

**EXECUTIVE ORDER NO. 85**

*RE: PROCUREMENT REGULATIONS*

**WHEREAS**, the Republic of Palau National Government has been operating until this date under a procurement system guided and directed by inadequate written regulations; and

**WHEREAS**, a need therefore exists to institute purchasing and contracting policies, procedures, practices, rules, and regulations to supplement the limited scope of 40 PNC 402, and 403; and

**WHEREAS**, to the extent now possible without being contrary to law, and to the extent possible that regulations may be issued without legislation, procurement regulations are needed immediately for the purposes of: (1) managing and controlling the procurement of supplies, services, and construction: (2) providing administrative and judicial remedies for the resolution of disputes and controversies relating to public contracts: and (3) providing a set of ethical standards governing public and private participants in the procurement process;

**NOW, THEREFORE**, by the power vested in me as President under the Constitution and Laws of the Republic of Palau, I hereby proclaim and order that the attached Procurement regulations are issued effective December 1, 1989: provided, however, to the extent any of these regulations conflict with 40 PNC 401, 402, or 403, or any other statutes of the Republic, the statutes shall prevail.

**IN WITNESS, HERETO**, I have set my hand and affixed my seal this 1<sup>st</sup> day of December, 1989, in the State of Koror, Republic of Palau.

Ngiratkel Etpison  
President  
Republic of Palau

REPUBLIC OF PALAU

PROCUREMENT REGULATIONS

Promulgated and issued by President Ngiratkel Etpison.  
Executive Order No. 85

Effective Date: December 1, 1989

## TABLE OF CONTENTS

### ARTICLE 1 - GENERAL PROVISIONS

#### Part A - General

- Section 1-101 - Purpose
- Section 1-102 - Authority
- Section 1-103 - Requirement of Good Faith Section 1-104 -Application
- Section 1-105 - Severability
- Section 1-106 - Effective Date
- Section 1-107 - Retention of Written Determinations

#### Part B - Definitions

- Section 1-201 - Definitions

### ARTICLE 2 - PROCUREMENT ORGANIZATION

#### Part A - Procurement Officer

- Section 2 - 101 - Procurement Authority
- Section 2 - 102 - Procurement Officer

#### Part B - Delegation of Authority

- Section 2 - 201 - Delegation

#### Part C - Procurement Regulation

- Section 2 - 301 - Procurement Regulation

#### Part D - Coordination

- Section 2 - 401 - Collection of Data
- Section 2 - 402 - Duties of Attorney General

### ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMULATION

#### Part A - Definition

- Section 3 - 101 - Definition of Terms

#### Part B - Methods of Source Selection

- Section 3 - 201 - Methods of Source Selection
- Section 3 - 202 - Competitive Sealed Bidding
- Section 3 - 203 - Small Purchases

#### Part C - Cancellation of Invitations for Bids or Requests for Proposals

- Section 3 - 301 - Cancellation of Invitation for bids or Requests for Proposals

#### Part D - Qualifications and Duties

- Section 3 - 401 - Responsibility of Bidders and Offerors
- Section 3 - 402 - reserved for future use

#### Part E - Reserved For Future Use

#### Part F - Inspection of Place of Business and Audit of Records

- Section 3 - 601 - Right to Inspect Place of Business

#### Part G - Reports and Records

- Section 3 - 701 - Reports of Anticompetitive Practices
- Section 3 - 702 - Retention of Procurement Records
- Section 3 - 703 - Contract File Documentation

#### Part H - Required Contract Clauses

- Section 3 - 801 - Required Contract Clause - General

### ARTICLE 4 -SPECIFICATION

#### Part A -Definitions

- Section 4-101 -Definition of Terms

Part B - Specification

- Section 4 - 201 - Duties of Procurement Officer
- Section 4 - 202 - Relationship With Using Agencies
- Section 4 - 203 - Maximum Practicable Competition
- Section 4 - 204 - Content of Specifications
- Section 4 - 205 - Specs Prepared by Architectural Firm

ARTICLE 5 - RESERVED FOR FUTURE USE

ARTICLE 6 - RESERVED FOR FUTURE USE

ARTICLE 7 - LEGAL AND CONTRACTUAL REMEDIES

Part A - Protests

- Section 7 - 101 - Authority to Resolve Protested Solicitations and Awards
- Section 7 - 102 - Remedies

Part B - Contract Disputes

- Section 7 - 201 - Authority to Resolve Contract Disputes

ARTICLE 8 - ETHICS IN PUBLIC CONTRACTING

Part A - Definition

- Section 8 - 101 - Definition of Terms

Part B - Standards of Conduct

- Section 8 - 201 - Statement of Policy
- Section 8 - 202 - General Standards
- Section 8 - 203 - Employee Conflict of Interests
- Section 8 - 204 - Employee Requirements
- Section 8 - 205 - Kickbacks and Gratuities
- Section 8 - 206 - Contract Clauses
- Section 8 - 207 - Restrictions on Employment of Present and Former Employees
- Section 8 - 208 - Use of Confidential Information
- Section 8 - 209 - Collusion by Bidders
- Section 8 - 210 - Penalties
- Section 8 - 211 - Recovery of Value Transferred or Received in Breach of Ethical Stands

Part C - Debar or Suspend

- Section 8 - 301 - Authority to Debar or Suspend

REPUBLIC OF PALAU  
PROCUREMENT REGULATIONS

ARTICLE I - GENERAL PROVISIONS

PART A - GENERAL

Section 1 - 101 - Purposes

- (1) Interpretation - These regulations shall be construed and applied to promote their underlying purposes and policies
- (2) Purposes and Policies - The purposes and policies of these regulations are as follows:
  - (a) to ensure the fair and equitable treatment of all persons who deal with the procurement system of the Republic;
  - (b) to provide for increased economy in all procurements and to maximize purchasing value of public funds;
  - (c) to encourage competition;
  - (d) to provide for public confidence in the procurement procedures: and
  - (e) to allow for the continued development of procurement policies and practices.
  - (f) to provide safeguards for the maintenance of a procurement system of quality and integrity.
- (3) Singular Plural and Gender Rules  
In these procedures, unless the context requires otherwise:
  - (a) words in the singular include the plural and those in the plural include the singular; and
  - (b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender

Section 1 - 102 - Authority

These regulations are issued by authority of Executive Order No. [sic].

Section 1 - 103 - Requirement of Good Faith

These regulations require all parties, including government employees, contractors, offerors and bidders involved in the negotiation, bidding, offering, performance and administration of government contracts to act in good faith.

Section 1 - 104 - Application

(1) General

These regulations apply only to procurement actions taken or contracts entered into after the effective date of these regulations. (See Section 1-107)

(2) National Government

Except as otherwise specified by law, these regulations apply to every expenditure of public funds irrespective of source, including United States Federal assistance monies. These regulations do not apply to contracts between the National and State governments or other governments.

Section 1 - 105 - Severability

If any provision of these regulations or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are declared to be severable.

### Section 1 - 106 - Effective Date

These regulations shall become effective [sic]

### Section 1 - 107 - Retention of Written Determinations

Written determinations required by these regulations shall be retained in the appropriate official contract file of the Procurement Officers.

## PART B - DEFINITIONS

### Section 1 - 201 - Definition

The terms used in these regulations shall have the following meanings unless the context otherwise requires:

- (1) Attorney General - means The Attorney General of The Republic of Palau.
- (2) Business - means any corporation, partnership, sole proprietorship, individual, joint venture, or any other private legal entity.
- (3) Change Order - means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.
- (4) Construction - means the process of building, altering, repairing, improving or demolishing of a public structure, or building or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (5) Contract - means all types of National Government agreements regardless of what these may be called, for the procurement of, supplies, services, or construction, or for the disposal of Government property.
- (6) Contract Modification - means any written alteration in specifications, delivery point, time, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (7) Contractor - means any person having a contract with The Republic.
- (8) Cost-Reimbursement Contract - means a contract under which the contractor is reimbursed for allowable and allocable costs in accordance with the terms of the contract and a fee, if any.
- (9) Dispute - means a disagreement concerning the terms of the contract and the legal rights and obligations of the contracting parties.
- (10) Employee - means an individual receiving a salary from the government, including elected and appointed officials.
- (11) Goods - means all property including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, leases of real and personal property, and sale or disposal of real or personal property of any kind.
- (12) Grant - means the furnishing by the government of assistance, whether financial or otherwise, to any person to support a program authorized by law.
- (13) Invitation for Bids - means all documents and announcements whether attached or incorporated by reference, utilized for soliciting bids.
- (14) Person - means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or private legal entity (See Business).
- (15) Procurement - means the acquisition by any means including purchase, lease or rental of any goods or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. It does not include personal service contracts with individuals who will be employed by Republic of Palau officials.
- (16) Procurement Officer - means any person duly authorized by the Republic of Palau as the

official responsible for procurement activities including entering into and administering contracts.

(17) Services - means the provision to the Republic of time, labor, or effort by a contractor of the National Government which does not involve the production or delivery of a specific end product other than reports, plans, and incidental documents.

(18) Using Agency - means any government organization which utilizes any supplies, services, or construction procured under these regulations.

## ARTICLE 2 - PROCUREMENT ORGANIZATION

### PART A - PROCUREMENT OFFICER(S)

#### Section 2 - 101 - Procurement Authority

Except as otherwise provided by law, or executive order, all rights, powers, duties, and authority relating to the procurement of construction, goods, and services, and the management, control, warehousing, sale, and disposal of construction, goods, and services, are hereby vested in the duly authorized procurement officer(s) or his designee by the appropriate Ministers.

#### Section 2 - 102 - Procurement Officers

(1) Location - The Procurement Officer for the purchase of goods shall be The Chief of Property and Supply who will report to the National Treasurer in the Ministry of Administration. The Procurement Officer for Construction and Architectural and Engineering (A&E) Contracts shall be the Director, Bureau of Public Works. The Procurement Officer for the purchase of contractual services (excluding A&E and construction) shall be the Director, Bureau of Public Service Systems.

(2) Tenure and Removal - The Procurement Officer(s) shall be a permanent classified public service system position.

(3) Authority and Duties - The Procurement Officer(s) are authorized to:

- (a) adopt operational procedures or rules to give effect to these regulations;
- (b) procure or supervise the procurement of all goods, services, and construction needed by the Government;
- (c) exercise general supervision and control over all inventories of supplies belonging to the government;
- (d) establish, and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction;
- (e) sell, trade or otherwise dispose of goods, and supplies belonging to the government.

### PART B - DELEGATION OF AUTHORITY

#### Section 2 - 201 - Delegation

The Procurement Officer(s) may delegate his authority. The Procurement Officer(s) may suspend, limit or revoke any delegation of authority made under the provision of this sub-section. Delegations must be in writing from the Procurement Officer(s) and include the name and title of the individual being delegated the authority.

### PART C - PROCUREMENT REGULATION

#### Section 2 - 301 - Procurement Regulation

(1) Regulations shall not change existing contract rights. Neither these nor any other regulation shall change any existing contractual commitment, right, or obligation of The National Government or of a contractor under a contract in existence on the effective date of such regulations.

## PART D - COORDINATION

### Section 2 - 401 - Collection of Data

(1) The Procurement Officer(s) shall cooperate with the Chief of Finance, Budget Officer, Public Auditor and National Planner in preparation of statistical data relating to procurement, usage, and disposition of all goods, services, and construction. The using Government agencies shall furnish such reports as the Procurement Officer(s) may require concerning usage, needs, and stocks on hand. The Procurement Officer(s) shall have the authority to prescribe forms for requisition, ordering and reporting of supplies, services and construction.

### Section 2 - 402 - Duties of Attorney General

- (1) The Attorney General or his designee shall serve as legal counsel and provide necessary legal services to the Procurement Officer(s).
- (2) The Attorney General shall certify the form of every government contract and change order.

## ARTICLE 3 -SOURCE SELECTION AND CONTRACT FORMULATION

### PART A - DEFINITION

#### Section 3 - 101 - Definition of Terms used in This Article

- (1) Bidding Time - means the time between the issuance of a solicitation and the opening of bids or the due date for proposals.
- (2) Cost-reimbursement Contract - means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and a fee, if any.
- (3) Firm-fixed-price Contract - means a contract under which a contractor agrees to perform the work required for a price which is not subject to any adjustment.
- (4) Offeror - means a person who has submitted a proposal in response to a request for proposals.
- (5) Purchase Description - means the words used in a solicitation to describe the construction, goods, or services to be procured.
- (6) Request for proposals - means all documents utilized for soliciting proposals under the negotiation method of procurement.

### PART B - METHODS OF SOURCE SELECTION

#### Section 3 - 201 - Methods of Source Selection

It is the policy of the Republic that all purchases and procurement actions be executed in a manner that provides open and free competition and avoids purchasing unnecessary or duplicative items.

When appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

#### Section 3 - 202 - Competitive Sealed Bidding

##### (1) Conditions for Use

Contracts shall be awarded by competitive sealed bids except as otherwise by law or these regulations. In using this method of procurement the following condition shall be met:

Invitations for bids shall contain a clear, complete and accurate description of the goods or services to be procured. This description shall not contain unnecessarily restrictive requirements which may unduly limit the number of bidders.

##### (2) Invitation for Bids

An invitation for bids shall be issued and shall include at a minimum:

- (a) notice that bids are being accepted;
- (b) invitation for bids Number;
- (c) date of issuance;
- (d) name, address, and location of issuing office and location where copies of the invitation for bids and plans may be obtained;
- (e) specific address/location where bids must be submitted;
- (f) date, hour, and place of bid opening;
- (g) a purchase description in adequate detail to permit full and open competition and allow bidders to properly respond;
- (h) quantity of goods or services to be furnished;
- (i) time, place, and method of delivery or performance requirements;
- (j) essential contractual terms and conditions;
- (k) any bonding requirements;
- (l) any local preference evaluation factors; and
- (m) closing date of bids.

(3) Public Notice Public notice of the invitation for bids shall be made a reasonable time, at least fifteen (15) days prior to the date of issue of the invitation. The notice shall be furnished to all state governments and to all persons who have requested to be included in bidders mailing lists within the previous 12 months; be published in a newspaper of general circulation in the Republic or in foreign newspapers if the Procurement Officer(s) determines that publication would benefit the government; and shall be publicly posted for at least fifteen (15) days at the office of the Procurement Officer(s), the Post Office Building, Courthouse, Bureau of Domestic Affairs Office, and announced on all radio and television stations within the Republic.

(4) Bidding Time

A bidding time of at least thirty (30) calendar days shall be provided unless the Procurement Officer(s) determines a shorter time period is reasonable and necessary. The minimum time period should not be less than 15 days after the notice of invitation for bids is posted.

(5) Bidders Mailing List

A list of potential bidders and suppliers requesting copies of invitation for bids in response to the public notice shall be maintained by the Procurement Officer(s). The list will be updated by the Procurement Officer(s) on an annual basis.

(6) Bid Receipt

Bids, upon receipt at the location specified in the invitation for bids, shall be kept unopened and secured in a locked receptacle. Bids which are opened in a time or in a manner not complying with Section 3 - 202 (7) shall be resealed in the envelope and the person who opened the bid shall write his signature and title on the envelop and deliver it to the procurement officer(s). No information contained in the bid shall be disclosed prior to bid opening.

(7) Bid Opening and Recording

The bid opening shall be conducted by the Procurement Officer(s) or his designee. The bids will be opened publicly in the presence of at least two witnesses at the time and place designated in the invitation. The Procurement Officer(s) shall record the amount of each bid together with the name of each bidder and prepare a written summary of the bid opening, to be countersigned by the witnesses. All bids and the summary shall be open for public inspection.

(8) Bid Acceptance and Evaluation

Bids shall be unconditionally accepted without alteration or correction except as authorized in these regulations. Bids shall be evaluated based on the requirements set forth in the invitation for bids.

(9) Bid Rejection

A bid may be rejected for any of the following reasons as determined by the Procurement Officer(s) in writing:

- (a) Failure to comply with material requirements of the invitation for bids such as specifications or time of delivery;

- (b) Imposition of conditions by the bidder which conditions limit the bidder's liability or modify requirements for the invitation. For example, bids may be rejected when the bidder:
  - (1) protects against future changes in conditions. such as increased costs; or
  - (2) fails to state a definite price; or
  - (3) states a price but qualifies it as subject to price in effect at time of delivery; or
  - (4) limits the rights of the government; or
  - (5) is nonresponsive.
- (c) A bid may be rejected if the bidder(s) is not responsible as determined by Section 3-401.

(10) Correction or Withdrawal of Bids; Cancellation of Awards

Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved by the Procurement Officer(s) in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the government or fair competition shall be allowed. If the bidder alleges an error, the government shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (a) or (b).

- (a) Correction of Bids -Correction of bids shall only be permitted when:
  - (i) an obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or
  - (ii) the otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from an error in judgement.
- (b) Withdrawal of Bids - Withdrawal of bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake.
- (c) Cancellation of Awards -Cancellation of awards or contracts shall be permitted only when:
  - (i) evidence as to the existence of the mistake could not reasonably be discovered until after the award; or
  - (ii) there exists no clear and convincing evidence to support the bid intended; or
  - (iii) performance of the contract at the award price would be unconscionable.

(11) Award

- (a) The contract must be awarded with reasonable promptness but not to exceed 30 days after opening of the bids by written notice to the responsible bidder whose bid fully meets the requirements of the invitation for bids and these regulations. Unsuccessful bidders also shall be promptly notified.
- (b) Notice of an award shall only be made by the presentation of a contract with all of the required government signatures to the bidder. Government contracts shall contain a clause which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required government officials. These officials are the Procurement Officer(s) or his designee, the Attorney General, and the Director, Bureau of Program Budget and Management.
- (c) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five percent (5%), the Procurement Officer(s) may negotiate an adjustment of the bid price. including changes in bid requirements. with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

### Section 3 - 203 - Small Purchases

- (1) Any procurement not exceeding \$5,000.00 may be made in accordance with the small purchase procedures established by these regulations. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.
- (2) Formal bidding is not required but it is encouraged for all items not exceeding \$5,000.00.
- (3) For all small purchases over \$300 and not put to bid. the Procurement Officer(s) or designee shall obtain price quotations from at least three (3) vendors and base the selection on competitive price, quality, delivery time and other relevant factors. A written documentation of the three quotes, the vendors submitting the quotes and the basis for selection shall be maintained in the purchase order file. Small purchases under \$300 may be limited to local vendors. Three price quotations are not required if there is adequate documentation ( e.g. list of phone calls made) that there are fewer than three suppliers of the items within the Republic. See also Section 3-205, Sole source procurement.
- (4) Purchase orders may be utilized for small purchases when there is no requirement to use a contract.

### PART C - CANCELLATION OF INVITATION FOR BIDS OR REQUESTS FOR PROPOSALS

#### Section 3 - 301 - Cancellation of Invitation for Bids or RFPs

An invitation for bids or request for proposals may be cancelled and any bids or proposals may be rejected when such action is determined in writing by the Procurement Officer(s) to be in the best interests of the government based upon:

- (1) inadequate specifications contained in solicitation; or
- (2) goods or services being procured are no longer required; or
- (3) change in specifications; or
- (4) all offers received being at unreasonable prices; or
- (5) bids or proposals received indicating that the needs of the government can be met by a less expensive good or service; or
- (6) collusive bids

A written determination of the reasons for the cancellation or rejection will be included in the contract file.

### PART D - QUALIFICATIONS AND DUTIES

#### Section 3 - 401 - Responsibility of Bidders and Offerors

- (1) Awards shall be made only to responsible bidders or offerors. Responsible bidders or offerors shall:
  - (a) have adequate financial resources to perform the contract or ability to obtain the finances;
  - (b) be able to comply with required delivery or performance schedule;
  - (c) have the necessary organization, experience and skills required to perform the contract or ability to obtain them;
  - (d) have the necessary production, construction, and technical equipment facilities or the ability to obtain them; and
  - (e) be qualified and eligible to receive award under applicable laws and rules
- (2) Obtaining Information

Prior to award. the Procurement Officer(s) may obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in paragraph 1 above. A determination of responsibility shall be made prior to the award of any contract calling for purchases of goods or services exceeding one hundred thousand dollars (\$100,000). The failure of a bidder or offeror to supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility. For the purposes of determining responsibility, the Procurement Officer may request inspection of the plant or place of business of the bidder or offeror at a reasonable

time, and the Procurement Officer may request the bidder or offeror to submit documents or other records for inspection. Failure to comply promptly with such requests shall be grounds for a determination that the bidder or offeror has failed to meet the standards of responsibility.

(3) Right of Non-Disclosure

Information furnished by a bidder or offeror pursuant to paragraph 2 may not be disclosed outside of the office of the Procurement Officer(s), the Attorney General or any involved government agency without prior consent by the bidder or offeror.

(4) Failure to Meet Standards of Responsibility

When a bidder or offeror is disqualified for failure to meet the standards of responsibility, a written determination shall be prepared and placed in the contract file.

PART E - RESERVED FOR FUTURE USE

PART F -INSPECTION OF PLACE OF BUSINESS AND AUDIT OF RECORDS

Section 3 - 601 - Right to Inspect Place of Business

All Invitations to Bid and all Requests for Proposals shall contain the following:

Bidder or Offeror acknowledges that the submission of a bid or offer provides the Republic of Palau the right to inspect at reasonable times the part of the plant or place of business of a contractor or subcontractor which is related to the performance of any contract awarded by the Government. Failure to allow inspection may result in the rejection of the bid or proposal.

PART G -REPORTS AND RECORDS

Section 3 - 701 - Reports of Anti-competitive Practices

When for any reason collusion or other anti-competitive practices is suspected among any bidders, offerors, or contractors, notice of the relevant facts shall be transmitted to the Attorney General.

Section 3 - 702 - Retention of Procurement Records

(1) All procurement records shall be retained and disposed of in accordance with the records retention rules and schedules approved by the Minister of Administration except for emergency and sole source procurements. Records for emergency and sole source procurements shall be maintained for a period of three years.

(2) Each of the records shall contain:

- contractor's name, and address;
- the amount and type of each contract; and a listing of the supplies, services, or construction procured under the contract

Section 3 - 703 - Contract File Documentation

An official contract file shall be established for each contract and contain the following information:

- (a) purchase requisition
- (b) public notice
- (c) bid or offeror's mailing list
- (d) invitation for bids or request for proposals
- (e) bid abstract or record
- (f) evaluation results in the case of a negotiated procurement
- (g) notice of award to unsuccessful bidders or offerors
- (h) contract
- (i) basis for cost or price
- (j) determination (emergency, sole source, non-responsibility)

## PART H - REQUIRED CONTRACT CLAUSES

### Section 3 - 801 - Required Contract Clauses - General

All contracts will include the following clauses:

- (1) Prohibition against gratuities and kickbacks as required by Article 8-Section 8-205.
- (2) Clauses providing for:
  - (a) remitted adjustments in prices, if any: time of performance;
  - (b) liquidated damages as appropriate;
  - (c) specified excuses for delay or non-performance;
  - (d) termination of the contract for default; and
  - (e) termination of the contract in whole or in part for the convenience of the Government, if applicable
- (3) Right to inspect place of business
- (4) Right to examine, copy, and audit books and records of contractors and subcontractors (40 PNC 275)
- (5) Right to make change orders in Construction Contracts
- (6) Contractor shall sign contract only after all authorized Government officials have signed
- (7) Contractor Records shall be maintained for three years from the date of final payment by the Government.
- (8) Provisions relating to provision of transportation and lodging expenses to resident workers in the same manner as provisions of these services to non-resident workers (30 PNC 124 [a] & [b]).

## ARTICLE 4 - SPECIFICATIONS

### PART A - DEFINITIONS

#### Section 4-101 - Definition

Specification means any description of the physical or functional characteristics, or the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service, or construction item for delivery.

### PART B - SPECIFICATION

#### Section 4 - 201 - Duties of the Procurement Officers

The Procurement Officer(s) or his designee shall be responsible for monitoring the use of specifications for construction, goods, and services to be procured.

#### Section 4 - 202 - Relationship with Using Agencies

The Procurement Officer(s) shall obtain expert advice and assistance from personnel of Using Agencies in the development of specifications and may delegate in writing to a Using Agency the authority to prepare and utilize its own specifications.

#### Section 4 - 203 - Maximum Practicable Competition

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in meeting the needs of the Republic and shall not be unduly restrictive.

#### Section 4 - 204 - Content of Specifications

Specifications shall, whenever practicable, present a description of the qualitative nature of the construction material, good, or service being procured and set forth, when necessary, the essential characteristics to which it must conform in order to satisfy its intended use. Specifications normally do

not specify a particular product peculiar to one manufacturer unless the particular product is essential to the requirements of the government and not available from other companies.

#### Section 4 - 205 - Specifications prepared by Architects and Engineers

The requirements of this article shall apply to all specifications, including those prepared by Architects and Engineers and Land-Surveying services for public contracts.

#### ARTICLE 5 - RESERVED FOR FUTURE USE

#### ARTICLE 6 - RESERVED FOR FUTURE USE

### ARTICLE 7 - LEGAL AND CONTRACTUAL REMEDIES

#### PART A - PROTESTS

##### Section 7 - 101 - Authority to Resolve Protested Solicitations and Award

###### (1) Right to Protest

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Officer(s). The protest shall be submitted in writing within 14 days after such aggrieved person knows or should have known of the facts giving rise thereto.

###### (2) Authority to Resolve Protests

The Procurement Officer(s) shall have the authority, prior to the commencement of an action in The Supreme Court of Palau concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. The Procurement Officer(s) will acknowledge receipt of protests within 5 working days after receipt and shall render a final decision within 30 days after receipt of the protest.

###### (3) Decision

If the protest is not resolved by mutual agreement, the Procurement Officer(s) shall promptly issue a decision in writing. This decision shall state the reasons for the actions taken.

###### (4) Notice of Decision

A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the protestor and any other party intervening within 30 days after receipt of the protest.

###### (5) Finality of Decision

A decision under subsection (3) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision seeks review of the decision by the Supreme Court of Palau within six months after notice of the decision is served.

###### (6) Stay of Procurement during Protests

In the event of a timely protest under subsection (1) of this section the government shall not proceed further with the solicitation or with the award of the contract until the Procurement Officer(s) makes a written determination that the award of the contract without delay is necessary to protect substantial interests of The Government.

##### Section 7 - 102 - Remedies

###### (1) Remedies Prior to Award

If prior to an award, the Procurement Officer(s) determines that a solicitation or award of contract is in violation of law or these regulations, then the solicitation or proposed award shall be

(a) cancelled, or

(b) revised to comply with law or regulation

###### (2) Remedies after Award

If after an award, the Procurement Officer(s) determines that a solicitation or proposed award of a

contract is in violation of law or regulation, then:

- (a) If the person awarded the contract has not acted fraudulently or in bad faith;
  - (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the government; or
  - (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination;
- (b) If the person awarded the contract has acted fraudulently or in bad faith:
  - (i) The contract shall be declared null and void; or
  - (ii) The contract may be ratified and affirmed if such action is in the best interests of the Government, without prejudice to the government's rights to such damages as may be appropriate.

## PART B - CONTRACT DISPUTES

### Section 7 - 201 - Authority to Resolve Contract Dispute

#### (1) Applicability

This section applies to controversies between the government and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon performance, interpretation, or compensation due under said contract.

#### (2) Authority

The Procurement Officer(s) is authorized to settle and resolve a controversy described in part (1) above.

#### (3) Decision

- (a) any dispute must be filed in writing with the Procurement Officer(s) within (14) calendar days after obtaining knowledge of the facts surrounding the dispute.
- (b) if such a dispute (controversy) is not resolved by mutual agreement, the Procurement Officer(s) shall issue a decision in writing within 90 days after receipt of notice of dispute. The decision shall include:
  - (i) description of dispute;
  - (ii) reference to pertinent contract terms;
  - (iii) statement of factual areas of disagreement or agreement; and
  - (iv) statement of decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

#### (5)[sic]Notice of Decision

A copy of the decision under part (2) above shall be mailed or otherwise furnished immediately to the contractor within 90 days after receipt of the notice of dispute.

#### (6) Finality of Decision

The decision under subsection (2) of this section shall be final and conclusive unless fraudulent or unless any person adversely affected by the decision seeks review of the decision by the Supreme Court within six months after notice of the decision is served.

#### (7) Duty to Continue Performance

A contractor that has a dispute pending before The Procurement Officer(s) must continue to perform according to the terms of the contract and failure to continue shall be deemed to be material breach of the contract unless the contractor obtains a waiver of this provision from the Procurement Officer(s).

#### (8) Failure to Render Timely Decision

If the Procurement Officer(s) does not issue the written decision required under subsection (2) of this section within 90 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

## ARTICLE 8 - ETHICS IN PUBLIC CONTRACTING

### PART A - DEFINITIONS

#### Section 8 - 101 - Definition of Terms

- (1) Confidential information - means any information which is available to an employee only because of the employee's status as an employee of a government organization and is not a matter of public knowledge or available to the public on request.
- (2) Conspicuously - means written in such special or distinctive form, print or manner such that a reasonable person affected by the writing would have been aware of it.
- (3) 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, or participation in any other advisory capacity.
- (4) Financial Interest - means:
  - (a) Any interest, ownership or involvement in any relationship which would result in the holder receiving a direct or indirect benefit or a future entitlement to receive more than \$10,000 per year or its equivalent.
  - (b) Holding a position in a business such as an officer, director, trustee, partner, employee or holding any position of management.
- (5) 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.
- (6) Immediate Family - means a spouse, parent, child, or sibling and any other person residing in the same household as the employee who is a dependent of the employee or of whom the employee is a dependent.
- (7) Dependent - means a son, daughter, parents, brother, sister or other person if such person receives from the employee or provides to the employee more than one-half of his financial support.

#### Section 8 - 202 - General Standards

- (1) 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 a public trust. In order to fulfill this ethical standard, employees must meet the requirements of these regulations.
- (2) Contractors: Any effort to influence any public employee to breach the standards of ethical conduct set forth in these regulations is also a breach of ethical standards.

#### Section 8 - 203 - Employee Conflict of Interest

- (1) Conflict of Interest within an employee's government organization of a government agency: It is a breach of ethical standards for any employee of a government agency to participate directly or indirectly in a procurement with that government agency if:
  - (a) the employee or any member of the employee's immediate family or dependent has a financial interest pertaining to the procurement;
  - (b) a business or organization in which the employee, or any member of the employee's immediate family or dependent, has a financial interest pertaining to the procurement; or
  - (c) 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.
- (2) Other Government Agency Procurements  
It is permissible for an employee, the employee's immediate family, or the employee's dependents to have an interest in a procurement with a government agency other than the one at which he is employed

provided:

- (a) The employee does not participate directly or indirectly in the procurement nor does he attempt to influence actions relative to the award of the procurement.
  - (b) The employee discloses his ownership/interest;
  - (c) The procurement is awarded as a result of a competitive sealed bidding or competitive negotiation.
- (3) 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 with the Procurement Officer(s) a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

#### Section 8 - 204 - Employee Disclosure Requirements

##### (1) Employee's Business Interest

An employee will disclose to the Attorney General and the Procurement Officer(s) on forms provided by the Procurement Officer(s) all interests, ownership or involvements with any business which will be bidding on government procurement actions, recommendation, preparation of any part of a program requirement or a purchase order request, influencing the content of any specification or procurement standard, rendering of advice, or participation in any other advisory capacity in any proceeding or application, relative to the procurement of goods, services or construction.

#### Section 8 - 205 - Kickbacks and Gratuities

##### (1) Kickbacks

It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

##### (2) Gratuities

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former 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 thereof.

#### Section 8 - 206 - Contract Clauses

The prohibitions against gratuities, and kickbacks shall be conspicuously set forth in every contract and solicitations therefor.

#### Section 8 - 207 - Restrictions on Employment of Present and Former Employees

##### (1) Present Employees

It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become a employee of a person contracting with the employees government agency within a year after the award of the contract or the cancellation of invitation for bids, if applicable, or when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties.

##### (2) Restrictions on former employees in matters connected with their former duties.

Permanent disqualification of former employee personally involved in a particular matter.

It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for any person, other than the government, in connection with any:

- (a) judicial or other legal proceeding, request for a ruling or other determination; or
- (b) claim; or,
- (c) charge or controversy in which the employee participated personally and substantially through decision, approval, disapproval, or recommendation.

(3) Disqualification of business when an employee has a financial interest.

It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the government, in connection with any:

- (a) judicial or other legal proceeding;
- (b) contract;
- (c) claim; or
- (d) charge or controversy in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, or otherwise.

#### Section 8 - 208 - Use of Confidential Information

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

#### Section 8 - 209 - Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The Procurement Officer(s) may declare the contract void if he finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the government.

#### Section 8 - 210 - Penalties

(1) Government employees - An employee who violates the provisions of these rules and regulations is subject to adverse action as may be appropriate in his or her particular circumstances. This action includes, but it not limited to, reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution. Procurement Officers may conduct proceedings providing for reprimand and/or suspension without pay for up to Sixty (60) days.

(2) Contractor - A contractor who violates a provision of these rules and regulations shall be subject to a written warning of reprimand, the termination of the contract or suspension from being a contractor or subcontractor under a government contract, in addition to other penalties prescribed by law.

(3) All proceedings under this section must be in accordance with due process requirements, including for employees, the provisions of the Administrative Procedure Act and, for non-employees, a right to notice and an opportunity for a hearing prior to imposition of any termination, debasement, or suspension from being a contractor or subcontractor under a Government contract.

#### Section 8 - 211 - Recovery of Value Transferred or Received in Breach of Ethical Standards

(1) General - The value of anything transferred or received in breach of the ethical standards of this article or regulations promulgated hereunder by an employee or non-employee may be recovered from either the employee and non-employee by the government.

(2) Recovery of Kickbacks by the Government - Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Government; such amount will be

recoverable hereunder from the recipient. In addition, said amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

## PART C - DEBAR OR SUSPEND

### Section 8 - 301 - Authority to Debar or Suspend

- (1) Authority - After reasonable notice to the person involved and reasonable opportunity for the person to be heard. The Procurement Officer(s), after consultation with the Attorney General, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.
- (2) Causes for Debarment or Suspension - The causes for debarment or suspension include the following:
  - (a) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract. or in the performance of such contract or subcontract;
  - (b) Conviction under Republic of Palau statutes of cheating, embezzlement, theft, forgery, bribery, or any other offense indicating a lack of business integrity or business honesty;
  - (c) Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer(s) to be so serious as to justify debarment action:
    - (i) deliberate failure without good cause to perform in accordance with the specifications within the time limits provided in the contract; or
    - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered a basis for debarment;
  - (d) Any other cause that the Procurement Officer(s) determines to be so serious and compelling as to affect responsibility as a government contractor, including debarment by another government entity; and
  - (e) For violation of any of the ethical standards set forth in this Article.
- (3) Decision - The Procurement Officer(s) shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (4) Notice of Decision - A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.
- (5) Finality of Decision - A decision under Subsection (3) of this section shall be final and conclusive.