

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. _____ ()

Introduced by:

Dennis G. Rodriguez, Jr.

Joe S. San Agustin

AN ACT TO ADOPT THE RULES AND REGULATIONS ATTACHED AS EXHIBIT “A” HERETO ENTITLED “THE RULES AND REGULATIONS GOVERNING THE JOAQUIN (KC) CONCEPCION II COMPASSIONATE CANNABIS USE ACT OF 2013”, AND AT THE SAME TIME AMEND § 1003 (fff) OF THE SAME RULES AND REGULATIONS, AND TO AMEND § 122503 (aa) OF ARTICLE 25, DIVISION 1, CHAPTER 10 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ALLOWING MEDICAL USE OF CANNABIS BY NON-RESIDENTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. *I Liheslaturan Guåhan* finds that the rules and regulations for the implementation of the Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013 have been a long time in development and that the public, having voted in a referendum in favor of the medical use of cannabis by persons with medical conditions that can be helped by cannabis, have waited long enough for the program to be put into place. On November 8, 2017, the Department of Public Health & Social Services submitted the draft rules and regulations for the Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013, at the request of the Chairman of *I Liheslaturan Guåhan*'s Committee on Health. For this reason, the draft rules and regulations attached to this legislation should have immediate public hearings and be adopted by *I Liheslaturan Guåhan* as soon as possible.

I Liheslaturan Guåhan further finds that existing statute and the draft rules and regulations at the present time limit the use of medical cannabis to Guam residents. Guam is presently the only destination in the Asia-Pacific region to have a legal medical cannabis program. The potential for Guam's program to provide relief to

non-resident patients is a real possibility that should be addressed. In addition, there is the probability of Guam developing a tourist-oriented medical cannabis market that may further spur economic opportunity for our island. Visiting patients who have been diagnosed as having debilitating medical conditions should also be able to avail of the relief medical cannabis offers.

It is therefore the intent of *I Liheslaturan Guåhan* to adopt the draft rules and regulations submitted by the Department of Public Health & Social Services after it has received public feedback and suggestions that strengthen the implementation of the medical cannabis program. It is further the intent to amend statute to allow visiting patients to avail of the Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013 subject to revision during open and publicly noticed legislative markup.

Section 2. Except for the change noted in Section 3 below, *I Liheslaturan Guåhan* hereby adopts as rules and regulations the attached and substituted copy, Exhibit A, entitled: “The Rules and Regulations Governing the Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013,” and such adopted rules and regulations may be changed hereafter according to the Administrative Adjudication Act.

Section 3. § 10003 (fff) of “The Rules and Regulations Governing the Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013,” attached as exhibit A is amended and adopted to read:

“§ 10003 (fff). *qualified patient* means a ~~resident of Guam~~ person who has been diagnosed by a practitioner as having a debilitating medical condition and has received a written certification for the medical use of cannabis.”

Section 4. § 12503 (aa) of Article 25 of Division 1, Chapter 10, of the Guam Code Annotated, is amended to read:

“§ 12503 (aa). *qualified patient* means a ~~resident of Guam~~ person who has been diagnosed by a practitioner as having a debilitating medical condition and has received a written certification for the medical use of cannabis.”

Section 5. Procurement of tracking system. For the purposes of the initial procurement of the tracking system and the need therefore as set forth in the Joaquin

(KC) Concepcion II Compassionate Cannabis Use Act of 2013, hereinafter *Act*, and in its applicable provisions contained in Guam Administrative Rules, the Legislature in this Section 5 and its foregoing subsections prescribes a procurement process which shall govern all matters of the procurement of such tracking system.

§5.01. Guam Procurement Law not applicable. Chapter 5 of Title 5, Guam Code Annotated, otherwise known as the Guam Procurement Law, shall not apply, in part or in its entirety, to the procurement of the tracking system set forth in this Section 5. The entirety of Division 4 of Title 2, Guam Administrative Rules, except those sections expressly applied by this Section shall not apply.

§5.02. Purposes, Rules of Construction.

(a) Interpretation. This Section shall be construed and applied to promote its underlying purposes and policies.

(b) Purposes and Policies. The underlying purposes and policies of this Section are:

(1) to prescribe a specific procurement process for the implementation and use of a digital, secured, maintained, remote-accessed, multi-platform data processing and tracking system for the proper tracking of the inventory, cultivation, manufacturing, dispensing, disposal, and destruction of medical cannabis and its derivative terms as they are defined in the Act; for the identification and verification of qualified patients, licensed possessors, primary caregivers, responsible parties, and practitioners, as they are known and defined in the Act; for the regulation of allowable amounts per qualified patient, the information referenced to include such patient's qualification and whether his written certification is valid; for the application, reapplication, issuance, rejection, and revoking of all registration identification cards; and for the production of academic research by academicians in the development of best practices in this industry and in the residual knowledge that can be attained by the study of the data so collected and allowed for release;

(2) to prevent the potential for respondents to delay the procurement of this tracking system through the appeals process otherwise provided for in the Guam Procurement Law;

(3) to provide for increased public confidence in the procedures followed in public procurement;

(4) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory;

(5) to prevent subjective and arbitrary selection of respondents;

(6) to foster effective broad-based competition within the free enterprise system;

(7) to provide safeguards for the maintenance of a procurement system of quality and integrity; and

(8) to require public access to all aspects of procurement consistent with the sealed bid procedure and the integrity of the procurement process.

(c) Singular-Plural and Gender Rules. In this Section, unless the context requires otherwise:

(1) words in the singular number include the plural, and those in the plural include the singular; and

(2) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

§5.03. Supplementary General Principles of Law Applicable. Unless displaced by the particular provisions of this Section, the principles of law and equity, including the Uniform Commercial Code of Guam, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Section.

§5.04. Requirement of Good Faith. This Section requires all parties involved in the negotiation, performance, or administration of such contract(s) as is needed for the tracking system to act in good faith.

§5.05. Determination. Written determinations required by this Section shall be retained in the appropriate official file of the Chief Procurement Officer.

§5.06. Definitions. As used in this Section, unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular subsection, or provision:

(a) Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(b) Capability, as used in this Section, means capability at the time of award of the contract.

(b) Change Order means a written order signed by the Chief Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

(c) Chief Procurement Officer means the person holding the position created in §5110 of Chapter 5, Title 5, Guam Code Annotated, as the head of the central procurement office of Guam.

(d) Contract means all types of territorial agreements, regardless of what they may be called, for the procurement or disposal of supplies and services.

(e) Contract Modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

(f) Contractor means any person having a contract with a governmental body.

(x) Cost Analysis is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(3) Cost Data are information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract.

(g) Data means recorded information, regardless of form or characteristic.

(h) Designee means a duly authorized representative of a person holding a superior position.

(x) Discussions, as used in the source selection process, means an exchange of information or other manner of negotiation during which the offeror and the territory may alter or otherwise change the conditions, terms, and price of the proposed contract. Discussions may be conducted in connection with competitive sealed proposals, sole source, and emergency procurement.

(j) Employee means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.

(k) Governmental Body means any Department, Commission, Council, Board, Bureau, Committee, Institution, Agency, Government Corporation, Authority or other establishment or establishment or official of the Executive Branch of the government of Guam, except for the Government of Guam Retirement Fund, Guam Community College, the University of Guam, the Department of Education, and the Guam Memorial Hospital Authority.

(m) May denotes the permissive.

(n) Person means any business, individual, union, committee, club, other organization or group of individuals.

(x) Price Analysis is the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(7) Price Data are factual information concerning prices, including profit, for supplies, services, or construction substantially similar to those being procured. In this definition, prices refer to offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both prime and subcontract prices.

(o) Procurement means buying, purchasing, renting, leasing or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(p) Procurement Officer means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

(q) Purchasing agency means the Guam Economic Development Authority, hereafter, *the Agency*.

(s) Services means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include any form of employment relationship with the government or collective bargaining agreements. Services also includes printing and processing for printing finished products, such as books, reports, and other items which are, when delivered in finished form and are not to be further processed by the using agency.

(t) Shall denotes the imperative.

(x) Solicitation means a Request for Proposals, a request for quotations, or any other document issued by the territory for the purpose of soliciting proposals to perform a territorial contract.

(u) Supplies means all property, including but not limited to equipment, materials, printing of forms, stationery and the like which are designed for further use or processing by the using agency, insurance, and leases of real property, excluding land and a permanent interest in land.

(v) Using agency means any governmental body of the Territory which utilizes any supplies or services procured under this Section, and more often referring to the Department of Public Health and Social Services.

(w) Entity means any department, agency, board, commission, instrumentality, public corporation or branch of the government of Guam and any corporation or person expending funds appropriated from the Government of Guam.

(x) Emergency means a condition posing an imminent threat to public health, welfare, or safety which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection.

(e) Requests for Proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(f) Responsible Officer 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.

§5.07. Procurement Counsel. The Attorney General of Guam or her designee shall act as counsel for the procurement of the tracking system described herein. The Procurement Counsel shall assist and advise the Chief Procurement Officer on all matters involving the successful procurement of the tracking system. Procurement Counsel shall provide technical assistance to the selection team that shall review responses to the procurement and to determine by comparing the quantitative and qualitative assessment of each response, which respondent shall be ranked highest, which shall be ranked second highest, and to continue in such vain until all proposals have been ranked and placed. Procurement Counsel shall act as legal advisor during all phases of the solicitation or procurement process. The Attorney General, or her designee, including one (1) or more Special Assistant Attorneys General shall, in addition, when she approves contracts, determine not only the correctness of their form, but their legality. In making such a determination of legality, she may require any or all agencies involved in the contract to supply her with evidence that the required procedures precedent to executing the contract were carried out. She or her designees may prescribe the forms and format required to be followed by the agencies in aiding her in his determination of form and legality.

§5.08. Methods of Source Selection. The contract(s) for the tracking system described in this Section shall be awarded by competitive sealed bidding. (a) Nothing in this Section requiring competitive bidding shall prohibit the development of specifications which require compatibility with existing supplies, equipment or data processing systems.

§5.09. Competitive Selection Procedures for Procurement under This Section.

(a) Conditions for Use. The tracking system described in this Section shall be procured in accordance with this subsection.

(b) Statement of Qualifications. Persons engaged in providing the services may submit statements of qualifications and expressions of interest in providing such types of services. The Procurement Officer may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(c) Public Announcement and Form of Request for Proposals. Adequate notice of the need for such services shall be given by the purchasing agency through a Request for Proposals. The Request for Proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

(d) Discussions. The head of the purchasing agency or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) Award. Award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, the negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

§5.10. Publication of RFP Documents on all Government of Guam Websites, and In Experienced States.

(a) Notwithstanding any other provision of this Chapter, Requests for Proposals (RFPs) shall be posted on the procuring agency's website. RFPs procured through the authority granted by this Section shall be posted, on the date of the RFP announcement, simultaneously on the procuring agency's website and then the websites of every government of Guam employee. No fees shall be assessed to prospective bidders or other parties for accessing/downloading procurement documents from an agency's website. Such documents shall remain on the respective agencies' websites for a period of not less than one hundred eighty (180) days

following the award of the Proposal. An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Territory in accordance with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the contract file.

(b) The procuring agency, and GSA, shall provide notice in each RFP announcement that recommends that prospective respondents register contact information with the agency to ensure that they receive any notices regarding any changes or updates to the RFP. The procuring agency, and GSA shall not be liable for failure to provide notice to any party who did not register contact information

(c) One Proposal Received. If only one proposal is received in response to a Request for Proposals, the Procurement Officer may, as such officer deems appropriate, either make an award in accordance with the procedures set forth in §3110 (Competitive Sealed Proposals) or, if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

(d) Performance Bonds for supply Contracts or Service Contracts. Performance bonds or other security may be required for supply contracts or service contracts as the Chief Procurement Officer, or the Director of Public Health, or such officer's designee deems advisable to protect the interest of the territory. Any such requirements must be set forth in the solicitation. Performance bonds should not be used as a substitute for a determination of offeror responsibility.

(e) Conditioning Proposals Upon Other Awards Not Acceptable. Any proposal which is conditioned upon receiving award of both the particular contract being solicited and another territorial contract shall be deemed nonresponsive and not acceptable.

(f) Nothing herein is intended to prevent the procuring agency, or GSA from making physical or digital media copies of procurement documents and assessing reasonable fees for such documents in a manner consistent with public law, administrative rules and regulations, and departmental policy that existed prior to the enactment of this Section.

§5.11. Cancellation of Requests for Proposals. A Request for Proposals, or other solicitation may be cancelled, or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Territory in accordance with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the contract file.

§5.12. Responsibility of Offerers.

(a) Determination of Nonresponsibility. A written determination of nonresponsibility of an offeror shall be made in accordance with regulations promulgated by the Policy Office, and if no such regulations have been adopted, then such determination shall be made by the Attorney General of Guam. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror.

(b) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the General Services Agency, the Department of Public Works or the purchasing agency without prior written consent by the offeror, but may be disclosed to the Attorney General at any time.

§5.13. Disclosure of Major Shareholders. As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of an offer. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit also shall include the names and addresses of any person qualified under this subsection of the 'person' so named in the partnership or corporation is incorporated under fictitious name, the identities of each and every person drawing remuneration from the profits or dividends of such incorporated person to be in the interest of the public good insofar as knowledge against conflicts of interest and corruption can further ensure integrity of the process. The affidavit shall be open and available to the public for inspection and copying.

§5.14. Types of Contracts. Subject to the limitations of this subsection, any type of contract which will promote the best interest of the Territory may be used; provided that the use of

cost-plus-a-percentage-of-cost contract is prohibited. A cost- reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Territory than any other type or that it is impracticable to obtain the supplies or services required except under such contract.

§5.15. Approval of Accounting System. Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Chief Procurement Officer, or the head of the Purchasing Agency, or a designee of any such officer that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(c) Specified Period. A contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Territory provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(d) Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing:

(1) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) that such a contract will serve the best interests of the Territory by encouraging effective competition or otherwise promoting economies in territory procurement.

(e) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

§5.16. Finality of Determinations. The determinations required by this subsection are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

§5.17. Reporting of Anticompetitive Practices. When for any reason collusion or other anticompetitive practices are suspected among any offerors, a notice of the relevant facts shall be transmitted to the Attorney General.

§5.18. Retention of Procurement Records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Attorney General. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

§ 5.19. Retention of Electronic Mail Correspondences. All incoming and outgoing electronic mail (email) correspondences pertaining to matters related to the procurement of supplies and services as governed by this Section shall be retained for a period of not less than five (5) years.

§5.20. Record of Procurement Actions Taken Under this Section.

(a) Contents of Record. The Chief Procurement Officer shall maintain a record listing of all contracts made under this Section for a minimum of five (5) years. The record shall contain:

- (1) each contractor's name;
- (2) the amount and type of each contract; and
- (3) a listing of the supplies and services procured under each contract.

(b) Submission to Legislature. A copy of such record shall be submitted to the Legislature on an annual basis. The record shall be available for public inspection.

§5.21. Record of Procurement Actions. The Chief Procurement Officer shall maintain a complete record of each procurement. The record shall include the following:

- (a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement;
- (b) a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;
- (c) sound recordings of all negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;
- (d) brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and

(e) the agency's determination of need.

§5.22. Certification of Record. No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by the preceding subsection of this Section and that it is complete and available for public inspection. The certificate is itself a part of the record.

§5.23. Public Record. The record required by §5,21 of this Section is a public record and, subject to rules promulgated by the Public Auditor, any person may inspect and copy any portion of the record.

§5.24. Rules for Procurement Records. This procurement process exists to:

- (a) protect the integrity of the bidding process;
- (b) protect the confidentiality of trade secrets;
- (c) establish reasonable charges for copying papers;
- (d) provide for transcription of sound recordings;
- (e) require public access to the record at the earliest possible time; and
- (f) not require that the record be complete or that the procurement award be made before inspection and copying are permitted.

§5.25. Competitive Selection Procedures for Services.

(a) Application. The provisions of this subsection 5.24 in its entirety apply to every procurement necessary for the implementation, use, maintenance, or renewal of the tracking system described throughout this Section except for that contract(s) resulting from the initial procurement of the tracking system, such to be procured by and contracted as a result of selection from the Request for Proposals appended hereto. The application of this subsection 5.24, from §5.24(d) through the end of subsection 5.24 shall apply also to the initial Request for Proposals appended hereto. The application of this subsection ends upon the date of the end of the applicability of this Section.

(b) Conditions for use of Competitive Selection Procedures. Except as authorized under 5 GCA §5214 (Sole Source Procurement) or 5 GCA §5215 (Emergency Procurement) of the Guam Procurement Act, competitive selection procedures shall be used for all procurement of the services listed in §5.24(a) in excess of \$5,000. Any procurement of such services not in excess of

this amount may be procured in accordance with Section 3111 (Small Purchases) of the Guam Procurement Act.

(c) Determination Required Prior to Use of Competitive Selection Procedures. For the purposes of procuring the services specified in §5.24(a), the Chief Procurement Officer may, in his or her discretion, procure services for a using agency when requested. In either case, the head of the using agency or a designee of such officer shall determine in writing, prior to announcing the need for any such services:

(1) that the services to be acquired are services specified in §5.24(a);

(2) that a reasonable inquiry has been conducted on the availability of services, and the territory does not have the personnel nor resources to perform the services required under the proposed contract;

(3) the nature of the relationship to be established between the using agency and the contractor by the proposed contract; and

(4) that the using agency has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.

(e) Public Notice in Competitive Selection Procedures. Notice of the need for services specified in §5.24a) (Application) be made by the Procurement Officer in the form of a Request for Proposals at least ten (10) calendar days inclusive of Sundays and holidays before the proposals are due.

(f) Request for Proposals.

(1) Contents. The Request for Proposals shall be in the form specified by the Procurement Officer and contain at least the following information:

(A) the type of services required;

(B) a description of the work involved;

(C) an estimate of when and for how long the services will be required;

(D) the type of contract to be used;

(E) a date by which proposals for the performance of the services shall be submitted;

(F) a statement that the proposals shall be in writing;

(G) a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;

(H) a statement of the minimum information that the proposal shall contain, to include:

(i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

(ii) if deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

(iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

(iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a period of time, as specified in the Request for Proposals;

(v) a plan giving as much detail as is practical explaining how the services will be performed; and

(vi) the factors to be used in the evaluation and selection process and their importance.

(2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. The following factors may be appropriate to use in conducting the evaluation. The relative importance of these and other factors will vary according to the type of services being procured. The minimum factors are:

(A) the plan for performing the required services;

(B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the personnel proposed to be assigned to perform the services;

(C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting, and

(D) a record of past performance of similar work.

(h) Receipt and Handling of Proposals.

(1) Registration. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more procurement officials. A Register of Proposals shall be established which shall include for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection.

(2) Requests of Nondisclosure of Data. If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a designee of such office shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the head of the agency conducting the procurement or a designee of such officer shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals, the proposal will be so disclosed.

(i) Discussion.

(1) Discussions Permissible. The head of the agency conducting the procurement or a designee of such officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall be to:

(A) determine in greater detail such offeror's qualifications, and

(B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

(2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in the contract.

(3) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

(j) Selection of the Best Qualified Offerors . After conclusion of validation of qualifications, evaluation, and discussion as provided above, the head of the agency conducting the procurement or a designee of such officer shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

(k) Submission of Cost or Pricing Data. The offeror determined to be best qualified shall be required to submit cost or pricing data to the head of the agency conducting the procurement at a time specified prior to the commencement of negotiations in accordance with this Section.

(l) Negotiation and Award of Contract.

(1) General. The head of the Agency or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

(2) Elements of Negotiation. Contract negotiations shall be directed toward:

(A) making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;

(B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

(C) agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

(3) Successful Negotiation of Contract with Best Qualified Offeror . If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

(4) Failure to Negotiate Contract With Best Qualified Offeror.

(A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file and the head of the agency conducting procurement or a designee of such officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three days.

(B) Upon failure to negotiate a contract with the best qualified offeror, the head of the Agency or the designee of such officer may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided in this subsection and commence with the next qualified offeror.

(5) Notice of Award. Written notice of award shall be public information and made a part of the contract file.

(6) Failure to Negotiate Contract with Offerors Initially Selected as Best Qualified. Should the head of the Agency or a designee of such officer be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with this subsection until an agreement is reached and the contract awarded.

(m) Memorandum of Evaluation and Negotiation. At the conclusion of negotiations resulting in the award of the contract, the head of the Agency or a designee of such officer shall prepare a memorandum setting forth the basis of award including:

(1) how the evaluation factors stated in the Request for Proposals were applied to determine the best qualified offerors; and

(2) the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract.

All memoranda shall be included in the contract file and be available for public inspection.

(o) Reports. The head of each using agency shall submit annually to the Chief Procurement Officer a listing of all contracts awarded under this subsection in the preceding fiscal year. The report shall identify the parties to the contract, the contract amount, duration, and the services to be performed thereunder.

§5.26. Cancellation of Requests for Proposals. The provisions applicable to the cancellation of requests for proposals contained in The procedures in §3115 of Division 4, 2 Guam Administrative Rules shall govern all procedures to this effect, except that no protest shall be recognized, nor further delay of procurement otherwise imposed.

§5.27. Responsibility of Offerors. (a) Determination of Nonresponsibility. A written determination of Nonresponsibility of a bidder or offeror shall be made in accordance with this Section. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(b) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the General Services Agency, the Director of Public Works, or the head of a Purchasing Agency, without prior written consent by the bidder or offeror.

(1) Application. A determination of responsibility or nonresponsibility shall be governed by this Section.

(2) Standards of Responsibility.

(A) Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

(i) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

(ii) a satisfactory record of performance;

(iii) a satisfactory record of integrity;

(iv) qualified legally to contract with the territory; and

(v) supplied all necessary information in connection with the inquiry concerning responsibility.

(B) Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

(3) Ability to Meet Standards. The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(A) evidence that such contractor possesses such necessary items;

(B) acceptable plans to subcontract for such necessary items; or

(C) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(4) Duty Concerning Responsibility. Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.

(5) Written Determination of Nonresponsibility Required. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

§5.28. Prequalification of Suppliers. Chapter 6, 7, 8 and 11 of Division 4, Title 2, Guam Administrative Rules, insofar as those provisions govern the conduct of requests for proposals and subsequent contracts awarded under this Section shall govern the modification and termination of contracts, all matters relating to cost and pricing, supply management, and the ethical conduct of all employees.

§5.29. No Protest; No Delay. Notwithstanding any provision of law, no protest shall be accepted nor delay otherwise imposed except due to natural or catastrophic event or by the cancellation of procurement or the inability to award a contract according to those governing provisions held in §5.25 of this Section.

Section 6. Amendments to Definitions Contained in Law. In order to reconcile pertinent measures of administrative policies to implement the Joaquin (KC) Concepcion Compassionate Cannabis Act as it is intended and with the greatest degree of efficiency, the corresponding subsections of §122503 (Definitions) and to §122510(a)(4) of Article 25 of Part 2, Chapter 12 of Division 1, Title 10, Guam Code Annotated, are hereby amended to read:

(a) *Allowable amount* means an amount of cannabis, in any form approved by the Department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis that is derived solely from an intrastate source. The allowable amount shall consist of an amount not to exceed two and a half (2.5) ounces of dried ~~or prepared~~ cannabis or its THC equivalency as determined by the Department, purchased from a dispensary every ~~thirty (30)~~ fourteen (14) calendar days. The qualified patient may request for an increased allowable amount of medical cannabis, prepared medical cannabis and medical cannabis products from the Department on a Department provided form; provided that the qualified patient provides a valid reason for legitimate need supported by a practitioner recommendation.

The allowable amount shall be reviewed by the Regulation Commission from time to time.

(g) *Commercial cultivation facility* means a licensed medical cannabis business that plants, grows, harvests, dries, cures, grades, and trims medical cannabis, prepared medical cannabis and medical cannabis products for qualified patients.

(h) *Commercial manufacturing facility* means a licensed medical cannabis ~~business person or licensed organization~~ that conducts the production, preparation, or

compounding of manufactured medical cannabis, as described in ~~this~~ the Act governing these Rules, or prepared medical cannabis.

(o) *Enclosed, locked location*” means an area that is completely enclosed by solid, ~~ten (10) foot~~ walls at least ten (10) feet in height, constructed of metal, concrete, or stone on all sides or windows exclusive of doors and passage ways and away from public view.

(t) *“Lot”* means the flowers from one (1) or more medical cannabis plants of the same strain and from the same crop, in a quantity that weighs five (5) pounds or less, or the leaves or other plant matter from one or more medical cannabis plants, other than full female flowers, in a quantity that weighs fifteen (15) pounds or less.

§122510(a)(4):

“affirmation that the proposed medical cannabis business is not within a Drug Free School Zone ~~pursuant to Chapter 48 of Title 17, Guam Code Annotated.~~ “Drug free school zone” means any area within one thousand (1,000) feet of a public or private elementary, secondary, or post-secondary educational institution or its accompanying grounds; or within the vehicle of any school bus which transports students while in motion. A drug free school zone shall not include private real property which is not a school or the accompanying grounds of a school. This definition as it appears in this subsection and as it applies in this Chapter shall not be construed as to change or in any way alter the meaning of “Drug Free School Zone” as it is defined and prescribed in the Guam Drug Free School Zone Act, Title 17, Chapter 48 of the Guam Code Annotated.”

Section 6. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Section 7. Effective Date. This Act *shall* become effective upon enactment.

