

CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM

RESOLUTION CSC-002-84

BE IT RESOLVED BY THE CIVIL SERVICE COMMISSION:

WHEREAS, Public Law 16-124 created the Guam Procurement Act and established ethical standards for Government of Guam employees involved in public contracting or the procurement or disposal of supplies, services, or construction; and

WHEREAS, Chapter 11 of the Guam Procurement Act designates the Civil Service Commission as the Ethics Commission for Government of Guam employees, and mandates the Commission to establish and adopt regulations for enforcement of the ethical standards; and

WHEREAS, the Civil Service Commission in conjunction with the General Services Agency, conducted a public hearing on the proposed regulations on June 13, 1984; and

WHEREAS, the proposed regulations are ready for adoption;
NOW, THEREFORE, BE IT

RESOLVED, that the Civil Service Commission hereby duly adopts the attached document entitled: "GOVERNMENT OF GUAM GUAM PROCUREMENT ACT CHAPTER 11 ETHICS REGULATIONS".

DULY AND REGULARLY ADOPTED ON THE 19th DAY OF JUNE, 1984.



VICENTE P. PEREZ
Chairperson



WILLIS S. CANNON
Commissioner



HARRY D. GUTIERREZ
Commissioner



LUCIA A. VALENTIN
Commissioner



JUNE S. REGALADO
Vice-Chairperson



E.L. "BILL" GIBSON
Commissioner



FRANK T. LIZAMA
Commissioner

GOVERNMENT OF GUAM
GUAM PROCUREMENT ACT
CHAPTER 11

ETHICS REGULATIONS

REGULATION 11-1 PURPOSE AND SCOPE

To provide regulations relating to ethical standards for Government of Guam employees involved in public contracting, in accordance with the Guam Procurement Act (Public Law 16-124). These regulations apply to all governmental bodies and employees covered by the Act.

REGULATION 11-2 NOTICE

The head of any governmental body covered by the Guam Procurement Act shall give notice of this Chapter to all employees within the organization who are involved in the procurement or disposal of supplies, services or construction; such head should explain and discuss the provisions to covered employees at least annually.

Reg. 11-2.1 Government Employee Statement

Each covered government employee shall be given a copy of this Chapter by the head of the governmental body by which such employee is employed, and shall be required to sign a statement, supplied by the Civil Service

Commission, that such employee is familiar with and will abide by the Guam Procurement Act and this Chapter.

Reg. 11-2.2

Filing of Government Employee Statements

Each government employee statement shall be filed with the Civil Service Commission. As a condition of employment, new government employees shall file such statement within ten days of the first day of such employee's employment. Incumbent employees shall file such statement within ten days of the effective date of this Chapter. This statement shall constitute the notice required by Section 6980.4 (Employee Conflict of Interest, Notice), Section 6980.5 (Employee Disclosure Requirements, Notice), and Section 6980.8 (Restrictions on Employment of Present and Former Employees, Contemporaneous Employment Prohibited) of the Guam Procurement Act.

REGULATION 11-3

DEFINITIONS

- (a) 'Blind Trust' means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

Sunshine act →

(b) 'Confidential Information' means any information which is available to an employee only because of the employee's status as an employee of this Territory and is not a matter of public knowledge or available to the public on request.

(c) 'Conspicuously' means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.

(d) 'Direct or Indirect Participation' means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(e) 'Financial Interest' means:

(1) ownership of any interest or involvement in any relationship from which, or as a result of which a person within the past year has received, or is presently or in the future entitled to receive, more than Two Thousand Five Hundred

Dollars (\$2,500) per year, or its equivalent;

(2) ownership or such interest in any property or any business as may be specified by the Ethics Commission; or

(3) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(f) 'Gratuity' means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. In this Chapter, a gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment. "Nominal value", as used in Section 6980(f) of the Guam Procurement Act, means actual worth, actual cost, whichever is greater, which does not exceed \$25 individually or cumulatively.

- (g) 'Immediate Family' means a spouse, children, parents, brothers and sisters or other relationships identified by the Civil Service Commission as falling within the term "immediate" family. In deciding whether a relationship is covered by this Chapter, the Commission will consider all relevant factors.
- (h) 'Official Responsibility' means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct territorial action.
- (i) 'Purchase Request' means that document whereby a using agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Guam Procurement Act.

(j) 'Employee' means an individual drawing a salary from a government body, whether elected or not, and any non-compensated individual performing personal services for any government body. 'Employee' is synonymous with "government employee" as used in this Chapter. The terms shall include:

- (1) a person elected to Territorial office;
- (2) a nonelected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the Territory; and
- (3) a noncompensated or minimally compensated person who is performing personal services for the Territory.

The term "government employee" does not include a person who, as an independent contractor, performs professional, scientific, technical, or advisory service for a territorial agency and who receives a fee, honorarium, or similar consideration for the services performed.

(k) 'Governmental Body' means any department, commission, council, board, bureau,

*Amended
by 18-44*

committee, institution, agency, government corporation, authority or other establishment or official of the executive branch of the Government of Guam, except for Guam Community College, the University of Guam, the Department of Education, the Guam Memorial Hospital Authority and other bodies exempted by statute after the effective date of this Chapter.

REGULATION 11-4 STANDARDS OF CONDUCT

Reg. 11-4.1 Statement of Policy

Public employment is a public trust. It is the policy of the Territory to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the Territory. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the territorial procurement organization.

To achieve the purpose of this regulation, it is essential that those doing business with the Territory also observe the ethical standards prescribed herein.

Reg. 11-4.2

General Standards of Ethical Conduct

(a) General Ethical Standards for Employees.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust.

In order to fulfill this general prescribed standard, an employee must also meet the specific standards set forth in these regulations.

Reg. 11-4.3

Employee Conflict of Interest

(a) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) a business or organization in which the employee, or any member of the

employee's immediate family has a financial interest pertaining to the procurement; or

- (3) any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) Financial Interest in a Blind Trust.

Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Civil Service Commission.

(c) Disclosure of a Blind Trust. Within

60 calendar days of the creation of a blind trust or, if such trust exists on the effective date of the Guam Procurement Act, within 60 calendar days of such effective date, the government employee who has a financial interest

in a blind trust shall file a disclosure report with the Civil Service Commission which shall contain the following:

- (1) a copy of the trust instrument;
- (2) the name and address of the trustee;
and
- (3) a statement that the government employee does not and will not receive notice of changes in the trust property.

(d) Civil Service Commission Ruling on a Blind Trust. Within 30 days of the receipt of a disclosure report, the Civil Service Commission shall determine in writing whether the particular trust arrangement complies with the policy set forth in Section 6980(a) (Definitions, Blind Trust) of the Guam Procurement Act. Upon a determination by the Civil Service Commission that the particular trust arrangement does not comply with the policy set forth in Section 6980(a) of the Guam Procurement Act, such employee may revise the trust arrangement and may submit a new disclosure report to the Civil Service Commission.

(e) Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.

Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from future participation in the transaction involved. The employee may, at the same time, apply to the Civil Service Commission in accordance with Regulation 11-6 for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(f) Application for Waiver. When a government employee knows that he or she has an actual or potential conflict of interest or when the Civil Service Commission has determined that an actual conflict of interest exists, such employee shall disqualify himself or herself from the procurement involved and may apply to the Civil Service Commission for a waiver of the conflict of interest prohibition under the authority of Section 6980.4(c) (Employee Conflict of Interest, Discovery of Actual or Potential Conflict of

Interest, Disqualification and Waiver) of the Guam Procurement Act.

(g) Grant or Denial of Waiver. Under Section 6982.1(c) (Civil Service Commission Waiver) of the Guam Procurement Act, the Civil Service Commission may grant a waiver of the conflict of interest prohibition where the interest of the Territory so require or when the ethical conflict is insubstantial or remote. Prior to granting or denying a waiver, the Civil Service Commission shall make such investigation as it may deem appropriate and which is not in violation of the government employee's rights, privileges, and immunities. Factors to be considered by the Civil Service Commission when determining whether to grant a waiver shall include:

- (1) the degree of involvement of the government employee in the particular procurement;
- (2) the size and character of the financial interest of the government employee or a member of such employee's immediate family which relates to the particular procurement;

- (3) the likelihood of the appearance of impropriety;
 - (4) the availability of suppliers or contractors, if any, with which a contract would not present a conflict; and
 - (5) the extent to which the Territory's interest will be affected by a waiver.
- (h) Negotiating for Employment with Contractor.

Section 6980.4 (Employee Conflict of Interest) of the Guam Procurement Act covers instances in which a government employee involved in procurement is actively negotiating for employment with a contractor or prospective contractor and applies to the Civil Service Commission for a waiver of the conflict of interest prohibition regarding any further participation in that procurement; offers of employment under certain circumstances may also be gratuities which are prohibited by Section 6980.6 (Gratuities and Kickbacks) of the Act.

Reg. 11-4.4

Employee Disclosure Requirements

- (a) Disclosure of Benefit Received from Contract. Any employee who has, or obtains any benefit from, any Territorial contract

with a business in which the employee has a financial interest shall report such benefit to the Civil Service Commission; provided, however, that this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(b) Failure to Disclose Benefit Received.

An employee who knows or should have known of such benefit, and fails to report such benefit to the Civil Service Commission is in breach of the ethical standards of this Section.

(c) "Benefit" Defined. A government employee receives a benefit for purposes of the disclosure requirement of Section 6980.5 (Employee Disclosure Requirement) of the Guam Procurement Act when a Territorial contract is awarded to a business in which such employee has a financial interest.

(d) Disclosure Requirement. The disclosure required by Section 6980.5 (Employee Disclosure Requirements) of the Guam Procurement Act shall be made to the Civil Service Commission within 30 days

after the government employee has actual or constructive notice of a benefit received or to be received. Such disclosure shall be made in written report which sets forth:

- (1) the name of the government employee and the name of the business involved;
- (2) the name of the government body with which the business has a contract;
- (3) the dollar amount and nature of the contract; and
- (4) the nature and extent of the benefit received or to be received.

This requirement applies regardless of whether such employee is subject to the conflict of interest prohibition set forth in Section 6980.4 (Employee Conflict of Interest) of the Guam Procurement Act.

Reg. 11-4.5

Gratuities and Kickbacks

- (a) Gratuities. It shall be a breach of ethical standards for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval,

recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(b) Relationship of Gratuity. In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:

(1) decision;

(2) approval;

(3) disapproval;

(4) recommendation;

(5) preparation of any part of a program requirement or a purchase request;

(6) action to influence the content

of any specification or procurement standard;

(7) rendering of advice;

(8) investigation;

(9) auditing; or

(10) other advisory capacity.

(c) Family. This prohibition extends to the giving of gratuities to anyone on the government employee's or former government employee's behalf such as a member of that employee's immediate family.

(d) When Prohibition Against Gratuities Not Applicable. Section 6980.6 (Gratuities and Kickbacks, Gratuities) does not prohibit:

(1) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the Territory and is based upon a personal or family relationship.

- (2) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;
- (3) acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of government employees, such as home mortgage loans; or
- (4) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value as described in Section 11-3(f) (Definitions, Gratuity) of this Chapter.
- (5) The gratuities prohibition set forth in Section 6980.6 (Gratuities and Kickbacks, Gratuities) of the Guam Procurement Act should not be construed to apply to instances

in which the interest of the Territory are served by Territorial participation in the widely attended luncheons, dinners, and similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest to the Territory and such organizations. However, payment by the Territory for attendance at such functions by government employees is encouraged.

Reg. 11-4.6

Prohibition Against Contingent Fees

- (a) Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Territorial contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employee or bona fide established commercial selling agencies for the purpose of securing business.
- (b) Influence Peddling. The prohibition in Section 6980.7 (Prohibition Against Contingent Fees, Contingent Fees) of the Guam Procurement Act covers influence

peddling and particularly that which might occur when a former government official is hired on a contingent basis by a business seeking Territorial contracts.

- (c) Improper Influence. A business employee or a commercial selling business should be conclusively presumed not to be bona fide if the Civil Service Commission determines that improper influence has been or is being used to secure a Territorial contract.

Reg. 11-4.7

Restrictions on Employment of Present and Former Employees

- (a) Contemporaneous Employment Prohibited.

Except as may be permitted by the Guam Procurement Act or rulings of the Civil Service Commission pursuant to the Act, or Title 4 of the Guam Code Annotated, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

"Contracting" as used in this Section

includes performing a Territorial contract or actively seeking award of a Territorial contract.

The Civil Service Commission may determine what constitutes a "governmental body" for purposes of the prohibition set forth in Section 6980.8(a) of the Guam Procurement Act. Such determination should be based on the separate and distinct function of the particular smaller unit.

- (b) Waiver. Under the provisions of Section 6980.8(a) (Restrictions on Employment of Present and Former Employees, Contemporaneous Employment Prohibited) of the Guam Procurement Act, the Civil Service Commission may waive the prohibition set forth in that Section on a case-by-case basis. Prior to granting a waiver, the Civil Service Commission shall make written determinations that:
- (1) the contemporaneous employment of the government employee had been publicly disclosed;
 - (2) the government employee will be able to perform his or her procurement

functions without actual or apparent bias or favoritism; and

(3) the best interest of the Territory will not be impaired.

Reg. 11-4.8

Use of Confidential Information

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

REGULATION 11-5

REMEDIES

Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.

(a) Existing Remedies Not Impaired. Civil and administrative remedies against employees which are in existence on the effective date of the Guam Procurement Act shall not be impaired.

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of the Guam Procurement Act or regulations promulgated hereunder, the Civil Service Commission may, in connection with employees of the Government of Guam, direct the appointing authority to issue any one or more of the following:

- (1) oral or written warnings or reprimands;
- (2) suspension with or without pay for specified periods of time; and
- (3) termination of employment;

but the Civil Service Commission members who made such recommendation shall not sit upon any appeal from the resulting adverse action and the Governor shall appoint the necessary members pro tempore, without the consent of the Legislature, to hear such appeals.

(c) Right to Recover from Employee Value Received in Breach of Ethical Standards.

The value of anything received by an employee in breach of the ethical standards of the regulations promulgated hereunder may be recoverable by the Territory as provided in Subsection 6981.2 of the Guam Procurement Act.

(d) Due Process. All procedures under this Section shall be in accordance with existing law and regulations regarding adverse actions and employee discipline promulgated pursuant to Title 4 of the Guam Code Annotated.

The Guam Procurement Act grants the functions required under this law to the Civil Service Commission with regard to employees. In the interests of continuing the employment structure already established and in not creating unnecessary commissions, the Civil Service Commission has jurisdiction over ethics violations by government employees.

(a) Ethics Commission

- (1) Regulations. The Civil Service Commission has developed these regulations to implement the Guam Procurement Act with regard to government employees. The authority and powers of the Commission to enforce these regulations shall be pursuant to the Guam Procurement Act and all relevant statutes governing the Commission.
- (2) Advisory Opinions. On written request of an employee, the Civil Service Commission may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Such requests and advisory opinions

must be duly published in the manner in which regulations of this Territory are published. Compliance with requirements of a duly promulgated advisory opinion of the Civil Service Commission shall be deemed to constitute compliance with the ethical standards of the Guam Procurement Act.

- (3) **Waiver.** On written request of an employee, the Civil Service Commission may grant an employee a written waiver from the application of Section 6980.4 of the Guam Procurement Act, and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the Territory so require or when the ethical conflict is insubstantial or remote.

(b) Appeal of Decisions

- (1) **General.** Except as provided under Section 6982.2 (Appeal of Decisions) of the Guam Procurement Act, a decision of the Civil Service

Commission shall be reviewable in accordance with the Administrative Adjudication Law of this Territory, but only in connection with the duty to render opinions.

- (2) An appeal from the decision of the Civil Service Commission as provided herein and the Guam Procurement Act, shall be taken before members, either permanent or pro tempore, who had no part in the decision being appealed from and in accordance with the rules of the Civil Service Commission governing adverse actions in general. Parties will be advised in advance of the procedural requirements of the Commission. As provided in Section 6982.2(c) of the Guam Procurement Act, further review by the Superior Court, where permitted, shall be pursuant to the provisions of Title 4, Guam Code Annotated.

(SAMPLE NOTICE)

Date: _____

MEMORANDUM

TO: Employee

FROM: Department/Agency Head

SUBJECT: Notice of Ethics Regulations

As an employee involved in public contracting or the procurement or disposal of supplies, services or construction, you are covered by the Ethics Regulations issued by the Civil Service Commission pursuant to the Guam Procurement Act (Public Law 16-124). You are required to familiarize yourself with the Regulations (a copy is attached for your use).

I will schedule a meeting for you so that I, or my designee, may explain and discuss the provisions of the Regulations. I hope to be meeting with you on this matter at least annually thereafter.

Department/Agency Head

Attachment

ACKNOWLEDGEMENT OF RECEIPT:

SIGNATURE OF EMPLOYEE

DATE: _____

GOVERNMENT EMPLOYEE STATEMENT
GUAM PROCUREMENT ACT
CHAPTER 11
ETHICS REGULATIONS

ER2

I, _____, do hereby affirm and certify that
(Name of Employee)

I have been furnished a copy of the Ethics Regulations issued by the Civil Service Commission pursuant to the Guam Procurement Act (Public Law 16-124); that I am familiar with and will abide by them.

Signature of Employee

Position Title

Department/Agency

DATE: _____

WITNESSED:

Signature of Witness

DATE: _____

NAME: _____

ADDRESS: _____

(City) (State) (Zip Code)

RECEIVED BY CIVIL SERVICE COMMISSION:

Signature

NAME (Please Print)

DATE: _____