

Leonardo M. Rapadas
Attorney General



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Office of the Attorney General

December 13, 2011

PROCUREMENT CIRCULAR NO. 2011-01

TO: All Government of Guam Agencies

FROM: Attorney General of Guam

SUBJECT: **Announcement of New AG Procurement Form 014 to Identify Estimated Cost of Procurement as Being \$500,000 or More, or Less than \$500,000, and Compliance with 5 GCA § 5150; Guidelines for Use**

Attached is new AG Procurement Form 014 entitled "Declaration re Compliance with 5 GCA § 5150" (hereinafter "Form 014") to assist government of Guam agencies in deciding when to engage our Office's assistance based on the estimated cost of a procurement, and to inform agencies of their responsibilities relative to 5 GCA § 5150. As you know, § 5150 requires our Office to assist all government agencies, both line agencies and autonomous, "during all phases of the solicitation or procurement process" if the cost of an acquisition is **\$500,000 or more** over the life of a contract or purchase order.

A failure to comply with 5 GCA § 5150 may result in serious adverse consequences including, but not limited to, procurement protests, protracted litigation, and additional financial liabilities for the agency.

To help you in your understanding of how § 5150 applies, the Attorney General's Office has determined that the procurement process essentially has four basic phases regardless of the type of procurement process employed. All of the basic four phases have sub-phases, and each sub-phase may require our Office's involvement as well. Some of the important sub-phases are listed below, but the list of sub-phases is not exhaustive, nor will the listed sub-phases necessarily apply to each and every procurement:

- (a) The Planning and Drafting Phase: from the time the need is identified and the procurement is conceived, to the time the procurement documents are drafted and finalized, and a package put together and ready for issuance;
- (b) The Solicitation and Bidding Phase: from official issuance and announcement of the procurement, to the date and time that bids or proposals are due and received:
 - the official issuance of the procurement documents and package;
 - the publication of notice;
 - the handling of any amendments to procurement;
 - the handling of questions and answers;

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- the handling of any pre-bid or pre-proposal conference;
 - the receipt of bids or proposals;
- (c) The Evaluations and Negotiations Phase: from the time bids or proposals are opened, to the time right before the decision to make an award:
- the opening of bids or proposals;
 - checking bids or proposals for responsiveness;
 - evaluating bids or proposals;
 - conducting discussions with offerors;
 - in the case of offerors, negotiating with the best qualified;
- (d) The Decision to Award and Contract Signing Phase: from the time a decision is made to make an award to the lowest bidder or a decision is made that negotiations with the best qualified offeror have been successful, to the time a purchase order is issued or a formal contract is drafted, issued and signed by all signatories.

Please note that § 5150 applies to sole source procurement and emergency procurement as well. These two types of procurement processes may also be broken down into the four basic phases described above.

The following are the guidelines which should be used in filling out Form 014:

1. Form 014 must be filled out during a procurement's initial planning stage and before any procurement is publicly announced or officially issued.
2. Form 014 applies to all procurement processes, except small purchases. Please use Form 014 for competitive sealed bids, requests for proposals, sole source procurement, or emergency procurement.
3. Form 014 must be certified and signed under penalty of perjury by the person who is the procurement officer for the agency. For the General Services Agency, it is the Chief Procurement Officer. For the Department of Public Works, it is the Director. For a purchasing agency or autonomous agency, it is the director or other head of the agency.
4. After filling out Form 014, it becomes a part of the procurement record. Please keep it with the procurement record at all times. If the Attorney General and Governor are required to approve your agency's contracts and the procurement cost is less than \$500,000, please submit Form 014 with the contract and procurement record to the Attorney General at the time the Attorney General reviews the contract and procurement.

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If you have any questions regarding this circular, please contact the Civil Division at 475-3324, extension 130.



LEONARDO M. RAPADAS
Attorney General

cc: Governor of Guam
Governor's Chief of Staff
Governor's Legal Counsel
Director, Department of Administration
Chief Procurement Officer, General Services Agency
Director, Department of Public Works

DECLARATION RE COMPLIANCE WITH 5 GCA § 5150

I, _____, make this declaration on _____
[print name clearly] *[enter today's date]*
regarding Procurement No. _____, and do hereby **certify under penalty of perjury** that:
[enter procurement no.]

(1) I am the procurement officer (Chief Procurement Officer; Director of Public Works; or head of a purchasing agency) for this procurement;

(2) I have caused an estimate to be made of the cost of the services or supplies being procured, and for which a contract will be entered into or a purchase order will be issued, whichever is appropriate as the case may be;

(3) My estimate of the total cost of the contract or purchase order, whichever is appropriate as the case may be, is *[please check one]*:

less than \$500,000; or

\$500,000 or more;

(4) If the total estimated cost of the procurement is \$500,000 or more, I understand that I must be advised by legal counsel designated by the Attorney General (which may be an Assistant Attorney General or other legal counsel designated as Special Assistant Attorney General ("SAAG") under 5 GCA § 5150) during each and every phase of the procurement process, beginning with the planning stage and before any request for proposal or invitation to bid is issued or notice published, or before any sole source procurement or emergency procurement is undertaken;

(5) If the total estimated cost of the procurement is \$500,000 or more, I understand I may not proceed with any phase of the procurement unless I have been advised by an Assistant Attorney General or a SAAG to proceed;

(6) If the total estimated cost of the procurement is less than \$500,000 initially when the procurement is begun, but the total cost increases to \$500,000 or more at some later point in time, I understand I must contact the Attorney General's Office as soon as I become aware that the procurement will actually cost \$500,000 or more, and that I may not proceed further without the assistance of the Attorney General's Office or a SAAG; and

(7) I understand if I do not comply with the requirements of 5 GCA § 5150 and the Attorney General's Office or a SAAG has not acted as legal counsel during all phases of a procurement estimated to cost \$500,000 or more, the Attorney General or SAAG may disapprove the contract, or the procurement may be subject to cancellation, or any award, contract or purchase order made or entered into may be subject to termination.

[Declarant's Signature]