

**CHAPTER 4****Government Contracts****SECTIONS**

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**Editor's note:** Chapter 3, originally reserved for Government Contracts in the 1982 edition of the code, was renumbered chapter 4.

Chapter 4, originally reserved for Public Auditor in the 1982 edition of the code, has been renumbered chapter 5.

**§ 401. Short title.**

This chapter is known and may be cited as the “Public Contracts Act.”

**Source:** PL 2-65 § 1.

**§ 402. Definitions.**

As used in this chapter:

(1) “Citizen bidder” means:

(a) until the termination of the Trusteeship, any business in which at least 51 percent of the interest therein is owned by a citizen or citizens of the Trust Territory of the Pacific Islands;

(b) upon termination of the Trusteeship, any business in which at least 51 percent of the interest therein is owned by a citizen or citizens of the Federated States of Micronesia;

(c) until the termination of the Trusteeship, a business which has been a resident of the Trust Territory of the Pacific Islands for at least one year immediately prior to the submission of its bid;

(d) upon termination of the Trusteeship, a business which has been a resident of the Federated States of Micronesia for at least one year immediately prior to the submission of its bid; and

(e) upon termination of the Trusteeship, a business which has paid gross revenue taxes to the Federated States of Micronesia for the one year period immediately prior to the submission of its bid.

(2) “Contracting officer” means the official in charge of letting a contract for a National Government agency.

(3) “Lowest responsible bidder” means the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract.

(4) “National Government agency” means any branch, department, office, division, board, bureau, commission, committee, institution, or authority of the National Government of the Federated States of Micronesia.

**Source:** PL 2-65 § 2; PL 4-4 § 1.

**§ 403. Competitive bidding required.**

All contracts for construction projects involving \$20,000 or more or for the purchase of personal property involving \$50,000 or more made on behalf of any National Government agency shall be let by free and open competitive bidding, by sealed bids, to the lowest responsible bidder in accordance with the provisions of this chapter.

**Source:** PL 2-65 § 3.

**§ 404. Citizen-bidder preference—Amount.**

(1) Citizen bidders who qualify to bid under the provisions of this chapter shall receive preference over noncitizen bidders in determining the award of the contract.

(2) For the purpose of determining the preference to be given to citizen bidders, the amount of the bid of each citizen bidder shall be reduced according to the following formula, and such reduction shall be used solely for the purpose of determining the lowest responsible bidder:

(a) for all contracts for construction projects involving at least \$20,000, but less than \$500,000, or for the purchase of personal property involving a least \$50,000, but less than \$500,000, the amount of the bid of each citizen bidder shall be reduced by 15 percent;

(b) for all contracts for construction projects involving at least \$500,000, but less than \$1,500,000, the amount of the bid of each citizen bidder shall be reduced by ten percent;

(c) for all contracts for construction projects involving at least \$1,500,000, but less than \$10,000,000, or for the purchase of personal property involving at least \$1,500,000, but less than \$10,000,000, the amount of the bid of each citizen bidder shall be reduced by five percent; and

(d) there shall be no citizen bidder preference with respect to contracts for construction projects involving \$10,000,000 or more, or for the purchase of personal property involving \$10,000,000 or more.

**Source:** PL 2-65 § 4; PL 4-4 § 2.

**§ 405. Citizen-bidder preference—Eligibility.**

In order for a bidder to be eligible to receive the citizen bidder preference provided for in section 404 of this chapter, such bidder shall meet the following criteria:

(1) The bidder shall be a citizen as defined under section 402(1) of this chapter;

(2) The bidder shall be bidding for a construction project or for the sale of personal property in response to an advertisement for bids made pursuant to this chapter;

(3) The bidder shall include in his written notice of intention to bid a statement that he is submitting his bid as a citizen bidder and provide sufficient documentation of his eligibility to receive the citizen bidder preference; and

(4) For construction projects, the bidder shall commit that until the termination of the Trusteeship, at least 25 percent of all workers employed at all times at the job site shall be citizens of the Trust Territory of the Pacific Islands; that upon termination of the Trusteeship, at least 25 percent of all workers employed at the job site at all times shall be citizens of the Federated States of Micronesia; and that at least 25 percent of all materials and supplies utilized in the construction project shall be purchased from within the Federated States of Micronesia.

**Source:** PL 2-65 § 5; PL 4-4 § 3.

**§ 406. Bonding and insurance.**

Except for contracts for construction projects involving \$150,000 or less, or for the purchase of personal property involving \$10,000,000 or less, the contracting officer is hereby authorized to impose such bonding and insurance requirements that, in his best judgment, are necessary and appropriate to ensure proper performance of the contract by the contractor. Such bonding and insurance requirements may include, but need not be limited to, bid guarantee, performance bond, or payment bond.

**Source:** PL 2-65 § 6; PL 4-4 § 4.

#### **§ 407. Exception—Foreign aid requirements.**

The provisions of this chapter shall not apply if the Federated States of Micronesia has entered into an agreement for a foreign aid project, the terms of which require that construction contracts or contracts for the purchase of personal property which are necessary for the completion of the project shall be let to nationals of the donor country.

**Source:** PL 2-65 § 7; PL 4-4 § 6 (part); PL 4-100 § 1.

#### **§ 408. Emergencies.**

In case of emergency affecting public health, safety, or convenience so declared in writing by the President upon application by the head of any National Government agency setting forth the nature of the emergency and the danger to the public health, safety, or convenience caused by delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority.

**Source:** PL 2-65 § 8; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

#### **§ 409. Qualifications of bidders.**

Before any prospective bidder may be entitled to submit a bid for the performance of a contract covered by section 403 of this chapter, he shall, not less than ten calendar days prior to the date designated for opening bids, give written notice to the contracting officer of his intention to bid, and such officer shall satisfy himself of the prospective bidder's financial ability to perform the work intended and of his experience and competence in performing similar work. Whenever it appears to the contracting officer that the prospective bidder is not fully qualified and able to perform the intended work, the contracting officer shall refuse to receive or consider any bid offered by the prospective bidder. Upon being determined not to be fully qualified, a prospective bidder may appeal this determination within ten days after notice of disqualification in accordance with the Administrative Procedures Act, chapter 1 of title 17 of this code.

**Source:** PL 2-65 § 9; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**§ 410. Advertisement for bids.**

Publication of a call for sealed bids shall include posting of notice for at least ten days in the immigration office and in one other prominent public place in each State in the Federated States of Micronesia, the use of radio and newspaper media when considered appropriate by the contracting officer, and any other means he may consider feasible. The notice shall state in clear terms the project that is to be bid on.

**Source:** PL 2-65 § 10; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**§ 411. Bids—Opening, rejection.**

The time of opening sealed bids shall not be less than 30 days after the final publication. All bids shall be sealed and delivered to the contracting officer and, in the presence of all bidders who attend, shall be opened by him at the hour and places as stated in the advertisement and may be inspected by any bidder. Any bid which does not comply with the requirements of the advertisement shall be rejected. If two or more bids are the same and the lowest, the contracting officer may accept the one he chooses. If no bids are received, the contracting officer may have the project done without further compliance with this chapter.

**Source:** PL 2-65 § 11; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**§ 412. Bids—Information.**

All bids on construction project contracts shall include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the construction project contract. The bid shall also indicate the nature and scope of the work to be performed by such joint contractor or subcontractor.

**Source:** PL 2-65 § 12; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**§ 413. Award to lowest responsible bidder.**

All contracts shall be in writing and shall be executed by the National Government agency which is authorized to let contracts in its own name and shall be made with the lowest responsible bidder. If the lowest bid is rejected, the contracting officer may, at his discretion, award the contract to the lowest remaining responsible bidder or advertise anew for bids pursuant to section 412 of this chapter. In each instance the officer, at his discretion, after determining the lowest responsible bidder, may negotiate with that bidder, and that bidder only, to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work.

**Source:** PL 2-65 § 13; PL 4-4 §§ 5, 6 (part); PL 4-100 § 2 (part).

**Erratum:** PL 4-4 § 5 reads “writing”, where 1987 supplement reads “writng.”

**§ 414. Effect of restraint of competition.**

Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement that he has not been a party to such an agreement.

**Source:** PL 2-65 § 14; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**§ 415. Effect of advance disclosure of terms of bid.**

Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and require advertisement and award anew.

**Source:** PL 2-65 § 15; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**§ 416. Assignment of contracts.**

No contracts awarded to the lowest responsible bidder shall be assignable by the successful bidder without written consent of the awarding authority.

**Source:** PL 2-65 § 16; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**§ 417. Institution of legal actions.**

Any citizen taxpayer in the Federated States of Micronesia or any *bona fide* unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the Federated States of Micronesia Supreme Court to enjoin execution of any contract entered into in violation of this chapter.

**Source:** PL 2-65 § 17; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**Cross-reference:** The statutory provisions on the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

**§ 418. Regulations.**

The President may issue regulations to implement this chapter in accordance with the provisions of the

Administrative Procedures Act, chapter 1 of title 17 of this code.

**Source:** PL 2-65 § 18; PL 4-4 § 6 (part); PL 4-100 § 2 (part).

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 419. Implementation of Infrastructure Development Plan.**

(1) Notwithstanding any provision of law to the contrary, the National Government shall have jurisdiction, in coordination with the respective state, over activities relating to any public contract that is or may be awarded for a civil works project to implement any part of the Infrastructure Development Plan and that is supported by funds provided through Section 211 of the Amended Compact of Free Association, as that Plan may be amended from time to time, including but not limited to all contract management activities, all bidding and pre-bidding procedures for such public contracts, and all activities performed by any citizen or noncitizen contractor or subcontractor pursuant to any such public contract. Except for this section, the provisions of chapter 4 shall not apply to public contracts referred to in this subsection.

(2) Notwithstanding section 205 of title 32 of this code, no Foreign Investment Permit shall be required to conduct any activity referred to in subsection (1) of this section.

(3) The President shall be responsible for establishing procurement procedures specifically for use with all public contracts referred to in subsection (1) of this section, which shall

(a) meet or exceed prevailing international standards for free and open competitive bidding, transparency, and fairness to all parties,

(b) effectively and efficiently facilitate the execution and implementation of public contract referred to in subsection (1) of this section,

(c) protect resident workers, and

(d) protect the public interest.

Such procurement procedures shall take effect upon adoption by the President in accordance with title 17 of this code.

(4) Any citizen taxpayer in the Federated States of Micronesia may seek to enjoin a public contract referred to in subsection (1) of this section to the same extent and in the same manner as such remedy is available to *bona fide* unsuccessful bidders on the contract under the procurement procedures established and approved by the President pursuant to subsection (3) of this section.

(5) The courts of the Federated States of Micronesia shall recognize and give full force and effect to the dispute resolution methods established by the President pursuant to subsection (3) of this section.

**Source:** PL 14-48 § 1.

**Cross-reference:** Title 32 of this code is on Business Regulation. The statutory provisions on the President and the Executive are found

in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.