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Attorney General



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Civil & Solicitor Division

Office of the Attorney General

January 10, 2008

MEMORANDUM

Ref: GOV 07-0854

To: All Government of Guam Agencies

From: Attorney General

Subject: **Checklist for Attorney General Review of Procurement Contracts**

We have revised the "*Checklist for Attorney General Review of Procurement Contracts*" which was originally issued on May 14, 2003, and are forwarding the revised *Checklist* for your immediate use. All construction and professional services contracts that are signed by the contractor on or after January 14 must be accompanied by the *Checklist* when the contract and record are submitted to our office for review.

The updated *Checklist* is much more comprehensive than the original version, and will assist both us in reviewing your contract and your procurement officers in preparing a complete procurement record. The *Checklist* should be filled out by the responsible procurement officer administering the solicitation. The term "procurement officer" is defined at 5 G.C.A. §5030(p) as "any person duly authorized to enter into and administer contracts and make written determinations with respect thereto" and "also includes an authorized representative acting within the limits of authority." The definition would limit the procurement officer to the director or other head of an agency, or his or her deputy if the director is unavailable, and a few others such as administrative services officers, chiefs of administration, or person in charge of a procurement division.

The procurement law requires at 5 G.C.A. §5249 that the procurement officer prepare and maintain a "complete record" of each procurement. Furthermore, 5 G.C.A. §5250 prohibits any award of a contract until the responsible procurement officer has certified in writing under penalty of perjury that he or she maintains a complete procurement record of the solicitation.

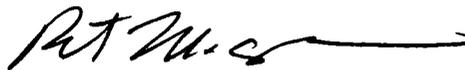
Accordingly, the revised *Checklist* also contains a form of certification to comply with the requirements of §5250. As it will be made under penalty of perjury, the certificate should not be signed unless the procurement officer believes it to be an accurate statement. However, if a contract is not accompanied by a full and complete procurement record, the contract may be legally insufficient and we may be unable to approve it.

Please ensure that the person preparing the *Checklist* and signing the certification has the proper authority to do so as defined by §5030(p) and understands the consequences of a false statement.

An organized procurement record will facilitate not only our ease in reviewing the record but your ease in keeping the record. Therefore, we suggest that the procurement record be put into a binder with tabs. Tabs numbered as in the *Checklist* would be ideal.

We also take this opportunity to give notice that the procurement law at 5 G.C.A. §5267 requires that all invitations to bid and requests for proposals identify the person who writes or drafts the specifications, scope of work, or statement of work, whatever it may be called. Also, if the specifications, etc. are amended, the identity of the person amending the language of the specifications must be identified. For all new solicitations after the date you have received this memorandum, please ensure that such identity is prominently noted as required by law.

Thank you for your cooperation.



J. PATRICK MASON
Deputy Attorney General
Civil & Solicitor Division

CHECKLIST for ATTORNEY GENERAL REVIEW of CONTRACTS
(for use ONLY with construction and professional services contracts)

The Checklist below lists every item that comprises a full and complete procurement record for an invitation to bid (ITB) or request for proposals (RFP). Except where noted, every item is required by law. The Checklist will assist us in our review of the contract's legal sufficiency, and should be prepared by the procurement officer administering the solicitation. The responsible procurement officer should check all items that are forwarded for review and sign the Certification if it is an accurate statement:

Identification of Contract: _____

- 1. Published notice of ITB or RFP
- 2. ITB or RFP
- 3. Log of distribution of ITB or RFP
- 4. Amendments to ITB or RFP, if any were issued
- 5. Logs of distribution of amendments to ITB or RFP, but only if amendments were issued
- 6. Minutes or summary of pre-submission conferences, but only if conferences were held
- 7. Logs of attendees of pre-submission conferences, but only if conferences were held
- 8. Written questions from bidders or offerors, but only if any questions were received
- 9. Written answers, but only if any questions were received
- 10. Proof that written answers were provided to all potential bidders or offerors, but only if any questions were received
- 11. Log of bids or proposals received
- 12. Each bid or proposal received
- 13. Evaluation of proposals or analysis of bids (bids are not required by law to be analyzed, but may be)
- 14. Tabulation of evaluations or analysis (tabulations are not required by law but recommended)
- 15. Letters to bidders concerning outcome of bid; for offerors, letters informing them of ranking and letter to best qualified offeror inviting negotiations
- 16. Memorandum of evaluations and negotiations (only required for RFP's)
- 17. Notice of intent to award
- 18. Any and all communications from or to anyone concerning any part of ITB or RFP
- 19. Contract, including all draft versions
- 20. Bid protests, if any, and responses thereto
- 21. Any determination required by law as may fit the circumstances

CERTIFICATION: Pursuant to 5 G.C.A. §5250, I hereby certify under penalty of perjury that I am the procurement officer responsible for administering the solicitation of the attached contract, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law.

Signature: _____

Print Name: _____ Date: _____