

ETHICAL CONDUCT AND RESPONSIBILITIES OF GOVERNMENT EMPLOYEES

- A. Public service is a public trust. Employees are expected to be loyal to the U.S. constitution, the Organic Act of Guam, and to perform their duties and responsibilities ethically and in accordance with laws.
- B. Employees shall not hold financial interest that conflict with the conscientious performance of duty.
- C. Employees shall not engage in financial transactions using confidential or non-public government information or allow the improper use of such information to further any private interest.
- D. An employee shall not, except as permitted by statute or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or persons whose interest may be substantially affected by the performance or non-performance of the employee's duties, or that of the employee's department.
- E. Employees shall put forth honest effort in the performance of their duties.
- F. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the government.
- G. Employees shall not use public office for private gain.
- H. Employees shall protect and conserve public property and shall not use it for other than authorized activities.
- I. Employees shall not engage in unauthorized outside employment or activities, including seeking or negotiating for employment that conflicts with official government duties, and responsibilities.
- J. Employees shall, in good faith, disclose waste and abuse and corruption to appropriate authorities and in doing so shall be protected from reprisal.
- K. Employees shall respect the rights and privacy of other employees and shall not use their position, authority or other means to injure another person or employee for personal reasons or malicious purposes.
- L. Employees shall refrain from the unlawful use of drugs and alcohol. Drugs shall mean those drugs identified in the Drug-Free Workplace Program Operating Procedures (DFWPOP)
- M. Employees shall be courteous and helpful to clients and members of the public.
- N. Employees shall be courteous to other employees and respect supervisory authority.

ATTACHED IS A COPY OF THE ETHICS REGULATIONS (2 GAR DIV.4 PROCUREMENT REGULATIONS)

EMPLOYEE NAME (PRINT)

EMPLOYEE SIGNATURE / DATE:

2 GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS

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 (Chapter 5, 5 GCA). 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.

Regulation 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.

Regulation 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 5 GCA §562(d)8 (Employee Conflict of Interest, Notice), 5 GCA §5629(c)

(Employee Disclosure Requirements, Notice), and §5632(a) (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.

(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 5 GCA §5601(f) of the Guam Procurement Act, means actual worth, actual costs, 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 noncompensated 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, 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

Regulation 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 person-

nel 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.

Regulation 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.

Regulation 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 5 GCA §5601(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 5 GCA §5601(a) of the Guam Procurement Act, such employee may revise the trust arrange-

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ment 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 5 GCA §5628(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 5 GCA §5675(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 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. 5 GCA 5628 (Employee Conflict of Interest) of the Guam Procurement Act covers instances in which a government employee involved in a 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 5 GCA §5630 (Gratuities and Kickbacks) of the Act.

Regulation 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.