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December 16, 2020

GENERAL SERVICES AGENCY CIRCULAR NO.: 2021-005

To: All Department and Agency Heads
From: Chief Procurement Officer
Subject: Submission of Annual Report to the Chief Procurement Officer
Ref: Listing All Contracts Awarded During the Preceding Year

Buenas yan Håfa Adai! This serves as a reminder to all agency/department heads that the requirement under 2GAR-Administration, Div. 4 – Procurement Regulations, §3114(o) Reports, to submit an Annual Report to the Chief Procurement Officer a listing of all contracts awarded under §3114 of these regulations during the preceding fiscal year.

Additionally, the report shall identify the parties to the contract, the contract amount, duration and the services to be performed thereunder. A copy of §3114(o) is attached for your reference. **Please submit reports no later than December 31, 2020.**

We are also requesting for each agency/department head to update your Primary and Alternate individuals authorized to conduct procurement activities within your respective agency/department. **The due date to submit names is no later than December 28, 2020.**

Your kind attention and full cooperation in this matter is greatly appreciated. If you have any questions regarding this matter, please call me at 475-1720/1707. ***DångkoloYu'os Ma'åse.***


CLAUDIA S. ACFALLE

Attachment

COMMITTED TO EXCELLENCE

**2GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS**

(FDA), of those drug products having the same active chemical ingredients.

SOURCE: Added to comply with 5 GCA §270. Eff. 1/1/1999.

§3113.2. Government to Purchase Drugs from Manufacturer. Whenever possible, the Chief Procurement Officer or his designee, shall purchase drugs, generic or otherwise, directly from the manufacturer so as to ensure and maximize economy.

SOURCE: Added to comply with 5 GCA §270. Eff. 1/1/1999.

§3113.3. Authority. All purchases of drugs directly from the manufacturer shall cite this section as authority, and each purchase order document shall reflect the following statement - "REF: 5 GCA §258."

§3114. Competitive Selection Procedures for Services Specified in §2112 (Authority to Contract for Certain Services and Approval of Contracts) of these Regulations. (a) Application. The provisions of this Section apply to every procurement of the services of accountants, physicians, lawyers, dentists, and other professionals as specified in §2112 (Authority to Contract for Certain Services and Approval of Contracts) of these Regulations.

(b) Conditions for use of Competitive Selection Procedures. Except as authorized under 5 GCA §5214 (Sole Source Procurement) or 5 GCA §5215 (Emergency Procurement) of the Guam Procurement Act, competitive selection procedures shall be used for all procurement of the services listed in Section 3114(a) (Application) in excess of \$5,000. Any procurement of such services not in excess of this amount may be procured in accordance with Section 3111 (Small Purchases) of this Chapter.

(c) Determination Required Prior to Use of Competitive Selection Procedures For the purposes of procuring the services specified in §3114(a)

**2GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS**

(Application), any using agency of the territory may act as a Purchasing Agency except as otherwise provided by law. (The Purchasing Agency shall consult with the Chief Procurement Officer or a designee of such office when procuring such services). However, the Chief Procurement Officer may, in his or her discretion, procure services for a using agency when requested. In either case, the head of the using agency or a designee of such officer shall determine in writing, prior to announcing the need for any such services;

(1) that the services to be acquired are services specified in §3114(a);

(2) that a reasonable inquiry has been conducted, which shall include requesting the appropriate Personnel Services Department to report on the availability of such personnel, and the territory does not have the personnel nor resources to perform the services required under the proposed contract;

(3) the nature of the relationship to be established between the using agency and the contractor by the proposed contract; and

(4) that the using agency has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.

(d) **Statement of Qualifications.** When the services specified in §3114(a) (Application) are needed on a recurring basis, the Procurement Officer shall actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format which shall include the following information:

(1) technical education and training;

(2) general or special experience, certifications, licenses, and membership in professional associations, societies, or boards;

**2 GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS**

(3) an expression of interest in providing a particular service specified in §3114(a); and

(4) any other pertinent information requested by the Procurement Officer.

Persons may amend statements of qualifications at any time by filing a new statement.

(e) **Public Notice in Competitive Selection Procedures.** Notice of the need for services specified in Section 3114(a) (Application) be made by the Procurement Officer in the form of a Request for Proposals at least ten (10) days before the proposals are due. Adequate public notice shall be given as provided in §3109(f) (Public Notice), and additionally shall consist of distributing Requests for Proposals to persons interested in performing the services required by the proposed contract.

(f) Request for Proposals.

(1) **Contents.** The Request for Proposals shall be in the form specified by the Procurement Officer and contain at least the following information:

(A) the type of services required;

(B) a description of the work involved;

(C) an estimate of when and for how long the services will be required;

(D) the type of contract to be used;

(E) a date by which proposals for the performance of the services shall be submitted;

(F) a statement that the proposals shall be in writing;

**2GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS**

(G) a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;

(H) a statement of the minimum information that the proposal shall contain, to include:

(i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

(ii) if deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

(iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

(iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a period of time, as specified in the Request for Proposals;

(v) a plan giving as much detail as is practical explaining how the services will be performed; and

(vi) the factors to be used in the evaluation and selection process and their importance.

(2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. The following factors may be appropriate to use in conducting the evaluation. The relative importance of these and other factors will vary

2 GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS

according to the type of services being procured. The minimum factors are:

(A) the plan for performing the required services;

(B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the personnel proposed to be assigned to perform the services;

(C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting, and

(D) a record of past performance of similar work.

(g) **Pre-Proposal Conferences** . Pre-proposal conferences, as appropriate, may be conducted in accordance with §3100(h) (Pre-Bid Conferences). Such a conference may be held anytime prior to the date established for submission of proposals.

(h) Receipt and Handling of Proposals.

(1) **Registration.** Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more procurement officials. A Register of Proposals shall be established which shall include for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only

**2GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS**

after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection.

(2) **Requests of Nondisclosure of Data.** If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a designee of such officer shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the head of the agency conducting the procurement or a designee of such officer shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals or protests under 5 GCA Chapter 5 Article 9 (Legal and Contractual Remedies) of the Guam Procurement Act, the proposal will be so disclosed.

(i) Discussion.

(1) **Discussions Permissible.** The head of the agency conducting the procurement or a designee of such officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall be to:

(A) determine in greater detail such offeror's qualifications, and

(B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

(2) **No Disclosure of Information.** Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the

**2GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS**

offeror awarded the contract shall be opened to public inspection except as otherwise provided in the contract. (See §3114(h)(1), Receipt and Handling of Proposals, Registration).

(3) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

(j) Selection of the Best Qualified Offerors . After conclusion of validation of qualifications, evaluation, and discussion as provided in §3114(i) (Discussions), the head of the agency conducting the procurement or a designee of such officer shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

(k) Submission of Cost or Pricing Data. The offeror determined to be best qualified shall be required to submit cost or pricing data to the head of the agency conducting the procurement at a time specified prior to the commencement of negotiations in accordance with §3118 (Cost or Pricing Data) of these Regulations.

(l) Negotiation and Award of Contract.

(1) General. The head of the agency conducting the procurement or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

(2) Elements of Negotiation. Contract negotiations shall be directed toward:

(A) making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;

**2 GAR • ADMINISTRATION
DIV. 4 • PROCUREMENT REGULATIONS**

(B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

(C) agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

(3) Successful Negotiation of Contract with Best Qualified Offeror . If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

(4) Failure to Negotiate Contract With Best Qualified Offeror.

(A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file and the head of the agency conducting procurement or a designee of such officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three days.

(B) Upon failure to negotiate a contract with the best qualified offeror, the head of the agency conducting the procurement or the designee of such officer may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided in Subsection 3114(1)(4)(a) of this Section and commence with the next qualified offeror.

(5) Notice of Award. Written notice of award shall be public information and made a part of the contract file.

**2GAR - ADMINISTRATION
Div. 4 - PROCUREMENT REGULATIONS**

(6) Failure to Negotiate Contract with Offerors Initially Selected as Best Qualified. Should the head of the agency conducting the procurement or a designee of such officer be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with Subsection 3114(f)(4) of this Section until an agreement is reached and the contract awarded.

(m) Memorandum of Evaluation and Negotiation. At the conclusion of negotiations resulting in the award of the contract, the head of the agency conducting the procurement or a designee of such officer shall prepare a memorandum setting forth the basis of award including:

(1) how the evaluation factors stated in the Request for Proposals were applied to determine the best qualified offerors; and

(2) the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract.

All memoranda shall be included in the contract file and be available for public inspection.

(n) Approval of Contracts for Legal Services. As provided by §2111 (Authority to Contract for Certain Service, Approval of Contracts for Legal Services) of these Regulations, no contract for the services of legal counsel may be awarded without the approval of the Attorney General.

(o) Reports. The head of each using agency shall submit annually to the Chief Procurement Officer a listing of all contracts awarded under §3114 of these Regulations in the preceding fiscal year. The report shall identify the parties to

**2 GAR - ADMINISTRATION
Div. 4 - PROCUREMENT REGULATIONS**

the contract, the contract amount, duration, and the services to be performed thereunder.

§3115. Cancellation of Invitations for Bids or Requests for Proposals.

(a) **Scope of This Section.** The provisions of this Section shall govern the cancellation of any solicitations whether issued by the territory under competitive sealed bidding, competitive sealed proposals, small purchases, or any other selection method, and rejection of bids or proposals in whole or in part.

(b) **Policy.** Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation shall give the status of funding for the procurement.

Preparing and distributing a solicitation requires the expenditure of government time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the territory's best interest.

(c) **Cancellation of Solicitation - Notice.** Each solicitation issued by the territory shall state that the solicitation may be cancelled as provided in these Regulations.

(d) **Cancellation of Solicitation: Rejection of All Bids or Proposals.**

(1) **Prior to Opening.**

(A) As used in this Section, *opening* means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding.