.** Whenever it is determined that the local franchised dealer or distributor is not able to furnish the required service or supply from shelf stock, the Purchasing Officer may authorize procurement direct from a manufacturer or supply distributor when the procurement

is for supplies or equipment needed to meet an emergency or disaster, and the Purchasing Officer certifies this exception in writing.

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

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

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

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

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

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

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

(B) **NOTICE:** Each solicitation issued by the Judiciary shall state that the solicitation may be cancelled as provided in these Regulations.

(C) **CANCELLATION OF SOLICITATION: Rejection of All Bids or Proposals.**

(1) **Prior to Opening.**

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

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

1. the Judiciary no longer requires the supplies, services, or construction;

2. the Judiciary no longer can reasonably expect to fund the procurement; or

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

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

(d) The notice of cancellation shall:

1. identify the solicitation;

2. briefly explain the reason for cancellation; and

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

(2) **After Opening.**

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

1. the supplies, services, or construction being procured are no longer required;

2. ambiguous or otherwise inadequate specifications were part of the solicitation;

3. the solicitation did not provide for consideration of all factors of significance to the Judiciary;

4. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

5. all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

6. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(b) A notice of rejection shall be sent to all businesses that submitted bids or proposals.

(3) **Documentation.** The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

(D) <u>REJECTION OF INDIVIDUAL BIDS OR PROPOSALS</u>.

(1) **General.** This section applies to rejection of individual bids or proposals in whole or in part.

(2) **Notice in Solicitation.** Each solicitation issued by the Judiciary shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the Judiciary as provided in these Regulations.

(3) **Reasons for Rejection.** Reasons for rejecting a bid or proposal include, but are not limited to:

(a) untimeliness;

(b) the bid or proposal is not responsive, that is, it does not provide the information requested in the Invitation to Bid or Request for Proposals; or

(c) the supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation to Bid or Request for Proposals.

(4) **Notice of Rejection.** Upon written request, unsuccessful bidders or offerors shall be advised of the reasons therefor.

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

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

SECTION 8. PROHIBITIONS

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

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

SECTION 9. SURPLUS STOCK

Whenever necessary, the Purchasing Officer or his designee shall prepare reports for the Judicial Council showing stocks of all supplies, materials and equipment which are no longer used or which have become obsolete, worn out or scrapped. The Judicial Council may transfer such stock to

another section or any branch of the government which has need for the item, or to a registered non-profit organization in Guam, or discard such stock if it cannot otherwise be disposed of. Departing or retiring employees may be permitted to purchase items of equipment from the Judiciary for sentimental or commemorative purposes at a cost determined equitable by the Purchasing Officer through depreciation and the age and condition of such equipment.

SECTION 10. PROTESTS

(A) Any aggrieved party who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, and who wishes to pursue a protest shall file a written protest with the Purchasing Officer. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knew or should have known of the facts giving rise to the protest.

(B) The Purchasing Officer shall have the authority to settle and resolve a protest.

(C) If the protest is not resolved by mutual agreement, the Purchasing Officer shall issue a decision in writing within thirty (30) days of receipt of the protest. If no written decision has been issued by the Purchasing Officer at the expiration of the thirty (30) day period, such shall be considered an adverse decision.

(D) Upon the issuance of an adverse decision by the Purchasing Officer, or upon the expiration of the thirty (30) day period after filing of the complaint, the aggrieved party may file an action in the Superior Court of Guam for appropriate relief within fourteen (14) days of such adverse decision or expiration of time.

SECTION 11. CONTRACT DISPUTES

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

(B) The written contract dispute complaint must be filed with the Purchasing Officer within fourteen (14) days of when the complaining contractor knew or should have known of the facts giving rise to the complaint.

(C) The Purchasing Officer shall make good faith efforts to resolve the complaint. If the Purchasing Officer determines that no resolution can be reached, an adverse decision shall issue in writing regarding the complaint. If no resolution is reached within thirty (30) days of the date the complaint was filed and no adverse decision has yet been issued in writing, the complaining party may proceed as if an adverse decision was issued in writing by the Purchasing Officer on the final day of the thirty (30) day period.

(D) Upon the issuance of an adverse decision by the Purchasing Officer regarding the complaint, or upon the expiration of the thirty (30) day period after filing of the complaint, an action may be filed in the Superior Court of Guam for appropriate relief within fourteen (14) days of such adverse decision or expiration of time.