

UOG Emergency Procurement Overview

A. Conditions for Use. Notwithstanding any other provision of this Chapter, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in the Procurement Regulations. See 5 G.C.A. §5215 and 2 G.A.R., Div. 4, §3113.

1. Emergency Defined. Guam's Procurement Law defines an Emergency as a condition posing an imminent threat to public health, welfare, or safety, or the health and safety of the environment, which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection. 5 G.C.A. §5030(x) (Added by P.L. 35-109:2 (Oct. 30, 2020) and 1 G.C.A. §1106(47).

2. Emergency Construction Works. Means the emergency operation, or demolition of existing structures and real property improvements, as well as building or assembly of temporary structures, necessary to address the imminent threat and nature of a particular event of emergency. 5 G.C.A. §5215(a).

3. Necessity of a Declaration of Emergency, or Certificate of Emergency. No emergency procurement shall be made except after, and consistent with, a Declaration of Emergency made by the Governor, or a Certificate of Emergency made by the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer.

a. A Declaration of Emergency shall be made by Executive Order duly issued by the Governor, and expressly authorizing emergency procurement of supplies, services, or emergency construction works and pursuant to a Determination of Need for Emergency Procurement, which shall be appended thereto.

b. A Certificate of Emergency shall be made, under penalty of perjury, by the Chief Procurement Officer, or Director of Public Works, or by the head of a purchasing agency, or a designee of either officer having requisite authority to procure supplies, services, or emergency construction works. 5 G.C.A. §5215(b).

4. Determination of Need for Emergency Procurement. No emergency procurement shall be solicited or awarded without a Determination of Need for Emergency Procurement, which shall:

a. Contain a statement expressly incorporating by reference the entire unaltered contents of the appended Determination of Need for Emergency Procurement.

b. Contain an affirmation that the contents of the Determination of Need for Emergency Procurement are true, correct, and complete to the best, informed knowledge, and good faith belief of the person making the Certificate of Emergency.

c. State the date of its execution, and be signed under penalty of perjury by the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer, conducting the emergency procurement of supplies, services, or emergency construction works.

d. Describe with factual particularity, the nature and apparent cause of the condition posing an imminent threat to public health, welfare, or safety, or the health and safety of the environment, which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection.

e. State that the threat is imminent, and that the emergency procurement is necessary, without delay, to protect the public health, welfare, or safety, or the health and safety of the environment.

f. Affirm solemnly that the emergency procurement of supplies, services, or emergency construction works, in the face of the emergency described, is not being used and will not be used, directly or indirectly, to avoid other methods of source selection or the purposes and policies of Guam's Procurement Law.

g. Be copied and appended to its respective Declaration of Emergency or Certificate of Emergency and further attached to and made a part of any contract, or Notice of Award made or given.

h. Be a material part of the procurement record.

A. How Conducted.

1. To the extent practicable an emergency procurement shall be made and conducted with competition and utilize competitive procedures used in Guam's Procurement Law as is practicable under the circumstances, in the good faith discretion of the person authorized to make such emergency procurement.

2. A record shall be kept of all determinations and statements required by 5 G.C.A. §5215 (Emergency Procurement), as well as all other matters required to be made a part of the procurement record by Guam's Procurement Law.

3. At the conclusion of a solicitation whether by award or cancellation, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or the authorized designee of either officer shall make, date, and sign a written statement describing: the circumstances of the event of the emergency procurement; the solicitation process used; the names of potential bidders or offerors contacted; and the justification for the selection of the awardee. 5 G.C.A. §5215(d).

4. The solicitation and competition for an award of an emergency procurement contract should include:

a. Sending a Notice of Request for Interest to contractors on a qualified bidders list, and others known to the government, who have provided responsive supplies, services, or emergency construction works to the government, within the preceding twelve (12) months, of the type needed to meet the particular emergency.

b. A request for prompt expression of interest.

c. At least three (3) Positive Written Quotations, which shall be solicited, recorded, and placed in the procurement file, for the acquisition of supplies, services, or emergency construction works needed, unrestricted by the qualified bidders list; provided, that all quotations are not required to be positive if accompanied by written certification that to the maximum extent practicable, such positive quotations could not be obtained from known or potential vendors.

d. An award of a contract or purchase order as expeditiously as the circumstances and prudent competition may allow for, to the responsible contractor shown to provide the lowest price and most expeditious delivery time. 5 G.C.A. §5215(d).

5. Limitations on Numbers, Time, and Amount of Emergency Procurement.

a. There shall be no limit on the number of emergency procurements of supplies, services,

and emergency construction works, but no emergency procurement shall be made for an amount or construction greater than the amount of such supplies, services, or emergency construction works that are necessary to address the emergency for a ninety (90) day period immediately following the date of the Determination of Need for Emergency Procurement.

b. During said ninety (90) day period, the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer shall promptly and expeditiously take all necessary steps to determine if there will be ongoing needs arising from the event of emergency beyond the ninety (90) day period, and plan for the solicitation of supplies, services, and emergency construction works for such ongoing needs under a method of procurement other than the emergency procurement.

c. The emergency procurement may be extended beyond ninety (90) days if the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer determines additional time is necessary and the contract scope and duration are limited to the emergency. Thirty (30) days prior to execution of the extension, a public hearing shall be held by the procuring agency, at which any person may present testimony.

i. Notice of intent to extend an emergency contract shall be published in a newspaper of general circulation at least five (5) days prior to a public hearing.

ii. Notice shall include at least a description of the need for the emergency extension, the vendor, and the date, time, and location of the public hearing. A record of such plan shall be made and kept as a part of the procurement record.

Finally, please include copies of the Executive Order, the Determination of Need for Emergency Procurement in the form specified above, in the procurement record and attached to the contract or PO for the emergency procurement. Please ensure that the term of the emergency procurement is not for more than 90 days from the date of the Determination of Need for Emergency Procurement.

EMERGENCY PROCUREMENT PROCESS

Step 1: Prepare the Emergency Declaration of Need and attach Executive Order Nos. 2023-02 and 2023-05 as Exhibits A and B respectively.

Step 2: Prepare Request for Quotations and issue to at least three potential vendors

Step 3: Receive and evaluate quotations received

Step 4: Prepare Emergency Procurement Statement

Step 5: Prepare Procurement Record and ensure it includes:

1. Emergency Determination of Need
2. Log of Communication
3. Copies of Communication
4. Requests for Quotation
5. Quotes Received
6. Emergency Procurement Statement
7. Certification of Procurement Record
8. Notice of Award
9. Contract or Purchase Order

Step 6: Prepare the Certification of Procurement Record (Procurement Form 1)

Step 7: Issue Notice of Award

Step 8: Prepare and issue the Contract or Purchase Order to the awardee. **NOTE: The term of the contract or purchase order must not be for more than 90 days after the date the Emergency Determination of Need was made.**

CERTIFICATION of COMPLETED PROCUREMENT RECORD

Instructions: After ascertaining the statement's accuracy and truthfulness, the agency's procurement officer (director or head of agency) must sign the Certification below to indicate that the agency has kept a complete procurement record of all documents required by law. The checklist below is provided to ensure that the record is complete, and must be filled out by the procurement officer or administrator. The checklist is comprised of every item that is required by law for an invitation for bid (IFB) or a request for proposal (RFP), and therefore every item, except as noted below, must be checked for the resulting contract to be considered legally sufficient. Please assemble the procurement record in the order stated below and place it in a three-ring binder, with visible tabs for each of the items below appearing in numerical order.

IFB/RFP No: _____ Contractor: _____

- 1. Published notice in newspaper of general circulation
- 2. Procurement package (IFB or RFP) issued to bidders or offerors
- 3. Log of distribution of procurement package
- 4. Amendments to IFB or RFP, if any were issued
- 5. Logs of distribution of amendments to IFB or RFP, but only if amendments were issued
- 6. Minutes or summary of pre-submission conferences, but only if conferences were held
- 7. Logs of attendees of pre-submission conferences, but only if conferences were held
- 8. Written questions from bidders or offerors, but only if any questions were received
- 9. Written answers, but only if any questions were received
- 10. Proof that written answers were provided to all potential bidders or offerors, but only if any questions were received
- 11. Log of bids or registry of proposals received
- 12. Each bid or proposal received
- 13. Evaluation of proposals or analysis of bids (bids are not required by law to be analyzed, but may be)
- 14. Tabulation of evaluations or analysis (tabulations are not required by law but recommended)
- 15. Letters to bidders concerning outcome of bid; for offerors, letters informing them of ranking and letter to best qualified offeror inviting negotiations
- 16. Memorandum of evaluations and negotiations (only required for RFP's)
- 17. Notice of intent to award
- 18. Any and all communications from or to anyone concerning any part of IFB or RFP
- 19. Contract, including all draft versions
- 20. Bid protests, if any, and responses thereto
- 21. Any determination required by law as may fit the circumstances

CERTIFICATION: Pursuant to 5 G.C.A. §5250, I hereby certify under penalty of perjury that I am the procurement officer responsible for administering the solicitation of the acquisition referenced above, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law.

Signature: _____

Print Name: _____ Date: _____

