



# Office of the Attorney General of Guam

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**Hon. Leevin Taitano Camacho**  
Attorney General of Guam

## **REFERENCE CHECKLIST FOR INVITATION FOR BID (IFB)**

This is an official Office of the Attorney General procurement form consisting of a list of questions designed as a reference tool of the items to be considered in the invitation for bid procurement process. The list is not exhaustive of all the considerations that may be involved in procurement. It is only a tool to assist Government of Guam employees as to questions and sections of the law involved at different stages in the procurement process.

The form is used by the Office of Attorney General Civil/Solicitor Attorneys who handle procurements and is handed out to government employees who participate in an all day procurement workshop: AG Procurement Workshop 101, Acquisition of Professional Services: Developing a Request for Proposal and Conducting a Procurement, along with AG Procurement Form 018 Reference Checklist for Request for Proposals.

Workshop participants are taken through procurement basics beginning with where the Guam Procurement Laws and Regulations are found online at the Supreme Court of Guam, Office of Compiler website; URL <http://www.justice.gov.gu/compileroflaws/> . The words in the checklist, such as “record” and “determination”, are explained with examples so that the participants learn fundamental key concepts and practices in Government of Guam procurement.

**Disclaimer:** This document is only a guide. This document is not necessarily complete. It is a work-in-progress and will be updated periodically. This document does not apply to all procurements. A working knowledge of the Guam procurement law and regulations is necessary to successfully use this document. *The checklist paraphrases law and regulation – please read the specific law and regulation.*

The user is requested to advise the Guam Office of the Attorney General if corrections or improvements can be made to this document.

You may contact the procurement attorneys at [solicitors@oagguamag.org](mailto:solicitors@oagguamag.org) with your comments, improvements, criticisms or complaints. Please visit the OAG procurement website for further information. URL: [www.oagguamag.org/procurement-forms](http://www.oagguamag.org/procurement-forms). All official OAG procurement forms are available on the OAG web site.



**yes**   **no**   **n/a**

**INITIAL QUESTIONS**

- 1.   Is there a record of planning for this procurement? [5 GCA § 5010; 2 GAR, Div. 4 § 1102.03]
- 2.   Is there a record of the requesting agency’s determination of need? [5 GCA § 5249(e)]
- 3.   Is this procurement mandated by statute? If so, cite: \_\_\_\_\_

**STATUTORY PREFERENCES**

- 4.   Can matter being procured be a product that is biodegradable, reusable, recyclable, made from recycled material, or some combination of the foregoing? [2 GAR, Div. 4 § 1102.02]
- 5.   If matter being procured includes concrete or asphalt paving, construction or repair of highways, does IFB give notice that bids must include use of available recycled glass, and require bidders to identify and certify in writing the percentage of recycled glass contained in the material offered? [5 GCA § 5218]
- 6.   Does IFB give notice about local preference policy? [5 GCA § 5008; 2 GAR, Div 4. §1104] If "not applicable" is checked, please state why:  
  
\_\_\_\_\_
- 7.   If horticulture products are being procured, does IFB give notice that 75% must be native grown or grown-in-Guam? [5 GCA § 5008.1]
- 8.   Is this an acquisition of local produce and/or fish from local farmers and fishermen? [5 GCA §5001(e)]
  - 8.1.   If the answer is “yes,” make determination whether this acquisition is exempted from the procurement law.
- 9.   Does IFB give notice about service-disabled veteran preference? [5 GCA §§5011, 5012]

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**yes**   **no**   **n/a**

10. Are there laws or regulations applicable to this procurement by virtue of this agency's enabling legislation or the requirements imposed by the funding source?

If the answer to # 10 is "yes," list the applicable laws and regulations here:

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**REQUIREMENTS FOR ALL SOLICITATIONS**

11. Does IFB advise of disclosure of major shareholders? [5 GCA § 5233; 2 GAR, Div. 4 §3109(e)(3)(E)]
- 11.1. Is affidavit form (AG Procurement Form 002) attached to IFB?
12. Does IFB advise that submission of bid or offer is a certification by bidder that price or offer was independently arrived at without collusion? [2 GAR, Div. 4 § 3126(b)]
- 12.1. Is affidavit form (AG Procurement Form 003) attached to IFB?
13. Does solicitation conspicuously state prohibition against gratuities and kickbacks? [5 GCA § 5630(c); 2 GAR, Div. 4 §11107(3)]
- 13.1. Is affidavit form (AG Procurement Form 004) attached to IFB
- 13.2. If proposed form of contract is attached to IFB, then prohibition must be stated in proposed contract. [2 GAR, Div. 4 §1107(4)(e)]  
Is the prohibition stated?   *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*
14. Does solicitation conspicuously state prohibition against contingent fees and retention of persons to secure contract? [5GCA § 5631(c); 2 GAR, Div. 4 §§ 11108(a)(3), 11108(f)]
- 14.1. Is affidavit form (AG Procurement Form 007) attached to IFB?

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**yes**   **no**   **n/a**

- 14.2.   If proposed form of contract attached to IFB, then prohibition must be stated in proposed contract. [ 2 GAR, Div. 4 §11108(h)] *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*
15.   Does IFB conspicuously state ethical standards? [2 GAR, Div. 4 § 11103(b)]
- 15.1.   Is affidavit form (AG Procurement Form 005) attached to IFB?
- 15.2.   If proposed form of contract attached to IFB, then ethical standards must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*
16.   Does IFB advise that solicitation for bids may be cancelled as provided for in regulations? [5 GCA § 5225; 2 GAR, Div. 4 § 3115(c)]
17.   Does IFB advise that any bid may be rejected in whole or in part in the best interest of territory as provided in the regulations? [2 GAR, Div. 4 § 3115(e) (2)]
18.   Does IFB recite prohibition against employment of sex offenders? [5 GCA § 5253(c)]
- 18.1.   If proposed form of contract attached to IFB, then prohibition must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*
19.   If for services, does IFB recite wage and benefits determination requirement? [5 GCA § 5211(b); see also, 5 GCA §§5801 and 5802] *[Instructions: For question 19 and its sub-questions, you may check "not applicable" only if procurement is for something other than services.]*
- 19.1.   Is the most recent applicable USDOL wage and benefits determination attached to IFB?
- 19.2.   Is declaration form (AG Procurement Form 006) attached to IFB?

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**yes   no   n/a**

20. Does IFB specifically provide for multiple or alternate bids?
- 20.1 If answer is no, then does solicitation state that multiple or alternate bids will be rejected. [2 GAR, Div. 4 §§ 3102(d)]
21. If contract will be for more than one year, does IFB state contract term and conditions of renewal or extension? [5 GCA § 5237(a); 2 GAR, Div. 4 §3121(e); for leases, see 2 GAR, Div. 4 § 3119(j)] The following apply only if the contract is for more than one year.
- 21.1. Was written determination made? [5 GCA § 5237(b); 2 GAR, Div. 4 § 3121(d)]
- 21.2. Does IFB state amount of supply or service needed? [2 GAR, Div. 4 § 3121(e)(1)(A)]
- 21.3. Does IFB state unit price for supply or service is to be given? [2 GAR, Div. 4 § 3121(e) (1)(B)]
- 21.4. Does IFB state that contract will be cancelled if funds not appropriated or are insufficient? [2 GAR, Div. 4 § 3121(e) (1)(C)]
- 21.5. Does IFB state that, if contract cancelled due to insufficient funds, contractor will be timely informed? [2 GAR, Div. 4 §3121(e)(1)(D)]
- 21.6. Does IFB state whether bidders should submit price for first year only or for entire contract term? [2 GAR, Div. 4 § 3121(e)(1)(E)]
- 21.7. Does IFB state how award will be determined, including price comparison if applicable? [2 GAR, Div. 4 § 3121(e)(1)(F)]
- 21.8. Does IFB state that, if cancelled, contractor will be reimbursed unamortized reasonably incurred non-recurring costs? [2 GAR, Div. 4 § 3121(e)(1)(G)]
22. If contract is to have an option for renewal, extension, or purchase, is notice of this provision included in the IFB ? [2 GAR, Div. 4 §3119(k)(1)]
23. If contract is for the lease of equipment, supplies or real property, have the provisions of 2 GAR, Div. 4 §§3119(j), and 3119(k)(3) been reviewed and applied to this solicitation?



**yes**   **no**   **n/a**

24. Is contract for an indefinite quantity? [2 GAR, Div. 4 §3119(i); and see 2 GAR, Div. 4 §6101(5) (b) as to contract terms.] If yes, the following apply.
- 24.1. Is there a written determination stating the rationale for using this type of contract and the reason why another form of contract will not suffice? [2 GAR, Div. 4 §3119(i) (2)]
- 24.2. Does the IFB state an approximate quantity or the best information available as to quantity? [2 GAR, Div. 4 §3119(i) (2)]
- 24.3. Does IFB specify that the contract will be for unit prices of a fixed price type? [2 GAR, Div. 4 §3119(i), (1) and (2)]
- 24.4. Does the IFB specify minimum quantities and/or maximum quantities that the Territory is obligated to purchase? [2 GAR, Div. 4 §3119(i) (2)] If so, state those minimum or maximum quantities here: \_\_\_\_\_
- 24.5. Does the IFB state approximate quantities? [2 GAR, Div. 4 §3119(i) (2)] If so, state those approximate quantities here:  
\_\_\_\_\_
- 24.6. Is this contract for a supply or service that obligates the territory to order all of the actual requirements of the agency for that supply or service from the contractor during a specified period of time? If yes, this is a Requirements Contract. [2 GAR, Div. 4 §3119(i) (3)]
- 24.6.1. If the answer to #24.6 is “yes,” have you reviewed 2 GAR, Div. 4 §§3119(i)(2) and (i)(3) and followed provisions for a requirements contract in development of the IFB and the contract for this solicitation?
- 24.6.2. If the answer to # 24.6 is “yes,” does the IFB reserve for the government the right to initiate and issue a new solicitation for the supply or service in the event that a particular quantity requirement arises that exceeds normal requirements or amounts specified in the contract? [2 GAR, Div. 4 §3119(i)(3)(A)]

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**yes**   **no**   **n/a**

- 24.7.   Does the IFB state the proposed term of the contract? If yes, state the term here: \_\_\_\_\_.  
Note that indefinite quantity contracts for a given supply or service shall not be used more than two times per fiscal year. [2 GAR, Div. 4 §3119(i)(2)]   **CAUTION!** Should the department or agency continue to require the supply or service, the procurement of such supply or service must comply with 2 GAR, Div. 4 §3109 (competitive sealed bidding) or §3111 (small purchases).
25.   Does the IFB permit the bidder to condition its bid as “all or none”? [2 GAR, Div. 4 §3115(f)]

### **SPECIFICATIONS**

26.   Does this solicitation seek to acquire a common or general use standard commercial product? It may be necessary to confer with the CPO or the DPW to determine this question. You are referred to 2 GAR, Div. 4 §§ 4102(a)(3) and 4103(b)(2)(a) for guidance.
- 26.1.   Has a specification for the common or general use standard commercial product been developed, and is it being utilized here?
27.   Has the CPO (or DPW for construction) prepared, issued, revised, maintained and monitored the use of the specifications in this acquisition? [5 GCA §5262; 2GAR, Div.4 §4103]
28.   Were the specifications prepared pursuant to a contract entered into by the CPO, DPW, or head of the Purchasing Agency with a private contractor? [2 GAR, Div. 4 §4103(a)(2) (a) & (b)]
- 28.1.   If the answer to # 28 is “yes,” is there a written determination made to justify contracting for the preparation of these specifications?
- 28.2.   If the answer to # 28 is “yes,” does the contract for preparation of these specifications require that the contractor abide by Guam procurement law and regulations?
- 28.3.   If the answer to # 28 is “yes,” does the CPO, DPW, or head of the Purchasing Agency retain responsibility and authority to finally approve of specifications.



**yes   no   n/a**

29. Were specifications reviewed to confirm that they include only essential physical characteristics and functions to meet government's needs? [5 GCA § 5268(a); 2 GAR, Div. 4 § 4109(a)]
30. Is it true that the specifications do not contain features peculiar to product of one manufacturer? [5 GCA § 5268(b); 2 GAR, Div. 4 § 4102(a)]
- 30.1. If answer is "no," is there a written determination that peculiar features are essential and reasons why similar product without features do not meet minimum requirements? [5 GCA §5268(b)]
31. Is a "brand name or equal" specified?
- 31.1. If so, is there a written determination by the CPO, DPW or head of the purchasing agency that 1) no specification for a common or general use item is available, 2) time does not permit the preparation of another form of specification, and 3) either nature of product or government's requirements make use of brand name or equal suitable, or it is otherwise in the government's best interest? [2 GAR, Div. 4 §4103(b)(2)(b)(ii)]
- 31.2. If so, are three or more different brands named as the "or equal" references? [2 GAR, Div. 4 §4103(b)(2)(b)(iii)]
- 31.3. If so, does the IFB state that substantially equivalent products to those designated will be considered for award? [2 GAR, Div. 4 §4103(b)(2)(b)(iii)]
- 31.4. If so, do the specifications include a description of the particular design, functional, or performance characteristics which are required? [2 GAR, Div. 4 §4103(b)(2)(b)(iv)]
- 31.5. If so, does the IFB contain explanatory language that use of brand name is for purpose of describing standard of quality, performance, and characteristics desired, and not to limit or restrict completion. [2 GAR, Div. 4 §4103(b)(2)(b) (v)]
32. Is a "brand name" product specified?

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**yes**   **no**   **n/a**

- 32.1.   If so, has the CPO or DPW made a written determination that only the identified brand name will satisfy the government's needs? [2 GAR, Div. 4 §4103(b)(2)(c)] Note: There is a reporting requirement for use of a brand name. *Id.*
33.   Do specifications describe salient technical requirements or desired performance without restrictions which do not affect requirements or performance? [5 GCA § 5268(c); 2 GAR, Div. 4 §§ 4102(a) (2) and 4109(c)]
34.   Do specifications include requirements which do not unnecessarily restrict competition? [5 GCA 5268(a); 2GAR, Div. 4 §4109(a)]
35.   Do specifications include only the essential physical characteristics and functions required to meet the government's minimum needs? [5 GCA 5268(a); 2GAR, Div. 4 §4109(a)]
36.   Are specifications free of product features which are peculiar to products of one manufacturer, producer or distributor? [5 GCA § 5268(b); 2 GAR, Div. 4 §4109(b)]
37.   Does the specification describe the requirements to be met without having effect of exclusively requiring a proprietary supply, service, or construction item, or requiring a sole source procurement? [2 GAR, Div. 4 §4106(a)]
- 37.1.   If the answer is "no," has a written determination been completed that it is not practicable to use a less restrictive specification?
38.   Do specifications permit and encourage maximum practicable competition? [5 GCA § 5265; 2 GAR, Div. 4 § 4102(a) (1)]
39.   Does the IFB for supplies, and any amendment, identify the person responsible for drafting specifications, and any persons, technical literature and manufacturer's brochures relied upon? [5 GCA § 5267; 2 GAR, Div. 4 § 4108]

### **REQUIREMENTS AND CRITERIA**

40.   Does the IFB set forth, prior to publication, all of the requirements and criteria that will be used to determine the lowest responsive bidder? [5 GCA §5211(g); 2GAR, Div. 4 §3109(n)(1)]



yes no n/a

## **IFB DOCUMENT REQUIREMENTS**

Items 41 – 57. The following items are mandatory, except where noted, as required by 5 GCA §5211 and/or 2 GAR, Div. 4 § 3109, unless another citation is given:

- 41. Instructions to bidders. [2 GAR §3109(c)(2)(A)]
- 42. Time and date set for receipt of bids. [2 GAR §3109(c)(2)(A)]
- 43. Address to deliver bids. [2 GAR §3109(c)(2)(A)]
- 44. Maximum time for bid acceptance. [2 GAR §3109(c)(2)(A)]
- 45. Bids are due at least 15 days after date of distribution of IFB. [2 GAR §3109(d)] A shorter time is possible for a particular acquisition if supported by written determination.
- 46. Advise that bid shall acknowledge receipt of amendments to IFB. [2 GAR, Div. 4 §3109(c)(6)]
- 47. Purchase description. [2 GAR §3109(c)(2)(B)]
- 48. Delivery and performance schedule. [2 GAR §3109(c)(2)(B)]
- 49. Inspection and acceptance requirements [2 GAR §3109(c)(2)(B)]
- 50. Evaluation factors for product acceptability [2 GAR §3109(c)(2)(B)]
- 51. Limiting statement on samples or descriptive literature. [2 GAR §3109(e)(3)(D)]
- 52. Advise of contract terms and conditions [2 GAR, Div. 4 §3109(c)(2)(C)]
- 52.1. Does any contract clause or condition for supply or service concern any of the following:
  - \_\_\_\_\_ Change orders in a fixed price contract
  - \_\_\_\_\_ Stop work order in a fixed price contract
  - \_\_\_\_\_ Variation in quantity in a definite quantity contract



yes no n/a

- \_\_\_\_\_ Any other price adjustment
- \_\_\_\_\_ Claims based on procurement officer's acts or omissions
- \_\_\_\_\_ Termination based on default of the contractor
- \_\_\_\_\_ Liquidated damages
- \_\_\_\_\_ Termination for convenience of the government
- \_\_\_\_\_ Remedies

- 52.2. If any of these matters are to appear in the contract, and it is not the intention to follow the exact language as provided in the applicable subsection of 2 GAR, Div. 4 §6101, (3) through (10) and (12), then does the IFB contain the mandatory clause advising of a material change in otherwise mandatory contract language? [5 GCA §§5350(d), and 5306(d) for construction; 2GAR, Div. 4 §6101(2)]
- 52.3. If the mandatory clause advising of a material change in contract language is required, has the written determination been completed by the CPO or DPW? [5 GCA §5350(d); 2GAR, Div. 4 §6101(2)]
- 53. Bid bond requirements, applicable only if contract will be greater than \$25,000 [5 GCA § 5212; 5 GCA § 5303 for construction; 2 GAR, Div.4 §3109(c)(3)(B)]
- 54. Performance bond or payment bond requirements, applicable only if for construction and if contract will be greater than \$25,000 [5 GCA § 5304]
- 55. If anticipated that Certificate of Current Cost or Pricing Data may be required of winning bidder, then notice thereof must be included in IFB [2 GAR, Div. 4 § 3118(e)(3)]
- 56. If payments will be made in installments, then IFB must so advise [2 GAR, Div. 4 § 3106]
- 57. Include bid form, with space for bid amount and signature [2 GAR, Div. 4§3109(e)(1)]



**yes**   **no**   **n/a**

58. If your answer to # 10, above, is “yes,” have you applied all applicable laws and regulations to the development and formulation of the IFB?

**PUBLIC NOTICE AND DISTRIBUTION OF IFB**

59. Was the IFB or Notice of the Availability of IFB mailed or otherwise furnished to a sufficient number of potential bidders in order to secure competition? [2 GAR, Div. 4 §3109(f) (1)]
60. If the procurement is for greater than \$25,000, was notice of IFB published at least fifteen days before due date? [5 GCA § 5211(c) and 2 GAR, Div. 4 §§ 3109(d) and (f)(2)]
61. In addition to # 59, above, has bidding time been adequate to provide bidders a reasonable time to prepare bids? [2 GAR, Div. 4 §3109(d)]
62. Was the Notice of the Availability of IFB adequate to describe the supply, service or construction desired? [2 GAR, Div. 4 §3109(f) (1)]
63. Does the Notice of the Availability of IFB indicate where, when and for how long IFB’s may be obtained? [2 GAR, Div. 4 §3109(f) (1)]
64. Was bid invitation made publicly available at GSA (or Department of Public Works, if construction)? [2 GAR, Div. 4 §3109(f) (3)]
65. Was register or log of distribution of IFB kept?

**PRE-BID CONFERENCE**

66. Was pre-bid conference timely conducted? [2 GAR, Div. 4 § 3109(g) (4)]
67. Was time, date and place announced to all prospective bidders?
68. Was summary or minutes of conference prepared?
69. Was summary or minutes distributed to all prospective bidders?
70. Were prospective bidders notified, in either the IFB or the pre-bid conference notice, that the IFB could only be modified by a written amendment to IFB. [2 GAR, Div. 4 §3109(g)(4)]



yes no n/a

### **AMENDMENTS TO IFB**

71. Were any amendments to the IFB issued? [2 GAR, Div. 4 § 3109(i)]
72. How many amendments were issued? \_\_\_\_\_
73. Does each amendment advise that bidder shall acknowledge receipt of amendment. [2 GAR, Div. 2 §3109(i) (1)]
74. Was each amendment timely distributed to or served on all prospective bidders who received an IFB. [2 GAR, Div. 2 §§3109(i) (2) and (3)]
75. Was proof of distribution or service maintained for the record?
- 75.1. Was proof of distribution kept in the form of a register or log of distribution, or in the form of some other documentation? [2 GAR, Div. 4 §3109(i) (2)] Please identify form of documentation used to confirm proper distribution of amendments:

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### **BIDS RECEIVED AND BID OPENING**

76. Was register maintained of bids received?
77. Was each bid time-stamped and dated upon receipt? [2 GAR, Div. 4 § 3109(l)(1)]
78. Was any bid received after the date and time set for submission?
- 78.1. If “yes,” was late bidders notified that the late bid will not be considered? [2 GAR, Div. 4 § 3109(k)(3)]
- 78.2. Was a record maintained of the late bids? [2 GAR, Div. 4 §3109(k)(4)]
79. Was a record of bids and an abstract of bids prepared at time of opening? [5GCA § 5211(d); 2 GAR, Div. 4 § 3109(l)(2)]

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**yes**   **no**   **n/a**

80. Was a public opening conducted at the time, date and place indicated in IFB? [5 GCA § 5211(d); 2 GAR, Div. 4 § 3109(l) (2)]
81. Were there any bid mistakes, corrections, or withdrawals after the time of opening? [2 GAR, Div. 4 §3109(m)]
- 81.1. If the answer to # 81 is "yes," is there a record of each in accordance with [2 GAR, Div. 4 § 3109(m) (4)]?
82. Has a bidder designated any part of a bid confidential as trade secret or proprietary? [2 GAR, Div. 4 § 3109(l) (3)]
- 82.1. If the answer to # 82 is "yes," has the procurement officer examined designated material to validate request for nondisclosure?
- 82.1.1. If the answer to # 82.1 is "yes," has procurement officer agreed with the request of bidder claiming confidentiality?
- 82.1.2. If the procurement officer does not agree with the request of the bidder, is there a record that the bidder was informed in writing of decision, the effect of decision, and of appeal rights?

### **DETERMINATION OF BID RESPONSIVENESS AND RESPONSIBILITY**

83. Were bids evaluated to determine that each meets the requirements and criteria set forth in the IFB? [5 GCA §5211(g); 2 GAR, Div. 4 §§ 3109(n) (1) and (3)]
84. Does any bid assert the condition, "All or None"? [2 GAR, Div. 4 §3115(f)]
- 84.1. If the answer to #84 is "yes," then did the IFB specifically permit an "All or None" bid? If the answer is "No", then the "All or None" bid must be rejected as non-responsive. [2 GAR, Div. 4 §3115(f)]
85. If for services, are the bid amounts sufficient to comply with the wage and benefit requirements of 5 GCA §§5801 and 5802? [5 GCA § 5211(g)]
86. If matter being procured includes concrete or asphalt paving, construction or repair of highways, did bidders identify and certify in writing the percentage of recycled glass contained in the material offered. [5 GCA §5218]



**yes   no   n/a**

87. If horticulture products are being procured, does bid confirm that 75% will be native grown or grown-in-Guam? [5 GCA § 5008.1]
88. Is any bidder qualified for the service-disabled veteran preference? [5 GCA §5011]
- 88.1. If the answer to #88 is “yes,” has the bid from that bidder been evaluated in light of the services-disabled veteran preference?
89. Is matter being procured from business licensed on Guam, and maintaining an office on Guam? [5 GCA § 5008; 2 GAR, Div. 4 § 1104]

If the answer to #89 is “yes,” then check the following items that apply:

- \_\_\_\_\_ 89.1. For manufacturing business, is 25% value added by U. S. workers?
- \_\_\_\_\_ 89.2. For business with regular inventory, does it carry 50% of items being procured?
- \_\_\_\_\_ 89.3. For bona fide retail or wholesale business, is the value of its inventory at least one-half of items being procured or is the value of its inventory at least \$150,000?
- \_\_\_\_\_ 89.4. For a service business, are at least 95% of its workers U.S. citizens, etc.?
- 89.5. For foreign supplier, is total cost of items or services no greater than eighty-five percent (85%) of the total cost FOB job-site, unloaded, when procured from Guam business?
- 89.6. If the answer to item 89 was "no," please state why: \_\_\_\_\_
- \_\_\_\_\_
90. Were acceptable bids evaluated to determine lowest bidder? [2 GAR, Div. 4 § 3109(n) (4)]
91. Was only one responsive bid received? [2 GAR, Div. 4 §3102(c)]

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**yes**   **no**   **n/a**

- 91.1.   If so, has finding been made that the price is fair and reasonable, and 1) that other prospective bidders had reasonable opportunity to respond, or 2) that there is not adequate time for re-solicitation? See §3102(c) for other considerations.
92.   Does the record show a basis for determining successful bidder? [2 GAR, Div. 4 § 3109(p)]
93.   Were any bids rejected for any reason? [2 GAR, Div. 4 § 3115(e)]
- 93.1.   If the answer to #93 was "yes," was the rejected bidders notified and was a written determination prepared? [2 GAR, Div. 4 §§3115(d) (2) (B), 3115(e)(4), 3116(a) and 3116(b)(5)]
94.   For construction contracts, if all bids exceeded available funds but lowest bid did not exceed available funds by 5%, was a contract negotiated? [5 GCA § 5211(g)]
95.   If there were not at least two responsible bidders, and the contract amount will be over \$100,000, was the lowest bidder to whom a contract will be awarded, asked to submit cost or pricing data, and did bidder submit data? [2 GAR, Div. 4 §§ 3118]
- 95.1.   If the answer to # 95 was "yes," did the proposed contractor submit the proposed data as a certified statement? [2 GAR, Div. 4 §§ 3118(d) (3) and 3118(e) (1)]

**AWARD AND NOTICE OF AWARD**

96.   Was written notice sent to successful bidder? [2 GAR, Div. 4 § 3109(q)]
97.   For procurement over \$25,000, was written notice sent to all unsuccessful bidders? [2 GAR, Div. 4 § 3109(q)]
98.   If your answer to # 10, above, is “yes,” have you applied all applicable laws and regulations to the receipt and handling of bids?

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yes no n/a

**MANDATORY REQUIREMENTS FOR ALL CONTRACTS**

99. Did the procurement officer certify in writing and under penalty of perjury that a complete record exists before award was made? [5 GCA § 5250; 2 GAR, Div. 4 § 3130] The certification should be in the following form or in substantially similar language:

**"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."**

100. Identify contract type by checking one [2 GAR, Div. 4 § 3119]:

- \_\_\_\_\_ fixed price contract - firm fixed price
- \_\_\_\_\_ fixed price contract - with price adjustment
- \_\_\_\_\_ cost-reimbursement - cost contract
- \_\_\_\_\_ cost reimbursement - cost-plus-fixed fee contract
- \_\_\_\_\_ cost incentive contract - fixed-price cost incentive
- \_\_\_\_\_ cost incentive contract - cost-reimbursement contract with cost incentive fee
- \_\_\_\_\_ performance incentive contract
- \_\_\_\_\_ time and materials contract - time and materials contract
- \_\_\_\_\_ time and materials contract - labor hour contract
- \_\_\_\_\_ lease
- \_\_\_\_\_ other: \_\_\_\_\_

101. For contracts which are not firm fixed price, has a written determination been made that the contractor's accounting system is adequate to allocate costs and will permit timely development of all cost data? [5 GCA § 5236; 2 GAR, Div. 4 § 3119(e)(2)]



**yes**   **no**   **n/a**

102. Can an assurance be made that contract is not a "cost-plus-a-percentage-of-cost" contract? [5 GCA § 5235; 2 GAR, Div. 4 § 3119(b)]
103. If this is a cost-reimbursement contract, then has a written determination been made that the contract is likely to be less costly than other types of contracts, and meets further conditions set out at 2 GAR, Div. 4 § 3119(e)(2)? [5 GCA § 5235]
104. Does the contract conspicuously state the prohibition against gratuities and kickbacks? [5 GCA § 5630(c); 2 GAR, Div. 4 § 11107(3)]
105. Does the contract conspicuously state contractor's representation that contractor has not retained a person to solicit or secure contract, or paid a contingent fees, commissions, or brokerage fees? [5 GCA § 5631(c); 2 GAR, Div. 4 § 11108(a) (3)]
106. Does contract conspicuously state ethical standard? [2 GAR, Div. 4 § 11103(b)]
107. Does contract recite prohibition against employment of sex offenders? [5GCA § 5253]
108. If contract is for multiple years, does contract state exactly the same term provision and renewal provision that were stated in the IFB? [5 GCA §5237(a)]
109. For multi-year contracts, are funds available for the first year at time of contracting? [5 GCA § 5237(a)]
110. For multi-year service contract, and/or service contract with renewal clause, is there a stipulation to apply the Wage and Benefits Determination for Guam promulgated by the U.S. Department of Labor on a date most recent to the renewal date? [5 GCA §§5801, 5802]
111. If the contract is not a firm fixed price contract, does the contract state that the contractor shall maintain its books and records for three years from the date of final payment, and that this provision must be included in subcontracts? [5 GCA § 5241; 2 GAR, Div. 4 § 3124]

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yes   no   n/a

112. If cost or pricing data was required, then does contract include provision that government may, at reasonable times and places, audit books and records relative to cost or pricing data, and that contractor shall maintain such records and books for three years from date of final payment? [5 GCA §5241; 2 GAR, Div. 4 §3124]
113. A Disputes Clause is mandated in each contract by 2 GAR, Div. 4 §9103(g). The language proposed by §9103(g) is not adequate in light of the amendment to the procurement law by P.L.28-068:IV:68 [codified at 5 GCA §5427(e)] providing for an administrative appeal to the Public Auditor, and in light of *Pacific Rock v. Department of Education*, 2001 Guam 21, confirming that disputes for money owed to or from the government of Guam are to be resolved pursuant to the Government Claims Act. Representatives of government agencies should contact the Office of the Attorney General at [solicitors@oagguam.org](mailto:solicitors@oagguam.org) for assistance and guidance.

### **CONTRACT REQUIREMENTS FOR CONSTRUCTION CONTRACTS ONLY**

114. Is there a written statement setting forth the facts leading to selection of a particular method of construction contract management? [5 GCA § 5302(c); 2 GAR, Div. 4 §§ 5102(4) (a) and 5102(4) (d)] If yes, please state the method of contract management: \_\_\_\_\_
- \_\_\_\_\_
115. If a contract is awarded in excess of \$25,000, does the contract specify the amount of a performance or payment bond to be delivered and that delivery must be 100% of the amount stated? [5 GCA § 5304(a); 2 GAR, Div. 4 § 5104]

### **CONTRACT CLAUSES FOR CONSTRUCTION CONTRACTS ONLY**

116. If contract contains estimated quantity items, then does contract also contain the "variations in estimated quantities" clause? [5 GCA § 5306(a) (2); 2 GAR, Div. 4 § 5106(4)]

117 - 124. The following are mandatory clauses for all construction contracts:

117. "Suspension of work" clause [5 GCA § 5306(a)(3); 2 GAR, Div. 4 § 5106(5)]



yes   no   n/a

118. "Differing site conditions" clause [5 GCA § 5306(a)(4); 2 GAR, Div. 4 § 5106(6)] [*Note: 2 GAR, Div. 4 § 5106(6) contains two alternative clauses.*]
119. "Price adjustment" clause [5GCA § 5306(b); 2 GAR, Div. 4 § 5106(7)]
120. "Claims based on government's acts or omissions" clause [5 GCA § 5306(a); 2 GAR, Div. 4 § 5106(8)]
121. "Termination for default for non-performance or delay; damages for delay; time extension" clause [5 GCA § 5306(c); 2 GAR, Div. 4 § 5106(9)]
122. "Liquidated damages" clause [5 GCA § 5306(c); 2 GAR, Div. 4 § 5106(10)]
123. "Termination for convenience" clause [5 GCA § 5306(c); 2 GAR, Div. 4 § 5106(11)]
124. "Remedies" clause [5GCA § 5306(a); 2 GAR, Div. 4 § 5106(12)]
125. Items 117 through 124 are mandatory provisions for construction contracts, and the procurement regulations contain the provisions which must be used verbatim. The provision for item 116 is also found in the procurement regulations and must be used verbatim if the provision is applicable. Deviations from these provisions as found in the regulations cannot be used routinely but only in particular contracts, and require a written determination to support the modification. Were any deviations made? [5 GCA § 5306(d); 2 GAR, Div. 4 §§ 5106(1) and (2)]
126. Regarding item 125, if there is a deviation from a mandatory contract clause is there a written determination to support each deviation? [5 GCA §5306(d); 2 GAR, Div. 4 §§ 5106(2)]
127. Is there a change order clause in the contract giving the government the unilateral right to change work or time of performance? [5 GCA § 5306(a)] [*Note: The regulations do not contain a change order clause to be used verbatim.*]
128. If matter to be procured includes concrete or asphalt paving, construction or repair of highways, does contract include provision stating suitable percentage of recycled glass to be used in project as condition of award; and require contractor to identify and certify in writing the percentage of recycled glass contained in the material offered? [5 GCA § 5218]



yes no n/a

## CONTRACT CLAUSES FOR NON-CONSTRUCTION CONTRACTS

129 -137. The following are contract clauses for supplies and services, and should be used only if the subject matter is applicable. If applicable, the clause in the regulation is to be used verbatim unless the provisions of the regulations at 2 GAR, Div. 4 §6101(2) are followed [5 GCA § 5350 (a) and (c); 2 GAR, Div. 4 § 6101(2)]:

- 129. "Changes" clause [2 GAR, Div. 4 § 6101(3)(a)]
- 130. "Stop work order" clause [2 GAR, Div. 4 § 6101(4)(c)]
- 131. "Variation in quantity" clause for definite quantity contracts [2 GAR, Div. 4 § 6101(5)(a)]
- 132. "Price adjustment" clause [2 GAR, Div. 4 § 6101(6)]
- 133. "Claims based on government's actions or omissions" clause [2 GAR, Div. 4 § 6101(7) referring one to 2 GAR, Div. 4 § 5106(8)]
- 134. "Termination for default" clause [2 GAR, Div. 4 § 6101(8)]
- 135. "Liquidated damages" clause [2 GAR, Div. 4 § 6101(9) (a); see also 2 GAR, Div. 4 § 6101(9)(b)]
- 136. "Termination for convenience" clause [2 GAR, Div. 4 § 6101(10)]
- 137. "Remedies" clause [2 GAR, Div. 4 § 6101(12) referring one to 2 GAR, Div. 4 §5106(12)]
- 138. With respect to items129 through137, if the clauses were applicable, but not quoted in the contract verbatim from the rule, then was a written determination made to justify each deviation? [5 GCA § 5350(d); 2 GAR, Div. 4 § 6101(2)]
- 139. If Certificate of Current Cost or Pricing Data was required of winning bidder, then does contract state the government's right to a reduction in price? [2 GAR, Div. 4 §§ 3118(e)(3) and 3118(f)(1).]
- 140. If horticulture products are being procured, does the contract require that 75% will be native grown or grown-in-Guam? [5 GCA § 5008.1]

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**yes**   **no**   **n/a**

141. If matter being procured includes concrete or asphalt paving, construction or repair of highways, does the contract provide for the contractor to comply with the required percentage of recycled glass contained in the material to be provided. [5 GCA §5218]
142. If your answer to # 10, above, is “yes,” have you applied all applicable laws and regulations to the development and award of the contract?

