

GOVERNMENT OF GUAM
Office of the Governor
Agana, Guam

EXECUTIVE ORDER NO. 1 -57

PROCUREMENT AND SUPPLY REGULATION NO. 1

WHEREAS, Public Law 1, Second Guam Legislature, First Special Session, established the Working Capital Fund of the Department of Finance, for the purpose of financing the Division of Procurement and Supply, including but not limited to, the procurement and warehousing of all operating supplies, equipment, materials, printing and binding of the Government of Guam, and operation costs of the Division of Procurement and Supply;

WHEREAS, Public Law 1 provides that the Working Capital Fund shall be utilized in such a manner as to obtain for the Government of Guam maximum benefits and advantages available through centralized purchasing and warehousing of materials, supplies and equipment for the use of all departments and agencies of the government; and

WHEREAS, the Governor of Guam under Section 6(b) of the Organic Act of Guam has the power to issue executive regulations not in conflict with any applicable law;

NOW, THEREFORE, by virtue of the foregoing, the following Procurement and Supply Regulation No. 1 is hereby adopted and promulgated:

PROCUREMENT AND SUPPLY REGULATION NO. 1

Section 1. PURPOSE. The purpose of this regulation is to provide, subject to and in conformity with law, standard procurement procedures for the Executive Branch of the Government of Guam.

Section 2. DEFINITIONS. Terms used in this regulation have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

.01. Supplies. The term "supplies" means any or all articles or things, except real estate, which shall be furnished to, or used by, any agency of the Government of Guam, including but not limited to all supplies, materials, equipment, printing, binding and publication, stationery, forms, and journals.

.02. Services. The term "services" means any or all rental, repair or maintenance of equipment, machinery or other personal property, and such other services as may be designated by the Governor from time to time. It does not include contracts for construction or employment.

.03. Purchasing Agent. The term "Purchasing Agent" or "Agent" means the Director of Finance or his delegate.

.04. Agency. The term "agency" means any department, agency, board, commission, office, official, instrumentality, revolving fund, fund, or other unit of the Executive Branch of the Government of Guam by whatever name it may be known.

.05. Government of Guam. The term "Government of Guam" or "Government" means the Executive Branch. The Legislative and Judicial Branches may make use of the services of the Division of Procurement and Supply, in accord with the procedures set forth herein, on a voluntary basis.

Section 3. POWERS AND DUTIES. The Agent shall be authorized and have the duty to perform the following functions:

.01. Purchase and Contract. To purchase or contract for all supplies and services of the Government, subject to the provisions set forth in this regulation and the laws of Guam;

.02. Standard Specifications. To enforce standard specifications established in accordance with Section 11 of this regulation;

.03. Inspection. To prescribe the manner of inspecting supplies, and of making chemical and physical tests of samples submitted with bids and of samples of deliveries, to determine compliance with specifications;

.04. Bid Bond. To determine whether a surety bid bond or cash deposit is to be submitted with any bid, and if required, to prescribe the amount thereof and provide that such bond or deposit shall be forfeited if the successful bidder fails to enter into a contract within the prescribed time;

.05. Performance Bond. To determine whether a surety performance bond shall be required before a contract is entered into, and if required, to prescribe the amount thereof and provide that such bond shall be forfeited upon failure to perform the contract in a satisfactory manner;

.06. Determination of Responsibility of Bidders. To prescribe the procedures and forms for securing from bidders under the sealed bid procedure information necessary to determine whether or not they are responsible, and to determine the responsibility of such bidders in accordance with standards prescribed in Section 7;

.07. Disqualification of Suppliers.

(a) To declare suppliers who default in performance to be irresponsible, and to disqualify them from receiving any business from the Government of Guam for a stated period of time;

(b) To disqualify from doing business with the Government of Guam suppliers who are in default on any payment of taxes or other obligation due the Government of Guam, or have failed to comply with licensing requirements;

(c) To prepare and distribute from time to time to all agencies a list of suppliers who have been disqualified and the period of time for which they have been disqualified.

.08. Central Warehouse. To have charge of a central warehouse for storage and distribution of supplies, and to prescribe the manner in which such supplies shall be delivered, stored and distributed;

.09. Requisitions. To prescribe the details of procedure and forms to be used by agencies for submitting requisitions for supplies and services, including the period to be covered, manner of authentication, and revision;

.10. Acceptance. To provide for the acceptance of supplies and services;

.11. Exceptions. To authorize, in writing, procurement by an agency, under conditions prescribed in Section 8;

.12. Forms. To prescribe all necessary forms;

.13. Other. To provide for such other matters as may be necessary to give effect to this regulation.

Section 4. PURCHASING AND CONTRACTING PROCEDURES.

The following procedures are available for the procurement of supplies and services:

.01. Sealed Bid Procedure. Procurement by sealed bids is authorized in any case in the discretion of the Agent and is required where the cost is \$2500 or more, except as otherwise provided.

.02. Open Market Procedure. Procurement on the open market is authorized where the cost is less than \$2500, subject to the following:

(a) Less than \$100. Where the cost is less than \$100, procurement may be made through petty cash of the Fund in accord with procedures established by the Agent.

(b) Less than \$500. Where the cost is less than \$500, procurement may be made by solicitation of informal written or oral bids on the open market, except that the Agent may dispense with such bids and proceed by negotiation where he deems it is more advantageous to the Government.

(c) Less than \$2500. Where the cost is less than \$2500, procurement may be made by solicitation of not less than three informal written bids on the open market from not less than three responsible bidders, of which a record shall be kept, except that the Agent may dispense with such bids and proceed by negotiation where he deems it is more advantageous to the Government.

(d) \$2500 or more. Where the cost is \$2500 or more, upon certification as to an exception from the sealed bid procedure under Section 5, procurement may be made in accord with the preceding subparagraph (c).

.03. Competition. It shall be the duty of the Agent to encourage and obtain full and open competition wherever feasible, and to discourage uniform pricing and bids.

Section 5. EXCEPTIONS TO REQUIREMENT FOR SEALED BIDS. Where the cost is \$2500 or more, an exception to the requirement for sealed bids is authorized where at least one of the following conditions exist as certified to by the Agent:

.01. The public exigency will not admit delay incident to the sealed bid procedure;

.02. The procurement is for medicines or other medical supplies;

.03. The procurement is for supplies to be purchased for authorized resale;

.04. The procurement is for supplies or services for which it is impractical to secure competition;

.05. The head of the using agency has determined that the supplies or services are for experimental, development, or research work, or for the manufacture or furnishing of property for experimentation, development, research or test;

.06. The procurement is for supplies which consists of technical equipment or component parts thereof which the Committee on Standardization has established as a standard to provide standardization of equipment and interchangeability of parts and procurement without sealed bids is necessary;

.07. The procurement is for supplies or services for which sealed bids have been obtained but have been rejected;

.08. The procurement is for supplies or services to be acquired from or through a Federal agency; and

.09. 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.

Section 6. SEALED BID PROCEDURE.

.01. Publication of Notice. Where procurement is made by sealed bids, either as authorized or required, a public notice requesting sealed bids shall be published at least once in a newspaper of general circulation in Guam and at least five days before the final date for submission of bids. Such notice shall include a general description of the supplies or services

to be procured, and shall state where bid forms and specifications are available and the time and place for the opening of bids. Such notice shall also be posted on a bulletin board, to which the public has access, in the Office of Procurement and Supply. The Agent may also solicit bids by sending invitations by mail to prospective suppliers.

.02. Submission. Bids shall be submitted sealed to the Agent, and shall be identified as bids on the envelope in such manner as the Agent may prescribe.

.03. Opening. Bids shall be opened in public at the time and place stated in the public notice.

.04. Record. Each bid, with the name of the bidder, shall be entered on a record and the record with the successful bid indicated shall, after the award, be open to public inspection.

.05. Rejection. The Agent shall have the authority to reject all bids, in whole or in part, or for any one or more items, if he determines it is in the public interest.

.06. Award. Bids shall be awarded to the lowest responsible bidder.

.07. Tie Bids. If bids are for the same unit price or total amount, in whole or in part, the Agent shall have authority to award the bid to one of the tie bidders by drawing lots in public, or to reject all such bids.

Section 7. SEALED BID PROCEDURE; STANDARDS FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER. In determining the lowest responsible bidder, the Agent shall be guided by the following:

.01. The ability, capacity and skill of the bidder to perform;

.02. Whether the bidder can perform promptly, or within the time specified, without delay or interference;

.03. The character, integrity, reputation, judgment, experience and efficiency of the bidder;

.04. The quality of performance of the bidder with regard to awards previously made to him;

.05. The previous and existing compliance by the bidder with laws and regulations relating to procurement;

.06. The sufficiency of the financial resources and ability of the bidder to perform;

.07. The quality, availability and adaptability of the supplies or services to the particular use required;

.08. The ability of the bidder to provide future maintenance and service for the use of the subject of the award; and

.09. The number and scope of conditions attached to the bid.

Section 8. EXCEPTIONS TO REQUIREMENT FOR PROCUREMENT THROUGH PURCHASING AND SUPPLY DIVISION. An agency may be authorized by the Agent, in writing, to procure supplies and services directly, using the open market procedure under Section 4.02 and in accord with conditions prescribed by the Agent, with regard to the following:

.01. Petty Cash Procurement. Through a petty cash fund established in the agency.

.02. Specific Supplies or Services. When it is deemed in the best interest of the Government, for specific supplies or services, either on a one-time or continuing basis.

.03. Emergencies. Where immediate procurement is necessary for the protection of the public health, welfare or safety.

Section 9. ENCUMBRANCE OF FUNDS. Except in emergencies as provided in Section 8.03, no procurement shall be made until the Controller, Department of Finance, shall have certified that the unencumbered balance in the appropriation or fund concerned, in excess of all unpaid obligations, is sufficient to defray the cost thereof.

Section 10. PROCUREMENT FROM DISQUALIFIED SUPPLIERS. Except in emergencies as provided in Section 8.03, no procurement shall be made from suppliers disqualified pursuant to Section 3.07.

Section 11. PROHIBITIONS.

.01. No procurement of supplies or services coming under this regulation shall be made except in accord herewith, and in accord, where authorized herein, with conditions and requirements prescribed by the Agent. Except as may be authorized by the Agent under Section 8, heads or other personnel of using agencies are not authorized to procure such supplies or services, or to enter contracts or agreements therefor, or accept delivery or tender thereof, on behalf of the Government of Guam or any agency thereof. Where there has been any unauthorized procurement, the Government of Guam reserves the right, without liability to the Government of Guam, to rescind the procurement and to reject any delivery or tender of such supplies or services, and to return at the expense of the supplier any such supplies which have been accepted without proper authority.

.02. Neither the Agent, his delegate, or any personnel of the Division of Procurement and Supply, or any member of the Committee on Standardization, shall be financially interested, directly or indirectly, in any procurement for supplies or services for any agency of the Government of Guam. Neither the Agent, his delegate, or any personnel of the Division of Procurement and Supply, or any

member of the Committee on Standardization, 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 future such benefit or employment. The Government reserves the right to rescind any procurement for any violation of this subsection.

.03. The Agent shall report to the Governor any violation of this section immediately after the violation becomes known to him, setting forth the names and positions of all persons involved and the pertinent facts of the violation.

Section 12. COMMITTEE ON STANDARDIZATION.

.01. There is hereby established a Committee on Standardization, to be composed of the following:

- (a) Director of Finance, who shall be the Chairman;
- (b) Director of Public Works;
- (c) Chief Officer, Public Utility Agency;
- (d) Director of Medical Services;
- (e) Director of Budget and Management.

A duly authorized representative of any member may act for him at any time.

.02. The Committee shall classify the requirements of the Government as to supplies and prescribe as standards the minimum numbers of qualities, sizes, and varieties thereof. Standards, and detailed specifications for standards, shall be prepared in the form of a Procurement and Supply Standards and Specifications Manual, which shall be issued on an installment basis as prepared. Standards and specifications, including any rescission or revision thereof, shall be effective only upon written approval of the Governor and promulgation thereof by

Executive Order.

.03. In the preparation, adoption, rescision or revision of any such standards or specifications, the Committee shall seek the advice, assistance and cooperation of the various agencies concerned in order to ascertain their requirements. All standards and specifications shall, insofar as possible, reasonably satisfy the requirements of the majority of the agencies concerned. All standards and specifications must be definite and certain, and must permit competition except standards as to technical equipment for specialized situations or to provide standardization of technical equipment and interchangeability of parts. After becoming effective, standards and specifications shall be applied to all future procurement except as otherwise authorized in this regulation.


Section 13. REPEAL. This regulation supersedes any prior memoranda, Executive Orders, or other directives in conflict herewith.

Dated at Agana, Guam, this 16th day of September
1957.



RICHARD BARRETT LOWE
Governor of Guam

COUNTERSIGNED:



WM. T. CORBETT
Secretary of Guam