

**TITLE 10 – PUBLIC WORKS AND CONTRACTS**

Chapters:

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- 02 Procurement

TITLE 10 – CHAPTER 01 – GOVERNMENT PROPERTY MANAGEMENT

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**10.0101 Authority.**

The authority for exercising control and management of government property in the ASG is vested in the director of material management. Section 4.1002 A.S.C.A., constitutes the basis for the issuance of the manual codified in this chapter and for all actions by the director in matters relating to the management and control of public property.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § (part).*

**10.0102 Purpose.**

The purpose of this chapter is to prescribe adequate and uniform procedures throughout the ASG for accounting for all equipment, materials, and supplies under the jurisdiction of the department of material management. Compliance with the basic requirements established in this chapter will ensure that proper records of all personal property are maintained and that such property is protected, preserved, and used only for official purposes.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).*

**10.0103 Director of material management duties.**

- (a) The director of material management shall manage and control government property and shall have authority over the disposition and use of such property, including inventorying and establishing forms and procedures for sale, rental, or other disposition of such property.
- (b) The director of material management shall list all real estate belonging to or under lease to the government, showing the agency controlling, location, metes and bounds, cost when acquired, persons to whom leased, and other details.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).*

**10.0104 Accountable officers-Department and agency head responsibility.**

All property acquired by the government will be charged to an accountable officer. The safeguarding of property and maintenance of proper records thereof shall be considered a primary responsibility of these officers it is the responsibility of the head of each department or agency to make certain that public property under his custody and control is properly utilized and protected against damage or loss.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).*

**10.0105 Property management officers.**

The head of a department or agency may designate an officer or employee of his department or agency to perform the functions prescribed. The officer or employee so designated, as responsible for supervising the property management program of his department, shall be the property management officer, regardless of his payroll designation or any other title or function assigned to him.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).*

**10.0106 Transaction code.**

For describing the type or nature of a transaction, including the acquisition or disposition of fixed assets, by means of a numerical code, the following transaction code has been developed and prescribed, and will be shown on reports submitted to the director of material management:

Acquisition

- 01- Purchase
- 02- Construction
- 03- Transfer in
- 04- Donation
- 05- Omission (erroneously omitted from previous inventory)
- 06- Judicial process
- 07- Acquisition not otherwise classified
- Disposition
- 11- Sale
- 12- Transfer out
- 13- Destruction
- 14- Disposition not otherwise classified.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM ii.*

**10.0107 Definitions.**

Subject to additional or more detailed definitions in the Accounting Manual of the department of administrative services, and unless the context otherwise requires:

- (1) “building” means any structure erected aboveground, together with its appurtenances, the principal purpose of which is for sheltering persons or property. The term also includes but is not limited to schools, libraries, offices, warehouses, clinics, hospitals, homes, and housing units
- (2) “capitalization” (“to capitalize”) means the assignment of a dollar value to property for the purpose of reflecting such value on property accountability records and general ledger asset accounts;
- (3) “capitalized property” means property which has been entered on the records as an investment or asset and includes “non expendable property” which, for management and/or accounting

purposes, is to be carried as capital assets until disposed of in accordance with law;

- (4) “construction work in progress” means the cost of construction work undertaken and being performed but not yet completed and accepted;
- (5) “equipment” (including machinery) means an article of personal property which is complete in itself, is of durable nature with an expected service life of 1 year or more, and does not ordinarily lose its identity or become a component part of another article when put into use. The term includes but is not necessarily limited to machinery; heavy-duty tools; trucks; cars; office, school, and household furniture’s and furnishings; or any durable item required to equip an individual or activity to do a job;
- (6) “expendable” means those categories or specific items of personal property which have been classified for property control and/or cost accounting purposes as expendable and the cost or appraised value thereof is to be charged as an expense when received or issued, depending upon cost accounting system applied. The value of quantities of expendable items held in stores or redistribution centers pending issue is recorded as an asset;
- (7) “improvements other than buildings” means and includes all improvements and attachments to the land such as roads, walkways, playgrounds, and lighting facilities and fixtures;
- (8) “land” means all parts of the earth’s surface owned by the government, regardless of the purpose and/or use. Land held under lease is not owned and should be omitted from the account;
- (9) “maintenance” refers to the routine recurring work required to keep property in substantially original condition. It may include replacement of minor constituent parts, materials, or supplies;
- (10) “material and supplies” means and refers to all items necessary for the equipping, maintenance, repair, operation, and support of governmental activities and services;
- (11) “nonexpendable” means those categories or specific items of personal property which, for property management and/or accounting purposes, are to be carried as capital assets of a department, bureau, or activity until disposed of by transfer, sale, or otherwise;

- (12) “personal property” means all property other than land and buildings. Items in this category are classified as “expendable” and “nonexpendable” property.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.1.*

**10.0108 Receiving-Acknowledging-Responsibility and records.**

Certain basic principles are involved in the receiving of government property and shall be observed when assigning the responsibilities of this function. These principles include:

- (1) acknowledging receipt. The individual who signs the receiving report is certifying that the property listed thereon has been received, and his signature serves as the basis for the expenditure of government funds. All incoming shipments shall be physically counted and inspected to insure that the quantity ordered has been delivered and that articles received meet the specifications. Any defects or damages to the property shall be noted at the time of inspection. Articles which require technical identification or inspection shall be examined by the receiving individual in conjunction with other qualified personnel;
- (2) establishing initial responsibility. The property management officer or individual acting in that capacity assumes responsibility for all personal property received at the time the equipment or supplies are accepted and the receiving report is executed. The property management officer shall be responsible for the identification of all nonexpendable personal property acquired by the agency in accordance with the provisions of this chapter;
- (3) establishing accountability. The accountable officer, the head of the department or agency shall establish prescribed accountability records for all property acquired or entrusted to him immediately upon receipt of documents evidencing the receipt of such property.

*History: Rule 3-78, 17 Apr 78. 300 GASM § 1.1.*

**10.0109 Receiving-Receipting report.**

All departments will formally document the receipt of all personal property, whether such property is acquired from commercial sources, donated, recovered, or obtained by transfer from another government agency.

- (1) Property received shall be recorded on a receiving report to provide a document of entry to the records and accounts and to substantiate the disbursement voucher. Appropriate receiving documents shall be prepared as soon as possible after receipt of the property.
- (2) Special handling shall be given receiving reports involving time discounts.
- (3) Receiving Report, GAS form MT/MGT 32 (see Appendix 1) shall be used for the purpose of carrying out the provisions of this section.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 1.2. There are two sections numbered 2 in Ch. 1 of Rule 3-78. 300 GASM.*

**10.0110 Identification marking-Required-Means.**

All government property classified as non-expendable, except as exempted elsewhere in this chapter, shall be permanently marked to identify it as government owned. Markings may be accomplished by any means which will produce permanency and which will be most adaptable to the particular type of property.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 1.2. There are two sections numbered 2 in Ch. 1 of Rule 3-78, 300 GASM,*

**10.0111 Identification markings-Unmarkable apparatus-Large items.**

- (a) Very small, delicate, or precision apparatus, which cannot be marked in a permanent manner without damage to the equipment, is exempt from any requirement for marking or numbering. The number assigned to such equipment, however, shall be recorded on the property cards established for the equipment.
- (b) The larger, or more significant items of nonexpendable property, including but not limited to office furniture and ship equipment, shall be marked with the property number assigned thereto.

*History: Rule 3-78, eff 17 Apr 78. 300 GASM § 1.3.*

**10.0112 Identification markings-Property numbers.**

Each item or group of items of nonexpendable property shall be assigned an identifying property number by the head of the division of property, department of material management. Decimal suffixes may be added to the property number in order

to specifically identify individual items as may be determined. The numbers assigned shall be entered on the property records for the item.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM 1.4.*

**10.0113 Identification markings-Motor vehicles.**

All motor vehicles of the ASG, except those excepted elsewhere in this chapter, shall bear special markings and identification consisting of the following:

- (1) “For Official Use Only”;
- (2) ASG decalcomania;
- (3) Identification plates; i.e., plates numbers prefixed by letters, indicating department or office.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM 1.5.*

**10.0114 Identification markings-Removal before disposition.**

When property is sold or otherwise permanently removed from government service, all identification markings which indicate that the property was previously owned by the government shall be removed prior to disposition.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 1.6.*

**10.0115 Classification-Responsibility.**

- (a) It is the responsibility of each department, bureau, and/or agency to classify items of property as expendable or nonexpendable within the meaning of these terms as defined in this chapter and in the ASG Accounting Manual.
- (b) Nonexpendable property should be further classified to indicate whether it should generally be capitalized, noncapitalized, or considered with materials and supplies for physical and financial control purposes. The division of property, department of material management will, in cooperation with all departments, classify all personal property in accordance with the provisions of this chapter to ensure uniformity at all organizational levels.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.2.*

**10.0116 Classification-Guidelines.**

In making the determination as to proper classification of the various items of nonexpendable property, consideration will be given to such factors as acquisition cost, expected useful life, use,

susceptibility to personal uses, cost of possible accountability and/or responsibility records compared with cost of possible increased losses if such records are not maintained, as well as any other factors which may have a bearing on the classification. It will be necessary to use good judgment in applying these factors to individual items since the classification placed on an item will, to a with great extent, determine the type of inventory user, control and accounting records to be maintained therefor,

- (a) As a general rule, any single item of equipment costing more than \$100 should be capitalized. Classification of any given item of equipment should be consistent; however, in cases where a portion of the inventory of the item is acquired at a cost of \$100 or less and a portion at a cost of over \$100, the entire stock of a given item should be accounted for as either capitalized or noncapitalized equipment, as the case may be.
- (b) Examples of nonexpendable property items which fall under the capitalized equipment classification are: motor vehicles, office machines, surveying instruments, and similar major items of equipment which have a long expected service life and generally represent a major investment in personal property.
- (c) Examples of nonexpendable property items which will generally fall under the noncapitalized equipment classification are: small hand tools, and similar relatively low cost minor items of equipment which are frequently worn out after a comparatively short period of service,
- (d) Due to a high rate of breakage in service, a normally short service life, or an insignificant value, certain items of property nonexpendable by definition may, at the discretion of the director of material management, be administratively classified as expendable and treated as such in all respects. Examples of items which may be considered as expendable are glassware, tinware, brushes, drill bits, file baskets, pencil sharpeners, and like items which, in the opinion of the director of material management do not warrant the same measure of control and attention as do those composing the capitalized and noncapitalized classifications.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.3.*

**10.0117 *Records generally.***

- (a) Fiscal Accounting Records. The value of nonexpendable property acquired and disposed of shall be recorded in the records and accounts prescribed in this chapter and as determined by the director of administrative services as defined in the Accounting Manual.
- (b) Accountability Records. Accountability records shall be established and maintained to cover nonexpendable property as prescribed in this section.
- (c) Capitalized Equipment. The general ledger control account for capitalized property shall be supported by detailed property records to adequately identify the units of equipment the costs of which are charged to equipment accounts; provided a permanent record of the acquisition and disposition of all capitalized property; and provide information needed for inventory control and management purposes. This record will generally be known as the nonexpendable property accountability record, but may be supplemented by such other accountability or property records as may be necessary or desirable for property management purposes. These records shall be subject to both internal and external audit and all entries made therein must be adequately supported by valid acquisition and disposal documents.
- (d) Noncapitalized Equipment. The use of accountability records for noncapitalized equipment is not required by this title; but, rather, their use is discretionary with the head of each department, bureau, or agency.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.4.*

**10.0118 *Transfer of accountability.***

When an accountable officer is to be relieved of accountability, the incoming accountable officer shall be required to accept, formally, full responsibility and accountability for all government owned property involved in the transfer of accountability. This may be accomplished in either of 2 ways:

- (a) An itemized list of property of all classes may be compiled from the property records, showing, as a minimum, the quantity and adequate description of the items involved.
  - (1) Receipt of the property shall be acknowledged thereon by the incoming accountable officer, after such verification

and inventory as the incoming officer deems necessary to satisfy himself as to its correctness.

- (2) Prior to transfer of the property, any coverages which may be disclosed as the result of physical inventory shall be taken up in the records and accounts of the outgoing accountable officer, and any shortages adjusted.
- (3) Inventory of Property, GAS form MT/MGT 18 and continuation sheet (see Appendix 2) may be used for the purpose of compiling the list of property referred to above, and for formally documenting transfer of accountability. This list and receipt shall be prepared in triplicate, the original to be retained by the officer relieved, the duplicate to be filed by the incoming officer, and the triplicate forwarded to the head of the division of property, department of material management.

(b) If the incoming officer is satisfied that the property records are accurate and he is willing to assume full liability for all property recorded therein without physical verification, he may, as an alternate, execute a certificate in the following or similar form:

<p style="text-align: right;">_____ date</p> <p>I _____ (Name) _____ (Official designation), incoming accountable officer, have satisfied myself that the expendable and nonexpendable property accountability records of (Department or Agency) are accurate; and that the property recorded therein is physically on hand as of this date.</p> <p>I HEREBY AGREE to except full responsibility and pecuniary liability for property as recorded and waive any requirement for a physical inventory as a condition of such acceptance.</p> <p>_____ (Signature)</p> <p>_____ (Official Designation)</p>
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The original certificate shall forwarded to the division of property and each party to the transfer of accountability shall retain a copy.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.5.*

**10.0119 Responsibility records.**

To fix the responsibility for capitalized equipment, a receipt shall be obtained when such property is issued to individuals or transferred from the custody of 1 individual to another. Such receipts shall be filed in a manner which will allow the total holdings of capitalized property in the possession of each employee to be determined readily. However, certain items, although in use, but not in the custody of any 1 employee, may be controlled by means of location records in lieu of the receipt for property procedure described in this section, at the discretion of the head of each department or agency.

(a) Examples of items which can generally be controlled by use of location records are major shop equipment and similar items which are normally assigned for use by several different employees rather than for specific use of a single individual. When this procedure is used, responsibility for such property shall be vested in the accountable officer in any event, employees having capitalized equipment or other government property in their custody may be adjudged financially liable for its loss or damage by a proper board of survey action.

(b) Responsibility records of the type prescribed in this section for capitalized equipment are not required to be maintained for non-capitalized equipment. However, departments and agencies shall ensure that appropriate safeguards and controls are established at the operating office level whenever experience at the location indicates that such action is necessary to guard against:

- (1) excessive losses of any specific item;
- (2) excessive purchases or withdrawals when compared to program requirements for any specific item; or
- (3) use of property for other than official purposes.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.6.*

**10.0120 Clearance upon separation or transfer.**

Upon separation or transfer of an employee, a physical inventory shall be taken of all property in his custody. If all property is satisfactorily accounted for, property clearance shall be given the employee. Certification for final salary payment shall be withheld until this clearance has been granted, which

shall be prior to issuance of the employee’s final salary check.

*History: Rule 3-78, eff 17 Apr 73, 300 GASM § 2.7.*

**10.0121 Inventory-Reports**

Physical inventories of personal property shall be conducted at periodic intervals in accordance with the following:

- (a) **Capitalized Equipment.** The property management officer of each department or agency shall conduct a complete physical inventory of all capitalized equipment at least once annually, but they may be taken at more frequent intervals at the discretion of the head of the division of property, department of material management. A physical inventory shall be taken at intervals more frequently than annually whenever experience at any given location or with any given item indicates that this action is necessary for effective property accounting, utilization, and control.
- (b) **Noncapitalized Equipment.** Noncapitalized equipment shall be inventoried to the extent and in the manner provided by the proper division, department of material management; except, that in any event a physical inventory shall be made of all noncapitalized equipment charged to an individual employee upon his transfer or separation. Such employee shall be charged with the estimated market value of any items not produced at this time, except as he may be relieved from such financial liability by survey action or certificate of loss procedures, as appropriate.
- (c) **Reconciliation.** The results of the prescribed physical inventories of property, except that which is exempted, shall be reconciled with the responsibility, accountability, stores, and such other records as may be maintained for inventory control purposes. Any differences between the physical inventory of materials and supplies and the quantities shown on stores records shall be promptly adjusted and such adjustments adequately documented. In the case of nonexpendable property, rechecks and adjustments shall be made within 120 days after the effective date of the inventory. The head of the property division, department of material management shall conduct periodic inspections or audits as deemed necessary to verify the accuracy of the recordings of the respective

departments or agencies. The findings of the head of the property division shall be submitted to the director of material management.

- (d) **Inventory Report.** After completing the physical counting and reconciliation process the accountable officer shall certify in writing to the head of the property division of the department of material management that such inventories have been completed and that subsidiary card records reflect actual quantities on hand and are in agreement with general ledger control accounts. Forms GAS MT/MGT 26A and 27A (see Appendices 8 and 9) may be used for reporting purposes and for recording the results of the inventory.
- (e) **Transaction Report.** At the end of each accounting period, a report shall be prepared and submitted to the treasurer/director of administrative services summarizing all transactions incurred during the period. This report will show the balance carried from last report, a summary of new acquisitions (list P.O. or Stub No. involved and cost), a summary of dispositions made (see Appendix 15) and a new balance will be shown. Should the treasurer find that the report does not agree with the general ledger he shall cause an investigation to reconcile the difference.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 3.1.*

**10.0122 Liability and accountability-relief provisions-Scope.**

Sections 10.0122 and 10.0123 set forth basic requirements for the appointment of boards survey or other authorities to (1) investigate circumstances surrounding lost, stolen, damaged, and unserviceable property and (2) report Findings and make recommendations for the fixing of or the relief from personal liability for damaged or missing property. Sections 10.0122 and 10.0123 also provides for review of the actions of boards of survey by the property division, department of material management, and for the director of material management to make the final determination as to financial liability and disposition of the property.

*History: Rule 3-75, eff 17 Apr 78, 300 GASM § 4.1.*

**10.0123 Relief from accountability.**

An accountable officer may be relieved of accountability for property by the following methods:

- (1) Transfer of accountability to another accountable officer;
- (2) Transfer of available property to another accountable officer within the department and/or transfer of excess property to other governmental agencies;
- (3) Sale of property under conditions and limitations authorized by current laws and regulations;
- (4) Authorized condemnation and destruction, abandonment, or donation of property;
- (5) Loss, including theft and accidental destruction of property, when documented by an approved report of survey or certificate of loss.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 4.2.*

**10.0124 Survey and report-Required when.**

Survey action and a report of survey, GAS form MT/MGT 31, illustrated in Appendix 3, are required to authorize and/or document the following property transaction and circumstances:

- (1) Loss of property exceeding \$100 in original cost. Losses of \$100 and less shall be subject to report of survey procedures if not documented by a certificate of loss as provided in 10.0126;
- (2) Condemnation for salvage, reduction to scrap, destruction and abandonment of property regardless of circumstances;
- (3) Donation to public bodies;
- (4) Property damage exceeding \$100 in value, except damage resulting from motor vehicle accidents which are investigated and reported as provided in existing law and regulations. Damages of \$100 and less shall also be subject to report of survey procedures if not documented by a certificate of loss as provided in 10.0126;
- (5) Any circumstance, except motor vehicle accidents, in which there is a possibility of a claim against the government in connection with the administration, care, and use of its property.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.1.*

**10.0125 Disposal not requiring survey.**

Survey action is not required to authorize the following type of property disposals, all of which are otherwise authorized and amply documented:

- (1) Transfer of available and excess property to any other governmental activity;
- (2) Sale on nonreportable property after circularization as available;
- (3) Sale of surplus property. However, in cases involving reportable property, the sale thereof may not be made until after release by the department of material management;
- (4) Sale of scrap material;
- (5) Donation of surplus property for educational, public health, and civil defense purposes;
- (6) Sale or exchange of personal property where the exchange allowance or proceeds of sale are to be applied against the purchase price of replacement items.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.2.*

**10.0126 Certificate of loss or damage.**

A certificate of loss or damage (see Appendix 10) may be used in lieu of a report of survey to document losses of or damages to property provided the total amount of the loss or extent of the damage to all items contained in the certificate does not exceed \$100 and possible claims against the government are not involved.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.3.*

**10.0127 Survey authority.**

When survey action is required as prescribed in this chapter, and as may be directed by the head of the property division, department of material management, it shall be conducted by the authorities set out in 10.0128 and 10.0129.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.4.*

**10.0128 Survey board.**

- (a) Authority for survey boards is found at 4.0302 A.S.C.A.
- (b) Boards of survey, consisting of not less than 3 members, shall be appointed by the Governor. In case of property to be surveyed, neither the accountable officer nor the responsible employee for such property shall be a member of the board of survey. A standing board may be appointed to act on all cases or the board may be selected on a case-by-case basis. (c) Special boards of survey shall be appointed by the Governor.



*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.5.*

**10.0129 Survey review authority.**

Authority to approve or disapprove reports of survey and certificates of loss vested in the Lieutenant Governor of American Samoa.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.6.*

**10.0130 Survey board investigation-Findings and liability-Scrapping.**

Boards of survey shall fully investigate matters submitted to them. They will call for all evidence obtainable and will not limit inquiries to evidence or statements presented by parties in interest. They will examine and verify all evidence presented and available, and make recommendations consistent with the circumstances and findings disclosed by such examination.

- (a) In the case of damaged property, the board of survey or traveling survey officers will usually recommend that the employee be relieved of financial liability unless its findings disclose that:
  - (1) the property involved was being used for other than official purposes; or
  - (2) the employee failed to exercise reasonable precautions with regard to the care, use, and custody of the property in the particular circumstances. Inexpert use of property in carrying out official business resulting in damage will not usually justify holding the employee financially liable.
- (b) In the case of missing property where the employee is able to show when and under what circumstances the property was lost, the board of survey will usually make its recommendations concerning financial liability by following criteria similar to that for damaged property.

Where the employee is unable to produce missing property and is unable to explain meaningfully the circumstances under which it disappeared, the board will usually be concerned with the question as to whether the employee had or should have had adequate control over the custody of the property. If the nature of the property or the circumstances of the employee's holding it were such that custody and control were unimpaired, the board would understandably be reluctant to recommend that the employee be relieved of financial liability.

- (c) Boards of survey should carefully examine property being surveyed. Where the board finds that the property has further usefulness, either as is or after justifiable repairs or reconditioning, it may recommend that the property be continued in service.
- (d) Where final board of survey action directs that the destruction or reduction to scrap of property, such disposition shall be witnessed by at least 1 member of the survey board and an inspector of the property division, department of material management.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.7.*

**10.0131 Liability question separability-Loss evaluation-Survey action deferral.**

Boards of survey's action in determining whether to hold an employee financially liable for damaged or missing property entrusted to him should be taken apart from and without prejudice to whatever action of a personnel nature may be appropriate. The question of financial liability must be kept separate from such questions as the appropriateness of retraining, transferring, reprimanding, suspending, dismissing, or even commending the employee.

- (a) When an employee is found liable for property loss or damage by board of survey action, or when he voluntarily accepts liability, it shall be the responsibility of the accountable officer to establish the government's claim against the employee. Restitution should be sought to the extent of the government's loss. In the case of damaged property, the government's loss will usually be (1) the cost of necessary repairs or (2) the estimated market value after, as compared with before, the damage occurred. In the case of missing property, the measure of the government's loss should be the appraised value based on the last known condition of the property.
- (b) In any instance involving property irregularities subject to the provisions of this chapter, final board of survey action should be deferred until completion of action by the director of material management.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.8.*

**10.0132 Appeal of liability finding.**

An employee held liable for damaged or missing property by action of a board of survey shall have the right to appeal to the appropriate reviewing authority.

It is desirable that such appeals be made through the usual channels.

*History: Rule 3-72, eff 17 Apr 72, 300 GASM § 5.11.*

**10.0133 Theft or damage reporting.**

Thefts or damages to government property shall be reported simultaneously to the property division, department of material management and to the attorney general, department of legal affairs. Copies of such reports shall be used as pertinent attachments to reports of survey.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.12.*

**10.0134 Fixed asset classes-Designated.**

(a) The fixed assets of the ASG are divided into the following 6 classes:

1. Land;
2. Buildings;
3. Other structures and facilities;
4. Equipment under unit control;
5. Equipment under collective control;
6. Work in progress.

(b) The numbers appearing on the left in subsection (a) of this section are for identification purposes and constitute the first digit of each class in the property identification that appears in 10.0112.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM Ch.6 (part).*

**10.0135 Fixed asset classes-1. Land.**

1. Land: This classification includes all land owned by the government of American Samoa, regardless of method of acquisition. It does not include any buildings or structures on the land.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.1.*

**10.0136 Fixed asset classes-2. Buildings.**

2. Buildings: This classification includes permanent buildings which may or may not be connected with other structures by passageways. In addition to the building itself, it includes plumbing, heating, ventilating, sanitary, mechanical, electrical work, lockers, and cabinets which are made a part of the building.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.2.*

**10.0137 Fixed asset classes-3. Other structures and facilities.**

3. Other structures and facilities: This classification consists of nonexpendable items accounted for as a single unit or entity. It must meet 1 or more of the following conditions:

- (1) The cost of the individual piece of equipment is \$100 or more;
- (2) It has a serial or model number given it by the manufacturer;
- (3) Replacement policy for the equipment is determined by such pertinent factors as the relationship of the maintenance cost of the acquisition cost of the unit and the observation required of the individual performance or characteristics of the unit.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.3.*

**10.0138 Fixed asset classes-5. Equipment under collective control.**

5. Equipment under collective control.

(a) This classification applies to equipment that is accounted for as a group rather than as single units. The individual piece of equipment loses its identity as such and is one of a group. For this purpose, the equipment must be the same with respect to function, material, shape, and size.

(b) Equipment under collective control must meet 1 or more of the following conditions:

- (1) The cost of each item in the group must be less than \$100;
- (2) It has no serial or model number given it by the manufacturer,
- (3) The relationship of maintenance cost to the acquisition cost of the equipment and the observance of its performance are not pertinent factors in determining replacement policy.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.5.*

**10.0139 Fixed asset classes-6. Work in progress.**

6. Work in progress: This classification will apply to construction projects which have been started but not completed and accepted. Temporary records will be maintained to support the value of the work in place as reported. The department

of administrative services will be required to furnish a copy of each paid partial payment voucher in order that the property records may be in accord with that department of administrative services satisfactory completion of the project acceptance by the ASG the total cost completed project will be added to the private inventory account.

*History: Rule 3-7 8, eff 17 Apr 78, 300 GASM § 6.6.*

**10.0140 Storage-Scope and purpose of provisions.**

This section through 10.0143 prescribe basic requirements for the storage of equipment, materials, and supplies acquired by the ASG. This section through 10.0143 will not attempt to cover every conceivable condition or problem that will arise in connection with the storage of various commodities. With a reasonable exercise of judgment, as well as a reference to reputable and recognized standards, and compliance with safety techniques and standards of the division of fire, department of public safety, these provisions will enable and assist each department to achieve the desired objectives.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 7.1.*

**10.0141 Storage-Objectives.**

Storage objectives include such factors as maximum utilization of space consistent with adequate care and protection of property; positive item identification; effective conservation of time, labor, and equipment; and the rapid, easy movement of property from the storage area to the point of use or consumption. Storage methods and procedures vary according to the amount and type of available space, labor, equipment, and the quantity and type of property stored.

The basic objectives set forth in 10.0142 and 10.0143 are recommended as guides in planning and storage of personal property.

*History: Rule 3-7 8, eff 17 Apr 78, 300 GASM § 7.2.*

**10.0142 Storage-Arrangement and accessibility.**

Orderly arrangement is essential to efficient operation of storehouses. All items, whether stored in bins, bays, in bulk or in original containers should be so arranged that nomenclature and quantity may be readily determined. Efficient storage demands the maximum utilization of space with a minimum amount of labor. Where practical, labor should be

conserved by use of modern materials handling equipment and storage aids.

Fast moving items should be stored in convenient locations from which they can be issued with minimum handling. Stock of individual items or classes of items should be segregated to facilitate handling, issuing, and inventorying.

- (a) Protection. Types of property should be stored according to the kind of protection required. Protection requirements will vary greatly with the types of commodities stocked. All items must be protected from fire and theft. Certain items require protection from dampness, heat, and hazardous characteristics, and are stored separate from other stocks. These factors, as well as maximum protection of property against all causes of deterioration or destruction, must be considered in selecting proper storage locations.
- (b) Rotation. Stock rotation is based on the general storage principle of “first in, first out”. The fact that many items, for example, perishables, foodstuffs, medicines, paints, chemicals, etc., are subject to deterioration or infestation, requires that the oldest stock be issued first.

*History: Rule 3-78, eff 17 Apr78, 300 GASM § 7.3.*

**10.0143 Storage-facilities.**

Adequate storage facilities shall be provided at each location to ensure the proper safeguarding of all government property. Facilities required will vary largely between the projects and other activities of the various departments and agencies. Actual requirements will depend upon such factors as volume of property to be handled, characteristics of commodities to be stored, and nature of the operations.

- (a) Indoor. Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities, but should be subject to flexibility to provide for periodic changes in specific space requirements. Employees engaged in storehouse and storage operations must be instructed in safety and fire protection regulations pertaining to these operations.

The division of fire is charged with the responsibility of periodically inspecting warehouses and for instructing employees therein in the techniques of fire prevention and protection.

- (b) Outdoor. Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the government’s interest. Outside storage areas shall be prominently posted to clearly indicate that the property stored therein is government property. Entrance to such areas should be restricted to authorized personnel only.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 7.4.*

**10.0144 General ledger control account-Charging to projects benefited.**

The value of stores property acquired and disposed of shall be recorded in a general ledger control account for stores where the volume of work or other factors necessitate the establishment of a stores account. Unless otherwise directed by the head of each bureau or office, acquisitions of stores property described in the following subsections need not be recorded in a general ledger control account, but may be charged directly to the project benefited:

- (1) Materials and supplies purchased for immediate application on a specific project or job;
- (2) Materials and supplies purchased for single purposes, such as those procured against a bill of materials for a specific construction project, even though such materials may be stored for future use, consumption, or installation in such cases, however, card records showing quantity and descriptive information of the items involved shall be maintained to the extent necessary to ensure proper management and control of such inventories.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 8.1.*

**10.0145 Card records-Use.**

The general ledger control account for stores shall be supported by detailed card records to adequately identify the units of property, the costs of which are charged to the stores account, provide a permanent record of the acquisition and disposition of all stores items and provide information needed for inventory control and management purposes. Use records shall be subject to both international external audit, and all entries made therein must be adequately supported by valid acquisition and disposal documents.

*History: Rule 3-72, eff 17 Apr 78, 300 GASM § 8.2.*

**10.0146 Card records-Forms.**

Property record cards and stock cards (see appendices 7, 10 and 14) or a modification thereof, shall be used for the purpose of carrying out the Provisions of 12.0344 and 12.0345.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 8.3.*

**10.0147 Reconciliation of records.**

The total value of stores recorded on the stock card records shall be compared with the balance shown in the general ledger control accounts for stores at least once each year. Any differences disclosed as a result of this comparison shall be reconciled and adjusted in accordance with sound accounting practice is as necessary to bring the subsidiary records and control account monetary balances into complete agreement. The value of all property recorded on the property record cards shall be compared with the balance shown in the general ledger control account. Differences, if any, shall be reconciled.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 8.4.*

**10.0148 Issuing-Authorized employees.**

To ensure that property will not be issued indiscriminately, the official having administrative jurisdiction of the property should designate in writing an essential number of employees to whom materials and supplies may be issued and/or to whom responsibility for equipment may be assigned.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 9.1.*

**10.0149 Issuing-Documentation and receipts-Transfers.**

All issues of property shall be adequately documented and a receipt obtained at the time the property is removed from the storehouse or other storage area.

- (a) Transfer of property, GAS form MT/MGT 20 (see Appendix 4) or a modification thereof may be used for the purpose of documenting transfers of property between offices or departments.
- (b) Issues from supply warehouses are handled by stub requisitions, GAS form 107 (see Appendix 13).

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 9.2.*

**10.0150 Sale-Governing provisions-Public notice.**

- (a) Contracts for the sale of government property are entered into by virtue of the provisions of this chapter and as may be specifically and expressly provided by law.

- (b). Property offered for sale will be brought to the attention of the buying public by direct mail, posting in public places, and by both free publicity and paid advertising in newspapers, on radio, and on television. The amount of paid advertising should be commensurate with the type and value of the property being sold.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.1.*

**10.0151 Sale publicity.**

Every effort will be made to obtain maximum free publicity for sales from local newspapers, radio and television stations. Postal authorities will be contacted and requested to display posters and sale offerings on post office bulletin boards.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.2.*

**10.0152 Descriptions of property-Bid deposit-Award criteria.**

- (a) Invitation for bids, announcements and public notices, offering property for sale, will contain a full and complete description of the property, its location, condition and life span, and method of sale, whether by sealed bids, negotiation, or auction or spot bid.
- (b) Description of vehicular items, such as but not limited to automobiles, station wagons, ambulances, motor trucks, tractor trucks, and buses, will include the following: make of vehicle, year, series or model, manufacturer's serial number, type of vehicle and kind of body, number of cylinders, number of wheels driving, if other than standard, and manufacturer rated capacity.
- (c) Extremely important to the description of any property offered for sale is the portrayal of its true condition. Exact degrees of condition are matters of wide interpretation based on technical knowledge and individual opinion. The terminology contained in this chapter will govern. Some indication of the general condition of the property should be included if at all possible so that the bidder may have a basis upon which to estimate its value for future use. Condition codes should not be used in the description as these might prove quite meaningless to prospective bidders.
- (d) Awards normally will be made to the highest responsible and responsive bidder. In the event no awards are made for an item even though bids

are received, the reasons for not making an award will be entered on the record of the sale.

- (e) When a bidder has not met the bid deposit requirement, as provided for in the invitations of bid, such bid normally will be considered nonresponsive, except under any of the following situations:
- (1) The bid deposit is less than the amount required by the invitation to bid by an inconsequential amount and the rejection of the bid would not be in the best interest of the government;
  - (2) Only 1 bid has been received and it is considered to be adequate, and the bidder agrees to submit the required deposit;
  - (3) A bidder submits a bid deposit which is insufficient to cover all of the items for which he is in line for award. He should be awarded those items for which the bid deposit would have been adequate had only those items been bid upon; provided, however, that such a partial award is not inconsistent with either the bid as submitted by the bidder or the terms and conditions of the invitations, such as all-or-none bid qualification.
- (f) In determining which of several items should be awarded, the greatest possible return to the government shall be the prime factor.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.3.*

**10.0153 Bid opening and abstract-Unit-basis bidding.**

- (a) The official designated as the bid opening officer shall decide when the time set for bid opening has arrived and shall so declare to those present. All bids received prior to the time set for opening shall then be publicly opened and, when practicable, read aloud to the persons present, and be recorded. The official abstract of bids will contain as a minimum the following information:
- (1) Number of prospective bidders solicited;
  - (2) Number of bids received;
  - (3) Number of awards made;
  - (4) Item number for which no award is made and the reason thereof;

- (5) Item number and statement of reasons for any award other than to highest bidder;
  - (6) Information regarding whether a bid is submitted subject to condition, reservation, or qualification in any respect.
- (b) When bids are solicited on a unit basis, bidders will insert their unit prices and total prices in the space provided for each item. In the event the bidder quotes a total price on an item but fails to quote a unit price the government will determine the unit price by dividing the total price quoted by the quantity of the item set out in the invitation to bid. The unit price so determined will be used for the purpose of bid evaluation, award, and all phases of administration.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 4.*

**10.0154 Bid examination.**

- (a) Examination of bids by interested persons shall be permitted during business hours if it does not unduly interfere with the conduct of government business.
- (b) Before making an award, the sales contract officer (the deputy division of property or his designee) shall carefully examine the highest bid received to assure that:
  - (1) the bid is accompanied by the full amount of the required deposit, individual bid deposit bond, or reference to an annual bid deposit bond number;
  - (2) there are no qualifications which would compromise the position of the government; and
  - (3) the bid represents a fair price to the government and is commensurate with the market value of the property offered, but in no case less than the scrap value.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.5.*

**10.0155 Bid rejection-Abstract certification.**

- (a) Bids may be rejected by the sales contract officer when bid prices offered are below the current market appraisals and the prices offered are not considered reasonable, and/or when it appears that there was a collusive attempt by bidders to hold down prices.
- (b) For each item which is withdrawn prior to bid opening and for each item for which there is no

award made, entry will be made on the abstract of bids.

- (c) Although the abstract of bids is public information at all times after completion of the public opening of bids, the successful bidder for each item is not designated until the item has been circled and the abstract or document attached to the abstract has been certified as follows by the sales contract officer:

“I have made the awards or rejected the bids as indicated on this abstract, and the same countersigned by the Director of Material Management.”

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.6.*

**10.0156 Accounting of bid and sale proceeds.**

Bid deposits and proceeds from sales shall, if not otherwise provided by law, be deposited in the Central Warehouse Fund, and authorized refunds, such as cash bid deposits and any overpayments, will be remitted therefrom.

*History: Rule 3-78, eff Apr 78, 300 GASM § 10.7.*

**10.0157 Sales contracts-Notice of award-Storage charges.**

- (a) The sales contract and notice of award shall be issued as promptly as possible after review and shall specify the final date or dates for payment and removal of the property.
- (b) In the event a purchaser fails to remove all property awarded within the specified removal period, the same shall be stored and daily storage charges thereon shall accrue at the rate of \$25.
- (c) In all instances when storage charges are assessed, payment will be made by the purchaser prior to the removal of the property unless otherwise authorized.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.2.*

**10.0158 Sales contract default-Failure to pay for or remove property.**

- (a) When a purchaser fails to pay for or remove property or otherwise performed as required by the terms and conditions of sale he is considered to be in default; the consequences of this failure to properly perform his obligation under the contract may result in contract termination.
- (b) A termination for default for failure to pay and remove property form shall be issued for

nonpayment or for nonremoval of property awarded. Ordinarily the purchaser will be allowed 20 days in which to cure the default on sales contract, including auction sales or spot bid.

- (c) The notice of default will advise the purchaser that in the event the default is cured prior to the expiration of the cure period, he will be required to pay any accrued storage charges for the period commencing with the day following the removal date specified in the award. The purchaser will also be notified in the notice of default that in the event the default is not cured within the prescribed period he will lose all right, title, and interest in the property and that, upon expiration of the period prescribed for curing the default, a sum equal to 50% of the purchase price will be retained or collected by the government as liquidated damages.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.9.*

**10.0159 Auction.**

- (a) At the hour, day, and location previously announced, the sale contracting officer will open the proceedings with an announcement concerning the conduct of the sale. All items will be offered item by item, in sequence, as they appear in the invitation and/or the public notice.
- (b) As each item is sold, the same should be forthwith recorded in an auction sale item record with pertinent information preprinted thereon. As a minimum, the same should show the hour, day, and location of the auction sale, the sale contracting officer and other officials and clerks of the department of material management, the name and address of the bidder and the amount bid. The successful bidder should be immediately informed with respect to his obligation. Notices of award of contract will be mailed or otherwise furnished to the purchaser as soon as practicable after the sale.
- (c) In the event time permits, “no bid” or “rejected bid” passed items may be offered during the progress of the sale and may again be reoffered before the close of the sale, when deemed advisable and specific announcement is made to that effect at the time the item is passed.

*History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.10.*

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[End of Title 10 – Chapter 1]

TITLE 10 - CHAPTER 02 – PROCUREMENT

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**10.0201 Short title.**

The rules codified in this chapter shall be known and cited as “American Samoa Procurement Rules.”

*History: Rule 5-54, eff 11 Jul 81, (part).*

**10.0202 Authority.**

The rules in this chapter are promulgated pursuant to the authority granted under Section 12.0214 A.S.C.A.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0203 Purpose.**

The purpose of this chapter is to prescribe uniform rules necessary to fully implement Chapter 12.02 A.S.C.A.

*History: Rule 5-84, eff 11 Jul 84, § (part).*

**10.0204 Definitions.**

As used in this chapter, the words in this section shall have the following meanings unless the context otherwise requires:

- (a) “Chief procurement officer” means the head of the central procurement office of the government.
- (b) “Construction” means the purchases of building, altering, repairing, improving, or demolishing of a public structure or building, or public improvements commonly known as “capital



improvements”. It does not include the routine maintenance of existing structures, buildings, or public real property.

- (c) “Contract” means all types of agreements, regardless of what they may be called, for procurement.
- (d) “Contractor” means a person having a contract with an authorizing agency.
- (e) “Employee” means an individual receiving a salary from the government, including elective officials and nonsalaried individuals performing personal services for the government.
- (f) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or other disposal of real and personal property of any kind or nature.
- (g) “Government” means the American Samoa Government (ASG) which includes the executive, legislative, and judicial branches.
- (h) “Governmental body” means any department, office, agency, or other establishment or official of the government.
- (i) “Governor” means the Governor of American Samoa.
- (j) “Grant” means the furnishing by the government of assistance, whether financial or otherwise, to any person to support a program authorized by law.
- (k) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (l) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal entity.
- (m) “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 of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. It does not include employment contracts with individuals to be supervised by ASG employees.

- (n) “Rules” means rules which have been adopted under authority of this chapter in accordance with the provisions of the Administrative Procedure Act, 4.1001 A.S.C.A., et seq.
- (o) “Reasonable”, in reference to a bidder, means a person whose bid is equitable, fair, and suitable, and is not excessive or inappropriate in any material respect.
- (p) “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 will assure good faith performance.
- (q) “Responsive”, in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.
- (r) “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 reports, plans, and incidental documents.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0205 Requirement of good faith.**

This chapter requires all parties involved in the negotiation, execution, performance, or administration of government contracts to act in good faith.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0206 Applicability.**

- (a) Except as otherwise specified by law this chapter applies to every expenditure of public funds including federal assistance moneys and enterprise funds under any contract. This chapter also applies to the disposal of territorial goods.
- (b) This chapter does not apply to either grants by the government or contracts between the government and its bodies, political subdivisions, or other governments.
- (c) This chapter may not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement except that no such agreement shall be used to authorize sole source procurement or violation of Article X of this chapter.

- (d) Where there is a discrepancy between the provisions of this chapter and the laws of the territory, the laws shall have precedence over these rules. These rules shall have precedence over executive orders or other executive branch issuance until this chapter is amended.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**II. PROCUREMENT ORGANIZATION**

**10.0210 Centralization of procurement authority.**

Except as otherwise provided by law or executive order, all rights, powers, duties and authority relating to the procurement of construction, goods, and services, and the management, control, warehousing, sale, and disposal of construction, goods and services, now vested in, or exercised by a governmental body are transferred to the chief procurement officer.

**10.0211 Chief procurement officer.**

- (a) Location. The chief procurement officer shall head the office of procurement in the Department of Administrative Services. The office of procurement shall consist of a contract branch, a property management branch, and a policy and review branch.
- (b) Appointment and Qualifications. The Governor shall appoint and the Legislature shall confirm the chief procurement officer. The chief procurement officer shall meet the qualifications set forth in 12.0206 A.S.C.A.
- (c) Tenure and Removal. The chief procurement officer shall be a full time public official who serves at the Governor’s pleasure.
- (d) Authority and Duties. The chief procurement officer shall serve as the central procurement official of the government and is authorized to:
- (1) Adopt operational procedures or rules governing the internal functions of his office.
  - (2) Adopt and maintain rules for the government as necessary and appropriate for the implementation of Chapter 12.02 A.S.C.A., governing the procurement, management, control, and disposal of all construction, goods, and services procured by a governmental body. A separate manual of all rules and amendments to the rules shall be maintained by the chief procurement officer. The manual of rules

shall be open to inspection and copying during normal business hours.

- (3) Except as otherwise specifically provided in this chapter, in accordance with rules adopted:
- (A) procure or supervise procurement of all construction, goods, and services needed by the government;
  - (B) exercise general supervision and control over all inventories of goods belonging to the government;
  - (C) sell, trade, or otherwise dispose of goods, surplus to the government, and serve as the head of the American Samoa agency for surplus property responsible for acquiring surplus federal property under the Federal Property and Administrative Services Act, as amended; and
  - (D) establish and maintain programs for the inspection, testing, and acceptance of construction, goods, and services.
- (4) Assist in providing technical assistance including training, necessary to ensure uniform implementation of the rules in this chapter.
- (5) Supervise the conduct of management reviews to monitor compliance with the rules in this chapter and initiate corrective action, as required.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0212 Decentralized procurement authority.**

- (a) Delegation of Authority. The chief procurement officer may delegate authority to execute and administer contracts to a procurement officer who is responsible for administering procurement on behalf of an agency or governmental body under the provisions of this chapter. The chief procurement officer may delegate authority to supervise and control inventories belonging to the government. The chief procurement officer may also suspend, limit, or revoke any delegation of authority made under the provisions of this subsection. Except as otherwise specifically provided in this chapter, the following officials are delegated authority to execute and administer contracts, and control inventories of government property under the conditions prescribed:

- (1) Director of Health. Execution and administration of purchase orders and contracts for routine procurement of drugs, medicines, and medical supplies and control of stores of medical supplies;
  - (2) Director of Public Works. Execution and administration of architect-engineer and construction contracts and control of stores necessary for day-to-day maintenance requirements.
- (b) Procurement Authority by Law or Executive Order.
- (1) Executive Director of the American Samoa Power Authority. Execution and administration of purchase orders and contracts for the Authority and control of stores necessary for day-to-day operations of the Authority pursuant to Chapter 15.01 A.S.C.A., et seq.;
  - (2) Director of the Marine Railway Authority. Execution and administration of purchase orders and contracts for the Authority and control of stores necessary for day-to-day operation of the Authority pursuant to Executive Order No. 3-1978;
  - (3) Director of the Department of Agriculture. Control of storage and distribution of fungicides, herbicides, insecticides, weedicides, other agricultural chemicals, and animal feeds and fertilizers pursuant to 24.1201 A.S.C.A., et seq., and 24.2101 A.S.C.A., et seq.
- (c) Notification of Delegations. Every official having procurement authority by delegation under this section or by law or executive order shall notify the chief procurement officer in writing of the name and title of any individual to whom that authority is delegated and the scope of the delegated authority.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0213 Coordination.**

Under procedures adopted by the chief procurement officer, and except when a special evaluation or selection group is appointed by competent authority the CIP (Capital Improvement Project) and Procurement Review Committee shall review and approve the procurement of all construction and of goods and services which exceed \$25,000 prior to

execution of contracts. The committee may also review contracts of lesser value at its discretion.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0214 Duties of the Attorney General.**

- (a) The Attorney General, or such officer as the Attorney General may designate, shall serve as legal counsel and provide legal services to the chief procurement officer.
- (b) The Attorney General shall approve all government contracts for construction, leases of real property, other goods exceeding \$25,000, and services as to legal sufficiency prior to execution, regardless of the authority for execution and administration.

*History: Rule 5-84, eff 11 Jul 84, (part); and Rule 14-84, eff 27 Dec 84, § 1; amd. 2022, Rule 2022-0003, eff 29 Nov 2022.*

*Amd: 2022, revised “\$10,000” to “\$25,000.”*

*Editors Note: Under authority granted by A.S.C.A. § 4.1010 – Emergency Rules 2022-0001 (4/12/2022) and 2022-0002 (8/17/2022) were adopted. Said rules were permanently promulgated under Rule 2022-0003 (11/29/2022).*

**III. PROCUREMENT INITIATION**

**10.0220 Duties of the chief procurement officer.**

The chief procurement officer shall develop, issue and maintain procedures governing the preparation and initiation of requisitions for the purchase of construction, goods, and services by the government.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0221 Duties of the Director of Program Planning and Budget Development.**

The Director of Program Planning and Budget Development shall certify as to the availability of funding for all requisitions involving the expenditure of public funds, irrespective of source, within 48 hours after receipt of the requisition.

- (a) It shall be the policy of the government to identify in advance, to the extent feasible, planned purchases and procurement actions for each fiscal year to:
  - (1) Avoid the purchase of unnecessary or duplicative goods or services;
  - (2) Consider consolidating or breaking out procurement requirements to obtain a more economical purchase;

- (3) Consider lease versus purchase alternatives to determine the most economical approach; and
  - (4) Insure adequate resources are available and sufficient time is allotted to insure delivery of needed goods and services.
- (b) The head of each governmental body initiating requisitions shall submit to the chief procurement officer, by 1 Oct of each year, a list of purchases planned for the fiscal year (other than small purchases) including:
- (1) A description of the purchase;
  - (2) Estimated dollar amount;
  - (3) Required delivery date and
  - (4) Estimated date for requisition initiation.
- (c) The list of planned purchases shall be updated on a quarterly basis by the head of each governmental body initiating requisitions.

*History: Rule 5-84, eff 11 Jul 84, (part).*

IV. **SOURCE SELECTION AND CONTRACT FORMULATION**

**10.0230 Definitions.**

As used in this article, the following definitions shall apply:

- (a) “Bidding time” means the time between the issuance of a solicitation and the opening of bids or the due date for proposals.
- (b) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and a fee, if any.
- (c) “Firm-fixed-price contract” means a contract under which a contractor agrees to perform the work required for a price which is not subject to any adjustment.
- (d) “Offeror” means a person who has submitted a proposal in response to a request for proposal.
- (e) “Purchase description” means the words used in a solicitation to describe the construction, goods, or services to be procured.
- (f) “Request for proposals” means all documents utilized for soliciting proposals under the negotiation method of procurement.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0231 Methods of source selection.**

- (a) It is the policy of the government to conduct all purchases and procurement actions in a manner that provides maximum open and free competition.
- (b) Unless otherwise authorized by law, all government contracts shall be executed by competitive sealed bidding, in accordance with 10.0231(d), except as provided in:
  - (1) Subsection 10.0231(c)(1) – (2) for small purchases or micropurchases;
  - (2) Subsection 10.0231(e) for negotiation; or
  - (3) Subsection 10.0231(f) for emergency procurements.
- (c) Simplified Purchases.
  - (1) Small Purchases. Any procurement with a dollar value of \$10,001 to \$25,000 shall be completed by soliciting at least three (3) quotes which may be done by the requesting department, the Office of Procurement, or both.
  - (2) Micropurchases. Any procurement with a dollar value of \$10,000 or less, shall be non-competitive and shall rotate vendors.
  - (3) Procurement requirements shall not be artificially divided so as to constitute a simplified purchase under this subsection and circumvent other source selection rules required under this section.
- (d) Competitive Sealed Bidding.
  - (1) Conditions for Use. Contracts shall be awarded by competitive sealed bidding except as provided in 10.0231(b). For this method to be used, the following conditions shall be present:
    - (A) A clear, complete, accurate, and realistic purchase description or specification for the good or service to be procured is available;
    - (B) The purchase description or specification does not contain unnecessarily restrictive requirements or features which may unduly limit the number of bidders;

- (C) Two or more responsible bidders are willing and able to submit bids for the procurement; and
  - (D) The procurement requirements can be defined with sufficient accuracy so that a firmfixed-price contract can be executed, and selection of the successful bidder can be made principally on the basis of price.
- (2) Invitation for Bids. An invitation for bids shall be issued and shall include:
- (A) Invitation for bids number;
  - (B) Date of issuance;
  - (C) Name, address, and location of issuing office including room and building where bids must be submitted;
  - (D) Date, hour, and place of bid opening;
  - (E) A purchase description and/or specification for the goods or services to be procured in sufficient detail to permit full and open competition and allow bidders to properly respond to the invitation. Descriptions and specifications shall conform to the requirements in 10.0243;
  - (F) Quantity of goods or services to be furnished;
  - (G) Time, place, and method of delivery or performance requirements;
  - (H) All requirements bidders must fulfill and other factors (if any) to be used in evaluating bids;
  - (I) Clauses required by 10.0250(d) or 10.0260;
  - (J) Bonding requirements for construction as required by 10.0250(b);
  - (K) Local preference evaluation factors when required by 10.0272;
  - (L) Optional Form (OF) 17, sealed bid label.
- (3) Public Notice. Public notice of the invitation for bids shall be made at least one week prior to the issuance date of the invitation. Such notice shall be furnished to all suppliers of the goods or services being procured who have requested to be included in bidders main lists; shall be published in a newspaper of general circulation in American Samoa, and foreign newspapers if required; and displayed at the office of the chief procurement officer the U.S. Post Office, and at other appropriate public places. The notice shall contain:
- (A) Invitation for bids number;
  - (B) Adequate description of the types and quantities of goods and services to be furnished;
  - (C) Information on how to obtain copies of the invitation for bid, including any charges as required by 10.0250(a).
- (4) Bidding Time. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the government. A bidding time of 30 calendar days shall be provided, unless the chief procurement officer determines a shorter period is reasonable and necessary.
- (5) Bidders Mailing List. A list of potential bidders and suppliers requesting copies of invitations for bids in response to public notices shall be compiled and maintained by the chief procurement officer.
- (6) Bid Receipt. Bids, where receive 1 at the location specified in the invitation for bids, prior to the time set for opening, shall be kept unopened and secure in a locked receptacle. Bids which are opened by mistake shall be resealed in the envelope and the person who opened the bid shall write his signature and title on the envelope and deliver it to the chief procurement officer. No information contained in the bid shall be closed prior to bid opening.
- (7) Bid Opening. The bid opening official designated by the chief procurement officer shall determine when the time established for bid opening in the invitation for bids has arrived and shall so declare to those present including at least one or more witnesses from the government. All bids received prior to the time set for bid opening shall then be publicly opened, read aloud to the

persons present, and recorded as to the name of the bidder and the amount of each bid.

(8) Recording of Bids. The invitation for bids number, bid opening date, names and addresses of bidders, prices bid, and bid evaluation as may be required by 10.0272, shall be entered in an abstract or record and shall be open to public inspection by interested persons. The record shall be completed as soon as practicable after the bid opening and the bid opening official shall certify the accuracy of the record.

(9) Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction except as authorized under paragraph (0) or (11) of this subsection. Bids shall be rated based on the requirements set forth in the invitation for bids, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(10) Bid Retention. A bid may be rejected for any of the following reasons, as determined in writing by the chief procurement officer:

(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 bidders liability to the government. 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 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 the government under any invitation for bids provision. A low bidder may be requested to delete objectionable limitations from a bid provided such conditions do not affect price, quantity, quality, or delivery of the goods or services offered;

(C) Unreasonableness as to price;

(D) A low bid from a nonresponsible bidder as determined in accordance with 10.0233; (E) Failure to furnish a bid guarantee as required by 10.0250(b).

(11) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes must be supported by a written determination made by the chief procurement officer and approved by the Attorney General or designee. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the government or fair competition shall be permitted. A suspected bid mistake requires the government to request confirmation of the bid. Where there is an appearance of an obvious mistake, the bidder shall be requested to reconfirm the bid prior to award. In such an instance, if the bidder alleges an error the government shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (A) or (B) below.

(A) Correction of Bids. Correction of bid shall only be permitted when:

(I) An obvious clerical mistake is clearly evident from examining the bid document.

Examples of such mistakes are: obvious misplacement of a decimal point; errors in extension of unit prices; errors in addition; and obvious mistakes in designation of a unit; 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 in the form of bid worksheets or other information which supports the bid intended and the bid, as corrected, remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from an error in judgment.
  - (B) Withdrawal of Bids. 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 but not as to the bid intended.
  - (C) Cancellation of Awards. Cancellation of awards or contracts shall only be permitted when:
    - (I) Evidence as to the existence of the mistake is not discovered until after 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.
  - (12) Award. A contract shall be awarded with reasonable promptness by written notice to the lowest reasonable, responsive, responsible bidder whose bid fully meets the requirements of the invitation for bids and the rules set forth in this chapter. Unsuccessful bidders shall be promptly notified.
  - (13) Negotiation After Opening of Bids. After the opening of bids, if all bids exceed available funds as certified under 10.0221, and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than 5%, and time and economic considerations preclude resolicitation of the work at a reduced scope the chief procurement officer is authorized to negotiate an adjustment of the bid price, including changes in invitation for bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of the available funds. The negotiation of the price and changes in bid requirements shall be documented in a written determination made by the chief procurement officer and included in the contract file.
- (e) Negotiation.
    - (1) Competitive.
      - (A) Conditions for Use. Contracts may be awarded by competitive negotiation when the chief procurement officer determines in writing that the use of competitive sealed bidding under 12.0231(d) is not practicable because of the nature of the goods or services to be procured.
      - (B) Requests for Proposals. A request for proposals shall be issued and shall include:
        - (I) Request for proposal number;
        - (II) Date of issuance;
        - (III) Name, address, and location of issuing office including address for submission of proposals;
        - (IV) Date for submission of proposals;
        - (V) Description of the required goods or services to be procured;
        - (VI) Evaluation criteria to be used by the government in evaluating proposals on a technical and cost basis. The relative importance of the evaluation criteria shall be stated so all offerors clearly understand the basis for award;
        - (VII) Instructions for offerors to use in submitting technical and cost proposals, including number of copies required;
        - (VIII) Quantity of goods or services to be furnished;
        - (IX) Time, place, and method of delivery or performance requirements;

- (X) Clauses required by 10.0260.
- (C) Public Notice. Public notice shall be made in accordance with 10.0231(d) (3).
- (D) Proposal Times. Proposal times shall conform to the requirements in 10.0231(d) (4).
- (E) Offerors Mailing List. A list of prospective offerors shall be prepared in accordance with the requirements of 10.0231(d) (5).
- (F) Receipt of Proposals. Proposals shall be opened and used only by government personnel authorized to participate in evaluation. No information contained in a proposal shall be disclosed to the public until after contract award. Proposals shall be protected so as to avoid disclosure of contents to competing offerors.
- (G) Evaluation. Proposals shall be evaluated by the government in accordance with the evaluation criteria contained in the request for proposals. No other criteria may be used. The results of the evaluation shall be documented and a determination shall be made by the chief procurement officer of those responsible offerors whose proposals are reasonably susceptible of being selected for award. The determination shall be included in the contract file.
- (H) Discussions. Discussions shall be conducted with those responsible offerors whose proposals are determined by the chief procurement officer to have a reasonably susceptible chance of being selected for award. These discussions shall be conducted for the purpose of obtaining clarification from the offeror on its proposal to ensure full understanding of, and responsiveness to, the request for proposal requirements. Discussions shall be conducted individually with each offeror and care shall be exercised to ensure that no information derived from competing offerors' proposals is disclosed. All offerors with whom discussions are conducted shall be afforded the same time period to revise their proposal and submit a best and final offer to the government based on the discussions.
- (I) Final Offers. Best and final offers received from offerors shall be evaluated by the government using the evaluation criteria contained in the request for proposals and the results shall be documented and included in the contract file,
- (J) Award. Award shall be made to the responsible offeror whose proposal is determined in writing by the chief procurement officer to be most advantageous to the government considering price and the evaluation criteria contained in the request for proposal. Unsuccessful offerors shall be promptly notified.
- (2) Noncompetitive.
- (A) Conditions for Use. Contracts may be awarded without competition when the chief procurement officer determines in writing that award of a contract is infeasible under small purchase, competitive sealed bidding, or competitive negotiation procedures and that there is only one source available to furnish the required construction, goods, or services. The written determination shall be prepared by the requisition initiator and shall contain the following information:
- (I) The unique capabilities of the source that are required, why they are required, and the degree of consideration given to other sources;
- (II) The facilities or equipment of the source that are required, why they are required and if they are unavailable from other source'
- (III) Whether the work is a continuation of contract work previously performed by the source and the additional time,



expense, or duplication of effort required to bring another source up to that level;

(IV) Whether drawings or specifications suitable for competitive sealed bidding or competitive negotiation are available. If unavailable, explain why and the time and expense required to develop them;

(V) Other sources given consideration and specific reasons why they lack the qualifications required for the procurement.

(f) Emergency Procurement.

(1) Conditions for Use. Notwithstanding any other provisions of this chapter, the Governor may make or authorize a governmental body to make an emergency procurement when there exists a threat to public health, welfare, or safety under emergency conditions as defined under 26.0105(d) A.S.C.A. An emergency procurement must be as competitive as practicable under the circumstances.

(2) Documentation. A written determination describing the basis for the emergency, the extent of competition obtained, and the basis for selection of a particular contractor shall be prepared, reviewed by the Attorney General, and approved by the Governor, before contract award. The determination shall be included in the contract file.

*History: Rule 5-8-4, eff 11 Jul 84, (part); Rule 2022-0003, eff 29 Nov 2022.*

*Amd: 2022, subsection (c), single paragraph split into subsections (1)-(3); subsection (1) added \$10,001 to \$25,000 and “shall be completed by soliciting at least three (3) quotes which may be done by the requesting department, the Office of Procurement, or both”; subsection (2) “Micropurchases. Any procurement with a dollar value of \$10,000 or less, shall be non-competitive and shall rotate vendors.”; subsection (3) “Procurement requirements shall not be artificially divided so as to constitute a simplified purchase under this subsection and circumvent other source selection rules required under this section.”*

**10.0232 Cancellation of solicitations.**

An invitation for bids or request for proposals may be cancelled, and any or all bids or proposals may be

rejected, when such action is determined in writing by the chief procurement officer to be in the best interest of the government based on:

(a) Inadequate or ambiguous specifications contained in the solicitation;

(b) Specifications which have been revised;

(c) Goods or services being procured which are no longer required;

(d) Inadequate consideration given to all factors of cost to the government in the solicitation;

(e) Bids or proposals received indicate that the needs of the government can be satisfied by a less expensive good or service;

(f) All otherwise acceptable bids or proposals received are at unreasonable prices; or

(g) Bids were collusive (see 10.0292(i)).

*History: Rule 5-8-4, eff 11 Jul 84, (part).*

**10.0233 Qualifications and duties.**

(a) Responsibility of Bidders and Offerors. Awards shall be made only to responsible contractors.

(1) Responsibility Factors. 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 and facilities (or the ability to obtain them); and

(G) Be otherwise qualified and eligible to receive an award under applicable laws and rules.

- (2) Obtaining Information. Prior to award, the government official delegated authority to execute and administer a contract shall obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in paragraph (1) of this subsection. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with request to responsibility may be grounds for a nonresponsibility determination under paragraph (4) of this subsection. Information furnished by a bidder or offeror pursuant to this paragraph may not be disclosed outside of the office of the chief procurement officer or the purchasing agency without prior written consent by the bidder or offeror.
- (3) Responsibility Determination. The signing of a contract shall constitute a determination that the prospective contractor is responsible.
- (4) Nonresponsibility Determination. 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 government official delegated authority to execute the contract and shall state the basis for the determination. The determination shall be placed in the contract file.

(b) Prequalification. Prospective suppliers of goods or services may be prequalified for particular types of construction, goods, and services when determined necessary by the chief procurement officer. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include but shall not be limited to prequalified suppliers.

*History:- Rule 5-84, eff 11 Jul 84, (part).*

**10.0234 Types of contracts.**

- (a) Use of a cost-plus-a-percentage-of-cost and percentage of construction cost method of contracting are prohibited.
- (b) Normally, a firm-fixed-price contract shall be used unless use of a cost reimbursement contract is justified under subsection (c) of this section.

- (c) A cost reimbursement contract may be used when the chief procurement officer determines in writing that:
  - (1) 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;
  - (2) Use of a firm-fixed-price contract could seriously affect the contractor’s financial stability or result in payment by the government for contingencies that never occur; or
  - (3) Use of a cost reimbursement contract is likely to be less costly to the government than any other type due to the nature of the work to be performed under the contract.
- (d) The chief procurement officer shall develop, issue, and maintain procedures for the preparation of contract documents.

*History: Rule 5.84, eff 11 Jul 84, (part).*

V. ***SPECIFICATIONS***

**10.0240 Definitions.**

As used in this article, the following definition shall apply:

- (a) “Specification” means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0241 Duties of the chief procurement officer.**

- (a) The chief procurement officer shall be responsible for monitoring the use of specifications for construction, goods, and services to be procured.
- (b) The chief procurement officer may delegate this responsibility in writing to an official who has been delegated authority to execute and administer contracts.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0242 Maximum practicable competition.**

All specifications shall be written to promote overall economy for the purposes intended, encourage maximum competition in satisfying the government’s

minimum needs, and shall not be unduly restrictive of competition.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0243 Use of specifications.**

- (a) Specifications shall not be written so as to specify a particular product, or a particular feature of a product peculiar to one manufacturer unless that particular product or feature is essential to the government’s requirements and products of other companies lacking the particular feature would not meet the minimum needs of the government.
- (b) Specifications shall, whenever practicable, include a description of the qualitative nature of the construction material, good, or service to be procured and, when necessary, set forth those minimum essential standards and characteristics to which it must conform to satisfy its intended use.
- (c) When it is impracticable or uneconomical to make a clear and accurate description of the required good or service, a “brand name or equal” description may be used as provided in 10.0244 as a means to define the performance or other salient characteristics of the requirement.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0244 Brand name or equal provision.**

- (a) “Brand name or equal” descriptions shall be used only when it is determined that it is impracticable or uneconomical to make a clear, accurate, and detailed description of the government’s requirements without referring to a particular product.
- (b) “Brand name or equal” descriptions used in specifications shall set forth those salient physical, functional, or other characteristics of the referenced product which are determined to be essential to meet the minimum needs of the government. Such descriptions shall include:
  - (1) Complete identification of the item required;
  - (2) Applicable model, make, or catalog number for each brand name referenced, and identity of the commercial catalog in which it appears;

- (3) Name of manufacturer, producer, or distributor of each brand name product referenced and address;
- (4) Instructions for bidders or offerors to furnish for an “equal” product to be offered, the name of the product, manufacturer, model number, and all other information required for the government to determine that the offered product fully meets the salient characteristic requirements listed in the “brand name or equal” description.

*History: Rule 5-84, eff 13 Jul 84, (part).*

**10.0245 Specifications prepared by architects and engineers.**

The requirements of this article shall apply to all specifications prepared by architects and engineers for public contracts.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**VI. PROCUREMENT OF CONSTRUCTION AND ARCHITECT-ENGINEER SERVICES**

**10.0250 Construction.**

- (a) Invitation for Bids.
  - (1) Deposit. The chief procurement officer, or other official designated authority to execute and administer construction contracts, shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.
  - (2) Contents. The invitation for bids shall be prepared in accordance with 10.0231(d) (2). In addition, the following additional items shall be included in the form prescribed by the chief procurement officer:
    - (A) Notice to Bidders. General information regarding project information;
    - (B) Instructions to Bidders. Information on the preparation of bids, bid security requirements (10.0250(b)), and forms and certifications to be submitted with the bid;
    - (C) General Conditions. Standard contract clauses governing the performance of work;
    - (D) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed;

- (E) Technical Specifications. Specifications governing the technical aspects of the work to be performed;
  - (F) Local Bidder Preference. Evaluation of local bidder preference as required under 10.0272.
- (b) Bid security.
- (1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts where performance and contract bonds are required. Bid security shall be on a bid bond (GSA Standard Form 24), in cash, by certified check, cashier’s check, or other form acceptable to the government. The surety company shall hold a certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety, or other surety acceptable to the government.
  - (2) Amount. Bid security shall be in an amount equal to at least 5% of the amount of the bid or other amount as specified in the invitation for bids depending upon the source of funding.
  - (3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid in accordance with 10.0231(d) (10) (E).
- (c) Contract, Performance, Payment and Other Bonds.
- (1) Contract Bond. A contract bond is required in cash, certified check, cashier’s check, or with sureties certified by the government on GSA Form PUB/WKS-49 or other similar form satisfactory to the government when the amount of the contract does not exceed \$100,000.
  - (2) Performance and Payment Bonds. A performance bond and payment bond are required in cash, certified check, cashier’s check, or with sureties certified by the government on GSA Form 25 and 25A or other similar form satisfactory to the government when the contract exceeds \$100,000.
  - (3) Amount. The contract, performance, and payment bonds shall be in an amount sufficient to protect the government’s interest as determined by the chief procurement officer.
- (4) Other Bonds. Other bonds, such as labor and materials bonds, may be required in order to protect the interests of the government. Such bonds shall be required as determined by the chief procurement officer or other government official delegated authority to execute and administer construction contracts.
- (d) Required Contract Provisions. The following causes shall be included in all construction contracts as prescribed:
- (1) For contracts exceeding \$10,000, “Termination for convenience” (Appendix A);
  - (2) For contracts exceeding \$10,000, “Termination for default” (Appendix 131);
  - (3) For contracts exceeding \$ 10,000, “Equal Opportunity” (Appendix C);
  - (4) “Anti-Kickback Statute” (Appendix D);
  - (5) When required by federal grant program legislation and the contract exceeds \$2,000, “Davis Bacon Act” (Appendix F);
  - (6) Where applicable for contracts in excess of \$2,000, “Contract Work Hours and Safety Standards Act” (Appendix F);
  - (7) For contracts over \$100,000, “Clean Air and Water” (Appendix G) unless this requirement has been waived by EPA;
  - (8) Prohibition against gratuities and kickbacks as required by 10.0292(f);
  - (9) Prohibition against contingent fees as required by 10.0292(g);
  - (10) Prohibition against collusion as required by 10.0292(i).
- (e) Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget

or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order, or adjustment in contract price shall not be made unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0251 Architect-engineer services.**

- (a) Applicability. Architect-engineer services shall be procured as provided in this section except as authorized by 10.0231(c) (small purchases), 10.0231(d)(2) (noncompetitive negotiation) or 10.0231(f) (emergency procurement).
- (b) Policy. It is the policy to publicly announce all requirements for architect-engineer services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price.
- (c) Selection. The chief procurement officer or other official delegated authority to execute and administer architect-engineer contracts shall maintain files of current statements of qualifications of architect-engineer firms. After public announcement of a requirement for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms regarding the contract requirements and technical approach and a selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the services required.

- (d) Negotiation. The chief procurement officer or other official delegated authority shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the government. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the selected firms, the chief procurement officer or other official with delegated authority shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0252 Duties of the chief procurement officer.**

The chief procurement officer may promulgate additional contract provisions as are required for construction or architect-engineer contracts.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**VII. PROCUREMENT OF GOODS AND SERVICES**

**10.0260 Required contract provisions.**

The following clauses shall be included in all contracts as prescribed:

- (a) For contracts in excess of \$10,000, “Termination for Convenience” (Appendix A);
- (b) For contracts in excess of \$10,000, “Termination for Default” (Appendix B2);
- (c) For contracts in excess of \$10,000, “Equal Opportunity” (Appendix C);
- (d) For contracts in excess of \$2,500 which involve employment of mechanics or laborers, “Contract Work Hours and Safety Standards Act” (Appendix F);
- (e) For negotiated contracts, “Examination of Records” (Appendix I);
- (f) For contracts over \$100,000. “Clean Air and Water” (Appendix G);

- (g) For contracts involving research, development, experimental or demonstration work, “Patents” (Appendix J);
- (h) Prohibition against gratuities and kickbacks as required by 10.0260(f): (i) Prohibition against contingent fees as required by 10.0260(g);
- (j) Prohibition against collusion as required by 10.0260(i).

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0261 Duties of the chief procurement officer.**

The chief procurement officer may promulgate additional contract provisions as are required for contracts for goods and services. The chief procurement officer may require bid bonds and performance and payment bonds on contracts other than construction contracts upon a written determination that such additional security is necessary to protect the government’s interest.

*History: Rule 5-84, eff 11 Jul 84, (part)*

**VIII. SOCIOECONOMIC PROGRAMS**

**10.0270 Policy.**

It shall be the policy of the government to use its procurement rules to promote local business investment, activity, and competitiveness with other nonlocal businesses by decreasing cash outflow and assisting to overcome the limitations of size, isolation from the mainstream of commercial and financial activities, lack of diversified industrial bases and inadequate availability of venture capital which have stymied business development. The government shall encourage economic activities and business development to the maximum extent feasible without compromising effective and efficient government procurement practices including competition.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0271 Definitions.**

As used in this article, the following definitions apply:

- (a) “Local bidder” for procurement of goods and services means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or private legal entity which:
  - (1) Has a valid American Samoa business license and, if required, a foreign

corporation permit to transact business in American Samoa;

- (2) has its principal place of business in American Samoa;
- (3) Has owned, operated, or maintained an office, store, warehouse, or other facility in American Samoa for at least six months;
- (4) Has, or has the ability to obtain, necessary technical support services, as may be required, for timely installation, maintenance, warranty, and repair of the goods to be furnished in the bid.

(b) “Local bidder” for procurement of construction means a sole proprietorship which is wholly owned by an American Samoan or a permanent resident as defined in 41.0502 A.S.C.A., or a partnership, joint venture, or other unincorporated association which is wholly owned by those persons, or a corporation which is majority owned by those persons and has submitted a bid in response to an invitation for bids for construction.

(c) “Off-island bidder” means a person submitting a bid in response to an invitation for bids who does not qualify as a “local bidder” as defined in subsections (a) and (b) of this section.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0272 Local bidder preference and evaluation.**

- (a) Construction Procurements.
  - (1) For construction procurements where the contract value is estimated by the government at \$50,000 or less, the procurement shall be set aside and restricted to local bidders only. Bids received from off-island bidders will be rejected.
  - (2) For all construction procurements where the contract value is estimated by the government to exceed \$50,000, bids from off-island bidders shall be evaluated after bid opening so as to give preference to responsive, responsible and reasonable local bidders by application of the following schedule of add-on percentages to the bid amount submitted by the lowest responsive, responsible, and reasonable off-island bidder:

Estimated Value	Add-on Percentage
\$50,001 to \$100,000	10%
\$100,001 to \$200,000	\$10,000 plus 5% of the amount in excess of \$100,000
More than \$200,000	\$15,000

(b) Procurement of Goods and Services

- (1) For all procurements of goods and services (other than construction) for which qualifying bids are received from both local bidders and off-island bidders, the bids shall be evaluated after bid opening so as to give preference to responsive, responsible and reasonable local bidders by application of the following schedule of add-on percentages to the bid amount submitted by the lowest responsive, responsible and reasonable off-island bidder:

Estimated Value	Add-on Percentage
Up to \$10,000	25%
\$10,001 to \$50,000	\$2500 plus 12% of the amount in excess of \$10,000
\$50,001 to \$100,000	\$7300 plus 10% of the amount in excess of \$50,000
\$100,001 to \$200,000	\$12,300 plus 5% of the amount in excess of \$100,000
More than \$200,000	\$17,300

- (c) If, after the addition of the applicable add-on percentage amount according to subsection (a) or (b) of this section, the bid submitted by the lowest responsive, responsible, and reasonable local bidder is equal to or less than the evaluated bid (amount of bid plus add-on percentage of the bid) of the lowest responsive, responsible, and reasonable off-island bidder, then the local bidder shall be awarded the contract.
- (d) Procurement requirements may not be artificially divided or combined so as to circumvent the provisions of this section.
- (e) The Governor may suspend or reduce a local preference set forth in this section if he finds that such action is desirable or necessary in the public interest as a result of financial or economic conditions affecting directly or indirectly the government generally, for a period or periods not exceeding 18 months in total. The preferences suspended or reduced must be fully restored after 18 months unless permanent modifications are proposed to the Legislature. Suspension or reduction shall be adopted under the Administrative Procedure Act, 4.1001 A.S.C.A., et seq.

*History: Rule 5-84 eff 11 Jul 84. (part)*  
*Amendment: Amd: 25 Mar 2022 (chart updated)*

**IX. CONTRACT ADMINISTRATION**  
**10.0280 Responsibilities.**

The chief procurement officer and other officials delegated authority to award and administer government contracts shall be responsible for monitoring contract performance in accordance with the terms, conditions and specifications of the contract.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0281 Contract file documentation.**

For each contract awarded, an official contract file shall be established and contain the following information:

- (a) Purchase requisition;
- (b) Public notice;
- (c) Bid or offeror’s mailing list;
- (d) Invitation for bids or request for proposals;
- (e) Bid abstract or record;
- (f) Determination of nonresponsibility, when applicable;
- (g) Evaluation results (negotiated procurement)
- (h) Notice of award to unsuccessful bidders or offerors;
- (i) Contract;
- (j) Noncompetitive determination (when applicable);
- (k) Emergency procurement determination (when applicable);
- (l) Cost-reimbursement contract determination (when applicable);
- (m) Basis for cost or price.

*History: Rule 5-84. eff 11 Jul 84, (part).*

**10.0282 Disputes and appeals.**

- (a) Definition. “Dispute” means any disagreement between contractors or potential contractors and the government regarding a procurement officer’s decision on mistakes-in-bidding, source selection, contract interpretation, or termination for convenience or default.

- (b) Requirements. All such disputes shall be submitted in writing to the procurement officer making the decision. The procurement officer shall acknowledge receipt of the dispute within 5 working days of receipt and shall render a final decision within 30 working days after receipt of the dispute.
- (c) Appeals. Appeals of a procurement officer’s final decision in a dispute may be made within 60 days of the date of the decision, provided such appeal is submitted in writing to the Governor. The Governor shall appoint a board of at least three persons knowledgeable of procurement to review such appeals and recommend appropriate action to the Governor. None of the board members shall have participated in the action under appeal. At least one of the board members shall be a qualified attorney. Hearing procedures and documentation shall be as set forth in the Administrative Procedure Act, 4.1025 A.S.C.A., et seq., and the rules.
- (d) Limitation. A termination for default may only be converted to a termination for convenience as a result of a finding by the appeals board on behalf of the appellant.

*History: Rule 5-84, eff 11 Jul 84, (part).*

X. **ETHICAL CONDUCT STANDARDS FOR GOVERNMENT EMPLOYEES AND CONTRACTORS**

**10.0290 Policy.**

Public employment is a public trust. In governmental contracting, public employees shall discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors and conduct themselves in a manner as to foster public confidence in the integrity of the government.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0291 Definitions.**

As used in this article, the following definitions shall apply:

- (a) “Confidential information” means any information which is available to an employee only because of the employee’s status as an employee of this government and is not a matter of public knowledge or available to the public on request.
- (b) “Conspicuously” means written in such special or distinctive format, print, or manner that a

reasonable person against whom it is to operate ought to have noticed it.

- (c) “Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (d) “Financial interest” means:
  - (1) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive compensation; or
  - (2) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (e) “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (f) “Immediate family” means a spouse, children, parents, brothers and sisters.

*History: Rule 5-84, eff 11 Jul 84. (part).*

**10.0292 Standards of ethical conduct.**

- (a) Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee’s duties is a breach of a public trust. In order to fulfill this ethical standard, employees must meet the requirements of this section.
- (b) Ethical Standards for Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a breach of ethical standards.
- (c) Employee Disclosure Requirements.
  - (1) Disclosure of Benefit Received From Contract. Any employee who has, or obtains any benefit from any government contract with a business in which the employee has a financial interest shall



report such benefit to the chief procurement officer or designee.

- (2) Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of the ethical standards of this section.
- (d) Employee Conflict of Interest.
- (1) Policy. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that;
    - (A) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
    - (B) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
    - (C) Any other person business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
  - (2) Discovery of Actual or Potential Conflict of Interest, Disqualification and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.
- (e) Use of Confidential Information. It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.
- (f) Prohibition Against Gratuities and Kickbacks.
- (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 or 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 or 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,
  - (3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefor.
- (g) Prohibition Against Contingent Fees.
- (1) Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government 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.
  - (2) Representation of Contractor. Every person, before being awarded a government contract, shall represent, in writing, that such person has not retained anyone in violation of this subsection. Failure to do so constitutes a breach of ethical standards.
  - (3) Contract Clause. The representation prescribed in this subsection shall be conspicuously set forth in every contract and solicitation there for.
- (h) Restrictions on Employment.

- (1) Present Employees. 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, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.
  - (iii) Claim; or
  - (iv) Charge or controversy, in matters which were within the former employee's official responsibility, where the government is a party or has a direct or substantial interest.
- (2) Restrictions on Former Employees in Matters Connected with their Former Duties.
  - (A) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the government in connection with any:
    - (i) Judicial or other proceeding, application, request for a ruling, or other determination;
    - (ii) Contract;
    - (iii) Claim; or
    - (iv) Charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the government is a party or has a direct and substantial interest.
  - (B) One Year Representation Restriction Regarding Matters for which a Former Employee was Officially Responsible. It shall be a breach of ethical standards for any former employee, within twelve months after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the government, in connection with any:
    - (i) Judicial or other proceeding, application, request for a ruling, or other determination;
    - (ii) Contract;
- (3) Disqualification of Business When an Employee has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the government, 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, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the government is a party or has a direct and substantial interest.
- (4) Selling to the government after termination of employment is prohibited. It shall be a breach of ethical standards for any former employee to engage in selling or attempting to sell supplies, services, or construction to the government for six months following the date employment ceased.

The term "sell" as used herein means signing a bid proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person;

provided, however, that this subsection is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this government, nor shall a former employee be precluded from serving as a consultant to this government.

- (i) Collusion Between Bidders/offerors.
  - (1) Policy. Collusion or secret agreement between bidders or offerors for the purpose of securing an advantage to the bidders or offerors as against the authorizing agent in the awarding of contracts is prohibited. The authorizing agent may declare the contract void if he finds sufficient evidence after a contract has been let that the contract was obtained by a bidder/offeror or bidders/offerors by reason of collusion or secret agreement among the bidders/offerors to the disadvantage of the government.
  - (2) Representation of Contractor. Every person, before being awarded a government contract, shall represent, in writing, that such person has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competition in connection with the bid or proposal submitted.
  - (3) Contract Clause. The representation prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefor.
- (j) Prohibition Against Employee Use and Contractor Acceptance of Purchase Requisitions.
  - (1) Policy. Only valid purchase orders and contracts awarded pursuant to this chapter constitute legal and binding documents between the government and its contractors. The government shall not make payment to a contractor who delivered goods or services as a result of receipt and acceptance of a purchase requisition, unless such purchase was authorized by this chapter.
  - (2) Notice. All purchase requisitions used by the government shall contain a prominent

notice on the face of the requisition form which sets forth the prohibition in this subsection.

- (3) Employee Liability. Unless otherwise authorized by this chapter, any employee who uses or attempts to use a purchase requisition to obtain goods or services directly, from a contractor without first obtaining a valid purchase order or contract may be held personally liable and responsible for the amount of the goods and services.
- (4) Ratification. Employee purchases for the government without the use of a valid purchase order or contract are improper and illegal. Such actions may be ratified in exceptional circumstances by the chief procurement officer when such action is determined to be in the interest of the government.

*History: Rule 5-84. eff 11 Jul 84. (part).*

**10.0293 Civil penalties.**

- (a) An employee who violates a provision of this chapter or the rules is subject to adverse action, including but not limited to reprimand, suspension without pay, or termination of employment, in addition to other penalties prescribed by law.
- (b) A person other than an employee who violates a provision of this chapter or the rules shall be subject, by the procurement officer with which that person is dealing directly at the time of the violation, to written warning of reprimand, termination of contract or transaction, or suspension from being a contractor or subcontractor under a government contract in addition to other penalties prescribed by law.
- (c) All proceedings under this section must be in accordance with due process requirements, including but not limited to reasonable notice and opportunity for hearing, and must be conducted in accordance with the hearing procedures prescribed by the Administrative Procedures Act, 4.1025 A.S.C.A., et seq., and the rules.

*History: Rule 5-84, eff 11 Jul 84, (part).*

**10.0294 Criminal penalties.**

- (a) Except as otherwise provided in this section, a violation of a provision of this chapter is punishable as a class B misdemeanor.
- (b) A person who gives or receives anything of value for the purpose of securing or influencing the award of a contract subject to the provisions of this chapter, is upon conviction, guilty of a class C felony.

*History: Rule 5-84, eff 11 Jul 84. (part).*

**APPENDIX A**

**TERMINATION FOR CONVENIENCE**

- (a) The government may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that a termination is in the government’s interest. The contracting officer shall terminate by delivering to the contractor a notice of termination specifying the extent of termination and the effective date.
- (b) After receipt of a notice of termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice;
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
  - (3) Terminate all subcontracts to the extent they relate to the work terminated;
  - (4) Assign to the government, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;
  - (5) With approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;

- (6) As directed by the contracting officer transfer title and deliver to the government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the government;
- (7) Complete performance of the work not terminated;
- (8) Take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the government has or may acquire an interest;
- (9) Use its best efforts to sell as directed or authorized by the contracting officer, any property of the types referred to in subparagraph (6) of this subsection; provided, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (c) The contractor shall submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the government to remove those items or enter into an agreement for their storage. Within 15 days, the government will accept title to those items and remove-them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the contractor shall submit a final termination settlement proposal to the

contracting officer in the form and with the certifications prescribed by the contracting officer. The contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the contractor fails to submit the proposal within the time allowed, the contracting officer: may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.

- (e) Subject to paragraph (d) of this appendix, the contractor and the contracting officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated.

*History: Rule 5-84, eff 11 Jul 84, (part).*

APPENDIX B1  
TERMINATION FOR DEFAULT (CONSTRUCTION)

If the contractor refuses or fails to prosecute the work or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the government resulting from his refusal or failure to complete the work within the specified time.

If the government so terminates the contractor's right to proceed, the resulting damage will consist of the fixed and agreed liquidated damages if stipulated

elsewhere in this contract until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the government in completing the work.

If the government does not so terminate the contractor's right to proceed, the resulting damage will consist of the fixed and agreed liquidated damages if stipulated elsewhere in this contract until the work is completed or accepted.

The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

- (1) The delay in the completion of the work arises from causes other than normal weather beyond the control and without the fault or negligence of the contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, acts of another contractor to the government in the performance of a contract with the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather for American Samoa taking into consideration that approximately 200 inches of rainfall annually is normal, or delays of subcontractors or suppliers arising from causes other than normal weather beyond the control and without the fault or negligence of both the contractor and such subcontractors or suppliers;
- (2) The contractor, within 10 days from the beginning of any such delay notifies the contracting officer in writing of the cause of delay.

The contracting officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the finding of fact justify such an extension, and his findings of facts shall be final and conclusive on the parties subject only to appeal.

If, after notice of termination of the contractor's right to proceed under the provisions of this section it is determined for any reason that the contractor was not in default under the provisions of this section, the rights and obligations of the parties shall be the same as if a notice of termination for convenience had been issued.

The rights and remedies of the government provided in this section are in addition to any other rights and remedies provided by law or under this contract.

*History: Rule 5-84, eff 11 Jul 84, (part).*

APPENDIX B2

TERMINATION FOR DEFAULT (GOODS AND SERVICES)

- (1) Default. If the contractor refuses or ails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise ails to timely satisfy the contract provisions, commits any other substantial breach of this contract, the procurement officer may notify the contractor in writing of the delay or nonperformance; and if not cured in ten days or my longer time specified in writing by the procurement officers such officer may terminate the contractor’s right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) Contractor’s Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the government has an interest.
- (3) Completion. Payment for completed supplies delivered and accepted shall be at the contract-price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and procurement officer. The government may withhold from amounts due the contractor such sums as the procurement officer deems to be necessary to protect the government against loss because of outstanding liens or claims of former lien holders and to reimburse the government for the excess costs incurred in procuring similar goods and services.

- (4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the procurement officer within 15 days after the cause of the delay and the failure arises out of causes such as, acts of God, acts of the public enemy, acts of the government and any other governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the supplies of services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor’s progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the government under the clause entitled “Termination for Convenience”.

- (5) Erroneous Termination for Default. If after notice of termination of the contractor’s right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

*History: Rule 5-84, eff 11 Jul 84, (part).*

APPENDIX C  
EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or; national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this equal opportunity clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided, by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance' with such rules, regulations, and orders.
- (f) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967; and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the government may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the government to enter into such litigation to protect the interests of the government.

*History: Rule 5-84, eff 11 Jul 84, (part).*

APPENDIX D

ANTI-KICKBACK STATUTE

The contractor shall comply with the Copeland “Anti-Kick Back” Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

TITLE 18, U.S.C., Section 874:

“874. Kick-Back from public works employees; Whoever by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000.00 or imprisoned not more than five years, or both.”

*History: Rule 5-84. eff 11 Jul 84. (part).*

APPENDIX E

DAVIS-BACON ACT

The following clause must be included in all construction contracts which are subject to the Davis-Bacon Act provisions:

(1) Minimum wages.

- (i) All mechanics and laborers employed or working upon the site of the work, or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics, and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions

made or costs reasonably anticipated under section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a) (1) (iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

- (ii) The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination and a report of the action taken shall be sent by the federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for final determination.
- (iii) The contracting officer shall require whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.
- (iv) If the contractor does not make payments to a trustee or other third person he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of



the Secretary of Labor which is a part of this contract:

Provided, however, the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The government may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, all or part of the wages required by the contract, the government may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and Basic Records.**

(i) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1 (b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated

in providing benefits under a plan or program described in section 1 (b) (2) (B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(ii) The contractor will submit weekly a copy of all payrolls to the contracting officer if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the government. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a “Weekly Statement of Compliance which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a) (1) (iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the government and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting agencies that their employment is pursuant to an approved program and shall identify the program.

(4) **Apprentices and Trainees.**

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (ii) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of journeyman's rate contained in the applicable wage determination.
- (ii) Trainees. Except as provided in 29 CFR 55 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor,

Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of h program, the registration of the trainees, and the ratios and wage rates prescribed in that program in the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.
- (5) Compliance with Copeland Regulations (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.
- (6) Subcontracts. The contractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (5) and (7) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts- which they may enter into together with a clause requiring this insertion in any further subcontracts that may in turn be made.

- (7) Contract Termination. A breach of clauses (1) through (6) may be grounds for termination of the contract.

Additional provisions which must be included are:

- (1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or pen-nit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, as the case may be.
- (2) Violations; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (I), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (I).
- (3) Withholding for Unpaid Wages and Liquidated Damages. The government may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid

wages and liquidated damages as provided in the clause set forth in subparagraph (2).

- (4) Subcontracts. The contractor shall insert in any subcontracts the clauses set forth in subparagraphs (1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

*History: Rule 5-84. eff 11 Jul 84, (part).*

APPENDIX F  
CONTRACT WORK HOURS AND SAFETY STANDARDS  
ACT OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- (a) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involves the employment of laborers' mechanics, apprentices, trainees, watchmen, and guards shall require cir permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any work week in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice trainee, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, whichever is the greater number of overtime hours.
- (b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph (a), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard

employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph (a).

- (c) Withholding for Unpaid Wages and Liquidated Damages. The contracting officer may withhold from the government prime contractor, from any moneys payable on account of work performed by the contractor or subcontractor such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages provided in the provisions of paragraph (b).
- (d) Subcontracts. The contractor shall insert paragraph (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The contractor shall maintain payroll records containing the information specified in 20 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

*History: Rule 5-84, eff 11 Jul 84, (part).*

#### APPENDIX I

##### EXAMINATION OF RECORDS

The contractor agrees that the contracting officer, the Comptroller General of the United States, or the Secretary of the interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor involving transactions related to this contract.

The contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the contracting officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent book, documents, papers and records of such subcontractor, involving transactions related to this contract.

*History: Rule 5-84, eff 11 Jul 84, (part).*

#### APPENDIX J PATENTS

The contractor shall hold airtight save the government and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost arid expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the government, unless otherwise specifically stipulated in the contract documents.

License and/or royalty fees for the use of a process which is authorized by the government on the project must be reasonable, and paid to holder of the patent or his authorized licensee, directly by the government and not by or through the contractor.

If the contractor uses any design, device, or materials covered by letters of patent or copyright he shall provide for such use by suitable agreement with the owner of such patented or copyright design, device, or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The contractor and/or his sureties shall indemnify and save harmless the government from any and all claims for infringement, by reason of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the government for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the work or after completion of the work.

*History: Rule 5-4, eff 11 Jul 84, (part).*

#### APPENDIX D

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END OF TITLE 10 - PUBLIC WORKS AND  
CONTRACTS