COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN, MARIANA ISLANDS

Vol. 13 No. 08



August 15, 1991 1

commonwealth

register

Published monthly by the Registrar of Corporations Office of the Attorney General

COMMONWEALTH REGISTER AUGUST 15, 1991 VOLUME 13 NO. 08

TABLE OF CONTENTS

PROPOSED REGULATIONS:

NOTICE OF ADOPTION:

PUBLIC NOTICE

Proposed Regulations Promulgated Pursuant to Article XXI of the Commonwealth Constitution and the Tinian Casino Gaming Control Act of 1989.

The Tinian Casino Gaming Control Commission (Commission) hereby gives public notice that pursuant to its duties and responsibilities under Article XXI of the Constitution, as amended, and the authority given the Commission by and through the Tinian Casino Gaming Control Act of 1989 promulgates these proposed procurement regulations to be utilized by the Commission under the Tinian Casino Gaming Act of 1989.

The Commission hereby advises the general public that the Rules and Regulations are available at the Commission Office, P.O. Box 143, San Jose Village, Tinian, M.P. 96952.

These rules and regulations shall be effective upon notice of their adoption as provided by the Commonwealth Administrative Procedure Act.

Dated this 11V day of Muguet, 1991.

TINIAN CASINO GAMING CONTROL COMMISSION

BY: John U\ Hofschneider Chairman

NOTICIA PUBLIKO

Ma-propopone na Areglo yan Regulasion ni ma-estapblesi sigun i Attikulo XXI gi Commonwealth Constitution yan i Tinian Casino Gaming Control Act of 1989.

I Tinian Casino Gaming Control Commission (Commission) hana' guaha noticia pupbliku sigun gi responsbilidad gi papa i Attikulo XXI gi Constitution, ni ma-amenda, yan i autoridad ni nina'e i Commission gi papa i Tinian Casino Gaming Control Act of 1989, na ha-estapblesi este siha i mapropopone na regulasion yan i punto siha i Commission para u-usa gi para todo na chinili gi papa i Tinian Casino Gaming Control Act 1989 yan todo inekkungok siha ni manginagagao.

I Commission ha-abibisa i pupbliku henerat na i Areglu yan Regulasion gaige gi Offisinan i Commission, P.O. Box 143, San Jose Village, Tinian, MP 96952.

Este siha na areglo yan regulasion para u efektibo gi noticia na ma-adopta sigun ni maprobiniyi gi Commonwealth Administrative Procedures Act.

Mafecha gi mina uno na haane gi Augusto, 1991.

TINIAN CASINO GAMING CONTROL COMMISSION ν. BY: John U. Hofschneider Chairman

TINIAN CASINO GAMING CONTROL COMMISSION RESOLUTION CASINO APPLICATION

Resolution No.<u>91-15</u>

WHEREAS, the people of the Second Senatorial District, in the exercise of a fundamental constitutional right, enacted the Tinian Casino Gaming Control Act of 1989 pursuant to Articles XXI and IX of the Commonwealth Constitution; and

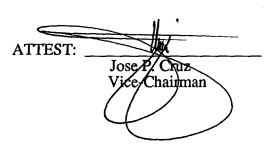
WHEREAS, the Tinian Casino Gaming Control Commission, an autonomous local governmental entity, was created pursuant to the Tinian Casino Gaming Control Act of 1989, by Local Initiative, which was approved overwhelmingly by the voters of the Second Senatorial District on November 4, 1989; and

WHEREAS, pursuant to the Tinian Casino Gaming Control Act of 1989, the Tinian Casino Gaming Control Commission is vested with the power and authority to establish, regulate, set standards for casino operations, solicit and select suitable qualified applicants/operators, and enact and enforce rules and regulations to carry out the intent and purpose of the Tinian Casino Gaming Control Act of 1989; and

WHEREAS, the Tinian Casino Gaming Control Commission deems it is necessary and appropriate to achieve these purposes has tentatively adopted procurement regulations which shall be published in the Commonwealth Register during the month of August, 1991, and

NOW, THEREFORE, BE IT RESOLVED, that the Tinian Casino Gaming Control Commission does hereby tentatively adopt the attached procurement regulations which shall be published for comment in the Commonwealth Register during the month of August, 1991.

CERTIFICATION



Iohn U. Hofschneider Chairman

PROCUREMENT REGULATIONS

Adopted August 1, 1991

Procurement Regulations

TABLE OF CONTENTS

ARTICLE 1 GENERAL PROVISIONS

Part A

General Section 1-101 Purposes

Section 1-102 Authority

- Section 1-103 Supplementary General Principles
- Requirement of Good Faith Section 1-104
- Section 1-105 Application of Regulations
- Section 1-106 Severability
- Section 1-107
- Validity of Contract Computation of Time Section 1-108
- Section 1-109 Preference to Local Contractors
- Section 1-110 Public Access to Procurement Information
- Section 1-111 **Remedy Against Employee**
- Section 1-112 Definitions

ARTICLE 2

PROCUREMENT ORGANIZATION

- Section 2-101 Creation of Procurement and Supply Section
- Section 2-102 Chief of Procurement and Supply
- Section 2-103 Duties of the Chief
- Section 2-104 **Centralized Procurement**
- Section 2-105 **Bulk Procurement of Supplies**

ARTICLE 3

Part A

SOURCE SELECTION AND CONTRACT FORMATION

- Source Selection
- Methods of Source Selection Section 3-101
- Section 3-102 Competitive Sealed Bidding
- Section 3-103 **Competitive Sealed Proposals**
- **Professional Services Procurement** Section 3-104
- **Construction Procurement** Section 3-105
- Section 3-106 Cancellation of Invitation for Bids and Request for Proposals
- Section 3-107 Subverting the Competitive Bid Process
- Section 3-108 Small Purchases
- Section 3-109 Sole Source Procurement
- Section 3-110 **Emergency Procurement**
- Expedited Purchasing in Special Circumstances Section 3-111
- Part B Qualification of Contractors
- Section 3-201 **Responsible Bidders and Offerers**
- Section 3-202 Prequalification of Contractors

Part C Contracts

- Section 3-301 **Execution of Contracts**
- Section 3-302 Types of Contracts
- Contract Review, Processing and Oversight Section 3-303
- Part D Inspection and Audit

Procurement Regulations

TABLE OF CONTENTS

Section 3-401	Report of Anticompetitive or Deceptive Practices
Section 3-402	Retention of Procurement Records

ARTICLE 4 BID PROTESTS AND CONTRACT DISPUTES

Section 4-101 Protests to the Executive Director

Protest Remedies

- Section 4-102 Protests After Award
- Section 4-103 Appeal of Executive Director's Decision to the Public Auditor
- Section 4-104
- Section 4-105 Contract Disputes

ARTICLE 5 ETHICAL STANDARDS IN PROCUREMENT

Part A	Definitions
Section 5-101	Definition of Terms

Part B Standards of Conduct

Section 5-201 Policy Section 5-202 General Standards Section 5-203 **Employee Disclosure Requirements** Section 5-204 **Employee Conflict of Interest** Gifts, Gratuities and Offers of Employment Section 5-205 Section 5-206 **Contingent Fees and Kickbacks** Section 5-207 **Contract Clauses** Section 5-208 Restriction on Employment of Present and Former Employees Section 5-209 Use of Confidential Information Collusion by Bidders Section 5-210 Legal, Civil and Administrative Remedies Section 5-211 Section 5-212 Authority to Debar or Suspend

COMMONWEALTH REGISTER

VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE

7824

ARTICLE 1 - GENERAL PROVISIONS

ARTICLE 1 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 underlying purposes and policies of these regulations are:
 - (a) to standardize and centralize the procurement policies and practices of the TCGCC;
 - (b) to provide for increased public confidence in the procedures followed in TCGCC procurement;
 - (c) to insure the fair and equitable treatment of persons who deal with the procurement system of the TCGCC;
 - (d) to provide increased economy in TCGCC procurement activities and to maximize to the fullest extent practicable the purchasing value of TCGCC funds;
 - (e) to foster effective broad-based competition within the free enterprise system; and
 - (f) to provide safeguards for the maintenance of a procurement system of quality and integrity.

Section 1-102 <u>Authority</u>

The Executive Director is in control of and is responsible for procurement and supply in the TCGCC.

Section 1-103 Supplementary General Principles

Unless displaced by the particular provisions of these regulations, principles of law and equity including, but not limited to, the Uniform Commercial Code of the Commonwealth the TCGCC Code of Ethics and Common Law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement these regulations.

Section 1-104 Requirement of Good Faith

These regulations require all parties, including TCGCC employees, contractors and suppliers, involved in the negotiation, bidding, performance or administration of TCGCC contracts to act in good faith.

Procurement Regulations

Section 1-105 Application of Regulations

These regulations apply to every expenditure of TCGCC funds for goods, services or construction irrespective of source.

Section 1-106 Severability

If any provision of these regulations or any application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, 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 regulation are declared to be severable.

Section 1-107 Validity of Contract

No TCGCC contract shall be valid unless it complies with these regulations.

Section 1-108 Computation of Time

- (1) Except as otherwise specified, all "days" referred to in this regulation are deemed to be working days of the TCGCC.
- (2) In computing any period of time prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.
- (3) The term "file" or "submit" except as otherwise provided refers to the date of transmission.

Section 1-109 Preference to Local Contractors

All other factors being judged equal, it shall be the policy of the TCGCC to first prefer companies or individuals located on Tinian and secondly elsewhere in the Commonwealth before considering non-CNMI vendors for procurement placement.

Section 1-110 Public Access to Procurement Information

Except as otherwise stated herein, procurement information shall be a matter of public record and available to the public during normal business hours by appointment with the Chief and subject to a reasonable charge for reproduction.

Section 1-111 <u>Remedy Against Employee</u>

Any procurement action of an employee of the TCGCC in violation of these regulations is an action outside the scope of his or her employment. The TCGCC will seek to have any liability asserted against it by a contractor which directly results from these improper acts to be determined judicially to be the individual liability of the employee who committed the wrongful act.

Procurement Regulations

Section 1-112 **Definitions**

As used in these regulations, unless the context otherwise requires, the following meanings apply:

- (1) *Chairman* means the Chairman of the TCGCC.
- (2) *Chief* means the Chief of the Procurement and Supply Section within the Division of Administration.
- (3) *Commission* means the currently appointed Commissioners of the Tinian Casino Gaming Control Commission as a collective body.
- (4) *Commonwealth* or *CNMI* means the Commonwealth of the Northern Mariana Islands.
- (5) *Construction* means the process of building, altering, repairing, improving or demolishing of a structure or building or improvements commonly known as "capital improvements". It does not include the routine maintenance of existing structures, buildings, or real property.
- (6) *Contract* means all types of agreements, regardless of title terminology for the procurement of supplies, services or construction.
- (7) Cost-Reimbursement Contract means a contract under which a contractor is reimbursed for costs which are allowable and in accordance with the contract terms and these regulations, and a fee, if any.
- (8) *Dispute* means an interpretative disagreement concerning the legal rights and obligations of contracting parties.
- (9) *Employee* means an individual receiving regular compensation from the TCGCC, including appointive officials and non-salaried individuals performing personal services for the TCGCC. This definition extends to the Commissioners and all staff members. Consultants and part-time workers shall be considered employees for purposes of these regulations.
- (10) *Executive Director* means the Executive Director of the TCGCC.
- (11) Goods means all property, including but not limited to equipment, material, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of real property, and sale or other disposal of real and personal property.
- (12) *Invitation for Bids* means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (13) Legal Counsel means the in-house TCGCC Legal Counsel.
- (14) *Person* includes any body corporate, association, firm, business or partnership as well as a natural person.

Procurement Regulations

- (15) *Procurement* means buying, purchasing, renting, leasing or acquiring construction, goods or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description or requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
- (16) *Protest* means an objection lodged by a party outside of TCGCC with regard to the selection of a source for award of a contract or other procurement action.
- (17) *Public Auditor* means the office of the CNMI Public Auditor.
- (18) *Purchase Description* means the words used in a solicitation to describe the goods, services or construction to be purchased and includes specifications attached to, or made part of, the solicitation.
- (19) *Responsible* in reference to a bidder, means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which should assure good faith performance.
- (20) *Responsive* in reference to a bidder, means a person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or RFP.
- (21) *RFP* means Request for Proposal which is an invitation to bid on certain large or complex needs for construction, goods or services.
- (22) *Services* means the furnishing of time, labor or effort by a person other than an employee, and not involving the delivery of a specific end product other than task completion, reports, plans or incidental documents.
- (23) TCGCC means the Tinian Casino Gaming Control Commission as an organization.

ARTICLE 2 - PROCUREMENT ORGANIZATION

Section 2-101 Creation of Procurement and Supply Section

There is created in the Division of Administration a Procurement and Supply Section to assist the Executive Director in the execution of these regulations.

Section 2-102 Chief of Procurement and Supply

The Deputy Executive Director is designated as the Chief of Procurement and Supply. With the approval of the Commission, the Executive Director may appoint another responsible employee as the Chief of Procurement and Supply to administer day-to-day procurement activities. The Chief may receive clerical assistance in the performance of his duties from employees of the Division of Administration provided, however, that no employee of the Accounting Section shall be directly involved in initiating procurement actions.

Section 2-103 Duties of the Chief

- (1) Oversee that these regulations are observed in all TCGCC procurement;
- (2)provide advance planning for the centralized purchase of TCGCC supplies;
- (3) procure or supervise the procurement of all supplies, goods and services needed by the TCGCC;
- (4) conduct bidding, procurement, negotiation or administration of TCGCC contracts upon request of the Executive Director;
- (5) establish and administer repair and maintenance programs for TCGCC equipment;
- (6) sell, trade or otherwise dispose of surplus or unserviceable supplies or equipment belonging to TCGCC;
- (7) exercise general supervision and control over all inventories of TCGCC supplies;
- (8) exercise general oversight and control on the use of physical assets and other capital equipment to prevent waste or abuse or other unauthorized use;
- (9) establish and administer programs for the inspection, testing and acceptance of supplies; and
- (10)hear all appeals of protests and disputes.

Section 2-104 Centralized Procurement

All purchases shall be centralized in the Procurement and Supply Section under the administration of the Chief.

Section 2-105 Bulk Procurement of Supplies

Subject to normal competitive bid requirements, the Chief may, with the approval of the Executive Director, purchase certain consumable supplies in large quantities or solicit annual contracts to provide consumable supplies where deemed efficient. No separate contract or purchase order for these supplies will be approved except under emergency conditions in accordance with Section $3-1\overline{10}$.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

ARTICLE 3 Part A - Source Selection

Section 3-101 Methods of Source Selection

All TCGCC procurement shall be awarded by competitive sealed bidding, except as provided in:

(1)	Section 3-103	Competitive Sealed Proposals;
(2)	Section 3-104	Professional Services Procureme

Section 3-104 Professional Services Procurement;

Procurement Regulations

- (3) Section 3-105 Construction Procurement;
- (4) Section 3-108 Small Purchases;
- (5) Section 3-109 Soul Source Procurement;
- (6) Section 3-110 Emergency Procurement; and
- (7) Section 3-111 Expedited Purchasing.

Section 3-102 Competitive Sealed Bidding

- (1) When competitive sealed bidding is required, an Invitation For Bids shall be issued which shall include at a minimum:
 - (a) an invitation for bids number;
 - (b) date of issuance;
 - (c) name, address and location of issuing office;
 - (d) specific location where bids must be submitted;
 - (e) date, hour and place of bid opening;
 - (f) a purchase description in sufficient detail to permit full and open competition among bidders and to establish criteria by which bids can be evaluated;
 - (g) quantity to be furnished;
 - (h) time, place and method of delivery or performance requirements;
 - (i) essential contractual terms and conditions; and
 - (j) any bonding requirements.
- (2) Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publication of notice in a newspaper of general circulation in the Commonwealth on three separate dates shall be deemed to be adequate notice.
- (3) A bidding time of at least twenty (20) calendar days shall be provided, unless the Chief determines a shorter period is reasonable and necessary.
- (4) All bids shall be submitted to the Chief at the Procurement and Supply Section. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at the office. Bids submitted from vendors outside the Commonwealth must be postmarked by the date set in the Invitation for Bids and must be received within seven (7) working days of that date. Bidders outside the Commonwealth must notify the Chief in writing of their intent to bid in order to receive this additional seven (7) days for the receipt of the actual bid documents. This notice of intent to bid may be by any mode of written communication including telex, facsimile or other electronic transmission.
- (5) If a bid is prematurely opened by mistake, it shall be resealed and the person who opened the bid shall write his signature and print his title on the envelope and deliver it to the Chief. No information contained in the bid shall be disclosed prior to the bid opening. The Chief shall cause the opened bid to be placed into the sealed receptacle.
- (6) The bid opening shall be conducted by the Chief on the date specified in the Invitation for Bids. All bids received prior to the advertised bid closing shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, together with the

Procurement Regulations

name of each bidder shall be recorded. The record and each bid shall be open to public inspection. The Chief shall prepare a written summary of the bid opening.

- (7) 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.
- (8) A bid may be rejected for any of the following reasons:
 - (a) failure to conform to essential requirements of the Invitation for bids such as specifications or time of delivery;
 - (b) imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to the TCGCC. For example, bids shall be rejected in which the bidder:
 - (i) protects against future changes in conditions, such as increased costs;
 - (ii) fails to state a price and indicates that price shall be the price in effect at the time of delivery.
 - (iii) states a price but qualifies it as subject to price in effect at time of delivery; or
 - (iv) limits the rights of TCGCC.
 - (c) unreasonableness as to price; or
 - (d) a bid from a nonresponsible bidder.
- (9) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards based on bid mistakes must be accomplished by the Chief in writing. Whenever a bid mistake is suspected, the TCGCC shall request confirmation on the bid prior to award. In such an instance, if the bidder alleges an error, the TCGCC shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (a) or (b).
 - (a) Correction of bids shall only be permitted when:
 - (i) an obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistake 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.

COMMONWEALTH REGISTER

VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE TOOL

7831

- (b) Withdrawal of a 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 or contracts shall only be permitted when:
 - (i) evidence as to the existence of the mistake is not discovered until after the award;
 - (ii) there exists no clear and convincing evidence to support the bid intended; and
 - (iii) performance of the contract at the award price would be unconscionable.
- (10) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and these regulations. Unsuccessful bidders shall also be promptly notified.
 - (a) Notice of award to the successful bidder shall be considered informal notification only and shall not constitute a contract or intent to enter into a contract by TCGCC. An award shall only become effective upon execution of a contract as prescribed herein. No acceptance of an offer shall occur nor shall any rights or obligations be incurred until a TCGCC contract is written and has been approved by all the officials required.
 - (b) In the event that 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 Chairman may authorize the Chief to modify the bid requirements in the hope of bringing the bid price within the amount of available funds. The Chief will then inform all responsive and responsible bidders whose original bid was within five percent (5%) of the available funds of the bid requirement modification and request submission of an adjusted bid price. The notification shall be documented in writing and modified bids received attached to the original bidding documents.

Section 3-103 Competitive Sealed Proposals

When the Chief determines in writing that the use of competitive sealed bidding is either not practical or not advantageous to the TCGCC and receives the approval of the Executive Director, a contract may be entered into by competitive sealed proposals. In such event, the following procedures shall apply:

- (1) Proposals shall be solicited through a Request For Proposals (RFP).
- (2) Except as otherwise stated in this section, all pertinent provisions of Section 3-102 shall apply to an RFP initiated procurement.

- (3) The request for proposals shall state the relative importance of price and other evaluation factors.
- (4) Proposals shall be opened so as to avoid disclosure of contents to competing offerers during the process of negotiation. A register of proposals received shall be prepared and opened for public inspection after contract award.
- (5) As provided in the RFP, discussions may be conducted with responsible offerers who submit proposals determined to have a reasonable chance of being selected for award for the purpose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. Offerers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerers.
- (6) Award shall be made to the responsible offerer whose proposal is determined to be the most advantageous to TCGCC taking into consideration price and other evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The Executive Director shall make a written recommendation to the Commission as to the best qualified offerer based on the evaluation factors set forth in the RFP, and negotiated compensation amount. The Commission shall vote to accept or reject the recommendation of the Executive Director.
- (7) The contract file shall document the basis on which the award was made.

Section 3-104 Professional Services Procurement

The services of accountants, physicians, lawyers, architects, engineers or other professional practitioners shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, expedited procurement or sole-source procurement.

- (1) It is the policy of TCGCC to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. Waiver of this public announcement may be approved by the Chairman when an emergency short-term need is determined to exist and a qualified professional is found to be immediately available at a fair and reasonable price.
- (2)Adequate notice of the need for professional services shall be given by the Chief through an RFP. The RFP shall describe the services required, list the type of information and data required of each offerer and state the relative importance of particular qualifications.
- (3) The Chief or Executive Director may conduct discussions with any offerer who has submitted a proposal to determine such offerers qualifications for further consideration and for the purpose of negotiation of a compensation amount determined to be fair and reasonable. Discussions shall not disclose any information derived from proposals submitted by other offerers.

AUGUST 15, 1991 PAGE 7833 COMMONWEALTH REGISTER VOLUME 13 NO. 8

- (4) The Executive Director shall make a written recommendation to the Commission as to the best qualified offerer based on the evaluation factors set forth in the RFP, and negotiated compensation amount. The Commission shall vote to accept or reject the recommendation of the Executive Director.
- (5) If compensation cannot be agreed upon with the best qualified offerer then negotiations will be formally terminated with the selected offerer. If proposals were submitted by one or more other offerers determined to be qualified, negotiations may be conducted with such other offerer or offerers in the order of their respective qualification ranking and the contract may be awarded to the highest ranked offerer with whom the amount of compensation is determined to be fair and reasonable.

Section 3-105 Construction Procurement

- (1) All procurement of construction services shall be by competitive sealed bid in accordance with Section 3-102 and this section. In addition to the requirements of Section 3-102 (1), the invitation for bids shall contain the following information for bidders:
 - (a) general information regarding the project;
 - (b) information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;
 - (c) special contract clauses depending on the nature and dollar amount of the work to be performed; and
 - (d) technical specifications of the work to be performed.
- (2) Bid security shall be required for all competitive sealed bidding of construction contracts where the price is estimated by the Chief to exceed \$25,000 or when the Chief determines it is in the interest of the TCGCC.
 - (a) Bid security shall be in the form of a bid bond, certified check, cashiers check or other form acceptable to the TCGCC which shall be submitted with the sealed bid.
 - (b) Bid security shall be an amount equal to at least fifteen percent (15%) of the amount of the bid or other amount as specified in the Invitation for Bids.
 - (c) Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as nonresponsive.
- (3) When a construction contract is awarded in excess of \$25,000, the following bonds or security shall be delivered to the TCGCC and shall become binding on the parties upon execution of the contract.
 - (a) A performance bond satisfactory to the TCGCC, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the TCGCC, in an amount equal to one hundred percent (100%) of the price specified in the contract; and

计分词 清晰

COMMONWEALTH REGISTER VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE 7834

124

Procurement Regulations

- (b) A payment bond satisfactory to the TCGCC executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the TCGCC, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.
- (4) Every person who has furnished labor or material to the contractor or its subcontractors for work in respect of which a payment bond has been furnished under this section, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed or material was furnished by such person for which such claim is made, shall have the right to sue on the payment bond.
 - (a) Claimants under this section shall be entitled to sue for the balance unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person.
 - (b) Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing the payment bond under this section, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which such person performed the last of the labor or furnished the last of the material upon which such claim is made. Such notice shall state with substantial accuracy the amount claimed, the name of the party to whom the material was furnished or for whom the labor was performed and dates of such furnishment or performance. Such notice shall be personally served or served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.
 - (c) Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth. No such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was furnished by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.
- (6) Every contract modification, change order or price adjustment under a construction contract shall be subject to prior written certification by the Chief as to the effect of the contractual modification, change order or price adjustment on the total contract budget. In the event that the certification discloses a resulting increase in the total contract budget, such contract modification, change order or adjustment in contract price shall be fully subject to the provisions of Subsection 3-107 (2) and processed in accordance with Section 3-303. In the event of a legitimate and proper contract modification, change order or price adjustment for which sufficient funds are unavailable, the Executive Director may authorize the Chief to renegotiate the scope of the contract, if feasible, so that the total contract price does not exceed available funds.

COMMONWEALTH REGISTER VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE 7835

and a second

Section 3-106 Cancellation of Invitation for Bids and Request for Proposals

An invitation for bids or request for proposals may be canceled, and any or all bids or proposals may be rejected, when such action is determined in writing by the Chief and approved by the Executive Director to be in the best interest of the TCGCC because of:

- (1) Inadequate or ambiguous specifications contained in the solicitation;
- (2) specifications which have been revised;
- (3) goods or services being procured which are no longer required;
- (4) inadequate consideration given to all factors of cost to the TCGCC in the solicitation;
- (5) bids or proposals received indicate that the needs of the TCGCC can be satisfied by a less expensive good or service;
- (6) all offers with acceptable bids or proposals received are at unreasonable prices;
- (7) bids were collusive; or
- (8) cancellation is otherwise determined to be in the best interest of the TCGCC.

Section 3-107 Subverting the Competitive Bid Process

- (1) It shall be a violation of these regulations to split a contract into subcontracts or multiple contracts for the purpose of avoiding competitive bidding.
- (2) Any contract which was awarded on the basis of the lowest responsive, responsible bidder and which subsequently requires a substantial change order or modification resulting in a materially increased cost shall be closely scrutinized by the Executive Director for propriety and referred to the Public Auditor unless the justification is readily apparent. An improper modification or change order would be, for example, one which should have been reasonably foreseeable at the time of the formation of the contract. Requests for modification or change orders judged to be improper shall constitute a violation of these regulations.

Section 3-108 Small Purchases

Any procurement not exceeding the amounts established herein may be made in accordance with these small purchase procedures. However, artificially dividing procurement requirements so as to constitute a small purchase shall be a violation of these regulations.

- (1) Bidding is not required for procurement under \$5,000.
- (2) For procurement valued at \$5,000 to \$10,000, the Chief must obtain price quotations from at least three (3) vendors if available and base the selection on competitive price and quality. All price quotations obtained must be written and retained in the procurement files supporting the purchase.

- (3) Purchase orders may be utilized for purchases in subparagraphs (1) and (2).
- (4) This section shall not apply to lease or purchase of vehicles, machinery and equipment. Any lease or purchase of vehicles, machinery and equipment shall be procured pursuant to Section 3-102 or other applicable provisions of these regulations.

Section 3-109 Sole Source Procurement

- (1) A written justification for sole source procurement shall be prepared by the person requesting the procurement and shall contain the unique capabilities required and why they are required and the considerations given to alternative sources.
- (2) A contract may be awarded for goods, services or construction without competition when the Chief determines and the Executive Director approves in writing that there is only one source for the required goods, services or construction.
- (3) The Chief shall negotiate with the sole source contractor to obtain the best price possible under the circumstances.

Section 3-110 Emergency Procurement

- (1) Notwithstanding any other provision of these regulations, the TCGCC may make emergency procurement when there exists an immediate threat to the health, safety or welfare of it's employees or to the Commission's ability to discharge it's legal obligations. An emergency procurement must be as competitive as practicable under the circumstances.
- (2) A written justification of the basis for the emergency and for the selection of the particular contractor must be made by the Chief, approved by the Executive Director and reported to the Chairman.

Section 3-111 Expedited Purchasing in Special Circumstances

- (1) When special circumstances require the expedited procurement of goods or services, the Chief may request that the Executive Director approve expedited procurement without the solicitation of bids or proposals. Such request will be submitted in writing describing the special circumstances which, in the opinion of the Chief, justify the expedited procurement.
- (2) Factors to be considered in the request from the Chief and by the Executive Director in approving or disapproving this request shall be:
 - (a) The urgency of the TCGCC need for the good or service;
 - (b) The comparative costs of procuring the goods or service from a sole source or through the competitive process;
 - (c) The availability of the goods or service in Tinian or the Commonwealth and the timeliness in acquiring it; and

- (d) Any other factors establishing that the expedited procurement is in the best interest of the TCGCC.
- (3) Upon the Executive Director's written determination that the factors in (2) above justify an expedited purchase, the Chief shall process the necessary document(s) and proceed in procuring the required goods or service in the most efficient manner.
- (4) The Chief shall ensure that the expedited procurement is accomplished as competitively as possible under the circumstances.
- (5) The total amount of goods or service that may be approved under this section shall not exceed \$25,000 in any single fiscal year.

ARTICLE 3 Part B - Qualification of Contractors

Section 3-201 **Responsible Bidders and Offerers**

- (1) Awards shall be made only to responsible contractors. To be determined responsible, a prospective contractor must:
 - (a) have adequate financial resources to perform the contract, or the ability to obtain them;
 - (b) be able to comply with the required delivery or performance schedule;
 - (c) have a satisfactory performance record;
 - (d) have a satisfactory record of integrity and business ethics;
 - (e) have the necessary organization, experience and skills (or the ability to obtain them) required to successfully perform the contract;
 - (f) have the necessary production, construction and technical equipment facilities, or the ability to obtain them; and
 - (g) be otherwise qualified and eligible to receive an award under applicable laws and rules.
- (2) Prior to award, the Chief shall obtain information from the bidder or offerer as necessary to make a determination of responsibility based on the factors in paragraph 1 above. The unreasonable failure of a bidder or offerer to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for determination of nonresponsibility with respect to that bidder or offerer.
- (3) Information furnished by a bidder or offerer pursuant to paragraph 2 shall be accessible within the TCGCC only on a need-to-know basis and may not be disclosed to outside parties without prior consent by the bidder or offerer.
- (4) When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a written

determination shall be signed by the Chief stating the basis for the determination and this shall be placed in the contract file.

Section 3-202 Prequalification of Contractors

Prospective suppliers of goods or services may be prequalified for particular types of construction, goods and services when determined necessary by the Chief. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include prequalified vendors and others believed to be clearly qualified. In all sealed competitive bidding, bidders who have not been prequalified must establish their qualifications in the bid documents.

ARTICLE 3 Part C - Contracts

Section 3-301 Execution of Contracts

The Chairman or, in the absence of the Chairman, the Vice-Chairman in his capacity of Acting Chairman, are the only individuals authorized to enter into contracts on behalf of TCGCC.

Section 3-302 Types of Contracts

- (1) Use of a cost-plus-a-percentage-of-cost or percentage-of-construction-cost methods of contracting are prohibited.
- (2) TCGCC contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under paragraph 3.
- (3) A cost reimbursement contract may be used when the Chief determines in writing which is attached to the contract that:
 - (a) uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
 - (b) use of a cost reimbursement contract is likely to be less costly to the TCGCC than any other type due to the nature of the work to be performed under the contract.

Section 3-303 Contract Review, Processing and Oversight

- (1) All contracts must first be prepared by the Chief who shall certify that he has complied with Procurement Regulations, that the proposed contract is for a public purpose and it does not constitute a waste or abuse of TCGCC funds. All contract documents must be complete including attachments and exhibits, if they are incorporated into the contract by reference. Two original copies of the contract document shall be submitted to the Executive Director.
- (2) The Executive Director will review the contract for propriety and conformance with these regulations, such review to occur in a prompt and timely manner. If the Executive Director finds any aspect of the contract to be deficient or defective in any respect, he shall return the contract for appropriate resolution. Otherwise, the

 $^{\rm MH}$

COMMONWEALTH REGISTER VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE 7839

1.5

Procurement Regulations

Executive Director will approve the contract as to compliance with Procurement Regulations. Upon his own initiative or upon the request of the Public Auditor, the Executive Director may refer any contract to the Public Auditor for a recommendation before he approves or disapproves of the contract.

- (3) The contract shall next be approved by the certifying authority within the Accounting Section as defined in the TCGCC Internal Fiscal Management Procedures who shall certify the availability of funds.
- (4) The contract shall next be submitted to the Legal Counsel who shall certify the contract as to form and legal capacity.
- (5) Next, the contract shall be presented at a meeting of the Commission for final approval or disapproval by vote. An affirmative decision by the Commission shall serve as the authorization for the Chairman to enter into the contractual agreement on behalf of the Commission.
- (6) After all proper approvals have been obtained, the Chief shall forward two original copies of the contract to the contractor for his approval and signature.
- (7) After signature by the contractor, the Executive Director shall review the contract documents for completeness. If he is satisfied, he shall submit the two original copies of the contract signed by the contractor to the Chairman for his execution.
- (8) After execution by the Chairman, the Chief shall inform all parties in writing that the contract is in force and that contract implementation according to the terms contained therein may proceed. Concurrently, the Chief will forward original copies of the contract to the contractor and Legal Counsel. A photocopy of the contract shall be provided to the Executive Director and a second photocopy shall be retained by the Chief in the procurement contract file.
- (9) A contract may be referred back to the Chief by the Executive Director or the Legal Counsel for further review based on additional evidence that it may not comply with these regulations. If the Executive Director or Legal Counsel withdraws approval or refuses to approve a contract, the basis for this action shall be stated in writing.
- (10) It is the responsibility of the Executive Director to ensure that the contractor does not sign the contract or incur any expenses related to implementation of contract terms until all necessary TCGCC signatures have been obtained. The primary responsibility for supervision and inspection of a contractor's project in progress also rests with the Executive Director.

ARTICLE 3 Part D - Inspection and Audit

Section 3-401 Report of Anticompetitive or Deceptive Practices

When for any reason, any person suspects the following practices are occurring among bidders, offerers, contractors, subcontractors or TCGCC employees a notice of the relevant facts shall be transmitted by the person suspecting such activity directly to the Legal Counsel without delay:

- (1) unfair methods of competition;
- (2) deceptive acts; or
- (3) unfair business practices.

Section 3-402 Retention of Procurement Records

- (1) All records relating to procurement or proposed procurement shall be retained by the Chief in good order for a period of not less than five years.
- (2) Procurement records maintained by the Chief shall include a current listing of all contracts made under sole-source procurement, emergency procurement or expedited procurement since the adoption of TCGCC procurement regulations or for the previous five years, whichever is less. The records shall contain:
 - (a) each contractors name;
 - (b) the amount and type of each contract; and
 - (c) a listing of the supplies, services or construction procured under each contract.

ARTICLE 4 - BID PROTESTS AND CONTRACT DISPUTES

Section 4-101 Protests to the Executive Director

- (1) Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Executive Director. The protest shall be filed in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto. The Executive Director shall consider all timely protests or objections to the award of a contract, whether submitted before or after award.
- (2) When a proper protest against the making of an award is received, the award will be withheld pending disposition of the protest. Other persons, including bidders, involved in or affected by the protest shall be given notice by the Chief of the protest and its alleged basis. These persons shall also be advised that they may submit their views and relevant information to the Executive Director within a specified period of time, normally within one (1) week. Those bidders whose bids might become eligible for award shall be requested by the Chief, before expiration of the time for acceptance of their bid, to extend the time for acceptance to avoid the need for readvertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subsection (3) below.
- (3) When a written protest is received, award shall not be made until the matter is resolved, unless the Executive Director determines that:
 - (a) the materials and services to be contracted for are urgently required;

- (b) delivery or performance will be unduly delayed by failure to make award promptly; or
- (c) a prompt award will otherwise be advantageous to the TCGCC

If award is made under this subsection, the Executive Director shall document the file to explain the need for an immediate award. The Chief shall give written notice to the protester and others concerned of the decision to proceed with the award.

(4) The Executive Director shall decide the protest within twenty (20) calendar days after all interested parties have submitted their views unless he certifies that the complexity of the matter requires a longer time, in which event he shall specify the appropriate longer time and so advise all parties.

Section 4-102 Protests After Award

When a protest is filed after the contract has been awarded, the contractor shall be furnished the notice of protest and its alleged basis. Additionally, the provisions of Section 4-101 subsections (1), (4) and (5) shall apply. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the interests of TCGCC, the Chief should seek a mutual agreement with the contractor to suspend performance on a no-cost basis.

Section 4-103 Appeal of Executive Director's Decision to the Public Auditor

- (1) A written appeal to the Public Auditor of a decision by the Executive Director may be made provided that the party taking the appeal has first submitted a written protest as prescribed in Section 4-101 or 4-102, and the Executive Director has denied the protest or has failed to act on the protest within the time provided for in subsection 4-101 (4) above.
- (2) No particular form of pleading is required for filing an appeal to the Public Auditor. The appeal shall, however:
 - (a) include the name and address of the appellant;
 - (b) identify the contracting agency and the number of the solicitation or contract;
 - (c) contain a concise, logically arranged, and direct statement of the grounds for appeal; and

 $s \geq \sqrt{2}$

- (d) specifically request a ruling by the Public Auditor.
- (3) Any appeal of a decision of the Executive Director must be received by the office of the Public Auditor not later than ten (10) days after the appellant receives such decision, or, in the event that the Executive Director has not decided the protest, within ten (10) days from the date that he should have decided the protest pursuant to subsection 4-101 (4) above. Subsequent processing of the appeal shall be accomplished in accordance with established rules, regulations or procedures of the Office of the Public Auditor. The Chief and the Executive Director shall cooperate fully with the Public Auditor in the disposition of the appeal.

Procurement Regulations

- (4) When a protest has been appealed to the Public Auditor and the TCGCC is requested to submit a report, the Chief shall prepare the requested report which shall include copies of the following:
 - (a) the protest;
 - (b) the bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;
 - (c) the protest decision of the Executive Director;
 - (d) the solicitation, including the specifications or portions relevant to the protest;
 - (e) an abstract of competing offers or relevant portions;
 - (f) any other documents that are relevant to the protest; and
 - (g) the Chief's signed statement setting forth findings, actions and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Chief's report will include the determination of the Executive Director prescribed in subsection (3) above.

Section 4-104 Protest Remedies

- (1) If, prior to award, the Chief or the Public Auditor determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the solicitation or proposed award shall be cancelled or revised to comply with law or regulation.
- (2) If, after an award, the Chief or the Public Auditor determines that a solicitation or 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 rectified and affirmed, provided it is determined that doing so is in the best interest of the TCGCC; 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; but
 - (b) if the person awarded the contract has acted fraudulently or in bad faith:
 - (i) the contract may be declared null and void; or

Procurement Regulations

(ii) the contract may be ratified and affirmed if such action is in the best interest of the TCGCC, without prejudice to rights to such damages as may be appropriate.

Section 4-105 Contract Disputes

- (1) Any dispute between the TCGCC and a contractor relating to interpretation of the performance or compensation terms of a contract, which is the subject of these regulations, must be filed in writing with the Chief within ten (10) calendar days after the facts surrounding the dispute become known.
- (2) The Chief will attempt to resolve the dispute by mutual agreement with the contractor. If the dispute cannot be settled, either party may request a decision on the dispute from the Legal Counsel. The Legal Counsel shall review the facts pertinent to the dispute, consult with the Executive Director as necessary and prepare a written decision which shall include:
 - (a) description of the dispute;
 - (b) statement of the factual areas of disagreement or agreement;
 - (c) reference to pertinent contract terms including apparent intent of the parties;
 - (d) statement of interpretation of the factual areas of disagreement and a conclusion of the dispute with any supporting rationale.

At his discretion, the Legal Counsel may require a hearing or that information be submitted on the record at a meeting of the Commission.

(3) Duty to Continue Performance. A contractor with a pending dispute must continue to perform according to all terms of the contract. Failure to do so shall be deemed a breach of the contract unless a waiver of this provision is granted by the Executive Director.

ARTICLE 5 - ETHICAL STANDARDS IN PROCUREMENT

ARTICLE 5 Part A - Definitions

Section 5-101 Definition of Terms

- (1) *Confidential information* means any information which is available to an employee only because of the status as an employee of the TCGCC and is not a matter of public knowledge or generally available to the public on request.
- (2) *Conspicuously* means presentation in such special or distinctive form, print or manner that a reasonable person should have noticed it.
- (3) Direct or indirect participation in a procurement means involvement in the procurement decision, approval, disapproval, recommendation, preparation of any part of a procurement document, influencing the content of any specification or

procurement standard, rendering of advice, investigation, auditing or participation in any other advisory capacity.

- (4) *Financial interest* means:
 - (a) 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 compensation;
 - (b) holding a position in a business such as officer, director, trustee, partner, employee or the like;
 - (c) being a creditor of a company, it's owner(s) or officer(s); or
 - (d) exerting influence on financial or management decisions of a business.
- (5) *Gift* or *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 conveyed.
- (6) *Immediate family* means spouse, children, parents, brothers and sisters or any household resident.

ARTICLE 5 Part B - Standards of Conduct

Section 5-201 Policy

Employment at TCGCC constitutes a public trust with regard to the employee. In TCGCC contracting, employees shall discharge their duties impartially so as to:

- (1) insure fair competitive access to TCGCC procurement by all reasonable, responsive contractors; and
- (2) conduct themselves in a manner so as to foster public confidence in the integrity of the TCGCC procurement process.

Section 5-202 General Standards

- (1) Any attempt to realize personal gain through public employment by conduct inconsistent with these regulations is a breach of a public trust. In order to fulfill this ethical standard, employees must meet the requirements of this Article.
- (2) Any effort by a past, present or prospective contractor to influence any TCGCC employee to breach the standards of ethical conduct set forth in these regulations is a breach of ethical standard and a violation of these regulations.

Section 5-203 Employee Disclosure Requirements

(1) Any TCGCC employee who has a financial interest in or obtains any benefit from any TCGCC contractor shall report such financial interest or benefit in writing to the Chief.

(2) Any employee who knows or should have known of such financial interest or benefit and fails to report as required is in breach of these ethical standards.

-Section 5-204 Employee Conflict of Interest

- (1) It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows or should have known that:
 - (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
 - (b) 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 financial interest is involved in the procurement.
- (2) Upon discovery of an actual or potential conflict of interest with regard to a TCGCC procurement, the affected employee shall file with the Chief a written statement of disqualification and shall withdraw from any further participation in the transaction. The employee may, at the same time, apply to the Legal Counsel for an advisory opinion as to what further participation, if any, the employee may have in the transaction or similar future transactions.

Section 5-205 Gifts. Gratuities and Offers of Employment

- (1) It shall be a breach of ethical standards and a violation of these regulations for any TCGCC employee to accept from any person any item of value given to them with the intent to influence their business judgement.
- (2) It shall be a breach of ethical standards and a violation of these regulations 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 gift, gratuity or offer of employment in connection with any direct or indirect participation in a procurement.
- (3) It shall be a breach of ethical standards and a violation of these regulations 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 tier subcontractor or any person associated therewith as an inducement for influencing the award of a sub contract or order.

Section 5-206 Contingent Fees and Kickbacks

(1) It shall be a breach of ethical standards and a violation of these regulations for any person to be retained, or to retain any person, to solicit or secure TCGCC contracts under an agreement or understanding for payment of a commission, percentage, brokerage or contingent fee, except for normal compensation of bona fide employees or bona fide established commercial agencies engaged in the trade or business of securing contracts for third parties.

COMMONWEALTH REGISTER VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE 7846

(2, 2)

Procurement Regulations

(2) Every person, before being awarded a TCGCC contract, shall represent in writing that such person has not and will not compensate anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

Section 5-207 Contract Clauses

The prohibitions against gifts, gratuities, kickbacks and contingent fees shall be conspicuously set forth in every contract and solicitation therefor.

Section 5-208 Restrictions on Employment of Present and Former Employees

- (1) It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be the employee of any person contracting with TCGCC.
- (2) Where the TCGCC is a party or has a direct or substantial interest, it shall be a breach of ethical standards for any former employee to knowingly act as a principal or agent for any party other than the TCGCC in connection with any:
 - (a) judicial or other proceeding, application, request for a ruling or other determination;
 - (b) contract;
 - (c) claim; or
 - (d) charge or controversy;

pertaining to any matter in which the employee participated directly or indirectly in the procurement process while an employee.

- (3) Where the TCGCC is a party or has a direct or substantial interest, it shall be a breach of ethical standards for any business in which an employee or former employee has a financial interest to knowingly act as a principal or agent for any party other than the TCGCC in connection with any:
 - (a) judicial or other proceeding, application, request for a ruling or other determination;
 - (b) contract;
 - (c) claim; or
 - (d) charge or controversy;

pertaining to any matter in which the employee participates or participated directly or indirectly in the procurement process.

电空运车

Procurement Regulations

Section 5-209 Use of Confidential Information

It shall be a breach of ethical standards and a violation of these regulations 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 5-210 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage in the awarding of contracts is prohibited and constitutes a breach of ethical standards and a violation of these regulations.

- (1) The Chief shall declare a contract void and order all payments to the contractor suspended if he finds sufficient evidence that collusion or secret agreement was involved in obtaining the contract. The case will then be referred to the Legal Counsel for action as prescribed herein.
- (2) Where sufficient evidence of collusion or secret agreement is apparent prior to the contract being awarded, the Chief shall reject the collusive bids as not being submitted by responsible bidders. The case will then be referred to the Legal Counsel for action as prescribed herein.

Section 5-211 Legal, Civil and Administrative Remedies

The Legal Counsel or Executive Director shall report any known or highly suspected departure from these regulations which also constitutes, or would constitute if proven, a violation of United States, CNMI or Municipal law or ordinance to law enforcement officials, the Attorney General of the Commonwealth or other appropriate authority. In addition to existing remedies provided by law, any person who violates any of the provisions of these regulations may be subject to one or more of the following:

- (1) Any TCGCC employee who violates the provisions of these rules and regulations is subject to adverse action as may be appropriate under the particular circumstances. Possible adverse action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of TCGCC funds, or criminal prosecution.
- (2) A contractor or bidder who violates a provision of these rules and regulations shall be subject to a written warning, official reprimand, termination of the contract or suspension or debarment from future TCGCC contracting as a contractor or subcontractor in addition to other penalties prescribed by law.
- (3) All proceedings under this section must be in accordance with applicable due process requirements.

Section 5-212 Authority to Debar or Suspend

(1) After reasonable notice of an alleged violation to a party against whom debarment or suspension is proposed and a reasonable opportunity for response, including an appearance at a meeting of the Commission if requested, the Executive Director, after consultation with the Chairman and the Legal Counsel, shall have the authority to debar or suspend a person for cause from consideration for award of future

TCGCC contracts. Debarment shall be for a period of one (1) to three (3) years. A suspension shall be imposed for a period of three (3) months to one (1) year.

- (2) Actions for which debarment or suspension are authorized 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 Commonwealth or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the Consumer Protection Act (4 CMC 5101 et. seq.), unfair business practices as prescribed by 4 CMC 5202, or any other offenses indicating a lack of business integrity or business honesty which could directly affect perceived integrity as a TCGCC contractor;
 - (c) conviction under Commonwealth or Federal statutes of any crime involving the submission of collusive or fraudulent bids or proposals;
 - (d) violation of contract provisions, as set forth below, which is regarded by the Executive Director to be serious enough to justify suspension or 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 public or private 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 suspension or debarment;
 - (e) violation of any of the ethical standards set forth in Article 5; and
 - (f) any other cause that the Executive Director determines to be so serious and compelling as to affect responsibility as a TCGCC contractor, including debarment by another governmental entity.
- (3) The Executive Director shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and the length of time which such debarment or suspension will be in effect.
- (4) A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person. Upon opinion of the Legal Counsel that notification of other agencies is legally permissible, a copy of the decision shall be provided to other governmental contracting authorities within the CNMI, the Territory of Guam or other jurisdictions judged appropriate by the Executive Director.

PUBLIC NOTICE

PROPOSED REGULATIONS OF THE DIVISION OF LANDS & SURVEYS DEPARTMENT OF NATURAL RESOURCES

The Division of Lands & Surveys hereby gives public notice of its Proposed Regulations promulgated pursuant to 1 CMC 2655.

The Proposed Regulations are available for review at the Office of the Division of Lands and Surveys, Capitol Hill, Saipan.

Anyone interested in commenting on the Proposed Regulations may do so within 30 days from the date they are published in the Commonwealth Register.

Dennis M. Klein Assistant Attorney General

-91

Date

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PROPOSED REGULATIONS OF THE DIVISION OF LANDS AND SURVEYS OF THE DEPARTMENT OF NATURAL RESOURCES

1. <u>Purpose</u>.

These Regulations are intended to define the manner in which the Division of Lands & Surveys (hereafter "L&S") functions.

2. Establishment.

L&S is a duly established Division of the Department of Natural Resources, which was established by PL 1-8, codified at 1 CMC 2651-2656.

3. L&S Functions.

The functions of L&S are:

- a. To conduct surveys of public lands (1 CMC 2654(d).
- b. To assist the Land Commission as requested by conducting surveys in connection with the determinations of land titles (2 CMC 4222(a)).
- c. To provide surveying and related services to other public agencies of the CNMI government where appropriate, as decided by the Director of the Department of Natural Resources.

4. No Private Surveys.

L&S shall conduct no surveys of private land unless in connection with Land Commission title determinations.

5. <u>Clearance of Private Surveys.</u>

L&S, subject to manpower availability, shall provide "clearance" of private survey maps based upon surveys by private surveyors. Such "clearance" is limited to ascertaining that the maps appear to follow applicable standards.

The "clearance" is not a warranty or other statement of accuracy of the private surveyor or the map. No private survey map shall be valied without a "clearance" from L&S. Fees for the "clearance" service may be established by the Director of the Department of Natural Resources.

6. <u>Fees.</u>

L&S may charge reasonable fees, as set by the Director of the Department of Natural Resources, for the private copying of L&S materials or for other services provided to the private sector.

7. Original Documents.

No private person or entity may remove any original document from L&S files.

8. Transfer of Maps to Land Commission.

Upon clearance of an original survey map, it shall be transferred to Land Commission for filing.

9. Japanese Maps.

L&S shall retain all Japanese Maps in its files.

10. <u>Files.</u>

In addition to the Japanese Maps, L&S shall keep on file only documents regarding surveying and mapping, except those original maps and other documents of title which are transferred to Land Commission.

11. Survey Teams.

All survey teams shall operate under the general supervision of the Commonwealth Surveyor, with daily supervision by the Team/Party Chief.

12. Chief.

The Chief of L&S shall supervise the overall functions of the employees and the operations of the Division, subject to the direction of the Director of the Department of Natural Resources.

PUBLIC NOTICE

Adoption of Regulations which will regulate the procurement policies of the Commonwealth Utilities Corporation.

The Board of Directors of the Commonwealth Utilities Corporation, in accordance with 4 CMC 8157, has adopted regulations which shall govern the procurement policies of the Commonwealth Utilities Corporation.

These regulations were published in the Commonwealth Register, Volume 12, No. 06, June 15, 1990, page 7069. During the designated period for public comment, no comment was received by the Board of Directors. These regulations are adopted as originally promulgated in the Commonwealth Register.

In accordance with 1 CMC 9105(b), these regulations shall take effect within ten (10) days of this public notice.

Chairman, CUC Board of Directors

1	TINIAN CASINO GAMING CONTROL COMMISSION RESOLUTION HEARING REGULATIONS	
2 3	Resolution No. 91-12	
4		
5	WHEREAS, the people of the Second Senatorial District, in the exercise of a fundamental constitutional right, enacted the Tinian Casino Gaming Control Act of 1989 pursuant to Articles XXI and IX of the Commonwealth Constitution; and	
7 8	WHEREAS, the Tinian Casino Gaming Control Commission, an autonomous local governmental entity, was created pursuant to the Tinian Casino Gaming Control Act of 1989, by Local Initiative, which was approved overwhelmingly by the voters of the Second Senatorial District on November 4, 1989; and	
9 10 11	WHEREAS, pursuant to the Tinian Casino Gaming Control Act of 1989, the Tinian Casino Gaming Control Commission is vested with the power and authority to establish, regulate, set standards for casino operations, solicit and select suitable qualified applicants/operators, and enact and enforce rules and regulations to carry out the intent and	
12	purpose of the Tinian Casino Gaming Control Act of 1989; and	
13	WHEREAS, the Tinian Casino Gaming Control Commission deems it is necessary and appropriate to achieve these purposes to certify and adopt regulations for the conduct of hearings before the Commission which shall be filed with the Commonwealth Office of the	
14	Registrar of Corporations; and	
15 16	NOW, THEREFORE, BE IT RESOLVED, that the Tinian Casino Gaming Control Commission does hereby adopt and certify the attached hearing regulations for the conduct of hearings before the Commission which shall be filed with the Commonwealth Office of the Registrar of Corporations forthwith.	
17	CERTIFICATION	
18		
19 20	This Resolution was duly adopted by a vote of $\underline{4}$ for and $\underline{\circ}$ against at a duly convened meeting of the Commission, with a quorum being present, on this 25th day of July, 1991.	
21		
22		
23	ATTEST:	
24	Jose P. Chuz Vice-Chairman John U. Hofschneider	
25		
26		
27		
28		
COM	ONWEALTH REGISTER VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE 7854	
11		

Í

£

. 1	TINIAN CASINO GAMING CONTROL COMMISSION RESOLUTION		
2	APPLICATION REGULATIONS		
3	Resolution No. <u>91-13</u>		
4			
5 6	WHEREAS, the people of the Second Senatorial District, in the exercise of a fundamental constitutional right, enacted the Tinian Casino Gaming Control Act of 1989 pursuant to Articles XXI and IX of the Commonwealth Constitution; and		
	WHEREAS, the Tinian Casino Gaming Control Commission, an autonomous local		
7 8	governmental entity, was created pursuant to the Tinian Casino Gaming Control Act of 1989, by Local Initiative, which was approved overwhelmingly by the voters of the Second Senatorial District on November 4, 1989; and		
9	WHEREAS, pursuant to the Tinian Casino Gaming Control Act of 1989, the Tinian		
10	Casino Gaming Control Commission is vested with the power and authority to establish regulate, set standards for casino operations, solicit and select suitable qualified		
11	applicants/operators, and enact and enforce rules and regulations to carry out the intent and purpose of the Tinian Casino Gaming Control Act of 1989; and		
12	WHEREAS, the Tinian Casino Gaming Control Commission deems it is necessary and		
13	appropriate to achieve these purposes to certify and adopt application regulations for licensure and the Commission shall filed said regulations with the Commonwealth Office of the Registrar of Corporations; and		
14			
15 16	NOW, THEREFORE, BE IT RESOLVED, that the Tinian Casino Gaming Control Commission does hereby adopt and certify the attached application regulations for licensure and the Commission shall file said regulations with the Commonwealth Office of the Registrar of Corporations forthwith.		
17	CERTIFICATION		
18			
19	This Resolution was duly adopted by a vote of $\underline{4}$ for and $\underline{0}$ against at a duly convened meeting of the Commission, with a quorum being present, on this 25th day of July,		
20	1991.		
21	\frown .		
22			
23	ATTEST: Jose P. Cruz John U. Hofschneider		
24	Vice-Chairman Chairman		
25	$\forall \chi $		
26			
27			
28			
сом	NONWEALTH REGISTER VOLUME 13 NO. 8 AUGUST 15, 1991 PAGE 7855		

ĺ