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Article 5 The Request for Proposals

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§2530. Use. The Request for Proposals is used to initiate the competitive public bidding for water and wastewater infrastructure projects suitable for the use of the 'Build-Operate-Transfer' concept, or variants thereof.

§2531. Maximum Practicable Competition. The Request for Proposals shall seek to promote overall economy for the purposes intended and encourage competition in satisfying GWA's needs, and shall not be unduly restrictive.

§2532. Content. The Request for Proposal shall include the following:

1. instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by GWA, the location, time and date of each stage of the bidding process and other special information;
2. the project description, evaluation factors, project schedule;
3. the pre-determined formula using official price indices providing for the adjustment of the tolls, fees, rentals and charges during the life of the contract (Any adjustment shall take into account reasonableness of rates to the end users of private sectors water and wastewater infrastructure.);
4. the preferred form(s) of project financing, including, but not limited to, Build-Operate-Transfer, Build-Transfer-Operate, Build-Own-Operate-Transfer, Modernize-Operate-Transfer and Rehabilitate-Own-Transfer;
5. fixed terms of the imposition and collection of tolls, fees, rentals and charges not to exceed fifty (50) years;

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6. he required contents of the Technical Proposal;
7. he required contents of the Financial Proposal;
8. maintenance and repair standards required of the project;
9. the contract terms and conditions, including legal standards, warranty, bonding or other security requirements and financial incentives; and
10. to provide with packet submission, a valid license to conduct business on Guam.

§2533. Financial Incentives. The financial incentives and arrangements that the government of Guam may provide as authorized by the Guam Economic Development Authority ('GEDA') for the project shall be included in the contract terms accompanying the Request for Proposals. These incentives and arrangements may include, but are not limited to, guarantees such as a 'take or pay clause,' GEDA incentives or repayment in the form of a share of revenue of the project, subject to the limitations of Public Law Number 24-37, §9. Qualified Bidders are subject to GEDA's application process of the QC Program, as mandated by Chapter 58 of Title 12 of the Guam Code Annotated. Projects may be financed partly from direct government of Guam appropriations, or in-kind contributions, not exceeding forty percent (40%) of the project cost, and the balance to be provided by the project proponent.

§2534. Repayment Scheme . The repayment scheme shall be included in the contract terms accompanying the request for proposals. For the financing, design, construction, operation and maintenance of any infrastructure project undertaken through the Build-Operate-Transfer arrangement, or any of its variations, the project proponent shall be repaid by authorizing it to charge and collect from GWA, its sole wholesale consumer, reasonable tolls, fees and rentals for the use of the project facility not exceeding those incorporated in the contract and, where applicable, the proponent may likewise be repaid in the form of a share in the revenue of the project. For negotiated contracts, and for projects which have been granted a natural monopoly or where the public has no access to alternative facilities, the Guam Public Utility Commission ('GPUC') shall approve the tolls, fees, rentals and charges to GWA based on a reasonable rate of return.

§2535. Contract Termination. Contract termination provision shall be included in the contract terms accompanying the request for proposals. In the event that a project is revoked, canceled or terminated

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by the government through no fault of the project proponent, or by mutual agreement, the government of Guam shall compensate said project proponent for its actual expenses incurred in the project, plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date of such revocation, cancellation or termination. In the event that the government defaults on certain major obligations in the contract, and such failure is not remediable, or if remediable shall remain unremedied for an unreasonable length of time, the project proponent/contractor may, by prior notice to GWA specifying the turn-over date, terminate the contract. The project proponent/contractor shall be reasonably compensated by the government of Guam for equivalent or proportionate contract cost as defined in the contract.

§2536. Project Supervision. Every infrastructure project undertaken under the provisions of this Act shall be in accordance with the plans, specifications, standards and costs approved by GWA, and shall be under the supervision of GWA.

§2537. Contract Terms and Conditions. The contract terms and conditions included in the Request for Proposals shall detail the following:

1. contract governed by Guam law;
2. project's geographical location;
3. specific products or services to be provided by the project;
4. quality standards required of the project;
5. maintenance and repair standards required of the project;
6. manner in which GWA will supervise the project;
7. fixed terms of the imposition and collection of tolls, fees, rentals and charges not to exceed fifty (50) years;
8. financial, accounting, and management practices and objectives;
9. repayment scheme and schedule for payments including, but not limited to, escrow;
10. environmental standards and objectives (These standards and objectives shall be consistent with the laws and regulations administered by the Guam Environmental Protection Agency);
11. conditions for contract termination and penalties;

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12. the pre-determined formula using official price indices providing for the adjustment of the tolls, fees, rentals and charges during the life of the contract;
13. requirement that at least sixty percent (60%) of the facility operator's onsite labor force shall be local residents;
14. means for dispute resolution which may include, but is not limited to, use of the American Arbitration Association;
15. effect of default and compensation for contract termination;
16. financial incentives and arrangements;
17. representation that person being awarded the contract has not retained a person, to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of *bona fide* employees or *bona fide* established commercial selling agencies for the purpose of securing business;
18. a prohibition against gratuities, kickbacks and favors prescribed as follows:

1. Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity of an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract of subcontract; or to any solicitation or proposal therefor.

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

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3. Contract Clause. The prohibition against gratuities, kickbacks and favors to Guam prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

4. Favors to Guam. For purposes of this Section, a favor is anything, including raffle tickets, of more than de minimus value and whether intended for the personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of Guam or for any employee or agent of Guam to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of Guam whether or not such favor or gratuity may be considered a reimbursable expense of Guam, during the pendency of any matter related to procurement including contract performance warranty periods;

19. transfer provisions;
20. contract renegotiations circumstances which may include, but is not limited to, unforeseen events or changed circumstances; and
21. other contract terms as needed.