



**MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE
A.B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
Thursday, January 8, 2026, 3:00 p.m.
GIAA CONFERENCE ROOMS 1 & 2**

1. CALL TO ORDER AND ATTENDANCE

A special meeting of the Board of Directors of the A.B. Won Pat International Airport Authority, Guam (“GIAA” or the “Authority”) was held on January 8, 2026, and called to order by Chairman Brian J. Bamba at 3:09 p.m. at the GIAA Terminal Conference Rooms 1 & 2, 355 Chalan Pasaheru, Tamuning, Guam, 96913.

Directors Present:

Brian J. Bamba
Gurvinder S. Sobti
Rosie R. Tainatongo
Jesse G. Garcia

Offices or Positions:

Chairman
Vice Chairman
Director
Director

Directors Absent:

Donald I. Weakley (Excused)
Doyon A. Morato (Excused)
Lucy M. Alcorn (Excused)

Offices or Positions:

Board Secretary
Director
Director

GIAA Officials:

John M. Quinata
Artemio R.A. Hernandez, Ph.D.
Jean M. Arriola
Dafne Mansapit Shimizu
Anthony Quidachay
Vanessa Pangindian
Richard Cabrera
Raymond Quintanilla
Tony Laniog

Offices or Positions:

Executive Manager
Deputy Executive Manager
Airport Services Manager
Comptroller
Safety Administrator
Acting Program Coordinator IV
Electrician Supervisor
Airport Operations Superintendent
Engineer III (Civil)

William Brennan
Frank Santos

Arriola Law Firm, GIAA Legal Counsel
TMG, GIAA Consultant

Chairman Bamba welcomed Airport tenants, stakeholders, and members of the public who are noted in a sign-in sheet attached to these minutes.

2. APPROVAL OF AGENDA

On motion duly made by Vice Chairman Sobti, seconded by Director Tainatongo, the following resolution was unanimously passed:

Resolution No. 26-24

The Board hereby approves the agenda of January 8, 2026, special meeting, as presented.

3. NEW BUSINESS

- A. Adoption of GIAA Policies and Procedures for Competitive Solicitation, Selection, and Award of Concession Agreements authorized by Public Law 38-21

Deputy Executive Manager (DEM) Artemio R.A. Hernandez, Ph.D., presented this item to the Board. The adoption of the draft policies and procedures for the competitive solicitation, selection, and award of concession agreements (“Concession Policies”) pursuant to § 1203.1(a)(1) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated, is authorized by Public Law 38-21 and in accordance with Executive Order No. 2025-05.

Public Law 38-21 provides authority to the A. B. Won Pat International Airport Authority, Guam (GIAA) to adopt policies and procedures for the solicitation, selection, and award of agreements between the GIAA and any other party for the use of airport facilities and properties for airport purposes and/or visitor-related activities.

Specifically, relative to concession agreements, Public Law 38-21 provides that such agreements shall be authorized for a term of up to fifteen (15) years and shall be subject to policies and procedures for the competitive solicitation, selection, and award of concession agreements adopted from time to time by the GIAA’s Board of Directors.

Notice for Public Comment. Notice for Public Comments (for no less than 30 calendar days) was posted on Guam Daily Post on November 7 & December 2, 2025, December 22 & December 30, 2025, and January 2, 2026.

Notices for public comment and access to proposed policies and procedures, along with the fiscal assessment were posted on GIAA website at www.guamairport.com beginning November 7, 2025, with a deadline for comments extended to 5pm, January 5, 2026.

Notices for public comments were also sent to over 85 entities via email that included the following: GIAA current and prospective concessionaires, airlines, tenants and stakeholders, industry partners to include Guam Visitor’s Bureau, Guam Chamber of Commerce, Guam Hotel & Restaurant Association, local and federal partners. Notices were also sent to the appeals panel to include the Director of the Department of Administration, GSA Chief Procurement Officer and GSA Procurement Attorney.

The Public Hearing (held no sooner than thirty (30) calendar days after posting of the fiscal assessment and policies and procedures) was noticed in the Guam Daily Post on December 22, 2025, December 30, 2025, and January 2, 2026. The public hearing was held at 3pm, January 5, 2026, at the GIAA Conference Rooms 1 & 2, broadcast via www.guamairport.com and audio recorded.

It is noted that GIAA did not receive any public comments specific to the proposed policies and procedures. DEM Hernandez then discussed the revisions to the concession policies during the public comment and notice period.

One minor change is recommended in Article 5 § 5101 (a) A three-person Appeal Panel, designated by I Maga Hagan Guahan shall be constituted to administratively consider appeals from decisions of the Executive Manager, as allowed by these Concession Policies and Procedures. Prior to any solicitation for a concession agreement. Upon adoption of the Concession Policies and Procedures, GIAA shall enter a memorandum of understanding with I Maga Hagan Guahan to constitute such panel, which shall include the Director of DOA, the Chief Procurement Officer of the General Services Agency and the General Services Agency Procurement Counsel.

This change provides a standing appeals panel rather than convening a separate panel for each concession solicitation. This change is intended to reduce delays in convening a panel and promote efficiency and consistency in the process. In the event of conflicts of interest that preclude an individual panel member's participation, the policies and procedures provide the Governor with the Authority to "appoint any other appropriate individual employed with the Executive Branch of the Government of Guam."

Following approval of the GIAA Board, the policies and procedures will be submitted to the Governor of Guam for her review and approval.

Management recommends the adoption of the Proposed Policies and Procedures for the Solicitation, Selection, and Award of Concession Agreements and the one proposed change noted above, subject to legal review and shall become effective upon approval and signature of the Governor of Guam.

On motion duly made by Director Tainatongo, seconded by Director Garcia, the following resolution was unanimously passed:

Resolution No. 26-23

The Board hereby moves to adopt GIAA Policies and Procedures for Competitive Solicitation, Selection, and Award of Concession Agreements authorized by Public Law 38-21, as presented.

- B. Adoption of GIAA Policies and Procedures for the Solicitation, Selection, Award, and Operation of Lease Agreements authorized by Public Law 38-21

DEM Hernandez also presented to the board This Board item. Adoption of proposed policies and procedures for the solicitation, selection, award and operation of Airport Leases (“Lease Policies”) pursuant to § 1203.1(a)(2) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated, is authorized by Public Law 38-21.

Specifically, relative to lease agreements, Public Law 38-21 provides that such agreements shall be authorized for a term of up to fifty (50) years and shall be subject to applicable Federal Aviation Administration (FAA) requirements for aeronautical and non-aeronautical uses to include rates charged for non-aeronautical uses at fair market value pursuant to GIAA requirements and policies and procedures adopted from time to time by the GIAA Board of Directors.

At its meeting of November 13, 2025, the GIAA Board of Directors were provided notice of the GIAA Proposed Policies and Procedures for the Competitive Solicitation, Selections, Award, and Operation of Lease Agreements as reflected in the attached Executive Summary (attachment 1). Following this meeting and as part of the adoption process, the following were accomplished:

Notice for Public Comments (for no less than 30 calendar days) was posted on Guam Daily Post on November 21 & December 2, 2025.

Notices for public comments and access to proposed policies and procedures, along with the fiscal assessment were posted on GIAA website at www.guamairport.com on November 21, 2025, with a deadline for comments at 5pm, December 29, 2025.

Notices for public comments were also sent to over 85 entities via email that include current and prospective lessors, airlines, tenants, and stakeholders, industry partners to include the Guam Visitor’s Bureau, Guam Chamber of Commerce, Guam Hotel & Restaurant Association, local and federal partners.

The Public Hearing (held no sooner than thirty (30) calendar days after posting of the fiscal assessment and policies and procedures) was noticed in the Guam Daily Post on December 15 and December 18, 2025. The Public Hearing was held at 3pm, December 22, 2025, at GIAA Conference Rooms 1 & 2, broadcast via www.guamairport.com and audio recorded.

It is noted that GIAA did not receive any public comments specific to the proposed policies and procedures.

Management recommends the adoption of the GIAA Proposed Policies and Procedures for the Competitive Solicitation, Selections, Award, and Operation of Lease Agreements, subject to legal review.

On motion duly made by Director Tainatongo, seconded by Director Garcia, the following resolution was unanimously passed:

Resolution No. 26-25

The Board hereby moves to adopt GIAA Policies and Procedures for the Solicitation, Selection, and Award, and Operation of Lease Agreements authorized by Public Law 38-21

C. Approval of GIAA Noise Compatibility Program Measures – 14 CFR Part 150

Mr. Frank Santos (GIAA TMG Consultant) reported on this item and mentioned that this is a continuing program that was started back in 2022. It is under AIP 116, and the value of this study is \$2.2 million, and GIAA is at the last phase. The Noise study is in accordance with Title 14 Code of Federal Regulations CFR Part 150. In 2003, the initial study was completed, and the noise exposure map and the noise compatibility program (NCP) have been adopted and governed our abatement measures since that time.

The A.B. Won Pat International Airport Authority, Guam (GIAA) is committed to being a good neighbor and a responsible operator of the Antonio B. Won Pat International Airport (GUM, Airport). As the Airport proprietor, GIAA is updating its Noise Compatibility Program (NCP) in accordance with Title 14 of the Code of Federal Regulation Part 150 (14 CFR Part 150 or Part 150). GIAA completed the original Part 150 Study for the Airport in 2003. The Federal Aviation Administration (FAA) accepted the Noise Exposure Map (NEM) in May 2003 and provided a Record of Approval for the GIAA-recommended Noise Compatibility Program (NCP) measures in November 2003.

A Part 150 Study is a voluntary and federally supervised formal process for airport operators to address land use compatibility with noise from aircraft operations. Part 150 Study includes the following two principal elements:

- The Noise Exposure Map (NEM) element describes the airport layout and operation, aircraft-related noise exposure, land uses in the airport environment, and the resulting noise/land use compatibility. Part 150 requires that the documentation address aircraft operations during two time periods: the year of submission and a forecast year of at least 5 years following the year of submission.
- The Noise Compatibility Program (NCP) element describes the actions of the airport proprietor recommends addressing existing and future noncompatible land use with noise exposure from aircraft operations. When GIAA submits its NCP to the FAA, the FAA will review, evaluate, and make determinations on the individual proposed measures in the FAA's Record of Approval.

Part 150 Study Update is divided into two phases:

- Phase 1 focuses on the development and submittal of the NEM to the FAA for acceptance as being completed in accordance with 14 CFR Part 150, and
- Phase 2 determines the GIAA-recommended measures to minimize noncompatible land uses from aircraft noise with the development and submittal of the NCP to the FAA for review and evaluation of the individual measures and FAA's determination of their consistency with the purposes of Part 150 that will be documented in the FAA's Record of Approval.

The NEM Update was submitted in December 2024 and was accepted by the FAA in April 2025. The approved NEMs are shown on Figures ES-1 and ES-2. Submitting the NCP Update to the FAA is the last step in the process of updating Part 150 study.

This document (included in packet) summarizes the results of the NCP phase of the Part 150 Study update which assesses actions an airport proprietor may consider to address existing and future noncompatible land use resulting from the noise of aircraft operations. Part 150 Study is part of the broader effort to address noise exposure resulting from aircraft operations; it covers a study area that includes the Airport and adjacent communities on Guam.

The 2029 forecast NEM analysis indicates 251 of the 303 housing units within the DNL 65 dB noise contour and the one noise sensitive site (Best Western Guam Airport Hotel) are potentially noncompatible with noise from Airport operations. For the NCP, GIAA is recommending including one new noise abatement measure and continuing one prior noise abatement measure with modification for the updated NCP. The two GIAA-recommended noise abatement measures are:

- Use of Intersection Departures on Runway 6L
- Use of ICAO-A Departure Procedures

The implementation of these two measures would decrease housing units by 90 and population by 270 within the DNL 65 dB contour compared to the 2029 forecast NEM. Implementation of the recommended noise abatement measures would result in 148 noncompatible housing units remaining, which is a reduction of 103 noncompatible housing units compared to the 2029 forecast NEM.

GIAA is recommending continuing two prior remedial land use measures and three prior preventative land use measures with modification for the updated NCP. Two of the prior preventative land use measures would be combined into one measure for this update. The four GIAA-recommended land use measures are:

- Land Use Rezoning Support
- Acquire Noncompatible Land
- Sound Insulate Noise-Sensitive Structures
- Establish and Implement an Airport Noise Overlay Zone

GIAA is recommending including three new program management measures, continuing one prior program management measure and continuing one prior program management measure with modification for the updated NCP. The five GIAA-recommended program management measures are:

- Noise Compatibility Staff
- Noise/Land Use Advisory Committee

- Update the Noise Exposure Map
- Update the Noise Compatibility Program
- Noise Abatement Signage

In December 2025, GIAA completed the public outreach components of Part 150 with the completion of the 30-day public comment period, public workshop and public hearing.

On motion duly made by Director Garcia, seconded by Director Tainatongo, the following resolution was unanimously passed:


Resolution No. 26-25

The Board hereby moves to approve GIAA Noise Compatibility Program Measures – 14 CFR Part 150


4. ADJOURNMENT

On motion to adjourn duly made by Chairman Bamba, and seconded by Director Tainatongo, the motion was unanimously passed. The meeting was adjourned at 3:48 p.m.

Dated this 29 day of January 2026.



Brian J. Bamba
Chairman

Attest:


Donald I. Weakley
Board Secretary

Prepared and Submitted by:



Wana Frances C. Wintterle
Corresponding Secretary

BOARD OF DIRECTORS SPECIAL MEETING
3:00 p.m., Thursday, January 8, 2026
GIAA CONFERENCE ROOMS 1 & 2

Videoconference and Live Streamed via: <https://www.guamairport.com> or
<https://www.guamairport.com/corporate/about-our-airport/board-of-directors/airport-board-meeting>

Public Notice

First Notice:

The Guam Daily Post – Tuesday, December 30, 2025
Notice to Media – Tuesday, December 30, 2025

Second Notice:

The Guam Daily Post – Tuesday, January 6, 2026
Notice to Media – Tuesday, January 6, 2026

AGENDA

1. Call to Order and Attendance
2. Approval of Agenda
3. New Business
 - A. Adoption of GIAA Policies and Procedures for Competitive Solicitation, Selection, and Award of Concession Agreements authorized by Public Law 38-21
 - B. Adoption of GIAA Policies and Procedures for the Solicitation, Selection, Award, and Operation of Lease Agreements authorized by Public Law 38-21
 - C. Approval of GIAA Noise Compatibility Program Measures – 14 CFR Part 150
4. Adjournment



A.B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
Board of Directors Special Meeting
3:00 p.m., Thursday, January 8, 2026
GIAA Terminal Conference Rooms 1 & 2

SIGN-IN SHEET

	<u>PRINT NAME</u>	<u>COMPANY/AGENCY</u>
1.	FRANK SAITOC	TMG
2.	Bill Gutierrez	GIAA
3.	JENN ARKIO CA	"
4.	JAY LINDO	Centex
5.	CHEYL BUSTOS	GIAA/Admin
6.	Anthony Quinsy	GIAA
7.	VANESSA PANGINDIAN	GIAA
8.	BURKE FOSTER	GIAA Mtg
9.	Ray Amintanilla	GIAA/CPS
10.	Uriah Aquon	PDN
11.	RICHARD CABRERA	GIAA P+F
12.		
13.		
14.		
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17.		
18.		
19.		
20.		



**Sesteman Laibirihan
Pupblekon Guahan**

GUAM PUBLIC LIBRARY SYSTEM
Government of Guam



LOURDES A. LEON GUERRERO
Governor (Maga'haga)
JOSHUA F. TENORIO
LI Governor (Sigundo Maga'haga)

**Guam Public Library System (GPLS) Regular Board Meeting
Wednesday, January 7, 2026, 4:00 pm at the Hagåtña Library.**

AGENDA:

AGENDA: Call to Order, Roll Call, Approval of Minutes (12/3), Director's report, Old Business (updates; deed of property, archival grant update, update on grants, etc.), update of renewal of board members, New Business, Open Discussion, Adjournment

LIVE Streaming link: <https://www.facebook.com/guampubliclibrarysystem>

Please call June Aflague for those requiring special accommodations, auxiliary aid or services at 671-475-4755/54.

This ad is paid for by government funds.

KIM, MYEONGSU
355 CHALAN PASAHERU STE. 333,
TAMUNING, GU 96913
Pro Se.

IN THE SUPERIOR COURT OF GUAM

KIM, MYEONGSU
(DOB: 07/08/1990)
Plaintiff(s),
vs.
JU, SEULAE
(DOB: 10/16/1993),
Defendant(s).
SUPERIOR COURT CASE NO. DM0231-25
SUMMONS

WARNING: This is an official document from the court that affects your rights. Read this carefully. If you do not understand it, contact a lawyer for help.

TO: JU, SEULAE
4649 LOMA DEL SUR DR, EL PASO, TX, 79934

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers are served on you with this "Summons."
2. If you do not want a judgment or order taken against you without your input, you must file an "Answer" or a "Response" in writin~ with the court, and pay the filing fee. If you do not file an "Answer" or "Response" the other party may be given the relief requested in his/her Petition or Complaint. To file your "Answer" or "Response" take, or send, the "Answer" or "Response" to the:

 - Office of the Clerk of the Superior Court of Guam
120 West O'Brien Drive
Hagåtña, Guam 96910-5174
 - OR by electronic filing by sending to: efilecivil@guamcourts.org (or as modified by the Clerk of Court)

3. Deliver or mail a copy of your "Response" or "Answer" to the other party at the address listed on the top of this Summons.

4. If this "Summons" and the other court papers were served on you by a registered process server or a Marshal, within Guam or other Jurisdictions of the United States, your "Response" or "Answer" must be filed within TWENTY (20) CALENDAR DAYS from the date you were served, not counting the day you were served, except when a different time is prescribed by order of the court. Service by a registered process server or a Marshal is complete when made.

5. You can get a copy of the court papers filed in this case from the Plaintiff /Petitioner at the address listed at the top of the preceding page, from the Clerk of the Superior Court's Record's Section.

6. Requests for reasonable accommodation for persons with disabilities must be made to the Judiciary's ADA Coordinator at least ten (10) calendar days in advance of a scheduled proceeding.

ADA Coordinator
Phone: (671) 475-3375
E-mail: ada@guamcourts.gov
(or as modified by the Clerk of Court)

7. Requests for an interpreter for persons with limited English proficiency must be made to the Language Access Manager by the party needing the interpreter and/ or translator or his/her counsel at least ten (10) calendar days in advance of a scheduled court proceeding.

Language Access Manager
Phone: (671) 475-3299
E-mail: dwelle@guamcourts.gov
(or as modified by the Clerk of Court)

Dated: 09/16/2025

JANICE M. CAMACHO-PEREZ
Clerk of Court
By: /s/Nikole L.B. McDonald
Deputy Clerk

LAW OFFICE OF DANIEL J. BERMAN
Suite 801, DNA Building
238 Archbishop Flores Street
Hagåtña, Guam 96910
Telephone: (671) 922-7570
Email: djberman@pacificlawyers.law
Attorneys for Administrator:
DANIEL J. BERMAN

**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATE OF
YOSHIKO YONAHA CHRISTIANSEN,
Deceased,**

BY
DANIEL J. BERMAN,
Petitioner.

Probate Case No. PR0139-25

NOTICE TO CREDITORS

NOTICE IS HEREBY GIVEN by the undersigned counsel for Administrator of the Estate of Yoshiko Yonaha Christiansen, deceased, to the Creditors of, and all persons having claims against, the said Estate or against the deceased, that within two (2) months after the first publication of this Notice, they either file claims with the necessary vouchers in the office of the Clerk of the Superior Court of Guam, or exhibit them with necessary vouchers to the Law Office of Daniel J. Berman, Suite 801, DNA Building, 238 Archbishop Flores Street, Hagatna, Guam, 96910, being the place for the transactions of the said Estate.

DATED this 18 day of December, 2025.

LAW OFFICE OF DANIEL J. BERMAN
Attorney for Administrator
By: /s/DANIEL J. BERMAN

Louie J. Yanza
Law Office of Louie J. Yanza
A Professional Corporation
MVP Building • 862 South Marine Corps Drive, Suite 203
Tamuning, Guam 96913
Telephone: (671) 477-7059 • Facsimile: (671) 472-5487
adlmin@jwisguam.com
Attorney for Petitioner:
John Thomas Donnafield

**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATE OF
KEIKO DONNAFIELD,
Deceased.**

PROBATE CASE NO. PR0183-25

**NOTICE OF HEARING ON THE PETITION AND
THE AMENDED PETITION FOR LETTERS OF
ADMINISTRATION**

THIS NOTICE IS REQUIRED BY LAW. YOU ARE NOT REQUIRED TO APPEAR IN COURT UNLESS YOU DESIRE.

NOTICE IS HEREBY GIVEN that the Petitioner John Thomas Donnafield, has filed herein a Petition and an Amended Petition for Letters of Administration on the above-referenced Estate, reference to which Petition is made for further particulars, that the time and place of hearing of the same has been set for JAN 07 2026 at the hour of 9:30 a.m., at the Superior Court of Guam, 120 West O'Brien Drive, Hagåtña, Guam, and that all persons interested are hereby notified to appear and show cause, if any they have, why the Petition should not be granted.

Dated: NOV 18 2025

JANICE M. CAMACHO-PEREZ
Clerk of Court, Superior Court of Guam
/s/Pauline I. U. Santos
Chamber/Courtroom Clerk

You may appear in person at the Courtroom of the Honorable Dana A. Gutierrez, 120 W. O'Brien Drive, Hagatna, Guam or you may participate via Zoom by logging onto <https://guamcourts.org/zoom.us> and enter Meeting ID: 83978740380 and Passcode: 189701. For Technical assistance, please call (671) 475-3207 for (5) minute prior

IN THE SUPERIOR COURT OF GUAM

IN THE MATTER OF THE ESTATE OF

JUANA S.A. ATAD,

Decedent.

PROBATE CASE NO. PR0196-25

NOTICE OF HEARING

THIS NOTICE IS REQUIRED BY LAW. YOU ARE NOT REQUIRED TO APPEAR IN COURT UNLESS YOU DESIRE.

1. NOTICE IS HEREBY GIVEN that Petitioner Cynthia V. Ecube has filed a Petition for Letters of Administration and for Appointment of Administratrix.

2. A hearing on the petition will be heard on Wednesday, January 7, 2026, at 10:20 a.m. before Hon. Judge Elyze M. Iriarte.

3. To attend or to participate in the hearing, you may appear in person at the Guam Judicial Center, appear remotely at <https://guamcourts.org/zoom.us> and enter Meeting ID: 864 4387 2213 and Passcode: JEMJ; or call into the courtroom at 671-300-6703 at the designated hearing time. For connectivity issues, you may contact Jannette Samson at (671) 475-0141 or email jsamson@guamcourts.gov.

DATED: 10 DEC. 2025

JANICE M. CAMACHO-PEREZ
Clerk of Court, Superior Court of Guam
/s/Alice B. Mendoza
Courtroom/Chamber Clerk

little type

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CALL 671-646-0510/11

JOB ANNOUNCEMENT

LEVI'S/GUESS GUAM IS NOW HIRING:
SALES ASSISTANTS, BOOK-KEEPER
PROPERTY MANAGER/HANDYMAN
CALL 671-482-1818

**A.B. WONG PIET INTERNATIONAL
AIRPORT GUAM BOARD OF
DIRECTORS
SPECIAL MEETING**

Thursday, January 8, 2026 at 3:00 PM in Terminal Conference Rooms 1 & 2 and by Videoconference and Live Streamed via GIAA website: www.guamairport.com or <https://www.guamairport.com/corporate/about-our-airport/board-of-directors/airport-board-meeting>

AGENDA

1. Call to Order and Attendance
 2. Approval of Agenda
 3. New Business
 - A. Adoption of GIAA Policies and Procedures for Competitive Solicitation, Selection, and Award of Concession Agreements authorized by Public Law 38-21
 - B. Adoption of GIAA Policies and Procedures for the Solicitation, Selection, Award, and Operation of Lease Agreements authorized by Public Law 38-21
 - C. Approval of Noise Compatibility Program Measures - 14 CFR Part 150
 4. Adjournment
- Parking is available in the Public Parking Lot. Call the Board Office at (671) 642-4717/18 for special accommodations, auxiliary aids, or services. This ad is paid for by GIAA.

CIVIL SERVICE COMMISSION

KUMISION I SETBISISON SIBIT



Bell Tower Suite 201, 710 W. Marine Corps Drive, Hagåtña, Guam 96910 • Tel: (671) 647-1855 • Fax: (671) 647-1867

IN-PERSON MEETING AT 9:00 A.M. ON THURSDAY, JANUARY 8, 2026.

A live broadcast of this meeting is available to the public on the CSC website at csc.guam.gov or on GovGuam.tv. The public can also access a live stream of this meeting via zoom by using the link or Meeting ID and Passcode provided below. <https://us06web.zoom.us/j/83793791640?pwd=I7PPK20ate28nn6vQy45z8o0Wrvb0.1> (Meeting ID: 837 9379 1640 / Passcode: 449754)

AGENDA

- | | |
|---|--|
| I. CALL TO ORDER. | IV. OLD BUSINESS: None |
| II. APPROVAL OF MINUTES: January 6, 2026 | V. GENERAL BUSINESS: |
| III. NEW BUSINESS: | 1) Bills and Laws affecting CSC. |
| (1) Mitigation Hearing: | 2) Administrative Counsel Litigation Update. |
| Lynda B. Aguan vs. Department of Parks & Recreation; CSC Case No.: 19-GRE021 SP | 3) Administrative Matters: |
| (2) Grievance Hearing | a) Board Training; Civil Service Commission Board Members. |
| Briana Roberto & Cynthia Kuper vs. Guam Customs & Quarantine Agency; CSC Case No.: 24-GRE06 | VI. ADJOURNMENT. |

For special accommodations, please contact Maria P. Masnayo, CSCADA Coordinator at (671) 647-1872 / (671) 647-1855. /s/ Daniel D. Leon Guerrero, Executive Director
Paid for by the Civil Service Commission.



NOTICE OF PUBLIC HEARING

Monday, January 5, 2026 at 3:00 PM in Terminal Conf. Rms 1 & 2
Proposed Policies and Procedures for Competitive Solicitation, Selection, and Award of CONCESSION AGREEMENTS

- View Documents:** www.guamairport.com or <https://www.guamairport.com/corporate/media-center/public-notice-concessions-policies-and-procedures-concession-agreements>
- Submit Comments:** concessionpolicies@guamairport.net
- Deadline to Submit Comments:** Monday, January 5, 2026
- Video Conference and Livestream:** <https://www.zoom.com>
Meeting ID: 850 9479 9861 Passcode: 852072

AGENDA

1. Call to Order and Attendance
2. Public Comments
3. Adjournment

Parking is available in the Public Parking Lot. Call the GIAA Administration Office at (671) 646-0300 for special accommodations, auxiliary aids, or services. This ad is paid for by GIAA.



**FIRST NOTICE
YIGO MUNICIPAL PLANNING COUNCIL**

Regular Monthly Meeting • Wednesday, January 14, 2026, 6 pm
Yigo Senior Citizens Center • Livestreaming on Yigo Mayor's Office YouTube channel

AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF MINUTES – October & November 2025
- IV. FINANCIAL REPORT
- V. MAYOR'S REPORT
- VI. OLD BUSINESS
 - A. CLTC
 - 1. Lot 7055– Conceptual Plan submitted to CLTC
 - B. Ghura DCBG-DR – Mitigation Flooding at East Gayinero & Marianas Terrace Yigo Gym- Tier 2 shelter
 - 1. Survey was completed and submitted
 - 2. Submission of Project Office of Civil Defense SHMO
- VII. NEW BUSINESS
 - A. Public Hearing – Dept. of Land Management Tuesday,

In compliance with the American with Disabilities Act, individuals requiring special accommodations may contact the Yigo Mayor's Office at 671-653-9446/5248 or email yigomunicipaloffice@gmail.com.
Paid for by Yigo Mayor's Office funds.



CIVIL SERVICE COMMISSION

KUMISION I SETBISION SIBIT

Bell Tower Suite 201, 710 W. Marine Corps Drive, Hagåtña, Guam 96910 • Tel: (671) 647-1855 • Fax: (671) 647-1867

NOTICE OF MEETING

IN-PERSON MEETING AT 9:00 A.M. ON TUESDAY, JANUARY 13, 2026.

A live broadcast of this meeting is available to the public on the CSC website at csc.guam.gov or on GovGuam.tv. The public can also access a live stream of this meeting via zoom by using the link or Meeting ID and Passcode provided below. <https://us06web.zoom.us/j/2666477466?pwd=nE16veejZhaZj1BvPBdulMupVn0.1&omn=85000539509> (Meeting ID: 2666477466 Passcode: 6338464)

AGENDA

- I. CALL TO ORDER.
- II. APPROVAL OF MINUTES: None.
- III. NEW BUSINESS: None.
- IV. OLD BUSINESS:
 - Hearing on the Merits (Continuation)
 - (1) Deborah A. Duenas vs. Guam Behavioral Health and Wellness Center (GBHWC); CSC Case No.: 23-AA03T
- V. GENERAL BUSINESS:
 - 1) Bills and Laws affecting CSC: None.
 - 2) Administrative Counsel Litigation Update.
 - 3) Administrative Matters:
 - a). Board Training; Civil Service Commission Board Members.
- VI. ADJOURNMENT.

For special accommodations, please contact Maria P. Masnayan, CSC ADA Coordinator at (671) 647-1872 / (671) 647-1855.

/s/ Daniel D. Leon Guerrero, Executive Director
Paid for by the Civil Service Commission.

VEHICLES FOR BID

YEAR	MAKE	MODEL	COLOR	MILEAGE (subject to change)	BID START	BID END	MINIMUM BID
2021	NISSAN	FRONTIER 2WD	BLUE	71,180	12/31/2025	1/6/2026	\$12,400.00
2025	MITSUBISHI	OUTLANDER SPORT	GRAY	2,151	12/31/2025	1/6/2026	\$15,200.00
2017	GMC	CANYON	GRAY	51,850	12/31/2025	1/6/2026	\$3,800.00
2025	NISSAN	VERSA	BLACK	16,065	12/31/2025	1/6/2026	\$11,900.00
2022	NISSAN	KICKS	BLACK	71,053	12/31/2025	1/6/2026	\$2,200.00

BID STARTS DECEMBER 31, 2025 AND ENDS JANUARY 6, 2026.

BIDS ARE DUE AT 4:00PM ON THE LAST DAY.

VEHICLES WILL BE SOLD AS IS, WITHOUT WARRANTIES. VEHICLES WILL BE SOLD TO THE HIGHEST BIDDER.
FINANCING AVAILABLE, SUBJECT TO CREDIT APPROVAL.



First Hawaiian Bank.
Member FDIC

For more information or to obtain a bid form,
please contact us at (671) 475-7933 or
email: gdccollections@fhd.com.

**A.B. WON PAT INTERNATIONAL BOARD OF DIRECTORS
AIRPORT GUAM SPECIAL MEETING**

Thursday, January 8, 2026 at 3:00 PM in Terminal Conference Rooms 1 & 2 and by Videoconference and Live Streamed via GIAA website: www.guamairport.com or <https://www.guamairport.com/corporate/about-our-airport/board-of-directors/airport-board-meeting>

AGENDA

1. Call to Order and Attendance
 2. Approval of Agenda
 3. New Business
 - A. Adoption of GIAA Policies and Procedures for Competitive Solicitation, Selection, and Award of Concession Agreements authorized by Public Law 38-21
 - B. Adoption of GIAA Policies and Procedures for the Solicitation, Selection, Award, and Operation of Lease Agreements authorized by Public Law 38-21
 - C. Approval of Noise Compatibility Program Measures – 14 CFR Part 150
 4. Adjournment
- Parking is available in the Public Parking Lot. Call the Board Office at (671) 642-4717/18 for special accommodations, auxiliary aids, or services. This ad is paid for by GIAA.



GUAM LAND USE COMMISSION

Department of Land Management
ITC Building, Third Floor, Tamuning, GU 96913
P.O. Box 2950, Hagåtña, Guam 96932
Tel: 671-649-5263 Ext. 300 • Fax: 671-649-5383

AGENDA

A regular Guam Land Use Commission meeting will be held on Thursday, January 8, 2026, at 1:30 p.m., Department of Land Management Conference Room, 590 S. Marine Corps Dr., 3rd Floor, ITC Building, Tamuning. Livestreamed on YouTube at Guam Department of Land Management Channel.

- I. Notation of Attendance/Roll Call
- II. Approval of Minutes - [None]
- III. Old Business [None]
- IV. New Business
 - A. Application No. 2025-42, Guam Waterworks Authority, requests a Zone Change from "A" (Agricultural/Rural) to "PF" (Public Facility) for the proposed construction of a wastewater pump station on Lot 19-2, Tract 293, Mangilao.
 - B. Application No. 2022-01, Guam Capital Investment Corporation, requests a Zone Change from "M2" (Heavy Industrial) to "M1" (Light Industrial) to allow for the conversion of vacant commercial spaces on the second floor of an existing building to be used for six (6) multi-family dwelling units on a portion of Lot 236-REM, Parcels #9, #11, and #13, Hågat.
 - C. Application No. 2025-07, Eddie C. Palomo, Jason S. Tedtaotao and Mary Audrey C. Tedtaotao, request a Zone Change from "R1" (One Family Dwelling) zone to "C" (Commercial) zone, for the proposed construction and operation of a retail & wholesale hardware business with an accessory storage building, on Lot 10062-1-R7, Dededo.
 - D. Application No. 2025-73, Henry M. Simpson, Jr. and Carolyn S. Simpson, are requesting approval of a

APPLY NOW!!

- 187 - CARPENTER WITH 1 YEAR EXPERIENCE** **\$18.34 PER HOUR***
Performs carpentry duties for residential, commercial and government projects.
- 62 - CEMENT MASON WITH 1 YEAR EXPERIENCE** **\$17.51 PER HR.***
Performs cement mason duties for residential, commercial and government projects.
- 4 - ELECTRICIAN with min 2 yrs. exp.** **\$21.02 PER HR.***
Performs electrician duties for residential, commercial and government projects.
- 12 - FIELD SUPERVISOR with min 2 yrs. exp.** **\$29.61 PER HR.***
Performs field supervisor duties for residential, commercial and government projects.
- 9 - HEAVY EQUIPMENT OPERATOR with min 1 yr. exp.** **\$18.97 PER HR.***
Performs heavy equipment operator duties for residential, commercial and government projects.
- 3 - SAFETY SUPERVISOR with min 2 yrs. exp.; Must possess an Associate's degree in Occupational Health and Safety or a related field (may be foreign equivalent), or an Associates' degree in Engineering (may be foreign equivalent); and possesses OSHA 30-Hour and EM 385-1-1 40-Hour training.** **\$29.61 PER HR.***
Performs safety supervisor duties for residential, commercial and government projects.
- 65 - PAINTER with min 1 yr. exp.** **\$19.82 PER HR.***
Performs painter duties for residential, commercial and government projects.
- 10 - PLUMBER with min 2 yrs. exp.** **\$19.48 PER HR.***
Performs plumber duties for residential, commercial and government projects.
- 68- REINFORCING METAL WORKER WITH 1 YEAR EXPERIENCE** **\$16.98 PER HOUR***
Performs reinforcing metal worker duties for residential, commercial and government projects.

Verification of qualifications required
**Special wage rate: Work to be performed on DPRI-funded projects and projects covered by Davis Bacon, Service Contracts Act and/or Executive Order 14026 will be paid no less than the indicated wage rate.*



**ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
BOARD OF DIRECTORS**

EXECUTIVE SUMMARY

**Draft Policies and Procedures for the Solicitation, Selection, and Award
of Concession Agreements for Public Comment authorized by Public Law 38-21**

January 8, 2026

Purpose

To adopt the draft policies and procedures for the competitive solicitation, selection, and award of concession agreements (“Concession Policies”) pursuant to § 1203.1(a)(1) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated, which was authorized pursuant to Public Law 38-21 and in accordance with Executive Order No. 2025-05.

Background

Public Law 38-21 provides authority to the A. B. Won Pat International Airport Authority, Guam (GIAA) to adopt policies and procedures for the solicitation, selection, and award of agreements between the GIAA and any other party for the use of airport facilities and properties for airport purposes and/or visitor-related activities.

Specifically, relative to concession agreements, Public Law 38-21 provides that such agreements shall be authorized for a term of up to fifteen (15) years and shall be subject to policies and procedures for the competitive solicitation, selection, and award of concession agreements adopted from time to time by the GIAA’s Board of Directors.

At its meeting of November 13, 2025, the GIAA Board of Directors were provided notice of the GIAA Draft Policies and Procedures for Solicitation, Selection, and Award of Concession Agreements as reflected in the attached Executive Summary (attachment 1). Subsequent to this meeting and as part of the formal adoption process, the following were accomplished:

Notice for Public Comment. Notice for Public Comments (for no less than 30 calendar days) was posted on Guam Daily Post on November 7 & December 2, 2025, December 22 & December 30, 2025 and January 2, 2026.

Notices for public comment and access to proposed policies and procedures, along with the fiscal assessment were posted on GIAA website at www.guamairport.com beginning November 7, 2025 with a deadline for comments extended to 5pm, January 5, 2026.

Notices for public comments were also sent to over 85 companies via email that include the following: GIAA current and prospective concessionaires, airlines, tenants and stakeholders, industry partners to include Guam Visitor’s Bureau, Guam Chamber of Commerce, Guam Hotel

& Restaurant Association, local and federal partners. Notices were also sent to the appeals panel to include the Director of Department of Administration, GSA Chief Procurement Officer and GSA Procurement Attorney.

Notice of Public Hearing. The Public Hearing (held no sooner than thirty (30) calendar days after posting of the fiscal assessment and policies and procedures) was noticed in the Guam Daily Post on December 22, 2025, December 30, 2025, and January 2, 2026. The public hearing was held at 3pm, January 5, 2026 at the GIAA Conference Rooms 1&2, broadcast via www.guamairport.com and audio recorded.

It is noted that GIAA did not receive any public comments specific to the proposed policies and procedures.

Proposed Change to Policies and Procedures. One minor change is recommended in Article 5 § 5101 (a) A three-person Appeal Panel, designated by I Maga Hagan Guahan shall be constituted to administratively consider appeals from decisions of the Executive Manager, as allowed by these Concession Policies and Procedures. ~~Prior to any solicitation for a concession agreement, Upon adoption of the Concession Policies and Procedures, GIAA shall enter a memorandum of understanding with~~ request that I Maga Hagan Guahan ~~to~~ constitute such panel, which shall include the Director of DOA, the Chief Procurement Officer of the General Services Agency and the General Services Agency Procurement Counsel. If one or more of these positions are vacant or unavailable ~~at any time I Maga Hagan Guahan makes such designation~~, then I Maga Hagan Guahan may appoint any other appropriate individual employed within the Executive Branch of the Government of Guam, provided at least one individual is an attorney employed by Government of Guam Executive Branch.

This change provides a standing appeals panel rather than convening a separate panel for each concession solicitation, reducing delays in convening a panel and promotes efficiency and consistency in the process. In the event of conflicts of interest, vacancy or unavailability , that preclude an individual's participation, the policies and procedures provide the Governor with the Authority to "appoint any other appropriate individual employed with the Executive Branch of the Government of Guam."

Approval and signature of the Governor of Guam. Following approval of the GIAA Board, the policies and procedures will be submitted to the Governor of Guam for her review and approval.

Management Recommendation

Management recommends the adoption of the Proposed Policies and Procedures for the Solicitation, Selection, and Award of Concession Agreements and the one proposed change noted above, subject to legal review and shall become effective upon approval and signature of the Governor of Guam.

**Proposed Policies and Procedures for the Competitive Solicitation,
Selection & Award of Concession Agreements
at the**

**A.B. WON PAT INTERNATIONAL
AIRPORT GUAM**



ATURIDAT PUETTON BATKON AIREN
GUAHAN ENTENASIONAT

Duly and regularly adopted by the Board of Directors of the Antonio B. Won Pat International Airport Authority, Guam through Board Resolution Number 26-23 at the Special Board Meeting on the 8th day of January 2026.

Approved:

**Lourdes A. Leon Guerrero
I Maga' Håga Guåhan**

Date: _____

January 8, 2026

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CHAPTER 7B
ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
CONCESSION REGULATIONS**

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CHAPTER 7B
ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY
CONCESSION POLICIES AND PROCEDURES

ARTICLE 1
GENERAL PROVISIONS

NOTE: These Concession Policies and Procedures are authorized by 12 GCA § 1203.1.

- § 1101. Purpose.
- § 1102. Policy.
- § 1103. Objectives.
- § 1104. Planned Solicitation.
- § 1105. Requirement of Good Faith.
- § 1106. Definitions.
- § 1107. Savings Clause.

§ 1101. Purpose. The Government of Guam, through the Antonio B. Won Pat International Airport Authority, Guam (“GIAA” or “Authority”), owns and operates the Antonio B. Won Pat International Airport, Guam. These Concession Policies and Procedures (sometimes referred to herein as “Policies and Procedures”) do not and shall not constitute a part of any Concession Agreement. The purpose of these Concession Policies and Procedures is to provide standard policies and procedures governing the solicitation, selection, award and operation of non-airline Concessions on Airport Property, as required by the mandates of 12 GCA § 1203.1, as may be amended from time to time, and in conformity with industry practices and procedures.

§ 1102. Policy. It is the policy of GIAA to promote efficiency and achieve the needs and best interests of GIAA in the award of Concession Agreements by:

- (a) continuously developing sound policies and practices to achieve GIAA’s self-sustaining mandate;
- (b) providing for increased public confidence in the procedures followed in the award of Concession Agreements;
- (c) exercising fair and equitable treatment of all persons who compete for Concession Agreements and Concessionaires;
- (d) fostering effective broad-based competition within the free enterprise system; and
- (e) providing safeguards for the maintenance of a solicitation procedures of quality and integrity.

§ 1103. Objectives. The primary objectives of GIAA in entering into Concession Agreements, is to:

- (a) Maximize revenue generation to GIAA without creating an undue financial burden on those contracting with GIAA.
- (b) Minimize the costs and expenses incurred by GIAA in operating and maintaining the Airport.
- (c) Maintain a fee and rental structure that will make GIAA as self-sustaining as possible.
- (d) Provide the highest quality and broadest range of services to Airport users.
- (e) Enhance the growth and development of the Airport as a regional aviation center.

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ARTICLE 1
GENERAL PROVISIONS

- (f) Preserve investments in the Airport and the level of service provided by GIAA and its Concessionaires.
- (g) Facilitate orderly development of the Airport.
- (h) Ensure provisions of consistent quality of services provided at the Airport.
- (i) Ensure compliance with applicable laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application and acceptance of federal funds.
- (j) Enable conformity with the approved Airport Master Plan.
- (k) Make the Airport available for public use on reasonable terms without undue discrimination.

§ 1104. Planned Solicitation. All Solicitations for Concession Agreements shall, where possible, be made sufficiently in advance of need for performance to promote maximum competition and good management of resources. Publication of Requests for Proposals shall not be manipulated so as to place potential Proposers at an unnecessary competitive disadvantage. The Executive Manager shall make a written determination of need for the Concession prior to initiating a Solicitation.

§ 1105. Requirement of Good Faith. These Concession Policies and Procedures require all parties involved in the negotiation, performance, or administration of Concession Agreements to act in good faith.

§ 1106. Definitions. Terms used in these Concession Policies and Procedures have the following meaning ascribed to them unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular chapter in these Policies and Procedures.

- (a) *Air Transportation* shall mean the carriage for hire of persons, baggage, property, cargo, and mail by aircraft.
- (b) *Airport* shall mean the Antonio B. Won Pat International Airport.
- (c) *Airport Layout Plan* or *ALP* shall mean a plan that shows boundaries and proposed additions to all areas owned or controlled by GIAA for airport purposes, approved by the FAA and made a part hereof, as the same may be amended from time to time.
- (d) *Airport Property* shall mean all real property of GIAA as shown in the Airport Layout Plan.
- (e) *Award* shall mean the execution of the Concession Agreement(s) with one or more Proposers determined in writing by the Executive Manager to be best qualified based on evaluation factors set forth in the RFP. and.
- (f) *Blind Trust* shall mean an independently managed trust in which the Government Employee beneficiary has no management rights and in which the Government Employee beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (g) *Board of Directors* shall mean the duly appointed Board of Directors of GIAA acting

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ARTICLE 1
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collectively in the manner prescribed by law.

- (h) *Confidential Information* shall mean any information which is available to a GIAA employee only because of the employee's status as an employee of GIAA and is not a matter of public knowledge or available to the public on request.
- (i) *Conspicuously* shall mean 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.
- (j) *Contract Modification* shall mean any written alteration, modification, amendment, or restatement of any provisions of a Concession Agreement accomplished by mutual action of the parties to the contract.
- (k) *Concession(s) and Concession Privileges* shall mean the right given to a Person by GIAA to use a specific portion of Airport Property for the purpose of selling certain goods or providing certain services to users of the Airport to generate revenues, other than operating an Air Transportation business.
- (l) *Concession Agreement* shall mean the written contract between GIAA and a Concessionaire specifying the terms and conditions under which a Concessionaire may use, occupy, and access certain Airport Property and manage and operate a Concession.
- (m) *Concession Fee* in the context of an RFP shall mean the fees and/or rent proposed by a Proposer, and in the context of a Concession Agreement shall mean the fees and/or rent paid by a Concessionaire. In all cases the Concession Fee is in consideration for the Concession Privileges granted by GIAA. Concession Fee includes, but is not limited to, minimum annual guaranteed (MAG) rent and/or percentage rent.
- (n) *Concessionaire* shall mean the operator and/or manager of a Concession, or its permitted successors or assigns.
- (o) *Data* shall mean recorded information, regardless of form or characteristic.
- (p) *Designee* shall mean a duly authorized representative of a person holding a superior position.
- (q) *Direct or Indirect Participation* shall mean involvement through decision, approval, disapproval, recommendation, preparation of any part of a Solicitation, influencing the content of any terms or conditions of a Solicitation or Concession Agreement, rendering of advice, investigation, auditing or in any other advisory capacity.
- (r) *Discussions*, as used in the Solicitation process, means an exchange of information during which GIAA may seek to determine in greater detail a Proposer's qualifications and explore with the Proposer the scope and nature of a concession opportunity, the proposer's method of management and operation of the concession and the relative utility of alternative methods of approach.. Discussions may be conducted in connection with Request for Proposals.
- (s) *Executive Manager* shall mean the duly appointed Executive Manager of GIAA or his designee.
- (t) *FAA* shall mean the Federal Aviation Administration, U.S. Department of Transportation, or any federal agencies succeeding to its jurisdiction.
- (u) *FAR* shall mean the Federal Aviation Regulations as published by the FAA.

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ARTICLE 1
GENERAL PROVISIONS

- (v) *Financial Interest* shall mean:
- (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, more than Two Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent;
 - (2) ownership or an interest in any property or any business; or
 - (3) a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (w) *GAR* shall mean the Guam Administrative Rules and Regulations, as may be amended from time to time.
- (x) *GIAA* shall mean the Antonio B. Won Pat International Airport Authority, Guam, a public corporation and autonomous instrumentality of the Government of Guam.
- (y) *Government Employee* means:
- (1) Any person elected to public office;
 - (2) a non-elected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the government of Guam; a non-compensated or minimally compensated individual who is performing personal services for the government of Guam.
- The term *Government Employee* does not include a Person who, as an independent contractor, performs professional, scientific, technical, or advisory service for a government of Guam agency and who receives a fee, honorarium, or similar consideration for the services performed.
- (z) *Gratuity* shall mean 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. Gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment more than Nominal Value.
- (aa) *Immediate Family* shall mean spouse, fiancé, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family.
- (bb) *Interested Party* means an actual or prospective Proposer or Concessionaire that may be aggrieved by a Solicitation or award of a Concession Agreement and who files a protest.
- (cc) *Main Terminal Building* shall mean that portion of Airport Property identified as such in the ALP.
- (dd) *May* denotes the permissive.
- (ee) *Nominal Value* means actual worth or actual cost, whichever is greater, which does not exceed \$25 individually or cumulatively.
- (ff) *Official Responsibility* shall mean direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through

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ARTICLE 1
GENERAL PROVISIONS

- subordinates, to approve, disapprove, or otherwise direct government action.
- (gg) *Person* shall mean an individual, corporation, limited liability company, partnership sole proprietorship, joint venture, union, committee, club, other organization or group of individuals acting as an entity. Person includes a trustee, receiver, assignee or similar representative.
- (hh) *Proposer* means a Person who has actually submitted a proposal in response to a RFP, unless the context indicates otherwise.
- (ii) *Protestor* means an Interested Party who files a protest under Article 4 of these Policies and Procedures.
- (jj) *Prospective proposer* shall mean a Person who will actually submit a proposal in response to a RFP.
- (kk) *Request for Proposals* or *RFP* shall mean all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.
- (ll) *Responsible Proposer* shall mean 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.
- (mm) *Shall* denotes the imperative.
- (nn) *Signatory Airline* shall mean a certificated air carrier providing Air Transportation to and from the Airport that have executed substantially similar agreements with GIAA covering the use and occupancy of facilities at the Airport.
- (oo) *Solicitation* means a Request for Proposals issued by GIAA for the purpose of soliciting competitive proposals for a Concession opportunity on Airport Property.

§ 1107. Savings Clause. If any provision, section or subsection of these Policies and Procedures, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable, the remainder of such provision, section or subsection shall not be thereby affected and shall be given full effect, without regard to the invalid portion.

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CONCESSION POLICIES AND PROCEDURES

ARTICLE 2
COMPLIANCE WITH FEDERAL REQUIREMENTS

§ 2101. Compliance with Federal Requirements. All Solicitations shall comply with all federal law and regulations that are applicable to GIAA, and to the extent that such federal laws or regulations conflict with these Concession Regulations, the mandates of such federal laws or regulations shall prevail.

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ARTICLE 3
SOLICITATION METHODS AND CONTRACT FORMATION

- § 3101. General Provisions.
- § 3102. Unsolicited Offers.
- § 3103. Assignment, Novation or Change of Name.
- § 3104. Methods of Solicitation.
- § 3105. Reserved.
- § 3106. Request for Proposals.
- § 3107. Cancellation of Solicitation.
- § 3108. Responsibility of Offeror and Proposer.
- § 3109. Concession Agreements.
- § 3110. Multiple Awards.
- § 3111. Audits and Records.
- § 3112. Finality of Determinations.
- § 3113. Reporting of Anticompetitive Practices.
- § 3114. Solicitation Record.

§ 3101. General Provisions.

- (a) **Extension of Time for Proposal Acceptance.** After opening proposals, the Executive Manager may request Proposers to extend the time during which GIAA may accept their proposals. The reasons for requesting such extension shall be documented in the solicitation record.
- (b) **Only One Tender or Proposal Received.** If only one proposal is received in response to a Request for Proposals, the Executive Manager may, as the Executive Manager deems appropriate, either make an award in accordance with the procedures set forth in § 3106 (Request for Proposals) of this Article or, if time permits, resolicit.
- (c) **Multiple Or Alternate Proposals.** Unless multiple or alternate proposals are specifically provided for, the Solicitation shall state that such proposals shall not be accepted. When prohibited, multiple or alternate proposals shall be rejected. The provisions of this Section shall be set forth in the Solicitation, and if multiple or alternate proposals are allowed, it shall specify their treatment.
- (d) **Proposal Security and Faithful Performance Guaranty.** Proposal security and a faithful performance guaranty shall be required in such form and amounts as the Executive Manager deems advisable to protect the interests of GIAA. Any such requirements must be set forth in the Solicitation. Proposal security and the faithful performance guaranty should not be used as a substitute for a determination of Proposer responsibility.
 - (1) **Proposal Security.** A proposal security shall be required to be submitted with a proposal. The proposal security may be in such form as determined by the Executive

Chapter 7B

ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
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ARTICLE 3

SOLICITATION METHODS AND CONTRACT FORMATION

Manager, including, but not limited to, bond, letter of credit, or cashier's check. Such proposal security shall be submitted with the understanding that it will guarantee that the Proposer will not withdraw its proposal for the time period stated in the RFP and is subject to forfeiture if the successful Proposer fails to enter into a Concession Agreement within the prescribed time. The proposal security shall be in such amount as is determined by the Executive Manager in accordance with his/her best judgment. Such amount shall be adequate to protect GIAA from loss in the event the purported successful Proposer withdraws its proposal prior to the expiration of the time period stated in the RFP or the purported successful Proposer fails to enter into a Concession Agreement within the time prescribed in the RFP.

(2) **Faithful Performance Guaranty.** A faithful performance guaranty shall be required from the successful Proposer guaranteeing full performance by the Concessionaire of all of the terms, covenants and conditions contained in the Concession Agreement, including, but not limited to, payment of the Concession Fee.

(i) **Amount required.** The faithful performance guarantee shall be in such amount as is determined by the Executive Manager in his/her best judgment that is adequate to protect GIAA in the event of breach by the Concessionaire.

(ii) **Form.** The faithful performance guaranty may be in such form as determined by the Executive Manager, including, but not limited to, bond, letter of credit, or cashier's check. Bonds as may be required in this Section shall be issued by a surety licensed to do business in Guam and shall be issued on Government standard performance bond forms. Letter of Credit or Certified Check or Cashier's Check shall be issued by any banks or bonding agencies duly licensed to do business in Guam.

(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 shall be rejected.

(f) **Reserved.**

(g) **Incorporation by Reference.** A RFP may incorporate documents by reference provided that the RFP specifies where such documents can be obtained.

(h) **Acknowledgment of Amendments.** The RFP shall require the acknowledgment of the receipt of all amendments issued.

(i) **Disclosure of Ownership, Financial, and Conflicts of Interest.**

Chapter 7B

ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
CONCESSION POLICIES AND PROCEDURES

ARTICLE 3

SOLICITATION METHODS AND CONTRACT FORMATION

- (1) Purpose. The disclosures required by this Section are intended to reveal information bearing on the responsibility of a Proposer, and can be obtained by an inquiry regarding responsibility prior to award.
- (2) Public Disclosure of Ownership.
 - (i) The ownership interests to be disclosed under this Section include the interests of a Person who owns all or any part of a Proposer whether as a sole proprietor, a partner, limited or otherwise, a shareholder of any class, in which case the percentage ownership interest test shall be based on each class, a member of an association or company, limited or otherwise, and any Person owning a beneficial legal interest in any trust, and any other Person having the power to control the performance of the Concession or the prospective Concessionaire.
 - (ii) Prior to award, every Person who is a Proposer shall submit a Disclosure Statement, executed as an affidavit under oath, disclosing the name of each Person who currently or has owned an ownership interest in the Proposer greater than ten percent (10%) at any time during the twelve (12) month period immediately preceding the date of the Solicitation (the “relevant disclosure period”).
 - (A) If a Proposer is an artificial person, the Disclosure Statement shall disclose the name of each Person who has owned an ownership interest in such artificial person (a “second tier owner”) greater than twenty-five percent (25%) at any time during the relevant disclosure period.
 - (B) If any such second tier owner is also an artificial person, the Disclosure Statement shall disclose the name of each Person who has owned an ownership interest in such second tier owner (a “third tier owner”) of forty-nine percent (49%) or more during the relevant disclosure period.
 - (C) If the name of no natural person has been identified as an owner, or a second or third tier owner of the Proposer, the Disclosure Statement shall identify the name, position, address, and contact information of the natural person having the authority and responsibility for the performance of the prospective Concession Agreement, and the name of any natural person who has the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective Concession Agreement.
 - (iii) Disclosure of Financial Interest. Every Person who is a Proposer shall execute an affidavit disclosing the name of any Person who has received or is entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the Solicitation by means of a Disclosure Statement, executed as an affidavit under oath, disclosing such interest

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and shall also contain the amounts of any such commission, gratuity, contingent fee or other compensation.

(iv) Disclosure of Conflict of Interest. Every Person who is a Proposer shall disclose the name of any Person who directly or indirectly participates in any Solicitation if such person is also an employee of the government of Guam, or of the government of the United States if federal funds are used in payment of the contract.

(v) Required Information. Every disclosure of an ownership or financial interest of any Person required to be identified by this Section shall name the Person required to be disclosed and the street address of their principal place of business. All information disclosed or meant to be disclosed under this Section is public and shall be kept as part of the Solicitation Record.

(vi) Continuing Duty of Disclosure. Notwithstanding any other provision of these Policies and Procedures, the duty to disclose the information required under this Section shall be, upon award, a continuing duty of a Concessionaire, and all such information shall become part of the Solicitation Record. Throughout the term of a Concession Agreement, the Concessionaire shall promptly make any disclosures not made previously and update changes in the identities or other required information, interests, or conflicts of the Persons required to be disclosed herein. Failure to comply with this Section shall constitute a material breach of the Concession Agreement.

(j) Proposer Lists.

(1) **Purpose.** Proposer lists may be compiled to provide GIAA with the names of Persons that may be interested in competing for Concessions. Unless otherwise provided, inclusion or exclusion of the name of a Person does not indicate whether the Person is responsible with respect to a particular solicitation or otherwise capable of successfully performing a Concession Agreement.

(2) **Deletion of Proposers.** Persons that fail to respond to a RFP on three (3) consecutive Solicitations of similar Concession opportunities may be removed from the applicable list after notice to the Person. Persons currently meeting the criteria for inclusion on the list may be reinstated on such lists at their request.

(3) **Public Availability.** Names and addresses on proposer lists shall be available for public inspection provided the lists shall not be used for private promotional, commercial, or marketing purposes.

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- (k) **Publicizing Awards.** Written notice of award shall be sent to the successful Proposer and each unsuccessful Proposer shall be notified of the Award. Notice of award shall be made available to the public and included in the Solicitation Record.
- (l) **Mistakes in Proposals Discovered After Award.** Mistakes in proposals shall not be corrected after Award of the Concession Agreement except where the Executive Manager makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

§ 3102. **Unsolicited Offers.**

- (a) **Defined.** An unsolicited offer is any offer for a Concession other than one submitted in response to a Solicitation.
- (b) **Handling of Unsolicited Offers.** The Executive Manager shall not consider any unsolicited offers and shall return such offers to the sender, at the sender's cost, or destroy such offers.

§ 3103. **Assignment, Novation or Change of Name.**

- (a) **No Assignment.** No Concession Agreement is transferable, or otherwise assignable, without the prior written consent of the Executive Manager and Board of Directors provided, however, that a Concessionaire may assign monies receivable under a Concession Agreement after due notice to GIAA.
- (b) **Recognition of a Successor in Interest; Novation.** When in the best interest of GIAA, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:
 - (1) the transferee assumes all of the transferor's obligations;
 - (2) the transferor waives all rights under the Concession Agreement as against GIAA; and
 - (3) unless the transferor guarantees performance of the Concession Agreement by the transferee, the transferee shall, if required, furnish a satisfactory performance security in the form and amount determined by the Executive Manager.
- (c) **Change of Name.** When a Concessionaire requests to change the name in which it holds a Concession Agreement with GIAA, the Executive Manager shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Concessionaire to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the Concession Agreement are thereby changed.

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§ 3104. **Methods of Solicitation.** Concession Agreements shall be awarded pursuant to a Request for Proposals in accordance with Section 3106.

§ 3105. **Reserved.**

§ 3106. **Request for Proposals (“RFP”).**

- (a) **General.** One of GIAA’s objectives in awarding Concession Agreements is to obtain high quality services that provide and optimize non-airline revenue to GIAA and provide optimal customer service, value and experience to the traveling public. GIAA has determined that soliciting Concession Privileges through the RFP process is good business practice and industry standard. The RFP process allows GIAA to evaluate proposals based on a variety of non-quantitative factors, including quality of customer service, management team, concepts, concession design, company experience, capital investments, brands, training, and other relevant criteria. The RFP process also encourages Proposers to propose creative and unique elements in their proposals to optimize non-airline revenue and enhance customer experience in addition to guaranteed financial offers. For these reasons, the RFP process to procure Concessions is universally accepted and utilized by airports.
- (b) **Use.** GIAA has determined that it is consistent with good business practice to award Concessions using the RFP solicitation method.
- (c) **Public Notice.** Notice of the need for a Concession shall be made by the Executive Manager at least ten (10) days before the proposals are due.
 - (1) **Distribution.** Notices of a RFP shall be mailed or otherwise furnished to a sufficient number of Persons for the purpose of securing competition. Notices of a RFP shall indicate where and when the RFP may be obtained and the proposal submission deadline; generally describe the Concession opportunity; and may contain other appropriate information. Where appropriate, the Executive Manager may require payment of a fee for the supplying of a hard copy of the RFP package.
 - (2) **Publication.** Every Notice of a RFP shall be publicized at least once and at least seven (7) days before the final date of submission of tenders:
 - (i) in a newspaper of general circulation on Guam;
 - (ii) in industry media; or
 - (iii) in a government publication designed for giving public notices; and
 - (iv) GIAA’s website.
 - (3) **Public Availability.** A copy of the RFP package shall be made available for public inspection at GIAA’s Administration Office.
- (d) **Content.** The RFP shall be in a form specified by the Executive Manager and contain at least the following information:
 - (1) A description of the Concession Opportunity;

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- (2) A summary of key business terms;
 - (3) A statement of minimum qualifications, if any;
 - (4) A draft Concession Agreement;
 - (5) A schedule of events, including the proposal submission deadline;
 - (6) A statement that all potential Proposers must register with GIAA in order to receive notices regarding and amendments to the RFP;
 - (7) A statement that the proposals shall be in writing;
 - (8) A statement that Proposers may designate as confidential those portions of their proposals which contain trade secrets or other proprietary data;
 - (9) A statement of the minimum information that the proposal shall contain, which may include:
 - (i) the name of the Proposer, the location of the Proposer's principal place of business and, if different, the place of performance of the proposed contract;
 - (ii) if determined relevant by the Executive Manager, the age of the Proposer's business and average number of employees over a time period specified in the RFP;
 - (iii) the abilities, qualifications, and experience of all key personnel who would be assigned to the Concession;
 - (iv) a listing of other contracts under which services similar in scope, size, or discipline to the solicited Concession were performed or undertaken within the time period specified in the RFP;
 - (v) a plan giving as much detail as is practical explaining how the Concession will be managed and operated;
 - (vi) proposed Concession Fee; and
 - (vii) minimum investment of Proposer guaranteed as part of Proposal.
 - (10) the factors to be used in the evaluation and selection process and their importance and the basis for award.
- (e) **Evaluation.** The Executive Manager or an evaluation committee designated by the Executive Manager ("**Evaluation Committee**") shall evaluate all proposals submitted. Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. 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 Concession opportunity being solicited. The minimum factors are:
- (1) the plan for managing and operating the Concession;
 - (2) ability to successfully manage and operate the Concession as reflected by technical training and education, general experience, and specific experience in managing and operating a concession, and the qualifications and abilities of personnel proposed to be assigned to manage and operate the Concession;
 - (3) the personnel, equipment, and facilities to manage and operate the Concession that are currently available or demonstrated to be made available at the time of contracting, and
 - (4) a record of past performance of similar work.

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- (f) **Pre-Proposal Conferences.** Pre-proposal conferences may be conducted to explain the Solicitation requirements. Conferences shall be announced to all Persons who have registered with GIAA for receipt of notices relating to the RFP. The conference shall be held long enough after the RFP has been issued to allow potential Proposers to become familiar with it, but sufficiently before the proposals submission deadline to allow consideration of the conference results in preparing their proposals. Nothing stated at the pre-proposal conference shall change the RFP unless a change is made by written amendment as provided in § 3105(g) (Amendments to Requests for Proposals) of this Article. A summary of the conference shall be supplied to all those Persons who have registered for the RFP. If a transcript is made, it shall be part of the Solicitation Record. Such a conference may be held anytime prior to the date established for submission of proposals.
- (g) **Amendments to Requests for Proposals.**
- (1) **Form.** Amendments to RFPs shall be identified as such and shall require that the Proposer acknowledge receipt of all amendments issued. The amendments shall reference the portions of the RFP it amends.
 - (2) **Distribution.** Amendments shall be sent to all Persons who have registered with GIAA to receive notices regarding the RFP.
 - (3) **Timeliness.** Amendments shall be distributed within a reasonable time to allow potential Proposers to consider them in preparing their proposals. If the time and date set for receipt of proposals will not permit such preparation, such time shall be increased to the extent possible in the amendment.
- (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 GIAA officials. A Register of Proposals shall be established for each RFP that shall include for all proposals the name of each offeror and the number of modifications received. The Register of Proposals shall be opened to public inspection only after award of the Concession Agreement. Proposals of Proposers who are not awarded the Concession Agreement shall not be opened to public inspection.
 - (2) **Requests of Nondisclosure of Data.** If the Proposer selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Executive Manager or a designee 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, the Executive Manager shall inform the Proposer in writing what portion of the proposal will be disclosed and that, unless the Proposer withdraws the proposal or protests under Article 4 (Legal and Contractual Remedies), the proposal will be so disclosed.

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(i) **Discussions.**

(5) **Discussions Permissible.** The Executive Manager or Evaluation Committee may allow Proposers to give oral presentations on their proposals. The Executive Manager or Evaluation Committee may conduct Discussions with any Proposer. The purposes of such Discussions shall be to:

- (i) determine in greater detail such Proposer's qualifications, and
- (ii) explore with the Proposer the scope and nature of the Concession opportunity, the Proposer's proposed method of management and operation of the Concession, and the relative utility of alternative methods of approach.

(6) **No Disclosure of Information.** Discussions shall not disclose any information derived from proposals submitted by other Proposers, and GIAA shall not disclose any information contained in any proposals until after award of the proposed Concession Agreement has been made as provided in § 3106(h) (Receipt and Handling of Proposals). The proposal of the Proposer awarded the Concession Agreement shall be opened to public inspection except as otherwise provided in § 3106(h) (Receipt and Handling of Proposals).

(j) **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of Discussions. All documents relating to the modification or withdrawal of a proposal shall be made a part of the Solicitation Record.

(k) **Late Tenders, Late Withdrawals, and Late Modifications.**

(1) **Definition.** Any proposal received after the time and date set for receipt of proposals is late. Any withdrawal or modification of a proposal received after the conclusion of Discussions is late.

(2) **Treatment.** No late proposal, late modification, or late withdrawal shall be considered unless received before Award, and the proposal, modification, or withdrawal would have been timely but for the action or inaction of GIAA personnel.

(3) **Notice.** Persons submitting late proposals that will not be considered for award shall be so notified in writing as soon as practicable.

(4) **Records.** All documents relating to each late proposal, late modification, or late withdrawal shall be made a part of the Solicitation Record.

(l) **Selection of the Best Qualified Proposers.** After conclusion of validation of qualifications, evaluation, and discussions, the Executive Manager shall select, in the order of their respective qualification ranking, no fewer than three acceptable Proposers (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the Concession. In the case where an Evaluation Committee is appointed by the Executive Manager, the Committee shall submit the ranking to the

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Executive Manager for the Executive Manager's consideration and approval. The Board of Directors shall review and approve the ranking of proposers.

(m) Negotiation and Award of Concession Agreement.

(1) General. The Executive Manager shall negotiate a Concession Agreement with the best qualified Proposer(s) for the solicited Concession, including, without limitation, negotiation of Concession Fee and Minimum Investment Guarantee.

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

- (i) making certain that the Proposer(s) has a clear understanding of the Concession, specifically, the essential requirements involved in managing and operating the Concession;
- (ii) determining that the Proposer(s) will make available the necessary personnel and facilities to manage and operate the Concession for the duration of the term of the Concession Agreement; and
- (iii) agreeing upon Concession Fee, minimum guaranteed investment requirements and other key business terms, taking into account the estimated value of the Concession, and the scope, complexity, and nature of managing and operating the Concession.

(n) Successful Negotiation of Concession Agreement with the Best Qualified Proposer(s).

If Concession Fee and all terms, conditions and obligations can be agreed upon with the best qualified Proposer(s), and such Proposer is determined by GIAA to be responsible in accordance with Section 3108, the solicited Concession shall be awarded to that Proposer(s) by execution of the Concession Agreement.

(o) Failure to Negotiate Contract with the Best Qualified Proposer.

(1) If Concession Fee and all terms, conditions and obligations cannot be agreed upon with the Best Qualified Proposer(s), a written record stating the reasons therefor shall be placed in the Solicitation Record and the Executive Manager or a designee shall advise such Proposer of the termination of negotiations, which shall be confirmed by written notice within three days.

(2) Upon failure to successfully negotiate a Concession Agreement with the Best Qualified Proposer(s), the Executive Manager may enter into negotiations with the next most qualified Proposer. If Concession Fee and all terms, conditions and obligations can be agreed upon, then the Concession shall be awarded to that Proposer by execution of the Concession Agreement. If negotiations again fail, negotiations shall be terminated as provided in Subsection 3106(l)(1) and commence with the next most Qualified Proposer.

(p) Notice of Award. Written notice of Award shall be public information and made a part of the Solicitation Record.

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- (q) **Failure to Negotiate Contract with Proposers Initially Selected as Best Qualified.** Should the Executive Manager be unable to negotiate a Concession Agreement with any of the Proposers initially selected as the best qualified Proposers, proposals may be resolicited or additional Proposers may be selected based on original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with Subsection 3106(o) (Failure to Negotiate Contract with Best Qualified Proposer) of this Section until an agreement is reached and the contract awarded.
- (r) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the Award of the Concession Agreement, the Executive Manager shall prepare a memorandum setting forth the basis of Award including:
- (1) how the evaluation factors stated in the RFP were applied to determine the best qualified Proposers; and
 - (2) the principal elements of the negotiations including the significant considerations relating to Concession Fee and the other terms of the contract.
- The memorandum of evaluation and negotiation shall be included in the Solicitation Record and be available for public inspection.

§ 3107. **Cancellation of Solicitation.**

- (a) **Scope of this Section.** The provisions of this Section shall govern the cancellation of any solicitation and rejection of proposals in whole or in part.
- (b) **Policy.** Solicitations should only be issued when there is a valid need for the Concession unless the Solicitation states that it is for informational purposes only. Preparing and distributing a Solicitation requires the expenditure of GIAA time and resources. Potential Proposers likewise incur expense in examining and responding to Solicitations. Therefore, although issuance of a Solicitation does not compel award of a Concession Agreement, a Solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the Solicitation is in GIAA's best interest.
- (c) **Cancellation of Solicitation - Notice.** Each Solicitation issued by GIAA shall state that the Solicitation may be cancelled as provided in these Policies and Procedures.
- (d) **Cancellation of Solicitation: Rejection of All Proposals.**
- (1) **Prior to Opening.**
 - (i) As used in this Section, *opening* means the deadline for submission of proposals in response to a RFP.
 - (ii) Prior to opening, a Solicitation may be cancelled in whole or in part when the Executive Manager determines in writing that such action is in GIAA's best interest for reasons including but not limited to:
 - (A) GIAA no longer requires the Concession; or

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- (B) proposed amendments to the Solicitation would be of such magnitude that a new Solicitation is desirable.
- (iii) When a Solicitation is cancelled prior to opening, notice of cancellation shall be sent to all Persons that registered with GIAA for the particular Solicitation. The notice of cancellation shall
- (A) identify the Solicitation;
 - (B) briefly explain the reason for cancellation; and
 - (C) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future solicitation of a similar Concession.
- (2) **After Opening.**
- (i) After opening, but prior to award, the Solicitation may be cancelled and all proposals may be rejected in whole or in part when the Executive Manager determines in writing that such action is in GIAA's best interest for reasons including, but not limited to:
 - (A) the Concession solicited is no longer required;
 - (B) ambiguous or otherwise inadequate terms and conditions were part of the Solicitation;
 - (C) the Solicitation did not provide for consideration of all factors or significance to GIAA;
 - (D) all otherwise acceptable proposals received present clearly unreasonable proposed Concession Fee; or
 - (E) there is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.
 - (ii) A notice of cancellation and rejection should be sent to all Persons that submitted proposals, and it shall conform to Subsection 3107(d)(1)(iii).
- (3) **Record.** The reasons for cancellation and/or rejection shall be made part of the Solicitation Record and shall be available for public inspection.
- (e) **Rejection of Individual Proposals.**
- (1) **General.** This Section applies to rejection of individual proposals in whole or in part.
 - (2) **Notice in Solicitation.** Each Solicitation issued by GIAA shall provide that any proposal may be rejected in whole or in part when in the best interest of the GIAA as provided in these Concession Policies.
 - (3) **Reason for Rejection.**

Unless the Solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and GIAA's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

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(A) the Person that submitted the proposal is a not a responsible proposer as determined under § 3108 (Responsibility of Offerors and Proposers) of these Policies and Procedures;

(B) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of GIAA in some material respect; or

(C) the proposed Concession Fee is unreasonable.

(4) **Notice of Rejection.** Upon request, unsuccessful Offerors or Proposers shall be advised of the reasons therefor.

(f) **All or None Proposals.** Only when provided by the Solicitation may a proposal limit acceptance to the entire tender or proposal offering. Otherwise, such proposals shall be deemed to be nonresponsive. If the proposal is properly so limited, GIAA shall not reject part of such proposal and award on the remainder.

(g) **Disposition of Proposals.** When proposals are rejected, or a Solicitation cancelled after tenders or proposals are received, the tenders or proposals which have been opened shall be retained in the Solicitation Record, or if unopened, returned to the Offerors or Proposers upon request, at no cost to GIAA, or otherwise disposed of.

§ 3108. **Responsibility of Proposers.**

(a) **Determination of Nonresponsibility.** A determination of nonresponsibility shall be made in accordance with this Section. The unreasonable failure of a Proposer 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 Proposer.

(b) **Right of Nondisclosure.** Information furnished by a Proposer pursuant to this Section shall not be disclosed outside of GIAA without prior written consent of the Proposer.

(c) **Standards of Responsibility.** Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, whether a prospective Concessionaire has:

(1) 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 at time of award;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with GIAA; and

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

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- (d) **Information Pertaining to Responsibility.** The Proposer shall supply information requested by the Executive Manager concerning the responsibility of such Proposer. If such Proposer fails to supply the requested information, the Executive Manager shall base the determination of responsibility upon any available information or may find the Proposer nonresponsible if such failure is unreasonable.
- (e) **Ability to Meet Standards.** The Proposer may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
- (1) evidence that such Proposer possesses such necessary items;
 - (2) acceptable plans to subcontract for such necessary items; or
 - (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- (f) **Duty Concerning Responsibility.** Before awarding a Concession Agreement, the Executive Manager must be satisfied that the Proposer is responsible.
- (g) **Written Determination of Nonresponsibility Required.** If a Proposer who otherwise would have been awarded a Concession Agreement is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Executive Manager. A copy of the determination shall be sent promptly to the nonresponsible Proposer. The final determination shall be made part of the Solicitation Record.

§ 3109. **Concession Agreement.**

- (a) **Type.** The use of any type of contract specifying the terms and conditions under which a Concessionaire may use, occupy and access certain Airport Property and manage and operate a Concession is permitted. The Concession Agreement must be consistent with GIAA's Concession Objectives set forth in Article 1 of these Concession Policies and Procedures and in the best interests of GIAA.
- (b) **Terms and Conditions.** All Concession Agreements must at a minimum include provisions pertaining to the following matters:
- (1) Term or duration, extensions and holdover.
 - (2) Exclusivity or non-exclusivity.
 - (3) Concession Fees and other fees and costs of the Concessionaire.
 - (4) Concession premises.
 - (5) Permitted uses and use restrictions.
 - (6) Default and remedies.
 - (7) Insurance.
 - (8) Indemnification and Faithful Performance Guaranty.
 - (9) Concession performance and operating standards.

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- (10) Reporting, record-keeping and audit requirements.
- (11) Modification, assignment and subleasing limitations or restrictions.
- (12) Termination.
- (13) Facility improvement and minimum investment requirements.
- (14) Maintenance and repair obligations.
- (15) Development and financing of improvements; and
- (16) Mandatory contract clauses as provided in these Concession Policies and Procedures.

§ 3110. Multiple Awards.

- (a) **General.** A multiple award is an award of a Concession opportunity to more than one Proposer.
- (b) **Limitations on Use.** A multiple award may be made when award to two or more Proposers for a Concession opportunity is necessary for adequate provision of the Concession on Airport Property as determined by the Executive Manager. Multiple awards shall not be made when a single award will meet GIAA's needs without sacrificing availability of the Concession to Airport users.
- (c) **Intent to Use.** If a multiple award is anticipated prior to issuing a solicitation, GIAA shall reserve the right to make such an award and the criteria for award shall be stated in the Solicitation.
- (d) **Determination Required.** The Executive Manager shall make a written determination setting forth the reasons for a multiple award, which shall be made a part of the Solicitation Record.

§ 3111. Audit and Records.

- (a) **Audit.** GIAA may during the term of a Concession Agreement and for a period of four years (4) from the date of expiration or termination of the Concession Agreement, at reasonable times and places, audit the books and records of any Concessionaire to the extent that such books and records relate to the Concession or Concession Agreement. The scope of the audit shall be determined by the Executive Manager.
- (b) **Retention of Books and Records.** All Concessionaires shall maintain all books and records that relate to the Concession or Concession Agreement for four (4) years from the date of expiration or termination of the Concession Agreement, unless a shorter period is otherwise authorized in writing by the Executive Manager.
- (c) **Subcontractors.** GIAA's right to audit the obligation to maintain all books and records shall apply to all Concessionaire's subcontractors.

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- (d) **Conditions for an Audit.** An audit may be warranted when, with respect to a Concessionaire or its subcontractor, there is:
- (1) a question as to the adequacy of accounting policies;
 - (2) a question as to financial condition, integrity, and/or reliability;
 - (3) a substantial change in the methods of levels of operation; or
 - (4) other evidence that an audit is in GIAA's best interests as determined by the Executive Manager.

§ 3112. **Finality of Determinations.** The determinations required by these Concession Policies are final and conclusive unless they are found to be clearly erroneous, arbitrary, capricious, or contrary to law.

§ 3113. **Reporting of Anticompetitive Practices.**

- (a) **Reporting.** When for any reasons collusion or other anticompetitive practices are suspected among Proposers, a notice of the relevant facts shall be transmitted to the Attorney General.
- (b) **Anticompetitive Practices.** For the purposes of this Section, an anticompetitive practice is a practice among Proposers, which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive proposals, or result from illicit business actions which have the effect of restraining trade, such as controlling the proposed Concession Fee or an improper collective refusal to submit proposals. Indications of suspected anticompetitive practices include, but are not limited to, identical proposals, rotated proposed Concession Fees, sharing of the business, and group boycotts.
- (c) **Independent Concession Fee.** Every Solicitation shall provide that by submitting a proposal, the Proposer certifies that the proposed Concession Fee submitted was independently arrived at without collusion.
- (d) **Detection of Anticompetitive Practices.** In order to assist in ascertaining whether or not an anticompetitive practice may have occurred or may be occurring, the Executive Manager should be alerted and sensitive to conditions of the market or industry and evaluate past Solicitations including, as appropriate, the following:
- (1) a study of the proposal submission history of a particular Concession over a period of time sufficient to determine any significant patterns or changes;
 - (2) a review of similar Concession awards over a period of time; or
 - (3) consultation with outside sources of information, such as industry experts or Proposers who have competed for similar Concessions in the past, but who are no longer competing for such business.

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- (e) **Identical Submissions and Concession Fee Fixing.** The term *identical submissions* means the submission by Proposers of the same Concession Fee. The submission of identical Concession Fees may or may not signify the existence of collusion. In seeking to determine whether collusion has taken place, the Executive Manager should view the identical submissions against present and past submissions, the structure and stated of the industry involved including the nature of the Concession involved.
- (f) **Rotated High Concession Fees.** Rotated high proposed Concession Fees result where all Proposers participating in the collusive scheme submit proposals and by agreement alternate submitting the highest Concession Fee. To aid in determining whether rotation may be occurring, the Executive Manager must review past similar Solicitations in which the same Proposers have participated.
- (g) **Sharing of the Business.** Sharing of the business occurs where potential Proposers allocate business among themselves based on the customers or the territory involved. Thus, the Executive Manager might discover that a potential Proposer is not participating in a Solicitation because a particular territory has not been allocated to such Proposer.
- (h) **Group Boycott.** A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a Concession Solicitation until the boycotting competitor's conditions are met by the boycotted competitor or GIAA. The boycott of a competitor by other competitors may have an effect on the market structure or the proposed Concession Fee.

§ 3114. Solicitation Record.

- (a) **Contents.** The Executive Manager shall cause a complete record of each Solicitation to be retained and disposed of in accordance with records retention guidelines and schedules approved by the Attorney General. The record shall include at a minimum the following (“**Solicitation Record**”):
 - (1) **Meeting log.** A log of all meetings related to the Solicitation. The log shall include the date, time, subject matter and names of participants;
 - (2) **Communications log.** A log of all communications between GIAA Employees and any member of the public, which is in any way related to the Solicitation;
 - (3) **Sound recordings.** Sound recordings of (i) all pre-proposal conferences and (iii) discussions and negotiations arising from a RFP;
 - (4) **Written determinations.** All written determinations required by these Concession Policies and Procedures.
- (b) **Retention.** The Solicitation Record for each Concession shall be retained and disposed of in accordance with GIAA's record retention policy as approved by the Attorney General.

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- (c) **Certification.** No Concession Agreement shall be awarded unless the Executive Manager certifies in writing under penalty of perjury that the Solicitation Record has been maintained and that it is complete and available for public inspection. The certificate is itself a part of the Solicitation Record.
- (d) **Public Record.** The Solicitation Record is a public record and, subject existing laws and regulations regarding confidentiality and these Policies and Procedures, any Person may inspect and copy any portion of a Solicitation Record after an award is made.
- (e) **Policy.** It is the policy of GIAA to maintain a complete Solicitation Record for each Concession to:
 - (1) protect the integrity of the Solicitation process;
 - (2) protect the confidentiality of trade secrets;
 - (3) allow public access to the Solicitation Record at the earliest possible time.

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- § 4107. Interest.
- § 4108. Waiver of Sovereign Immunity.
- § 4109. Limitations on Actions.

§ 4101. Protests of a Solicitation or Award.

- (a) **Complaint to Executive Manager.** Complainants should seek resolution of their complaints initially with the Executive Manager. Such complaints may be made verbally or in writing.
- (b) **Protest.** A Proposer or Prospective proposer may protest a Solicitation or award to the Executive Manager.
- (c) **When Filed.** Protests shall be filed fourteen (14) calendar days after the protestor knows or should have known of the facts giving rise to the protest. A protest is considered filed when received by the Executive Manager. Protests filed after the 14-day period shall not be considered.
- (d) **Subject of Protest.** Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, solicitation, award, or disclosure of information marked confidential in the bid or offer.
- (e) **Form.** All protests shall be in writing, shall be submitted to the attention of the Executive Manager and shall be submitted in a sealed envelope clearly labeled “Protest – [Solicitation No.- Solicitation Name].” All protests shall:
 - (1) include the name, phone number, mailing address and email address of the protestor;
 - (2) include a statement of reasons for the protest and state with particularity the facts giving rise to the protest; and
 - (3) include supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.
- (f) **Additional Information.** Any additional information requested by GIAA should be submitted within the time periods established by GIAA in order to expedite consideration of the protest. Failure of the protestor to comply expeditiously with a request for

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information by GIAA may result in resolution of the protest without consideration of any information that is untimely filed pursuant to such request.

- (g) **Stay.** When a protest has been timely filed and before an award has been made, the Executive Manager shall not proceed further with the Solicitation or with the award of the Concession Agreement prior to final resolution of such protest, and any such further action is void, unless: (1) The Executive Manager, with the written concurrence of the Board, makes a written determination that the award of the Concession Agreement without delay is necessary to protect the substantial interests of GIAA (“§ 4101(g) Determination”); and (2) Absent a declaration of emergency by the Governor, the Protestor has been given at least two (2) days’ written notice (exclusive of weekends and government of Guam holidays) of the § 4101(g) Determination.
- (1) Final resolution of protest as used in Subsection (e) shall mean a final written decision on the Protestor’s appeal issued by the Appeal Panel in accordance with Subsection (j).
- (2) If an appeal of the protest is pending before the Appeal Panel, and the Board has confirmed such determination, or if no such appeal is pending, the Protestor has not filed a request with the Appeal Panel to review the § 4101(g) Determination prior to the expiration of the two-day period specified in this subsection.
- (h) **GIAA Decision.** The Executive Manager shall respond in writing to the protest within thirty (30) days of GIAA’s receipt of the protest. A copy of the decision shall be made or otherwise furnished immediately to the Protestor.
- (1) **Preparation Costs.** In addition to any other relief, the Executive Manager shall award the Protestor its reasonable proposal preparation costs, excluding attorneys’ fees, when a protest is sustained and the Protestor should have been, but was not awarded the Concession Agreement under the Solicitation.
- (2) **GIAA costs.** A Protestor shall be liable for GIAA’s reasonable costs associated with responding to the protest, excluding attorneys’ fees, upon a finding by the Executive Manager that the protest was made fraudulently, frivolously or solely to disrupt the Solicitation process.
- (i) **Request for Reconsideration.** Reconsideration of a decision of the Executive Manager may be requested by the Protestor, within fifteen (15) days after receipt by the Protestor of the notice of decision. Reconsideration can also be requested by an appellant or any Interested Party who submitted comments during consideration of the protest. The same time frame applies herein. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. A request for reconsideration does not extend the time to appeal the decision of the Executive Manager to the Appeal Panel.
- (j) **Appeal to the Appeal Panel.**

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- (1) Denial of Protest. If the protest is denied by the Executive Manager, the Protestor may appeal the denial by filing a Notice of Appeal with the Executive Manager. The protestor shall file its appeal and with the Executive Manager within fifteen (15) calendar days of the Protestor's receipt of Executive Manager's decision to deny the protest. The Appeal Panel shall determine whether a decision on the protest is in accordance with the statutes, regulations, and the terms and conditions of the Solicitation. The Appeal Panel shall have no jurisdiction to consider an appeal that is not filed within the time required by this Section.
- (2) Appeal Procedures. For all appeals to the Appeal Panel pursuant to this Section, the Appeal Panel shall conduct a review of the Executive Manager's denial of the protest pursuant to Article 5 of these Policies and Procedures. The Appeal Panel shall issue a written decision on the appeal within ninety (90) calendar days of the Executive Manager's receipt of the appeal.

(k) Reserved.

(l) Reserved.

(m) Finality. The decision of the Executive Manager is final unless a Person adversely affected by the decision timely appeals the decision to the Appeal Panel in accordance with these Concession Policies and Procedures.

(n) Making Information on Protests Available. The Executive Manager shall upon written request make available to any Person information submitted that bears on the substance of the protest except where the information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted and the legal basis to keep such information confidential, and indicating on the front page of each document that it contains such information.

§ 4102. Debarment or Suspension.

(a) Application. This Section applies to all debarment or suspensions of Persons from consideration for award of Concession Agreements by the Executive Manager.

(b) Authority. The Executive Manager after consultation with GIAA's counsel, and in accordance with this Section, shall have authority to debar a Person for cause from consideration for award of Concession Agreements. The debarment shall not be for a period of more than two (2) years. The Executive Manager, after consultation with GIAA's counsel, shall have authority to suspend such Person from consideration for award of Concession Agreements if there is probable cause for debarment.

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(c) Suspension.

- (1) Initiation. After consultation with the Concessionaire or prospective Concessionaire who is to be suspended, where practicable, upon written determination by the Executive Manager that probable cause exists for debarment, a Concessionaire or prospective Concessionaire may be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended Concessionaire or prospective Concessionaire.
- (2) Notice of Suspension. The notice of suspension shall state that:
 - (i) the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of the debarment decision, but not for a period in excess of three (3) months; and
 - (ii) proposals will not be solicited from the suspended Person, and, if they are received, they will not be considered during the period of suspension.
- (3) Effect of Notice of Suspension. A suspension is effective upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be terminated by the Executive Manager or by a court, but otherwise shall only terminate when the suspension has been in effect for three (3) months.

- (d) Debarment.** Proceedings for the possible debarment of a Concessionaire or prospective Concessionaire shall be initiated by the service of an accusation and statement of issues on such Person in accordance with Article 2 of the Administrative Adjudication Law (5 GCA Chapter 9, Articles 1 and 2), as such law may be amended from time to time (the "AAL"). In addition to the requirements under the AAL, the accusation shall: (1) state that debarment is being considered; (2) set forth the reasons for the action; and (3) state that the debarment proceedings are being conducted pursuant to Article 2 of the AAL.

- (e) Maintenance of List of Debarred and Suspended Persons.** The Executive Manager shall maintain and update a list of Persons debarred or suspended from participation in a Concession Solicitation. Such list shall include the date of expiration of the suspension or debarment. Such list shall be available to the public upon request.

§ 4103. Contract and Breach of Contract Controversies.

(a) Authority to Resolve Contract and Breach of Contract Controversies.

- (1) General. It is GIAA's policy to try to resolve all controversies with Concessionaires by mutual agreement without litigation. Resolution may be by informal discussions, mediation or other dispute resolution processes agreed to by the parties.
- (2) Scope. This Section is applicable to controversies between GIAA and a Concessionaire that arise under, or by virtue of, a Concession Agreement between them. The word *controversy* is meant to be broad and all-encompassing and includes without limitation controversies based upon breach of contract, mistake, misrepresentation, modification, reformation, or rescission.

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(b) Failure to Resolve.

(1) **Final Decision.** When a controversy cannot be resolved by mutual agreement, the Executive Manager shall, after written request by the Concessionaire for a final decision, promptly issue a written decision. Such decision must state that it is the “Final Decision” of GIAA on the controversy.

(2) **Contents of Final Decision.** The Executive Manager shall immediately furnish a copy of the decision to the Concessionaire, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:

(i) a description of the controversy;

(ii) references to pertinent contract provisions;

(iii) a statement of the factual areas of agreement or disagreement;

(iv) the basis for the decision;

(v) the following statement: “This is the final decision of the Executive Manager regarding this matter.

(3) **Failure to Timely Issue a Final Decision.** If the Executive Manager does not issue a written decision within sixty (60) days after the Executive Manager’s receipt of written request from the Concessionaire for a final decision, or within such longer period as may be agreed upon by the parties, then the Concessionaire may proceed as if an adverse final decision had been received.

(4) **Appeal of Final Decision.** For claims involving money damages, the Concessionaire must file a claim with GIAA in accordance with the Government Claims Act.

(c) **Controversies Involving GIAA Claims Against the Concessionaire.** All controversies involving claims asserted by GIAA against a Concessionaire that cannot be resolved by mutual agreement shall be the subject of a final decision by the Executive Manager.

(d) **Disputes Clause.** Language substantially similar to the following clause shall be inserted in all Concession Agreements:

DISPUTES

(1) The Authority and Concessionaire agree to attempt resolution of all controversies that arise under, or by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by the Authority in writing within sixty (60) days after Concessionaire’s written request that the Authority issue a final decision concerning the controversy. If the Authority does not issue a written decision, within sixty (60) days after Concessionaire’s written request for a final decision, or within such longer period as may be agreed upon by the parties, then Concessionaire may proceed as if an adverse decision had been received.

(2) The Authority shall immediately furnish a copy of the decision to Concessionaire, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(3) The Authority’s decision shall be final and conclusive, unless fraudulent, or unless for disputes involving money owed by or to Concessionaire under this

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Agreement, Concessionaire files appeal an of the decision in accordance with the Government Claims Act by filing a government claim with the Authority no later than eighteen months after the decision is rendered by the Authority or from the date when a decision should have been rendered.

(4) Concessionaire shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

(5) Concessionaire shall comply with the Authority's decision and proceed diligently with performance of this Agreement pending final resolution of any controversy arising under, or by virtue of, this Agreement, except where Concessionaire claims there has been a material breach of the Agreement by the Authority. However, if the Authority determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then Concessionaire shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Authority.

§ 4104. Determination that a Solicitation or an Award Violates Law.

(a) **Applicability.** This Section applies where it is determined administratively that a Solicitation or award of a Concession Agreement is in violation of law.

(b) Determination that a Solicitation or an Award Violates Law.

(1) **Determination.** A Solicitation or award may be in violation of the law or these Policies and Procedures due to actions of GIAA employees, proposers, Concessionaires, or other Persons. After consultation with GIAA counsel, the Executive Manager, or in an appeal over which it has jurisdiction, the Appeal Panel may determine that a Solicitation or award is in violation of the provisions of law or these Policies and Procedures. Any such determination shall be made in writing after an opportunity to be heard is given, and such determination by the Executive Manager is subject to appeal to the Appeal Panel.

(2) **Finding of Bad Faith or Fraud.** Bad faith or fraud shall not be assumed. Specific findings showing reckless disregard of clearly applicable laws or regulations must support a finding of bad faith. A finding of fraud must be supported by specific findings showing knowing, willful acts in disregard of such laws or regulations.

§ 4105. Violations of Law Found Prior to Award.

(a) **Remedies Prior to an Award.** If prior to award it is determined that a Solicitation or proposed award of a Concession Agreement is in violation of the law, then the Solicitation or proposed award shall be:

- (1) cancelled; or
- (2) revised to comply with the law.

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- (b) **Cancelling or Revising Solicitation or Proposed Award to Comply with the Law.** A finding by the Executive Manager, after consultation with GIAA counsel, that the Solicitation or proposed award is in violation of law will constitute a cogent and compelling reason to cancel or revise a solicitation or proposed award. Such cancellation shall be made in accordance with Section 3107 (Cancellation of Solicitations) of these Policies and Procedures.

§ 4106. Ratification, Termination, or Cancellation of Concession Agreement to Comply with the Law.

- (a) **Remedies After an Award.** If after an award it is determined that a Solicitation or award of a Concession Agreement is in violation of law, then:
- (1) if the Person awarded the Concession Agreement has not acted fraudulently or in bad faith:
 - (i) the Concession Agreement may be ratified and affirmed, provided it is determined that doing so is in the best interests of GIAA; or
 - (ii) the Concession Agreement may be terminated and the Person awarded the Concession Agreement shall be compensated for the actual expenses reasonably incurred under the Concession Agreement prior to the termination;
 - (2) if the Person awarded the Concession Agreement has acted fraudulently or in bad faith:
 - (i) the Concession Agreement may be declared null and void; or
 - (ii) the Concession Agreement may be ratified and affirmed if such action is in the best interests of GIAA, without prejudice to GIAA's rights to such damages as may be appropriate.

(b) No Fraud or Bad Faith by Concessionaire.

- (1) **General.** Upon finding after award that GIAA has made an unauthorized award of a Concession Agreement or that a Solicitation or award is otherwise in violation of law where there is no finding of fraud or bad faith, the Executive Manager may ratify or affirm the Concession Agreement or terminate it in accordance with this Section after consultation with GIAA counsel.
- (2) **Ratification and Affirmation.**
 - (i) **Waiver of violation.** If the violation can be waived without prejudice to GIAA or other Proposers, the preferred action is to ratify and affirm the Concession Agreement if such action is in the best interests of GIAA.
 - (ii) **No waiver of violation.** If the violation cannot be waived without prejudice to GIAA or other Offerors or Proposers and:
 - (A) if performance has not begun, and if there is time for resoliciting, the Concession Agreement shall be terminated. If there is no time for resoliciting, the Concession Agreement may be amended appropriately, ratified, and affirmed if such action is in the best interests of GIAA.
 - (B) if performance has begun, the Executive Manager shall determine in writing whether it is in the best interest of GIAA to terminate or to amend,

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ratify, and affirm the Concession Agreement. Termination is the preferred remedy.

- (iii) Best interests of GIAA. The following factors are among those pertinent in determining GIAA's best interest:
 - (A) the costs to GIAA's best interest;
 - (B) the progress made toward performing the whole contract; and
 - (C) the possibility of obtaining a more advantageous contract by resoliciting.
- (iv) **Termination.** Concession Agreements based on awards or Solicitations that were in violation of law shall be terminated at no cost to GIAA, if possible. If a termination claim is made by the Concessionaire, settlement shall be made in accordance with the Concession Agreement. If there are no applicable termination provisions in the Concession Agreement, settlement shall be made on the basis of actual costs reasonably incurred by the Concessionaire through the time of termination. Such costs shall be established in accordance with generally accepted accounting principles. Anticipated profits are not allowed.

(c) Fraud or Bad Faith by the Concessionaire.

- (1) **General.** Upon finding after award that a Solicitation or award is in violation of law and that the recipient of the Concession Agreement acted fraudulently or in bad faith, the Executive Manager may, after consulting with GIAA's counsel, declare the contract null and void or ratify and affirm it in accordance with this Section.
- (2) **Declaration of Concession Agreement Null and Void.** The Concession Agreement shall be declared null and void unless ratification and affirmation is found to be in GIAA's best interest under Subsection 4106(b)(2)(iii) of this Section.
- (3) **Ratification and Affirmation.** The Concession Agreement shall not be modified, ratified, and affirmed unless it is determined in writing that there is a continuing need for the Concession under the Concession Agreement and:
 - (i) there is no time to resolicit and award the Concession Agreement; or
 - (ii) the Concession Fee is higher than it could be otherwise.
- (4) **Effect of Declaring a Concession Agreement Null and Void.** In all cases where a contract is voided, GIAA is entitled to recover damages under any applicable legal theory from the faithful performance guaranty
- (5) **Effect of Ratification.** GIAA shall be entitled to any damages it can prove under any theory including, but not limited to, contract and tort regardless of its ratification and affirmation of the Concession Agreement.

§ 4107. Interest. Interest on amounts ultimately determined to be due to a Concessionaire shall be payable at the statutory rate from the date the claim arose through the date of decision or judgment, whichever is later. Interest on amounts ultimately determined to be due to GIAA shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

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§ 4108. Reserved.

§ 4109. Reserved.

Appendix A: Notice of Appeal Form

**APPEAL
GIAA CONCESSION RULES AND REGULATIONS**

**PART I- To be completed by APPEAL PANEL /
DESIGNATED GIAA ADMINISTRATIVE STAFF**

In the Appeal of _____)
_____) **NOTICE OF APPEAL**
_____)

(Name of Company), APPELLANT)
_____)
_____)

PART II- Appellant Information

Name: _____
Mailing Address: _____
Business Address: _____
Daytime Contact No: _____

I. PART III- Appeal Information

- A) Agency: Antonio B. Won Pat International Airport Authority, Guam (GIAA)
- B) Identification/Number of Solicitation or Concession Agreement: _____
- C) Decision being appealed was made on _____ (date) by GIAA Executive Manager.
Note: You must serve GIAA with a copy of this Appeal within 24 hours of filing.
- D) Appeal is made from:
(Please select one and attach a copy of the Decision to this form)
____ Decision on Protest of Method, Solicitation or Award
____ Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the
substantial interests of GIAA)

1
2 E) Names of Competing Proposers or Concessionaires known to Appellant:

3 _____
4 _____
5 _____
6 _____

7
8 **PART IV- Form and Filing**

9 In addition to this form, the Rules of Procedure for Appeals (Art. 5 of GIAA Concession
10 Policies and Procedures) require the submission together with this form of additional
11 information, including BUT NOT LIMITED

12 TO:

- 13 1. A concise, logically arranged, and direct statement of the grounds for appeal;
14 2. A statement specifying the ruling requested;
15 3. Supporting exhibits, evidence, or documents to substantiate any claims and the
16 grounds for appeal unless not available within the filing time in which case the
17 expected availability date shall be indicated.

18 Submitted this__ day of_____, 20__.

19 By: _____
20 APPELLANT

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APPEALS TO THE APPEAL PANEL

- § 5101 Appeal Panel
 - § 5101.1 Appointment and Authority of Hearing Officer
 - § 5102. Jurisdiction; Exhaustion of Remedies.
 - § 5104. Form and Filing of Appeal.
 - § 5105. Agency Report.
 - § 5106. Making Information on Appeals Available.
 - § 5107. *Ex Parte* Communications with Hearing Officer.
 - § 5108. Hearing Procedures.
 - § 5109. Reserved.
 - § 5110. Decisions of the Hearing Officer.
 - § 5111. Finality of Decisions.
 - § 5112. Appeal to Appeal Panel relative to Method, Solicitation, or Award.
 - § 5113. Reserved.
 - § 5114. Appeal to Appeal Panel of Debarment or Suspension.
 - § 5115. Review of Award Pending Protest or Appeal.
 - § 5116. Reserved.
- Appendices A-D.

§ 5101. Appeal Panel. (a) A three-person Appeal Panel, designated by I Maga Hagan Guahan shall be constituted to administratively consider appeals from decisions of the Executive Manager, as allowed by these Concession Policies and Procedures Upon adoption of these Policies and Procedures, GIAA shall request that I Maga Hagan Guahan constitute such panel, which shall include the Director of the Department of Administration, the Chief Procurement Officer of the General Services Agency and the General Services Agency Procurement Counsel. If one or more of these positions are vacant or unavailable, then I Maga Hagan Guahan may appoint any other appropriate individual employed within the Executive Branch of the Government of Guam, provided at least one individual is an attorney employed by Government of Guam Executive Branch.

(b) GIAA shall designate administrative staff responsible for handling any Appeal, and for supporting the needs of the Appeal Panel. These staff members shall be called the “Designated GIAA Staff.”

(c) GIAA shall provide the necessary facilities for all proceedings required in an appeal.

(d) GIAA shall maintain records of every Appeal, including a complete docket of all documents filed concerning an Appeal, which shall be publicly posted on GIAA’s website while an Appeal is ongoing and for a least 6 months following the final decision related to any Appeal.

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(e) GIAA shall bear all administrative costs concerning Appeals under this section, including for providing necessary facilities, maintaining an electronic and physical docket with all documents filed concerning an Appeal, and for any audio or other recordings for any hearings.

(f) The Appeal Panel shall be an ad hoc committee, and is not intended to be a Public Agency within the meaning of the Guam Open Government Law.

§ 5101.1 Appointment and Authority of the Hearing Officer. For any hearing required under this Article, the Appeal Panel shall appoint its attorney member as the Hearing Officer related to the Appeal. The Hearing Officer shall receive written, oral, or otherwise presented testimony, evaluate such testimony and make recommendations to the Appeal Panel. No prior determination shall be final or conclusive. The Hearing Officer has the power, among others, to:

- (a) Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or *sua sponte*;
- (b) Require parties to state their positions with respect to the various issues in the proceeding;
- (c) Require parties to produce for examination those relevant witnesses and documents under their control;
- (d) Rule on motions, and other procedural items on matters pending before such officer;
- (e) Regulate the course of the hearing and conduct of participants therein;
- (f) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (g) Fix time limits for submission of written documents in matters before such officer;
- (h) Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
 - (1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (2) Excluding all testimony of an unresponsive or evasive witness;
 - (3) Expelling any party or person from further participation in the hearing; and
 - (4) Taking official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.
- (i) Compel attendance and testimony of and production of documents by any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission;
- (j) Consider testimony and evidence submitted by any competing proposer or Concessionaire of the protestant or appellant; and
- (k) Make written recommendations concerning any findings of fact or conclusions of law necessary for a final decision by the Appeal Panel.

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§ 5102. Definitions. As used in this Article, unless the context in which they are used requires a different meaning, the following definitions shall apply.

- (a) *Appeal* means an appeal of a decision of the Executive Manager to the Appeal Panel in accordance with these Concession Policies and Procedures.
- (b) *Appellant* means an aggrieved person who appeals a decision of the Executive Manager to the Appeal Panel.
- (c) *Designated GIAA Staff* mean those GIAA employees designated by GIAA to administratively support the Appeal Panel, who shall have no involvement, directly or indirectly, with GIAA's defense, response, or other litigation-related-action concerning an Appeal pending before the Appeal Panel.
- (d) *GIAA Administrative Offices* means the Executive Offices of the A.B. Won Pat International Airport Authority, Guam located at 355 Chalan Pasaheru, Tamuning, Guam 96913 on the 3rd floor.
- (e) *Hearing Officer* means the attorney member of the Appeal Panel designated pursuant to Section 5101.1 to *inter alia* preside over a hearing on an Appeal.
- (f) *Interested Party* means a Concessionaire or an actual or prospective Proposer who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied.
- (g) *Protestor* means any actual or prospective Proposer or Concessionaire who is aggrieved in connection with the Solicitation or Award of a Concession Agreement and who filed a protest, or who has received a notice of suspension or debarment. Such a Protestor is sometimes referred to herein as an "aggrieved person."
- (h) *Prospective proposer* means a Person who will actually submit a proposal in response to a RFP, and would provide a Concession if such Person would prevail in the Appeal.
- (i) *File and submit* mean receipt by the Administration Offices of GIAA, as the case may be.
- (j) In computing any period of time prescribed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, a Sunday, a Government of Guam holiday, in which event a period extends until the end of the next day which is not a Saturday, a Sunday, a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays shall be excluded in the computation.

§ 5103. Jurisdiction of the Appeal Panel; Exhaustion of Remedies.

- (a) **Jurisdiction.** The Appeal Panel shall have the power to review and determine *de novo* any matter properly submitted to it. The Appeal Panel or the Hearing Officer shall have the power to compel attendance and testimony of, and production of documents by, any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission. The Appeal Panel may consider testimony and evidence submitted by any party to the Appeal.

§ 5104. Form and Filing of Appeal.

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- (a) **When Filed.** Appeals shall be made in writing to the Executive Manager and shall be filed in triplicate. An Appeal is considered filed when received by the GIAA Administrative Offices, which shall cause evidence of the date of filing to be stamped upon each Appeal and triplicate. Appeals filed after the allowable filing period set forth in statute or these rules shall not be considered.
- (b) **Form.** To expedite handling of Appeals, the envelope, transmittal letter, and the actual Appeal shall be labeled “Antonio B. Won Pat International Airport Authority Guam Concession Solicitation Appeal”. The written Appeal shall be in substantially the same format as **Appendix A** to this Article, and include at a minimum the following:
- (1) The name, mailing and business address of the Appellant;
 - (2) Appropriate identification of the Solicitation, and, if a contract has been awarded, its number; a concise, logically arranged, and direct statement of the grounds for Appeal;
 - (3) A statement specifying the ruling requested;
 - (4) Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for Appeal unless not available within the filing time in which case the expected availability date shall be indicated;
 - (5) A copy of the final decision on the protests or contract disputes or debarment action that are being Appealed; or copy of the request for final decision and any agreement to extend the decision deadline;
 - (6) An Appeal shall be signed by an Appellant, by an officer of the Appellant, or by the Appellant’s duly authorized representative or attorney, and the facts therein verified.
 - (7) A protest may be dismissed for failure to comply with any of the requirements of this section.
- (c) **Notice of Appeal, Submission of Report and Time for Filing of Comments on Report.**
- (1) The Appellant shall file a copy of the Appeal, and all supporting documents with the GIAA Administrative Offices. It shall be the duty of the Executive Manager to give notice of the Appeal to counsel for the Authority.
 - (2) The Executive Manager shall give notice of the Appeal to the Concessionaire if award has been made or, if no award has been made, to all Interested Parties; shall instruct said parties to communicate directly with the GIAA Administrative Offices regarding the status of the Appeal, and directly with the Executive Manager as allowed by law regarding the protested Solicitation.
 - (3) The Executive Manager shall submit to the Appeal Panel a complete copy of the Solicitation Record relevant to the Appeal within five (5) working days of receiving notice of an Appeal, in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents. It shall additionally submit an answer to the Appeal in the form of a detailed Agency Report, and shall furnish a copy of the report to the Appellant. This Agency Report shall comply to the requirements of § 5105 of this Article. The Agency Report shall be submitted within ten (10) working

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days of receipt of by the Executive Manager of the notice of Appeal. The Agency Report shall be submitted within twenty (20) days of receiving the notice of Appeal or notice of Appeal of a Debarment.

- (4) Comments on the Agency Report by an Appellant or an Interested Party, including testimony and evidence by any competing proposer or Concessionaire of the Appellant, shall be filed with the GIAA Administrative Offices within ten (10) days after receipt of the report. Any rebuttal by GIAA Management shall be filed with the GIAA Administrative Offices within five (5) working days after receipt by the Appeal Panel of the comments to which rebuttal is directed, with a copy to the Appellant. Unsolicited rebuttals by GIAA shall be considered if filed within five (5) working days after receipt by the GIAA Administrative Offices of the comments to which rebuttal is directed.
- (5) The failure of an Appellant or any Interested Party to comply with the time limits stated in this section may result in resolution of the Appeal without consideration of the comments untimely filed.
- (6) If the Appellant or GIAA considers that the Appeal, the Solicitation Record, the Agency Report, or any other report or material submitted contains material which shall be withheld pursuant to law or regulation, a statement advising of this fact must be affixed to the front page of the document and the allegedly exempted information must be so identified wherever it appears.
- (7) Requested Information Time for Filing. In order to expedite consideration of the Appeal, any additional information requested by the Hearing Officer shall be submitted within five working (5) days of receipt of such request unless another time is established in the request. Failure of any party to comply expeditiously with a request for information by the Hearing Officer may result in resolution of the Appeal without consideration of any information, which is untimely filed pursuant to such request.
- (8) After notice of an Appeal to the Appeal Panel has been filed a party may not discontinue such Appeal without prejudice, except as authorized by the Appeal Panel.

§ 5105. Agency Report. The Agency Report shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file and shall include the following, if not already submitted to the GIAA Administrative Offices as part of the Solicitation Record required by § 3114 of these Policies and Procedures:

- (a) A copy of the protest;
- (b) A copy of the proposal submitted by the Appellant and a copy of the proposal that is being considered for award or the proposal being protested, if any had been submitted prior to the protest;
- (c) A copy of the Solicitation;
- (d) A copy of the abstract of proposals or relevant or portions thereof relevant to the protest;
- (e) Any other documents which are relevant to the protest; including the Concession Agreement, if one has been awarded, and all amendments;

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(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant;

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal;

(h) If the award was made after receipt of the protest, the report will include the determination required under § 4101(g) of these Policies and Procedures; and

(i) A statement in substantially the same format as **Appendix B** to this Article, indicating whether the matter is the subject of a court proceeding.

§ 5106. Making Information on Appeals Available. GIAA shall, upon written request, make available to any Person information submitted that bears on the substance of the Appeal except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation or these Policies and Procedures. Persons who wish to keep such information submitted by them confidential shall so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information.

§ 5107. Ex Parte Communications with Hearing Officer.

(a) **No Ex Parte Communications.** No Person directly or indirectly involved in an Appeal shall communicate with the Appeal Panel or the Hearing Officer regarding any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an Appeal except:

(1) At a hearing; or

(2) With the written consent of all other parties or their counsel in such matters; or

(3) In the presence of all other parties or their counsel in such matters;

(4) By means of papers provided for or allowed by these rules or by law; Or

(5) Designated GIAA Administrative Staff shall maintain a record for every appeal, and may communicate with the Appeal Panel concerning the records maintained for the appeal.

(b) **Unrelated Matters.** Nothing in this rule shall prevent the Appeal Panel and GIAA staff from entertaining questions or complaints that are not related to the substance of a pending Appeal. Appeal Panel members and Hearing Offices shall report communications regarding a pending Appeal to all the parties in the pending Appeal.

§ 5108. Hearings Procedures.

(a) **Request for Hearing.** In all Appeals to the Appeal Panel of suspension or debarment, a hearing shall be conducted. In all other Appeals, the parties shall either request a hearing in writing or waive their right to a hearing and submit the case on the record without a

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hearing. Request for a hearing shall be made prior to the expiration of the time period allowed for filing comments on the Agency Report and shall be in a form substantially similar to **Appendix D** to this Article. Except in unusual circumstances found by the Appeal Panel, requests for a hearing received after such time will not be honored.

- (b) **Time and Place for Hearings.** Hearings shall be held at the place set by the Hearing Officer. The time for hearings shall be set by the Hearing Officer. Ordinarily, only one hearing will be held on an Appeal. Such hearing may be held by telephone conference call or other means at the discretion of the Hearing Officer.
- (c) **Notice of Hearing.** The Hearing Officer shall send a written notice of the time and place of the hearing to the Appellant and to the Executive Manager at least ten (10) days prior to the hearing unless the parties agree on a shorter period. It shall be the duty of each of these entities to notify its own counsel. Notice shall be sent by the Hearing Officer by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and shall state the nature and purpose of the proceedings, and shall substantially follow the format of **Appendix C** of this Article. The notice shall also state that the Appellant may be represented by counsel. Notices of hearings shall be promptly acknowledged by the parties. The Hearing Officer can require attendance of parties he or she deems appropriate.
- (d) **Hearing Proceedings.** Hearings shall be as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure except as provided by Guam law and the Concession Policies and Procedures. The testimony presented shall be written, oral or otherwise. The weight to be attached to evidence presented in any particular form will be within the discretion of the Hearing Officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate to the testimony that would be given by a witness if the witness were present. The Hearing Officer may require evidence in addition to that offered by the parties. Where not otherwise provided for by these Concession Policies and Procedures or statute, and where not inconsistent herewith, hearings shall be conducted in accordance with the Administrative Adjudication Law in Chapter 9 of Title 5, Guam Code Annotated, including those provisions on subpoenas and contempt.
- (e) **Record of Hearings.** A hearing shall be recorded by GIAA, at GIAA's cost, but need not be transcribed, except at the request and expense of the person making the request. The audio recording, together with the written record of the time, place, and persons present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record. An audio copy of the recorded hearing shall be made available to the parties in electronic or digital format.

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- (f) **Opening Statements.** Opening statements may be made unless a party waives this right, subject to time limits that may be set by the Hearing Officer.
- (g) **Public Hearings.** Hearings shall be open and accessible to the public.
- (h) **Judicial Notice.** In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of Guam. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, subject to time constraints imposed by the Hearing Officer.

§ 5109. Reserved.

§ 5110. Recommendation of the Hearing Officer.

- (a) **Time.** Within thirty (30) days of a hearing on an Appeal or after the parties have formally waived a hearing in accordance with § 5108(a) of these Policies and Procedures, the Hearing Officer shall issue a final written recommendation to the Appeal Panel, who shall within fourteen (14) days of receipt of such recommendation act by majority to either affirm or reverse, in whole or in part, the decision of the Executive Manager on Appeal.
- (b) **Distribution.** A copy of any final decision on an Appeal shall be immediately mailed via certified mail, return receipt requested, or furnished by any other method that provides evidence of receipt, to the Appellant, to any other participating party and to the Executive Manager. All decisions shall be posted on the GIAA website within ten (10) days of issuance.

§ 5111. Finality of Decision.

- (a) **Board Action.** Within 14 days of a Hearing Officer's Recommendation concerning an appeal under this Article, the Appeal Panel shall meet on the record of any Appeal and either confirm, deny or modify the recommendation of the Hearing Officer. The Appeal Panel's final decision, which shall be made part of the record, shall be in writing and shall recite the evidence relied upon which the decision is based.
- (b) **Appeal.** Any Person receiving an adverse recommendation, including GIAA, by the Hearing Officer may seek reconsideration, in writing, before the Appeal Panel prior to their action to confirm, deny or modify the recommendation. Such request for reconsideration shall be filed at the GIAA Administrative Offices within 7 calendar days of the Hearing Officer's recommendation. Any interested party may respond to such request for reconsideration by the Appeal Panel in writing within 4 calendar days of receipt.

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- (c) **Standard of Review.** Any determination of an issue or a finding of fact by the Hearing Officer shall be final and conclusive unless found to be arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law. Any decision of the Hearing Officer, including any determination regarding the application or interpretation of Guam law and the Concession Policies and Procedures, shall be entitled to great weight and the benefit of reasonable doubt, although it shall not be conclusive on the Appeal Panel.

§ 5112. Appeal Relative to Method, Solicitation, or Award. A Protestor may Appeal a decision under § 4101(h) relative to the protest of a method of selection, a Solicitation, an award of a Concession Agreement or regarding entitlement to costs, within fifteen (15) days of receipt by the Protestor of the decision. The Hearing Officer shall determine whether a decision on the protest of method of selection, Solicitation or award of a Concession, or entitlement to costs is in accordance with applicable statutes, regulations, these Policies and Procedures, and the terms and conditions of the solicitation.

§ 5113. Reserved.

§ 5114. Appeal of Debarment or Suspension.

This section applies to Appeals of debarment or suspensions of persons from consideration for award of Concession Agreements imposed by the Executive Manager. An aggrieved person may Appeal a suspension or debarment action within sixty (60) days of receipt of a decision under subsection § 4102 of these Policies and Procedures. The Appeal Panel shall review actions between GIAA and a person who is subject to a suspension or debarment proceeding, to determine whether, or the extent to which the debarment or suspension was imposed on a contractor in accordance with applicable statutes, regulations, these Policies and Procedures, and the best interest of GIAA, and was fair. A decision on Appeal of a suspension or debarment shall set for the reasons for such action and shall inform the debarred or suspended person involved of his right to judicial review as provided in these Policies and Procedures and Article 4 (Legal and Contractual Remedies) of these Policies and Procedures.

§ 5115. Review of Award Pending Protest or Appeal.

- (a) Any Protestor may protest a determination by the Executive pursuant to § 4101(g) of these Policies and Procedures that award of a Concession Agreement without delay pending Appeal is necessary to protect the substantial interests of GIAA. Said protest must be filed in writing at the Appeal Panel within two (2) days of receipt by Protestor of the notice of determination. The Appeal Panel shall either confirm or reject the determination during a duly noticed meeting of the Appeal Panel.
- (b) After an Appeal is filed with the Appeal Panel relative to method of selection, solicitation, or award pursuant to § 4101(h) of these Policies and Procedures, the hearing officer shall make a recommendation to confirm or reject any determination by the Executive Manager

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pursuant to § 4101(g) that award of a Concession Agreement without delay pending Appeal is necessary to protect the interests of GIAA.

(c) Reserved.

(d) Any additional information requested by the Hearings Officer shall be submitted within the time periods established by the requesting source in order to expedite review. Failure of any party to comply expeditiously with a request for information by the Hearings Officer may result in a recommendation by the Hearing Officer without consideration of any information that is untimely filed pursuant to such request.

§ 5116. Reserved.

Appendix C: Notice of Hearing Form

APPEAL

GIAA CONCESSION POLICIES AND PROCEDURES

In the Appeal of

(Name of Company), APPELLANT

NOTICE OF HEARING

You are hereby notified that a hearing will be held before the Hearing Officer for Appeals at the _____ on the _____ day of _____, 20__ , at the hour of _____, relative to the above referenced Appeal. You may be present at the hearing; may, but need not be, represented by counsel; may present any relevant evidence; and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Hearing Officer for the Appeal Panel.

Please acknowledge receipt of this Notice and return it to the GIAA Administrative Offices.

Acknowledged receipt:

Receiver's Signature

Print Name

Date

Appendix D: Hearing Request/Waiver Form

APPEAL

GIAA CONCESSION POLICIES AND PROCEDURES

In the Appeal of)
)
)

(Name of Company), APPELLANT)
)
_____)

HEARING REQUEST/WAIVER

Please select one:

The undersigned party does hereby request a hearing on the appeal stated above.

The undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this__ day of_____, 20__.

By: (Please select one)

___ APPELLANT

___ GIAA

Print Name

Sign Name

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ARTICLE 6
ETHICS IN PUBLIC CONTRACTING

- § 6101. Definitions of Terms Used in this Article.
- § 6102. Purpose and Policy.
- § 6103. General Ethical Standard for Non-GIAA Employees.
- § 6104. Criminal Sanctions.
- § 6105. Ethical Standard - Conflicts of Interest.

- § 6106. Ethical Standard – Gratuities, Kickbacks and Favors
- § 6107. Ethical Standard - Contingent Fees
- § 6108. Employment Prohibitions and Restrictions.
- § 6109. Use of Confidential Information
- § 6110. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards
- § 6111. Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards.
- § 6112. Recovery of Value Transferred or Received in Breach of Ethical Standards.
- § 6114. Ethics Enforcement.

§ 6101. Definitions of Terms Used in this Article.

- (a) *Bona Fide Employee* means an individual employed by a prospective proposer and subject to the prospective proposer’s supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain a Concession Agreement. In determining whether a bona fide employment relationship exists, the following factors should be considered:
 - (1) whether the employment is continuous;
 - (2) whether the person is subject to the supervision and control of the prospective offeror or proposer;
 - (3) whether the size of any contingent fee is reasonable in relation to the services performed;
 - (4) whether the method of payment of the contingent fee is customary in the trade; and
 - (5) whether the person is employed solely by the prospective offeror or proposer.
- (b) *Bona Fide Established Commercial Selling Agency* means a Person that neither exerts nor proposes to exert improper influence to solicit or obtain a Concession Agreement. In determining whether a Person is a Bona Fide Established Commercial Selling Business, the following factors should be considered:
 - (1) whether the Person is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such;
 - (2) whether the Person uses its own name and is characterized by the customary indicia of the conduct of a regular business;
 - (3) the degree to which the Person’s activities are directed toward the solicitation of

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Concessions;

- (4) whether the size of any contingent fee is reasonable in relation to the services performed; and
- (5) whether the method of payment to the contingent fee is customary in the trade.

§ 6102. Purpose and Policy.

- (a) **Purpose.** This Article prescribes the standards of conduct for Government Employees in general and establishes specific standards of conduct for non-government employees with regard to Solicitations.
- (b) **Policy.** Public employment is a public trust. It is the policy of GIAA to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by GIAA. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Government Employees must discharge their duties impartially so as to assure fair competitive access to Solicitations by responsible proposers. Moreover, Government Employees should conduct themselves in such a manner as to foster public confidence in the integrity of the Solicitation process. To achieve the purpose of and uphold the policies of this Article, it is essential that those seeking Concession opportunities at GIAA also observe the ethical standards prescribed herein.

§ 6103. General Ethical Standard for Non-Government Employees.

- (a) **No Influence.** Any effort to influence any Government Employee to breach the standards of ethical conduct set forth in this Article or 4 GCA Chapter 15 is also a breach of ethical standards.
- (b) **Required Declaration.** Every proposer shall submit a declaration regarding the ethical standard not to influence Government Employees. Such declaration shall be in a form established by GIAA.
- (c) **Required Clause.** The following clause shall be conspicuously set forth in every Solicitation and Concession Agreement:

REPRESENTATION REGARDING ETHICAL
STANDARD NOT TO INFLUENCE GOVERNMENT EMPLOYEES

Proposer or Concessionaire represents that it has not knowingly influenced and promises that it will not knowingly influence a Government Employee to breach any of the ethical standards set forth in Article 6 of the GIAA Concession Policies and Procedures or 4 GCA Chapter 15 (Standard of Conduct for Elected

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Officers, Appointed Officers, and Public Employees of the
Government Of Guam).

§ 6104. Criminal Sanctions. To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of Title 9 GCA (Crimes and Corrections), they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Article.

§ 6105. Ethical Standard – Government Employee Conflicts of Interest.

- (a) **(Conflict of Interest.** It shall be a breach of ethical standards for any Government Employee to participate directly or indirectly in a Solicitation when the Government Employee knows that:
- (1) the Government Employee or any member of the Government Employee's Immediate Family has a Financial Interest pertaining to the Solicitation;
 - (2) a Business in which the Government Employee, or any member of the Government Employee's Immediate Family has a Financial Interest, has a Financial Interest pertaining to the Solicitation; or
 - (3) any Person with whom the Government Employee or any member of the Government Employee's Immediate Family is negotiating or has an arrangement concerning prospective employment has a Financial Interest in the Solicitation.
- (b) **Financial Interest in a Blind Trust.** Where a Government Employee or any member of the Government Employee's Immediate Family holds a Financial Interest in a Blind Trust, the Government Employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that Financial Interest, provided that disclosure of the existence of the Blind Trust has been made to the Civil Service Commission.
- (c) **Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.** Upon discovery of an actual or potential conflict of interest, a Government Employee shall promptly file a written statement of disqualification with the Executive Manager and shall withdraw from further participation in the Solicitation. The Government Employee may, at the same time, apply to the Civil Service Commission pursuant to 5 GCA 5676(b) for an advisory opinion as to what further participation, if any, the employee may have in the Solicitation.
- (d) **Notice.** Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission.
- (e) **Application for a Waiver of Prohibition Against Conflict of Interest.**
- (1) Application for Waiver. (Reserved).
 - (2) Grant or Denial of Waiver. The Civil Service Commission, may grant a Government

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Employee and/or the Concessionaire a waiver of the conflict of interest prohibition where the interests of the GIAA so require or when the ethical conflict is insubstantial or remote.

Prior to granting or denying a waiver, the Civil Service Commission shall make such investigation as it may deem appropriate and which is not in violation of the Government Employee's or the Concessionaire's rights, privileges, and immunities. Factors to be considered by the Civil Service Commission when determining whether to grant a waiver shall include:

- (i) the degree of involvement of the Government Employee or Concessionaire;
- (ii) the size and character of the Financial Interest of the Government Employee or a member of such employee's Immediate Family or a Concessionaire which relates to the particular Solicitation;
- (iii) the likelihood of the appearance of impropriety;
- (iv) the availability of prospective proposers with which a Concession Agreement would not present a conflict; and
- (v) the extent to which GIAA's interests will be affected by a waiver.

§ 6106. Reserved

§ 6107. Ethical Standard – Gratuities and Kickbacks.

- (a) **Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any Government Employee or former Government Employee, or for any Government Employee or former Government 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 Solicitation, influencing the content of any Solicitation 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 Concession or a Concession Agreement, or to any Solicitation or proposal therefor.
- (b) **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 Concessionaire or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.
- (c) **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.
- (d) **Favors to the Government of Guam.** For purposes of this subsection, a favor is anything, including raffle tickets, or more than de minimis value and whether intended for the

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personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a Concessionaire, a subcontractor under a Concession Agreement to the Concessionaire, or any person associated therewith, to offer, give or agree to give any Government Employee or agent of the government of Guam or for any Government Employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any Solicitation.

(e) **Intentionally Omitted.**

(f) **Gratuities Prohibition.**

- (1) Breach. It is a breach of § 6107(a) (Gratuities and Kickbacks - Gratuities) of these Policies and Procedures:
 - (i) for any Person to offer, give, or agree to give any Government Employee or former Government Employee a gratuity of offer of employment; or
 - (ii) for any Government Employee or former Government Employee to solicit, demand, accept, or agree to accept a gratuity or an offer of employment; provided that the gratuity or offer of employment is in relation to a particular matter in accordance with § 6107(f)(2) of these Policies and Procedures, and pertains to any Concession, Concession Agreement, subcontract, or Solicitation or proposal therefor.
- (2) Relationship of Gratuity. In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:
 - (i) decision;
 - (ii) approval;
 - (iii) disapproval;
 - (iv) recommendation;
 - (v) preparation of any part of a Solicitation;
 - (vi) action to influence the content of any Solicitation;
 - (vii) rendering of advice;
 - (viii) investigation;
 - (ix) auditing; or
 - (x) other advisory capacity.
- (3) Family. This prohibition extends to the giving of gratuities to anyone on the Government Employee's or former Government Employee's behalf such as a member of the Government Employee's or former Government Employee's Immediate Family.

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- (g) **When Prohibition Against Gratuities not Applicable.** Section 6107(a) (Gratuities and Kickbacks-Gratuities) of these Policies and Procedures does not prohibit:
- (1) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any Solicitation or Solicitation requirement with GIAA and is based upon a personal or family relationship;
 - (2) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;
 - (3) acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of Government Employees, such as home mortgage loans; or
 - (4) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value as described in § 1106(cc) (Definitions-Gratuity) of these Policies and Procedures.
- (h) **Payment of a Kickback.** The prohibition against kickbacks set forth in § 6107(b)11206(2) (Gratuities and Kickbacks-Kickbacks) of these Policies and Procedures applies whether a kickback is made prior to or after the award of a Concession Agreement.
- (i) **Contract Clause.** The following clause shall be conspicuously set forth in every Concession Agreement and Solicitation therefor:

REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The Proposer or Concessionaire represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in § 6107 (Gratuities and Kickbacks) of the GIAA Concession Policies and Procedures.

§ 6108. Contingent Fees.

- (a) **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 Concession Agreement 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 a Concession.
 - (2) Representation of Concessionaire. Every Person, before being awarded a Concession Agreement, shall represent, in writing, that such Person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitute a breach of ethical standards.

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(3) Contract Clause. The representation prescribed in Subsection (2) of this Section shall be conspicuously set forth in every Concession Agreement and Solicitation therefor.

(b) **Intentionally Omitted.**

(c) **Influence Peddling.** The prohibition in § 6108(a)(1) (Prohibition Against Contingent Fees-Contingent Fees) of these Policies and Procedures covers influence peddling and particularly that which might occur when a former Government Employee is hired on contingent basis by a business seeking a Concession Agreement.

(d) **Relationship of Commercial Selling Agency to the Prospective Concessionaire.** The relationship between a Bona Fide Established Commercial Selling Agency and the prospective Concessionaire should be characterized by the following:

(1) the fees charged by the commercial selling agency are commensurate with the nature and extent of the business's services actually rendered to the prospective Concessionaire; (2) the commercial selling agency has adequate knowledge of the the prospective Concessionaire which it represents to judge whether the the prospective Concessionaire may be able to meet GIAA's requirements; and (3) the relationship between the commercial selling agency and the prospective Concessionaire is or is contemplated to be continuing.

(e) **Improper Influence.** A business employee or commercial selling agency should be conclusively presumed not to be bona fide if GIAA determines that improper influence has been or is being used to secure a Concession Agreement.

(f) **Solicitation Clause.** Every Solicitation for a Concession shall conspicuously set forth the following provision to be completed and submitted with every prospective Concessionaire's proposal:

PROSPECTIVE CONCESSIONAIRE'S REPRESENTATION REGARDING
CONTINGENT FEES

The prospective Concessionaire represents as a part of its proposal that it has/has not (circle applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Concession.

(g) **Information on Contingent Fees.** Any prospective Concessionaire who has completed the clause set forth in § 6108(f) (Solicitation Clause) in the affirmative and is the apparently successful proposer shall submit the following information:

(1) the full name and business address of the business or person retained, and the type of business organization;
(2) the relationship of the business or person to the prospective Concessionaire;

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- (3) the terms of the retention agreement or copy of such agreement;
 - (4) if such person is a business employee: (i) the duration of employment; (ii) whether that employee is on the Concessionaire's payroll for purposes of social security and federal or local income tax withholding; (iii) whether that employee represents other businesses and, if so, the names and addresses of such businesses;
 - (5) whether the business or person represents the prospective Concessionaire on: (i) both government and commercial business; (ii) only government business; or (iii) only the present Concession;
 - (6) the extent of the duties of the business or person; and
 - (7) the duration the business or person has been engaged in a particular type of work and has performed this type of work for the Concessionaire.
- (h) **Contract Clause.** The following clause shall be conspicuously set forth in every Concession Agreement and Solicitation therefor:

REPRESENTATION REGARDING CONTINGENT FEES

The Concessionaire represents that it has not retained a Person to solicit or secure a Concession Agreement 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 a Concession.

§ 6109. Employment Prohibitions and Restrictions.

- (a) **Restrictions on Employment of Present and Former Government Employees.**
- (1) Restrictions on Former Government Employees in Matters Connected with Their Former Duties.
 - (i) Permanent Disqualification of Former Government Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former Government Employee knowingly to act as a principal, or as an agent for anyone other than GIAA, in connection with any:
 - 1. judicial or other proceeding, application, request for ruling, or other determination;
 - 2. Concession Agreement;
 - 3. claim; or
 - 4. charge or controversy; in which the former Government Employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while a Government Employee, where GIAA is a party or has a direct and substantial interest.
 - (ii) One year representation restriction regarding matters for which a former Government Employee was officially responsible. It shall be a breach of ethical standards for any former Government Employee, within after cessation of the

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former employee's official responsibility, knowingly to act as principal, or as an agent for anyone other than GIAA, in connection with any:

1. judicial or other proceeding, application, request for a ruling, or other determination;
 2. Concession Agreement;
 3. claim; or
 4. charge or controversy; in matters which were within the former Government Employee's official responsibility, where GIAA is a party or has a direct or substantial interest.
- (2) Disqualification of Business When a Government Employee has a Financial Interest. It shall be a breach of ethical standards for a business in which an Government Employee has a Financial Interest knowingly to act as a principal, or as an agent for anyone other than GIAA, in connection with any:
- (i) judicial or other proceeding, application, request for a ruling, or other determination;
 - (ii) Concession Agreement;
 - (iii) claim; or
 - (iv) charge or controversy; in which the Government 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 Government Employee's official responsibility, where GIAA is a party or has a direct and substantial interest.
- (3) Selling to GIAA After Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former Government Employee, unless the former Government Employee's last annual salary did not exceed \$12,000, to engage in selling to the GIAA for ninety (90) days following the date employment ceased. The term Sell as used herein means signing a proposal or Concession Agreement; negotiating a Concession Agreement; contracting any employee for the purpose of obtaining, negotiating, or discussing changes in a Solicitation or other terms of a Concession Agreement; settling disputes concerning performance of a Concession Agreement; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual Concession Agreement, therefore, is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former Government Employee from accepting employment with private industry solely because the former Government Employee's employer is a Concessionaire with GIAA nor shall a former Government Employee be precluded from serving as a consultant to GIAA.

(b) Contemporaneous Employment Prohibition. (Reserved).

(c) Permanent Disqualification of Former Government Employee.

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- (1) Personal and Substantial Participation. For the Government Employee to have “participated personally and substantially” in a matter, such employee's involvement must have been more than merely ministerial in nature. Factors to be considered in determining personal and substantial participation of a former government employee while a government employee shall include but are not limited to:
- (i) the former Government Employee's degree of involvement in the particular matter;
 - (ii) the degree of involvement of the former employee with a subordinate who had substantial participation in the matter;
 - (iii) the effect or appearance of the involvement of the former government employee; and
 - (iv) the relative time spent on the particular matter by the former government employee.
- (2) Matter must be a Particular Matter Involving Identifiable Parties. The activities listed in § 6109(a)(1)(i) (Restrictions on Employment of Present and Former Employees-Permanent Disqualification of Former Employee Personally Involved in a Particular Matter) of these Policies and Procedures generally describe matters in which issues are defined and parties are identified, such as specific proceedings affecting the legal rights of parties, or isolated transactions or related sets of transactions between identifiable parties. Matters of general application, such as regulation and policy formulation, are not intended to be covered under those activities listed under § 6109(a)(1)(i). Therefore, only a particular matter involving an identifiable party or parties is subject to the permanent prohibition set forth under § 6109(a)(1)(i).
- (3) The Same particular matter must be involved. The prohibition set forth in § 6109(a)(1)(i) (Restrictions of Employment of Present and Former Employees-Disqualification of Former Employee Personally Involved in a Particular Matter) of these Policies and Procedures applies only with regard to those same particular matters in which the former Government Employee participated personally and substantially while a government employee. In determining whether two particular matters are the same, the following factors should be considered:
- (i) the factual basis of the matters;
 - (ii) the relationship of the issues involved in each matter;
 - (iii) the identity of the parties involved in each matter; and
 - (iv) the continued existence of an important GIAA interest.
- (d) **One year restriction for a former Government Employee.**
- (1) Official responsibility.
- (i) Intentionally Omitted.
 - (ii) Scope. The scope of a Government Employee's Official Responsibility is determined by the territory's statutes, regulations, executive orders, case law, or job descriptions, or may result from the lawful delegation of another Government Employee's duties.

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- (iii) Requirement That Matters Have Been Actually Pending. In order for a matter to have been within a former Government Employee's Official Responsibility, it must have in fact been assigned to or under consideration by persons under the former Government Employee's Official Responsibility.
- (2) One year restriction. The one year restriction set forth in § 6109(a)(1) (Restrictions on Employment of Present and Former Employees-Restrictions on Former Employees in Matters Connected with Their Former Duties) of these Policies and Procedures is measured from the time the former Government Employee's Official Responsibility ended in a particular matter.
- (e) **Disqualification of a Business.**
- (1) Personal and Substantial Participation. Personal and substantial participation is discussed in § 6109(c)(1) (Permanent Disqualification of Former Government Employee-Personal and Substantial Participation) of this Article.
- (2) Official Responsibility. Official Responsibility is discussed in § 6109(d)(1) (One Year Restriction for a Former Government Employee- Official Responsibility) of this Article.
- (3) Determination of Business Knowledge. In ascertaining whether a business has knowledge that a Government Employee has a Financial Interest in that business for the purpose of applying the prohibition in § 6109(a)(2) (Restrictions on Employment of Present and Former Employees-Disqualification of a Business When an Employee Has a Financial Interest) of these Policies and Procedures, the factors to be considered should include the following:
- (i) the size of the business;
 - (ii) the percentage of ownership in the business by the Government Employee;
 - (iii) the nature of the dealings of the Government Employee with the business regarding such employee's Financial Interest; and
 - (iv) such other evidence as may be relevant and material.
- (f) **Prohibition Against Selling to the Territory.**
- (1) Prohibition; Applicability. Section 6109(a)(3) (Restrictions on Employment of Present and Former Employees-Selling to the Territory After Termination of Employment is Prohibited) of these Policies and Procedures, prohibits a former Government Employee whose annual salary exceeded \$12,000 from selling or attempting to sell to GIAA within ninety (90) days following the date employment ceases. This prohibition applies with regard to any Government Employee who used to be employed.
- (2) Sell Defined. Section 6109(a)(3) (Restrictions on Employment of Present and Former Employees-Selling to GIAA After Termination of Employment is Prohibited) of these Policies and Procedures, defines sell for the purpose of prohibiting selling to GIAA to mean:
- (i) signing a proposal or Concession Agreement;

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- (ii) negotiating a Concession Agreement;
 - (iii) contracting any employee for the purpose of obtaining, negotiating, or discussing changes in a Solicitation or other terms of a Concession Agreement;
 - (iv) settling disputes concerning performance of a Concession Agreement; and
 - (v) any other liaison activity with a view toward the ultimate consummation of a sale although the actual Concession Agreement, therefore, is subsequently negotiated by another person. Requests for information are not included within the term "Sell."
- (g) **Employment with a Concessionaire.** The ninety (90) days prohibition against selling contained in § 6109(f) of these Policies and Procedures shall not prohibit a former Government Employee from obtaining employment with a Concessionaire, but such employee shall not Sell to GIAA as defined in § 6109(f)(2) (Prohibition Against Selling to the Territory-Sell Defined.)

§ 6110. Use of Confidential Information.

It shall be a breach of ethical standards for any Government Employee or former Government Employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

§ 6111. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards. (Reserved).

§ 6112. Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards.

- (a) **Existing Remedies Not Impaired.** Civil and administrative remedies against non-employees which are in existence on the effective date of these Policies and Procedures shall not be impaired.
- (b) **Supplemental Remedies.** In addition to existing remedies for breach of the ethical standards of this Article, GIAA, in connection with non-employees, may impose any one or more of the following: (a) written warnings or reprimands; (b) termination of transactions; and (c) debarment or suspension from being a Concessionaire under a Concession Agreement.
- (c) **Right to Recover From Non-Employee Value Transferred in Breach of Ethical Standards.** The value of anything transferred in breach of the ethical standards of this Article by a non-employee shall be recovered by GIAA.
- (d) **Right of the Territory to Debar or Suspend.** Debarment or suspension may be imposed by GIAA in accordance with these Concession Policies and Procedures (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action

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may not be taken without the concurrence of the Attorney General.

- (e) **Due Process.** All procedures under this Section shall be in accordance with these Concession Policies.

§ 6113. Recovery of Value Transferred or Received in Breach of Ethical Standards.

- (a) **General Provisions.** The value of anything transferred or received in breach of the ethical standards of this Article by a Government Employee or non-employee may be recovered from both the employee and non-employee.
- (b) **Recovery of Kickbacks by the Territory.** Upon a showing that a subcontractor made a kickback to a Concessionaire or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the territory and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.



**ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
BOARD OF DIRECTORS**

EXECUTIVE SUMMARY

**Draft Policies and Procedures for the Solicitation, Selection, and Award
of Concession Agreements for Public Comment authorized by Public Law 38-21**

November 13, 2025

Purpose

To give notice, advise, and present to the GIAA Board the draft policies and procedures for the competitive solicitation, selection, and award of concession agreements (“Concession Policies”) pursuant to § 1203.1(a)(1) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated, which was authorized pursuant to Public Law 38-21 and in accordance with Executive Order No. 2025-05.

Background

Public Law 38-21 provides authority to the A. B. Won Pat International Airport Authority, Guam (GIAA) to adopt policies and procedures for the solicitation, selection, and award of agreements between the GIAA and any other party for the use of airport facilities and properties for airport purposes and/or visitor-related activities.

Specifically, relative to concession agreements, Public Law 38-21 provides that such agreements shall be authorized for a term of up to fifteen (15) years and shall be subject to policies and procedures for the competitive solicitation, selection, and award of concession agreements adopted from time to time by the GIAA’s Board of Directors. The requirements of said policies and procedures and any amendments thereto are that they are based on industry standards, are competitive in nature, and consider the inclusion of small businesses in its adoption. Additionally, said policies and procedures shall not in any way authorize or permit gambling of any kind as defined in 9 GCA Chapter 64.

Subsequent to the passage of Public Law 38-21, the Governor signed and promulgated Executive Order No. 2025-05 on August 1, 2025, relative to establishing requirements for adoption of policies and procedures for airport concessions. GIAA’s policies as drafted are aligned with this Executive Order to the extent they are required or applicable.

Overview: Concession Policies Adoption Process

Pursuant to Public Law 38-21 and Executive Order No. 2025-05, prior to the adoption or any amendment of Concession Policies by the GIAA Board of Directors, the GIAA shall:

1. Prepare a fiscal assessment, which shall be posted with a copy of said policies and procedures on its website;
2. Allow for no less than thirty (30) calendar days for public comment;
3. Hold a public hearing noticed pursuant to 5 GCA § 8107 (Open Government Law) and held no sooner than thirty (30) calendar days after posting of the fiscal assessment and policies and procedures;
4. Be subject to applicable federal laws and regulations;
5. Be subject to the GIAA's bond covenants; and
6. Become effective upon approval and signature of the Governor of Guam

Summary: Concession Policies

The draft Concession Policies is recommended to be added to the Guam Administrative Rules and Regulations (GAR) under Title 4 (Commerce), Chapter 7B (Guam Airport Authority).

In the drafting of the Concession Policies, the GIAA closely modelled the Guam Procurement Law (5 GCA Chapter 5) and Regulations (2 GAR Division 4) to the extent applicable considering Guam Procurement Law and Regulations govern the purchase of goods, services, and construction whereas the draft Concession Policies are aimed at competitively soliciting for revenue-generating contracts. The modelling of the draft Concession Policies after Guam Procurement Law and Regulations ensures the standards of consistency, efficiency, competition, and fairness are upheld to ensure the best outcome and interests of the GIAA are maintained.

The draft Concession Policies are divided into six (6) Articles to include:

1. General Provisions
2. Compliance with Federal Requirements
3. Solicitation Method and Contract Formation
4. Legal and Contractual Remedies
5. Appeals to the Appeal Panel
6. Ethics in Public Contracting

Article 1: General Provisions includes the Purpose, Policy, Objectives, Planned Solicitation, Requirement of Good Faith, and Definitions of the draft Concession Policies.

Article 2: Compliance with Federal Requirements requires that all solicitations comply with all federal laws and regulations that are applicable to the GIAA.

Article 3: Solicitation Method and Contract Formation provides for the extensive provisions relative to the industry standard^a competitive method of solicitation – the Request for Proposals (“RFP”) – of which the objective in awarding such concession agreement(s) is to obtain high

^a Pursuant to Chapter 10, Section 10.2 of Airport Cooperative Research Program (ACRP) Report 54, the “RFP is the standard practice for selecting concessionaires at airports worldwide” p. 158.

quality services that provide and optimize non-airline revenue to GIAA and provide optimal customer service, value and experience to the traveling public. The RFP process allows the GIAA to evaluate proposals based on a variety of non-quantitative factors, including quality of customer service, management team, concepts, concession design, company experience, capital investments, training, and other relevant criteria. The RFP process also encourages creative and unique elements to optimize non-airline revenue and enhance customer experience.

As previously mentioned, the draft Concession Policies are modelled after Guam Procurement Law and Regulations therefore provisions such as public notice, determination of content of the RFP including the evaluation process, receipt and handling of proposals and the requests of nondisclosure of data, selection of the best qualified proposal(s), negotiation process, notice of award, cancellation process if needed, standards of responsibility, provision of details of the concession contract, the reporting of anticompetitive practices, and the maintenance of the solicitation record were utilized to the extent applicable.

Article 4: Legal and Contractual Remedies provides for provisions relative to protests of a solicitation or award, debarment or suspension, contract and breach of contract controversies, determination that a solicitation or an award violates law due to actions by different Persons, violations of law found prior to award, and ratification, termination, or cancellation of a concession agreement to comply with the law. Again, because the draft Concession Policies were modelled after Guam Procurement Laws and Regulations, the language and sections of Article 4 were utilized to the extent applicable.

Article 5: Appeals to the Appeal Panel involves a similar protest appeals process found in Guam Procurement Law and Regulations to the extent applicable. However, a three-person Appeal Panel, designated by the Governor shall be established to administratively consider appeals from decisions of the Executive Manager (as opposed to appeals to the OPA). GIAA will enter into an MOU with the Governor to constitute such panel, which shall include the Director of Department of Administration, Chief Procurement Officer of GSA and the GSA Procurement Counsel. The appeals process further includes appointment of hearing officer, jurisdiction; exhaustion of remedies, the form and filing of appeal, agency report, the making of information on appeals available, *ex parte* communications with the hearing officer, hearing procedures, decisions of the hearing officer, finality of decisions, appeal to appeal panel relative to method, solicitation and award, appeals on debarment and suspension and review of award pending protest or appeal.

Article 6: Ethics in Public Contracting prescribes the standards of conduct for government employees in general and establishes specific standards of conduct for non-government employees with regards to solicitations. This includes general ethical standards for non-government employees, standards related to government employee conflicts of interest, ethical standards related to gratuities and kickbacks and contingent fees, employment prohibitions and restrictions relative to present and former government employees, use of confidential information, civil and administrative remedies against non-employees who breach ethical standards, and ethics enforcement.

Fiscal Assessment

As previously indicated, statute requires that the GIAA prepare a fiscal assessment which shall be posted with a copy of the Concession Policies on its website, allow for no less than thirty (30) calendar days for public comment, and to hold a public hearing noticed pursuant to 5 GCA § 8107 (Open Government Law).

The Fiscal Assessment shall directly address, at a minimum, the purpose and need for, the financial impact upon those persons or entities directly affected by, and the potential benefits expected to the GIAA by the proposed Concession Policies. Concessions include, but are not limited to retail, specialty retail, food and beverage, advertising, currency exchange, car rentals, and parking.

A notice for public comment on the proposed Concession Policies and the required Fiscal Assessment was published in the newspaper on Friday, November 7, 2025, and available for viewing or download at www.guamairport.com. GIAA will convene a public hearing no less than thirty (30) calendar days from said posting which falls sometime after December 8, 2025.

DRAFT
**Proposed Policies and Procedures for the Competitive Solicitation,
Selection & Award of Concession Agreements
at the**

**A.B. WON PAT INTERNATIONAL
AIRPORT GUAM**



ATURIDAT PUETTON BATKON AIREN
GUAHAN ENTENASIONAT

November 7, 2025

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ARTICLE 1
GENERAL PROVISIONS

NOTE: These Concession Policies and Procedures are authorized by 12 GCA § 1203.1.

- § 1101. Purpose.
- § 1102. Policy.
- § 1103. Objectives.
- § 1104. Planned Solicitation.
- § 1105. Requirement of Good Faith.
- § 1106. Definitions.
- § 1107. Savings Clause.

§ 1101. Purpose. The Government of Guam, through the Antonio B. Won Pat International Airport Authority, Guam (“GIAA” or “Authority”), owns and operates the Antonio B. Won Pat International Airport, Guam. These Concession Policies and Procedures (sometimes referred to herein as “Policies and Procedures”) do not and shall not constitute a part of any Concession Agreement. The purpose of these Concession Policies and Procedures is to provide standard policies and procedures governing the solicitation, selection, award and operation of non-airline Concessions on Airport Property, as required by the mandates of 12 GCA § 1203.1, as may be amended from time to time, and in conformity with industry practices and procedures.

§ 1102. Policy. It is the policy of GIAA to promote efficiency and achieve the needs and best interests of GIAA in the award of Concession Agreements by:

- (a) continuously developing sound policies and practices to achieve GIAA’s self-sustaining mandate;
- (b) providing for increased public confidence in the procedures followed in the award of Concession Agreements;
- (c) exercising fair and equitable treatment of all persons who compete for Concession Agreements and Concessionaires;
- (d) fostering effective broad-based competition within the free enterprise system; and
- (e) providing safeguards for the maintenance of a solicitation procedures of quality and integrity.

§ 1103. Objectives. The primary objectives of GIAA in entering into Concession Agreements, is to:

- (a) Maximize revenue generation to GIAA without creating an undue financial burden on those contracting with GIAA.
- (b) Minimize the costs and expenses incurred by GIAA in operating and maintaining the Airport.
- (c) Maintain a fee and rental structure that will make GIAA as self-sustaining as possible.
- (d) Provide the highest quality and broadest range of services to Airport users.
- (e) Enhance the growth and development of the Airport as a regional aviation center.

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- (f) Preserve investments in the Airport and the level of service provided by GIAA and its Concessionaires.
- (g) Facilitate orderly development of the Airport.
- (h) Ensure provisions of consistent quality of services provided at the Airport.
- (i) Ensure compliance with applicable laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application and acceptance of federal funds.
- (j) Enable conformity with the approved Airport Master Plan.
- (k) Make the Airport available for public use on reasonable terms without undue discrimination.

§ 1104. Planned Solicitation. All Solicitations for Concession Agreements shall, where possible, be made sufficiently in advance of need for performance to promote maximum competition and good management of resources. Publication of Requests for Proposals shall not be manipulated so as to place potential Proposers at an unnecessary competitive disadvantage. The Executive Manager shall make a written determination of need for the Concession prior to initiating a Solicitation.

§ 1105. Requirement of Good Faith. These Concession Policies and Procedures require all parties involved in the negotiation, performance, or administration of Concession Agreements to act in good faith.

§ 1106. Definitions. Terms used in these Concession Policies and Procedures have the following meaning ascribed to them unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular chapter in these Policies and Procedures.

- (a) *Air Transportation* shall mean the carriage for hire of persons, baggage, property, cargo, and mail by aircraft.
- (b) *Airport* shall mean the Antonio B. Won Pat International Airport.
- (c) *Airport Layout Plan* or *ALP* shall mean a plan that shows boundaries and proposed additions to all areas owned or controlled by GIAA for airport purposes, approved by the FAA and made a part hereof, as the same may be amended from time to time.
- (d) *Airport Property* shall mean all real property of GIAA as shown in the Airport Layout Plan.
- (e) *Award* shall mean the execution of the Concession Agreement(s) with one or more Proposers determined in writing by the Executive Manager to be best qualified based on evaluation factors set forth in the RFP. and.
- (f) *Blind Trust* shall mean an independently managed trust in which the Government Employee beneficiary has no management rights and in which the Government Employee beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (g) *Board of Directors* shall mean the duly appointed Board of Directors of GIAA acting

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collectively in the manner prescribed by law.

- (h) *Confidential Information* shall mean any information which is available to a GIAA employee only because of the employee's status as an employee of GIAA and is not a matter of public knowledge or available to the public on request.
- (i) *Conspicuously* shall mean 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.
- (j) *Contract Modification* shall mean any written alteration, modification, amendment, or restatement of any provisions of a Concession Agreement accomplished by mutual action of the parties to the contract.
- (k) *Concession(s) and Concession Privileges* shall mean the right given to a Person by GIAA to use a specific portion of Airport Property for the purpose of selling certain goods or providing certain services to users of the Airport to generate revenues, other than operating an Air Transportation business.
- (l) *Concession Agreement* shall mean the written contract between GIAA and a Concessionaire specifying the terms and conditions under which a Concessionaire may use, occupy, and access certain Airport Property and manage and operate a Concession.
- (m) *Concession Fee* in the context of an RFP shall mean the fees and/or rent proposed by a Proposer, and in the context of a Concession Agreement shall mean the fees and/or rent paid by a Concessionaire. In all cases the Concession Fee is in consideration for the Concession Privileges granted by GIAA. Concession Fee includes, but is not limited to, minimum annual guaranteed (MAG) rent and/or percentage rent.
- (n) *Concessionaire* shall mean the operator and/or manager of a Concession, or its permitted successors or assigns.
- (o) *Data* shall mean recorded information, regardless of form or characteristic.
- (p) *Designee* shall mean a duly authorized representative of a person holding a superior position.
- (q) *Direct or Indirect Participation* shall mean involvement through decision, approval, disapproval, recommendation, preparation of any part of a Solicitation, influencing the content of any terms or conditions of a Solicitation or Concession Agreement, rendering of advice, investigation, auditing or in any other advisory capacity.
- (r) *Discussions*, as used in the Solicitation process, means an exchange of information during which GIAA may seek to determine in greater detail a Proposer's qualifications and explore with the Proposer the scope and nature of a concession opportunity, the proposer's method of management and operation of the concession and the relative utility of alternative methods of approach.. Discussions may be conducted in connection with Request for Proposals.
- (s) *Executive Manager* shall mean the duly appointed Executive Manager of GIAA or his designee.
- (t) *FAA* shall mean the Federal Aviation Administration, U.S. Department of Transportation, or any federal agencies succeeding to its jurisdiction.
- (u) *FAR* shall mean the Federal Aviation Regulations as published by the FAA.

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- (v) *Financial Interest* shall mean:
- (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, more than Two Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent;
 - (2) ownership or an interest in any property or any business; or
 - (3) a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (w) *GAR* shall mean the Guam Administrative Rules and Regulations, as may be amended from time to time.
- (x) *GIAA* shall mean the Antonio B. Won Pat International Airport Authority, Guam, a public corporation and autonomous instrumentality of the Government of Guam.
- (y) *Government Employee* means:
- (1) Any person elected to public office;
 - (2) a non-elected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the government of Guam; a non-compensated or minimally compensated individual who is performing personal services for the government of Guam.
- The term *Government Employee* does not include a Person who, as an independent contractor, performs professional, scientific, technical, or advisory service for a government of Guam agency and who receives a fee, honorarium, or similar consideration for the services performed.
- (z) *Gratuity* shall mean 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. Gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment more than Nominal Value.
- (aa) *Immediate Family* shall mean spouse, fiancé, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family.
- (bb) *Interested Party* means an actual or prospective Proposer or Concessionaire that may be aggrieved by a Solicitation or award of a Concession Agreement and who files a protest.
- (cc) *Main Terminal Building* shall mean that portion of Airport Property identified as such in the ALP.
- (dd) *May* denotes the permissive.
- (ee) *Nominal Value* means actual worth or actual cost, whichever is greater, which does not exceed \$25 individually or cumulatively.
- (ff) *Official Responsibility* shall mean direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through

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subordinates, to approve, disapprove, or otherwise direct government action.

- (gg) *Person* shall mean an individual, corporation, limited liability company, partnership sole proprietorship, joint venture, union, committee, club, other organization or group of individuals acting as an entity. *Person* includes a trustee, receiver, assignee or similar representative.
- (hh) *Proposer* means a *Person* who has actually submitted a proposal in response to a RFP, unless the context indicates otherwise.
- (ii) *Protestor* means an Interested Party who files a protest under Article 4 of these Policies and Procedures.
- (jj) *Prospective proposer* shall mean a *Person* who will actually submit a proposal in response to a RFP.
- (kk) *Request for Proposals* or *RFP* shall mean all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.
- (ll) *Responsible Proposer* shall mean 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.
- (mm) *Shall* denotes the imperative.
- (nn) *Signatory Airline* shall mean a certificated air carrier providing Air Transportation to and from the Airport that have executed substantially similar agreements with GIAA covering the use and occupancy of facilities at the Airport.
- (oo) *Solicitation* means a Request for Proposals issued by GIAA for the purpose of soliciting competitive proposals for a Concession opportunity on Airport Property.

§ 1107. Savings Clause. If any provision, section or subsection of these Policies and Procedures, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable, the remainder of such provision, section or subsection shall not be thereby affected and shall be given full effect, without regard to the invalid portion.

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§ 2101. Compliance with Federal Requirements. All Solicitations shall comply with all federal law and regulations that are applicable to GIAA, and to the extent that such federal laws or regulations conflict with these Concession Regulations, the mandates of such federal laws or regulations shall prevail.

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- § 3105. Reserved.
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- § 3108. Responsibility of Offeror and Proposer.
- § 3109. Concession Agreements.
- § 3110. Multiple Awards.
- § 3111. Audits and Records.
- § 3112. Finality of Determinations.
- § 3113. Reporting of Anticompetitive Practices.
- § 3114. Solicitation Record.

§ 3101. General Provisions.

- (a) **Extension of Time for Proposal Acceptance.** After opening proposals, the Executive Manager may request Proposers to extend the time during which GIAA may accept their proposals. The reasons for requesting such extension shall be documented in the solicitation record.
- (b) **Only One Tender or Proposal Received.** If only one proposal is received in response to a Request for Proposals, the Executive Manager may, as the Executive Manager deems appropriate, either make an award in accordance with the procedures set forth in § 3106 (Request for Proposals) of this Article or, if time permits, resolicit.
- (c) **Multiple Or Alternate Proposals.** Unless multiple or alternate proposals are specifically provided for, the Solicitation shall state that such proposals shall not be accepted. When prohibited, multiple or alternate proposals shall be rejected. The provisions of this Section shall be set forth in the Solicitation, and if multiple or alternate proposals are allowed, it shall specify their treatment.
- (d) **Proposal Security and Faithful Performance Guaranty.** Proposal security and a faithful performance guaranty shall be required in such form and amounts as the Executive Manager deems advisable to protect the interests of GIAA. Any such requirements must be set forth in the Solicitation. Proposal security and the faithful performance guaranty should not be used as a substitute for a determination of Proposer responsibility.
 - (1) **Proposal Security.** A proposal security shall be required to be submitted with a proposal. The proposal security may be in such form as determined by the Executive

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Manager, including, but not limited to, bond, letter of credit, or cashier's check. Such proposal security shall be submitted with the understanding that it will guarantee that the Proposer will not withdraw its proposal for the time period stated in the RFP and is subject to forfeiture if the successful Proposer fails to enter into a Concession Agreement within the prescribed time. The proposal security shall be in such amount as is determined by the Executive Manager in accordance with his/her best judgment. Such amount shall be adequate to protect GIAA from loss in the event the purported successful Proposer withdraws its proposal prior to the expiration of the time period stated in the RFP or the purported successful Proposer fails to enter into a Concession Agreement within the time prescribed in the RFP.

- (2) **Faithful Performance Guaranty.** A faithful performance guaranty shall be required from the successful Proposer guaranteeing full performance by the Concessionaire of all of the terms, covenants and conditions contained in the Concession Agreement, including, but not limited to, payment of the Concession Fee.
- (i) **Amount required.** The faithful performance guarantee shall be in such amount as is determined by the Executive Manager in his/her best judgment that is adequate to protect GIAA in the event of breach by the Concessionaire.
- (ii) **Form.** The faithful performance guaranty may be in such form as determined by the Executive Manager, including, but not limited to, bond, letter of credit, or cashier's check. Bonds as may be required in this Section shall be issued by a surety licensed to do business in Guam and shall be issued on Government standard performance bond forms. Letter of Credit or Certified Check or Cashier's Check shall be issued by any banks or bonding agencies duly licensed to do business in Guam.
- (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 shall be rejected.
- (f) **Reserved.**
- (g) **Incorporation by Reference.** A RFP may incorporate documents by reference provided that the RFP specifies where such documents can be obtained.
- (h) **Acknowledgment of Amendments.** The RFP shall require the acknowledgment of the receipt of all amendments issued.
- (i) **Disclosure of Ownership, Financial, and Conflicts of Interest.**

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- (1) Purpose. The disclosures required by this Section are intended to reveal information bearing on the responsibility of a Proposer, and can be obtained by an inquiry regarding responsibility prior to award.
- (2) Public Disclosure of Ownership.
 - (i) The ownership interests to be disclosed under this Section include the interests of a Person who owns all or any part of a Proposer whether as a sole proprietor, a partner, limited or otherwise, a shareholder of any class, in which case the percentage ownership interest test shall be based on each class, a member of an association or company, limited or otherwise, and any Person owning a beneficial legal interest in any trust, and any other Person having the power to control the performance of the Concession or the prospective Concessionaire.
 - (ii) Prior to award, every Person who is a Proposer shall submit a Disclosure Statement, executed as an affidavit under oath, disclosing the name of each Person who currently or has owned an ownership interest in the Proposer greater than ten percent (10%) at any time during the twelve (12) month period immediately preceding the date of the Solicitation (the “relevant disclosure period”).
 - (A) If a Proposer is an artificial person, the Disclosure Statement shall disclose the name of each Person who has owned an ownership interest in such artificial person (a “second tier owner”) greater than twenty-five percent (25%) at any time during the relevant disclosure period.
 - (B) If any such second tier owner is also an artificial person, the Disclosure Statement shall disclose the name of each Person who has owned an ownership interest in such second tier owner (a “third tier owner”) of forty-nine percent (49%) or more during the relevant disclosure period.
 - (C) If the name of no natural person has been identified as an owner, or a second or third tier owner of the Proposer, the Disclosure Statement shall identify the name, position, address, and contact information of the natural person having the authority and responsibility for the performance of the prospective Concession Agreement, and the name of any natural person who has the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective Concession Agreement.
 - (iii) Disclosure of Financial Interest. Every Person who is a Proposer shall execute an affidavit disclosing the name of any Person who has received or is entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the Solicitation by means of a Disclosure Statement, executed as an affidavit under oath, disclosing such interest

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and shall also contain the amounts of any such commission, gratuity, contingent fee or other compensation.

- (iv) Disclosure of Conflict of Interest. Every Person who is a Proposer shall disclose the name of any Person who directly or indirectly participates in any Solicitation if such person is also an employee of the government of Guam, or of the government of the United States if federal funds are used in payment of the contract.
 - (v) Required Information. Every disclosure of an ownership or financial interest of any Person required to be identified by this Section shall name the Person required to be disclosed and the street address of their principal place of business. All information disclosed or meant to be disclosed under this Section is public and shall be kept as part of the Solicitation Record.
 - (vi) Continuing Duty of Disclosure. Notwithstanding any other provision of these Policies and Procedures, the duty to disclose the information required under this Section shall be, upon award, a continuing duty of a Concessionaire, and all such information shall become part of the Solicitation Record. Throughout the term of a Concession Agreement, the Concessionaire shall promptly make any disclosures not made previously and update changes in the identities or other required information, interests, or conflicts of the Persons required to be disclosed herein. Failure to comply with this Section shall constitute a material breach of the Concession Agreement.
- (j) **Proposer Lists.**
- (1) **Purpose.** Proposer lists may be compiled to provide GIAA with the names of Persons that may be interested in competing for Concessions. Unless otherwise provided, inclusion or exclusion of the name of a Person does not indicate whether the Person is responsible with respect to a particular solicitation or otherwise capable of successfully performing a Concession Agreement.
 - (2) **Deletion of Proposers.** Persons that fail to respond to a RFP on three (3) consecutive Solicitations of similar Concession opportunities may be removed from the applicable list after notice to the Person. Persons currently meeting the criteria for inclusion on the list may be reinstated on such lists at their request.
 - (3) **Public Availability.** Names and addresses on proposer lists shall be available for public inspection provided the lists shall not be used for private promotional, commercial, or marketing purposes.

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- (k) **Publicizing Awards.** Written notice of award shall be sent to the successful Proposer and each unsuccessful Proposer shall be notified of the Award. Notice of award shall be made available to the public and included in the Solicitation Record.
- (l) **Mistakes in Proposals Discovered After Award.** Mistakes in proposals shall not be corrected after Award of the Concession Agreement except where the Executive Manager makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

§ 3102. **Unsolicited Offers.**

- (a) **Defined.** An unsolicited offer is any offer for a Concession other than one submitted in response to a Solicitation.
- (b) **Handling of Unsolicited Offers.** The Executive Manager shall not consider any unsolicited offers and shall return such offers to the sender, at the sender's cost, or destroy such offers.

§ 3103. **Assignment, Novation or Change of Name.**

- (a) **No Assignment.** No Concession Agreement is transferable, or otherwise assignable, without the prior written consent of the Executive Manager and Board of Directors provided, however, that a Concessionaire may assign monies receivable under a Concession Agreement after due notice to GIAA.
- (b) **Recognition of a Successor in Interest; Novation.** When in the best interest of GIAA, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:
 - (1) the transferee assumes all of the transferor's obligations;
 - (2) the transferor waives all rights under the Concession Agreement as against GIAA; and
 - (3) unless the transferor guarantees performance of the Concession Agreement by the transferee, the transferee shall, if required, furnish a satisfactory performance security in the form and amount determined by the Executive Manager.
- (c) **Change of Name.** When a Concessionaire requests to change the name in which it holds a Concession Agreement with GIAA, the Executive Manager shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Concessionaire to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the Concession Agreement are thereby changed.

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§ 3104. **Methods of Solicitation.** Concession Agreements shall be awarded pursuant to a Request for Proposals in accordance with Section 3106.

§ 3105. **Reserved.**

§ 3106. **Request for Proposals (“RFP”).**

- (a) **General.** One of GIAA’s objectives in awarding Concession Agreements is to obtain high quality services that provide and optimize non-airline revenue to GIAA and provide optimal customer service, value and experience to the traveling public. GIAA has determined that soliciting Concession Privileges through the RFP process is good business practice and industry standard. The RFP process allows GIAA to evaluate proposals based on a variety of non-quantitative factors, including quality of customer service, management team, concepts, concession design, company experience, capital investments, brands, training, and other relevant criteria. The RFP process also encourages Proposers to propose creative and unique elements in their proposals to optimize non-airline revenue and enhance customer experience in addition to guaranteed financial offers. For these reasons, the RFP process to procure Concessions is universally accepted and utilized by airports.
- (b) **Use.** GIAA has determined that it is consistent with good business practice to award Concessions using the RFP solicitation method.
- (c) **Public Notice.** Notice of the need for a Concession shall be made by the Executive Manager at least ten (10) days before the proposals are due.
- (1) **Distribution.** Notices of a RFP shall be mailed or otherwise furnished to a sufficient number of Persons for the purpose of securing competition. Notices of a RFP shall indicate where and when the RFP may be obtained and the proposal submission deadline; generally describe the Concession opportunity; and may contain other appropriate information. Where appropriate, the Executive Manager may require payment of a fee for the supplying of a hard copy of the RFP package.
- (2) **Publication.** Every Notice of a RFP shall be publicized at least once and at least seven (7) days before the final date of submission of tenders:
- (i) in a newspaper of general circulation on Guam;
 - (ii) in industry media; or
 - (iii) in a government publication designed for giving public notices; and
 - (iv) GIAA’s website.
- (3) **Public Availability.** A copy of the RFP package shall be made available for public inspection at GIAA’s Administration Office.
- (d) **Content.** The RFP shall be in a form specified by the Executive Manager and contain at least the following information:
- (1) A description of the Concession Opportunity;

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- (2) A summary of key business terms;
 - (3) A statement of minimum qualifications, if any;
 - (4) A draft Concession Agreement;
 - (5) A schedule of events, including the proposal submission deadline;
 - (6) A statement that all potential Proposers must register with GIAA in order to receive notices regarding and amendments to the RFP;
 - (7) A statement that the proposals shall be in writing;
 - (8) A statement that Proposers may designate as confidential those portions of their proposals which contain trade secrets or other proprietary data;
 - (9) A statement of the minimum information that the proposal shall contain, which may include:
 - (i) the name of the Proposer, the location of the Proposer's principal place of business and, if different, the place of performance of the proposed contract;
 - (ii) if determined relevant by the Executive Manager, the age of the Proposer's business and average number of employees over a time period specified in the RFP;
 - (iii) the abilities, qualifications, and experience of all key personnel who would be assigned to the Concession;
 - (iv) a listing of other contracts under which services similar in scope, size, or discipline to the solicited Concession were performed or undertaken within the time period specified in the RFP;
 - (v) a plan giving as much detail as is practical explaining how the Concession will be managed and operated;
 - (vi) proposed Concession Fee; and
 - (vii) minimum investment of Proposer guaranteed as part of Proposal.
 - (10) the factors to be used in the evaluation and selection process and their importance and the basis for award.
- (e) **Evaluation.** The Executive Manager or an evaluation committee designated by the Executive Manager ("**Evaluation Committee**") shall evaluate all proposals submitted. Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. 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 Concession opportunity being solicited. The minimum factors are:
- (1) the plan for managing and operating the Concession;
 - (2) ability to successfully manage and operate the Concession as reflected by technical training and education, general experience, and specific experience in managing and operating a concession, and the qualifications and abilities of personnel proposed to be assigned to manage and operate the Concession;
 - (3) the personnel, equipment, and facilities to manage and operate the Concession that are currently available or demonstrated to be made available at the time of contracting, and
 - (4) a record of past performance of similar work.

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- (f) **Pre-Proposal Conferences.** Pre-proposal conferences may be conducted to explain the Solicitation requirements. Conferences shall be announced to all Persons who have registered with GIAA for receipt of notices relating to the RFP. The conference shall be held long enough after the RFP has been issued to allow potential Proposers to become familiar with it, but sufficiently before the proposals submission deadline to allow consideration of the conference results in preparing their proposals. Nothing stated at the pre-proposal conference shall change the RFP unless a change is made by written amendment as provided in § 3105(g) (Amendments to Requests for Proposals) of this Article. A summary of the conference shall be supplied to all those Persons who have registered for the RFP. If a transcript is made, it shall be part of the Solicitation Record. Such a conference may be held anytime prior to the date established for submission of proposals.
- (g) **Amendments to Requests for Proposals.**
- (1) **Form.** Amendments to RFPs shall be identified as such and shall require that the Proposer acknowledge receipt of all amendments issued. The amendments shall reference the portions of the RFP it amends.
 - (2) **Distribution.** Amendments shall be sent to all Persons who have registered with GIAA to receive notices regarding the RFP.
 - (3) **Timeliness.** Amendments shall be distributed within a reasonable time to allow potential Proposers to consider them in preparing their proposals. If the time and date set for receipt of proposals will not permit such preparation, such time shall be increased to the extent possible in the amendment.
- (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 GIAA officials. A Register of Proposals shall be established for each RFP that shall include for all proposals the name of each offeror and the number of modifications received. The Register of Proposals shall be opened to public inspection only after award of the Concession Agreement. Proposals of Proposers who are not awarded the Concession Agreement shall not be opened to public inspection.
 - (2) **Requests of Nondisclosure of Data.** If the Proposer selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Executive Manager or a designee 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, the Executive Manager shall inform the Proposer in writing what portion of the proposal will be disclosed and that, unless the Proposer withdraws the proposal or protests under Article 4 (Legal and Contractual Remedies), the proposal will be so disclosed.

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(i) **Discussions.**

(5) **Discussions Permissible.** The Executive Manager or Evaluation Committee may allow Proposers to give oral presentations on their proposals. The Executive Manager or Evaluation Committee may conduct Discussions with any Proposer. The purposes of such Discussions shall be to:

- (i) determine in greater detail such Proposer's qualifications, and
- (ii) explore with the Proposer the scope and nature of the Concession opportunity, the Proposer's proposed method of management and operation of the Concession, and the relative utility of alternative methods of approach.

(6) **No Disclosure of Information.** Discussions shall not disclose any information derived from proposals submitted by other Proposers, and GIAA shall not disclose any information contained in any proposals until after award of the proposed Concession Agreement has been made as provided in § 3106(h) (Receipt and Handling of Proposals). The proposal of the Proposer awarded the Concession Agreement shall be opened to public inspection except as otherwise provided in § 3106(h) (Receipt and Handling of Proposals).

(j) **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of Discussions. All documents relating to the modification or withdrawal of a proposal shall be made a part of the Solicitation Record.

(k) **Late Tenders, Late Withdrawals, and Late Modifications.**

(1) **Definition.** Any proposal received after the time and date set for receipt of proposals is late. Any withdrawal or modification of a proposal received after the conclusion of Discussions is late.

(2) **Treatment.** No late proposal, late modification, or late withdrawal shall be considered unless received before Award, and the proposal, modification, or withdrawal would have been timely but for the action or inaction of GIAA personnel.

(3) **Notice.** Persons submitting late proposals that will not be considered for award shall be so notified in writing as soon as practicable.

(4) **Records.** All documents relating to each late proposal, late modification, or late withdrawal shall be made a part of the Solicitation Record.

(l) **Selection of the Best Qualified Proposers.** After conclusion of validation of qualifications, evaluation, and discussions, the Executive Manager shall select, in the order of their respective qualification ranking, no fewer than three acceptable Proposers (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the Concession. In the case where an Evaluation Committee is appointed by the Executive Manager, the Committee shall submit the ranking to the

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Executive Manager for the Executive Manager's consideration and approval. The Board of Directors shall review and approve the ranking of proposers.

(m) **Negotiation and Award of Concession Agreement.**

(1) **General.** The Executive Manager shall negotiate a Concession Agreement with the best qualified Proposer(s) for the solicited Concession, including, without limitation, negotiation of Concession Fee and Minimum Investment Guarantee.

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

- (i) making certain that the Proposer(s) has a clear understanding of the Concession, specifically, the essential requirements involved in managing and operating the Concession;
- (ii) determining that the Proposer(s) will make available the necessary personnel and facilities to manage and operate the Concession for the duration of the term of the Concession Agreement; and
- (iii) agreeing upon Concession Fee, minimum guaranteed investment requirements and other key business terms, taking into account the estimated value of the Concession, and the scope, complexity, and nature of managing and operating the Concession.

(n) **Successful Negotiation of Concession Agreement with the Best Qualified Proposer(s).**

If Concession Fee and all terms, conditions and obligations can be agreed upon with the best qualified Proposer(s), and such Proposer is determined by GIAA to be responsible in accordance with Section 3108, the solicited Concession shall be awarded to that Proposer(s) by execution of the Concession Agreement.

(o) **Failure to Negotiate Contract with the Best Qualified Proposer.**

(1) If Concession Fee and all terms, conditions and obligations cannot be agreed upon with the Best Qualified Proposer(s), a written record stating the reasons therefor shall be placed in the Solicitation Record and the Executive Manager or a designee shall advise such Proposer of the termination of negotiations, which shall be confirmed by written notice within three days.

(2) Upon failure to successfully negotiate a Concession Agreement with the Best Qualified Proposer(s), the Executive Manager may enter into negotiations with the next most qualified Proposer. If Concession Fee and all terms, conditions and obligations can be agreed upon, then the Concession shall be awarded to that Proposer by execution of the Concession Agreement. If negotiations again fail, negotiations shall be terminated as provided in Subsection 3106(l)(1) and commence with the next most Qualified Proposer.

(p) **Notice of Award.** Written notice of Award shall be public information and made a part of the Solicitation Record.

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- (q) **Failure to Negotiate Contract with Proposers Initially Selected as Best Qualified.** Should the Executive Manager be unable to negotiate a Concession Agreement with any of the Proposers initially selected as the best qualified Proposers, proposals may be resolicited or additional Proposers may be selected based on original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with Subsection 3106(o) (Failure to Negotiate Contract with Best Qualified Proposer) of this Section until an agreement is reached and the contract awarded.
- (r) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the Award of the Concession Agreement, the Executive Manager shall prepare a memorandum setting forth the basis of Award including:
- (1) how the evaluation factors stated in the RFP were applied to determine the best qualified Proposers; and
 - (2) the principal elements of the negotiations including the significant considerations relating to Concession Fee and the other terms of the contract.
- The memorandum of evaluation and negotiation shall be included in the Solicitation Record and be available for public inspection.

§ 3107. **Cancellation of Solicitation.**

- (a) **Scope of this Section.** The provisions of this Section shall govern the cancellation of any solicitation and rejection of proposals in whole or in part.
- (b) **Policy.** Solicitations should only be issued when there is a valid need for the Concession unless the Solicitation states that it is for informational purposes only. Preparing and distributing a Solicitation requires the expenditure of GIAA time and resources. Potential Proposers likewise incur expense in examining and responding to Solicitations. Therefore, although issuance of a Solicitation does not compel award of a Concession Agreement, a Solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the Solicitation is in GIAA's best interest.
- (c) **Cancellation of Solicitation - Notice.** Each Solicitation issued by GIAA shall state that the Solicitation may be cancelled as provided in these Policies and Procedures.
- (d) **Cancellation of Solicitation: Rejection of All Proposals.**
- (1) **Prior to Opening.**
 - (i) As used in this Section, *opening* means the deadline for submission of proposals in response to a RFP.
 - (ii) Prior to opening, a Solicitation may be cancelled in whole or in part when the Executive Manager determines in writing that such action is in GIAA's best interest for reasons including but not limited to:
 - (A) GIAA no longer requires the Concession; or

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- (B) proposed amendments to the Solicitation would be of such magnitude that a new Solicitation is desirable.
- (iii) When a Solicitation is cancelled prior to opening, notice of cancellation shall be sent to all Persons that registered with GIAA for the particular Solicitation. The notice of cancellation shall
- (A) identify the Solicitation;
 - (B) briefly explain the reason for cancellation; and
 - (C) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future solicitation of a similar Concession.
- (2) **After Opening.**
- (i) After opening, but prior to award, the Solicitation may be cancelled and all proposals may be rejected in whole or in part when the Executive Manager determines in writing that such action is in GIAA's best interest for reasons including, but not limited to:
 - (A) the Concession solicited is no longer required;
 - (B) ambiguous or otherwise inadequate terms and conditions were part of the Solicitation;
 - (C) the Solicitation did not provide for consideration of all factors or significance to GIAA;
 - (D) all otherwise acceptable proposals received present clearly unreasonable proposed Concession Fee; or
 - (E) there is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.
 - (ii) A notice of cancellation and rejection should be sent to all Persons that submitted proposals, and it shall conform to Subsection 3107(d)(1)(iii).
- (3) **Record.** The reasons for cancellation and/or rejection shall be made part of the Solicitation Record and shall be available for public inspection.
- (e) **Rejection of Individual Proposals.**
- (1) **General.** This Section applies to rejection of individual proposals in whole or in part.
 - (2) **Notice in Solicitation.** Each Solicitation issued by GIAA shall provide that any proposal may be rejected in whole or in part when in the best interest of the GIAA as provided in these Concession Policies.
 - (3) **Reason for Rejection.**

Unless the Solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and GIAA's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

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(A) the Person that submitted the proposal is a not a responsible proposer as determined under § 3108 (Responsibility of Offerors and Proposers) of these Policies and Procedures;

(B) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of GIAA in some material respect; or

(C) the proposed Concession Fee is unreasonable.

(4) **Notice of Rejection.** Upon request, unsuccessful Offerors or Proposers shall be advised of the reasons therefor.

(f) **All or None Proposals.** Only when provided by the Solicitation may a proposal limit acceptance to the entire tender or proposal offering. Otherwise, such proposals shall be deemed to be nonresponsive. If the proposal is properly so limited, GIAA shall not reject part of such proposal and award on the remainder.

(g) **Disposition of Proposals.** When proposals are rejected, or a Solicitation cancelled after tenders or proposals are received, the tenders or proposals which have been opened shall be retained in the Solicitation Record, or if unopened, returned to the Offerors or Proposers upon request, at no cost to GIAA, or otherwise disposed of.

§ 3108. Responsibility of Proposers.

(a) **Determination of Nonresponsibility.** A determination of nonresponsibility shall be made in accordance with this Section. The unreasonable failure of a Proposer 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 Proposer.

(b) **Right of Nondisclosure.** Information furnished by a Proposer pursuant to this Section shall not be disclosed outside of GIAA without prior written consent of the Proposer.

(c) **Standards of Responsibility.** Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, whether a prospective Concessionaire has:

(1) 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 at time of award;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with GIAA; and

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

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- (d) **Information Pertaining to Responsibility.** The Proposer shall supply information requested by the Executive Manager concerning the responsibility of such Proposer. If such Proposer fails to supply the requested information, the Executive Manager shall base the determination of responsibility upon any available information or may find the Proposer nonresponsible if such failure is unreasonable.
- (e) **Ability to Meet Standards.** The Proposer may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
- (1) evidence that such Proposer possesses such necessary items;
 - (2) acceptable plans to subcontract for such necessary items; or
 - (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- (f) **Duty Concerning Responsibility.** Before awarding a Concession Agreement, the Executive Manager must be satisfied that the Proposer is responsible.
- (g) **Written Determination of Nonresponsibility Required.** If a Proposer who otherwise would have been awarded a Concession Agreement is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Executive Manager. A copy of the determination shall be sent promptly to the nonresponsible Proposer. The final determination shall be made part of the Solicitation Record.

§ 3109. **Concession Agreement.**

- (a) **Type.** The use of any type of contract specifying the terms and conditions under which a Concessionaire may use, occupy and access certain Airport Property and manage and operate a Concession is permitted. The Concession Agreement must be consistent with GIAA's Concession Objectives set forth in Article 1 of these Concession Policies and Procedures and in the best interests of GIAA.
- (b) **Terms and Conditions.** All Concession Agreements must at a minimum include provisions pertaining to the following matters:
- (1) Term or duration, extensions and holdover.
 - (2) Exclusivity or non-exclusivity.
 - (3) Concession Fees and other fees and costs of the Concessionaire.
 - (4) Concession premises.
 - (5) Permitted uses and use restrictions.
 - (6) Default and remedies.
 - (7) Insurance.
 - (8) Indemnification and Faithful Performance Guaranty.
 - (9) Concession performance and operating standards.

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- (10) Reporting, record-keeping and audit requirements.
- (11) Modification, assignment and subleasing limitations or restrictions.
- (12) Termination.
- (13) Facility improvement and minimum investment requirements.
- (14) Maintenance and repair obligations.
- (15) Development and financing of improvements; and
- (16) Mandatory contract clauses as provided in these Concession Policies and Procedures.

§ 3110. **Multiple Awards.**

- (a) **General.** A multiple award is an award of a Concession opportunity to more than one Proposer.
- (b) **Limitations on Use.** A multiple award may be made when award to two or more Proposers for a Concession opportunity is necessary for adequate provision of the Concession on Airport Property as determined by the Executive Manager. Multiple awards shall not be made when a single award will meet GIAA's needs without sacrificing availability of the Concession to Airport users.
- (c) **Intent to Use.** If a multiple award is anticipated prior to issuing a solicitation, GIAA shall reserve the right to make such an award and the criteria for award shall be stated in the Solicitation.
- (d) **Determination Required.** The Executive Manager shall make a written determination setting forth the reasons for a multiple award, which shall be made a part of the Solicitation Record.

§ 3111. **Audit and Records.**

- (a) **Audit.** GIAA may during the term of a Concession Agreement and for a period of four years (4) from the date of expiration or termination of the Concession Agreement, at reasonable times and places, audit the books and records of any Concessionaire to the extent that such books and records relate to the Concession or Concession Agreement. The scope of the audit shall be determined by the Executive Manager.
- (b) **Retention of Books and Records.** All Concessionaires shall maintain all books and records that relate to the Concession or Concession Agreement for four (4) years from the date of expiration or termination of the Concession Agreement, unless a shorter period is otherwise authorized in writing by the Executive Manager.
- (c) **Subcontractors.** GIAA's right to audit the obligation to maintain all books and records shall apply to all Concessionaire's subcontractors.

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- (d) **Conditions for an Audit.** An audit may be warranted when, with respect to a Concessionaire or its subcontractor, there is:
- (1) a question as to the adequacy of accounting policies;
 - (2) a question as to financial condition, integrity, and/or reliability;
 - (3) a substantial change in the methods of levels of operation; or
 - (4) other evidence that an audit is in GIAA's best interests as determined by the Executive Manager.

§ 3112. **Finality of Determinations.** The determinations required by these Concession Policies are final and conclusive unless they are found to be clearly erroneous, arbitrary, capricious, or contrary to law.

§ 3113. **Reporting of Anticompetitive Practices.**

- (a) **Reporting.** When for any reasons collusion or other anticompetitive practices are suspected among Proposers, a notice of the relevant facts shall be transmitted to the Attorney General.
- (b) **Anticompetitive Practices.** For the purposes of this Section, an anticompetitive practice is a practice among Proposers, which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive proposals, or result from illicit business actions which have the effect of restraining trade, such as controlling the proposed Concession Fee or an improper collective refusal to submit proposals. Indications of suspected anticompetitive practices include, but are not limited to, identical proposals, rotated proposed Concession Fees, sharing of the business, and group boycotts.
- (c) **Independent Concession Fee.** Every Solicitation shall provide that by submitting a proposal, the Proposer certifies that the proposed Concession Fee submitted was independently arrived at without collusion.
- (d) **Detection of Anticompetitive Practices.** In order to assist in ascertaining whether or not an anticompetitive practice may have occurred or may be occurring, the Executive Manager should be alerted and sensitive to conditions of the market or industry and evaluate past Solicitations including, as appropriate, the following:
- (1) a study of the proposal submission history of a particular Concession over a period of time sufficient to determine any significant patterns or changes;
 - (2) a review of similar Concession awards over a period of time; or
 - (3) consultation with outside sources of information, such as industry experts or Proposers who have competed for similar Concessions in the past, but who are no longer competing for such business.

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- (e) **Identical Submissions and Concession Fee Fixing.** The term *identical submissions* means the submission by Proposers of the same Concession Fee. The submission of identical Concession Fees may or may not signify the existence of collusion. In seeking to determine whether collusion has taken place, the Executive Manager should view the identical submissions against present and past submissions, the structure and stated of the industry involved including the nature of the Concession involved.
- (f) **Rotated High Concession Fees.** Rotated high proposed Concession Fees result where all Proposers participating in the collusive scheme submit proposals and by agreement alternate submitting the highest Concession Fee. To aid in determining whether rotation may be occurring, the Executive Manager must review past similar Solicitations in which the same Proposers have participated.
- (g) **Sharing of the Business.** Sharing of the business occurs where potential Proposers allocate business among themselves based on the customers or the territory involved. Thus, the Executive Manager might discover that a potential Proposer is not participating in a Solicitation because a particular territory has not been allocated to such Proposer.
- (h) **Group Boycott.** A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a Concession Solicitation until the boycotting competitor's conditions are met by the boycotted competitor or GIAA. The boycott of a competitor by other competitors may have an effect on the market structure or the proposed Concession Fee.

§ 3114. Solicitation Record.

- (a) **Contents.** The Executive Manager shall cause a complete record of each Solicitation to be retained and disposed of in accordance with records retention guidelines and schedules approved by the Attorney General. The record shall include at a minimum the following (“**Solicitation Record**”):
 - (1) **Meeting log.** A log of all meetings related to the Solicitation. The log shall include the date, time, subject matter and names of participants;
 - (2) **Communications log.** A log of all communications between GIAA Employees and any member of the public, which is in any way related to the Solicitation;
 - (3) **Sound recordings.** Sound recordings of (i) all pre-proposal conferences and (iii) discussions and negotiations arising from a RFP;
 - (4) **Written determinations.** All written determinations required by these Concession Policies and Procedures.
- (b) **Retention.** The Solicitation Record for each Concession shall be retained and disposed of in accordance with GIAA's record retention policy as approved by the Attorney General.

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- (c) **Certification.** No Concession Agreement shall be awarded unless the Executive Manager certifies in writing under penalty of perjury that the Solicitation Record has been maintained and that it is complete and available for public inspection. The certificate is itself a part of the Solicitation Record.
- (d) **Public Record.** The Solicitation Record is a public record and, subject existing laws and regulations regarding confidentiality and these Policies and Procedures, any Person may inspect and copy any portion of a Solicitation Record after an award is made.
- (e) **Policy.** It is the policy of GIAA to maintain a complete Solicitation Record for each Concession to:
- (1) protect the integrity of the Solicitation process;
 - (2) protect the confidentiality of trade secrets;
 - (3) allow public access to the Solicitation Record at the earliest possible time.

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§ 4101. Protests of a Solicitation or Award.

- (a) **Complaint to Executive Manager.** Complainants should seek resolution of their complaints initially with the Executive Manager. Such complaints may be made verbally or in writing.
- (b) **Protest.** A Proposer or Prospective proposer may protest a Solicitation or award to the Executive Manager.
- (c) **When Filed.** Protests shall be filed fourteen (14) calendar days after the protestor knows or should have known of the facts giving rise to the protest. A protest is considered filed when received by the Executive Manager. Protests filed after the 14-day period shall not be considered.
- (d) **Subject of Protest.** Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, solicitation, award, or disclosure of information marked confidential in the bid or offer.
- (e) **Form.** All protests shall be in writing, shall be submitted to the attention of the Executive Manager and shall be submitted in a sealed envelope clearly labeled “Protest – [Solicitation No.- Solicitation Name].” All protests shall:
 - (1) include the name, phone number, mailing address and email address of the protestor;
 - (2) include a statement of reasons for the protest and state with particularity the facts giving rise to the protest; and
 - (3) include supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.
- (f) **Additional Information.** Any additional information requested by GIAA should be submitted within the time periods established by GIAA in order to expedite consideration of the protest. Failure of the protestor to comply expeditiously with a request for

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information by GIAA may result in resolution of the protest without consideration of any information that is untimely filed pursuant to such request.

- (g) **Stay.** When a protest has been timely filed and before an award has been made, the Executive Manager shall not proceed further with the Solicitation or with the award of the Concession Agreement prior to final resolution of such protest, and any such further action is void, unless: (1) The Executive Manager, with the written concurrence of the Board, makes a written determination that the award of the Concession Agreement without delay is necessary to protect the substantial interests of GIAA (“§ 4101(g) Determination”); and (2) Absent a declaration of emergency by the Governor, the Protestor has been given at least two (2) days’ written notice (exclusive of weekends and government of Guam holidays) of the § 4101(g) Determination.
- (1) Final resolution of protest as used in Subsection (e) shall mean a final written decision on the Protestor’s appeal issued by the Appeal Panel in accordance with Subsection (j).
- (2) If an appeal of the protest is pending before the Appeal Panel, and the Board has confirmed such determination, or if no such appeal is pending, the Protestor has not filed a request with the Appeal Panel to review the § 4101(g) Determination prior to the expiration of the two-day period specified in this subsection.
- (h) **GIAA Decision.** The Executive Manager shall respond in writing to the protest within thirty (30) days of GIAA’s receipt of the protest. A copy of the decision shall be made or otherwise furnished immediately to the Protestor.
- (1) **Preparation Costs.** In addition to any other relief, the Executive Manager shall award the Protestor its reasonable proposal preparation costs, excluding attorneys’ fees, when a protest is sustained and the Protestor should have been, but was not awarded the Concession Agreement under the Solicitation.
- (2) **GIAA costs.** A Protestor shall be liable for GIAA’s reasonable costs associated with responding to the protest, excluding attorneys’ fees, upon a finding by the Executive Manager that the protest was made fraudulently, frivolously or solely to disrupt the Solicitation process.
- (i) **Request for Reconsideration.** Reconsideration of a decision of the Executive Manager may be requested by the Protestor, within fifteen (15) days after receipt by the Protestor of the notice of decision. Reconsideration can also be requested by an appellant or any Interested Party who submitted comments during consideration of the protest. The same time frame applies herein. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. A request for reconsideration does not extend the time to appeal the decision of the Executive Manager to the Appeal Panel.
- (j) **Appeal to the Appeal Panel.**

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- (1) Denial of Protest. If the protest is denied by the Executive Manager, the Protestor may appeal the denial by filing a Notice of Appeal with the Executive Manager. The protestor shall file its appeal and with the Executive Manager within fifteen (15) calendar days of the Protestor's receipt of Executive Manager's decision to deny the protest. The Appeal Panel shall determine whether a decision on the protest is in accordance with the statutes, regulations, and the terms and conditions of the Solicitation. The Appeal Panel shall have no jurisdiction to consider an appeal that is not filed within the time required by this Section.
- (2) Appeal Procedures. For all appeals to the Appeal Panel pursuant to this Section, the Appeal Panel shall conduct a review of the Executive Manager's denial of the protest pursuant to Article 5 of these Policies and Procedures. The Appeal Panel shall issue a written decision on the appeal within ninety (90) calendar days of the Executive Manager's receipt of the appeal.

(k) **Reserved.**

(l) **Reserved.**

(m) **Finality.** The decision of the Executive Manager is final unless a Person adversely affected by the decision timely appeals the decision to the Appeal Panel in accordance with these Concession Policies and Procedures.

(n) **Making Information on Protests Available.** The Executive Manager shall upon written request make available to any Person information submitted that bears on the substance of the protest except where the information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted and the legal basis to keep such information confidential, and indicating on the front page of each document that it contains such information.

§ 4102. Debarment or Suspension.

(a) **Application.** This Section applies to all debarment or suspensions of Persons from consideration for award of Concession Agreements by the Executive Manager.

(b) **Authority.** The Executive Manager after consultation with GIAA's counsel, and in accordance with this Section, shall have authority to debar a Person for cause from consideration for award of Concession Agreements. The debarment shall not be for a period of more than two (2) years. The Executive Manager, after consultation with GIAA's counsel, shall have authority to suspend such Person from consideration for award of Concession Agreements if there is probable cause for debarment.

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(c) **Suspension.**

- (1) **Initiation.** After consultation with the Concessionaire or prospective Concessionaire who is to be suspended, where practicable, upon written determination by the Executive Manager that probable cause exists for debarment, a Concessionaire or prospective Concessionaire may be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended Concessionaire or prospective Concessionaire.
- (2) **Notice of Suspension.** The notice of suspension shall state that:
 - (i) the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of the debarment decision, but not for a period in excess of three (3) months; and
 - (ii) proposals will not be solicited from the suspended Person, and, if they are received, they will not be considered during the period of suspension.
- (3) **Effect of Notice of Suspension.** A suspension is effective upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be terminated by the Executive Manager or by a court, but otherwise shall only terminate when the suspension has been in effect for three (3) months.

- (d) **Debarment.** Proceedings for the possible debarment of a Concessionaire or prospective Concessionaire shall be initiated by the service of an accusation and statement of issues on such Person in accordance with Article 2 of the Administrative Adjudication Law (5 GCA Chapter 9, Articles 1 and 2), as such law may be amended from time to time (the "AAL"). In addition to the requirements under the AAL, the accusation shall: (1) state that debarment is being considered; (2) set forth the reasons for the action; and (3) state that the debarment proceedings are being conducted pursuant to Article 2 of the AAL.

- (e) **Maintenance of List of Debarred and Suspended Persons.** The Executive Manager shall maintain and update a list of Persons debarred or suspended from participation in a Concession Solicitation. Such list shall include the date of expiration of the suspension or debarment. Such list shall be available to the public upon request.

§ 4103. **Contract and Breach of Contract Controversies.**

(a) **Authority to Resolve Contract and Breach of Contract Controversies.**

- (1) **General.** It is GIAA's policy to try to resolve all controversies with Concessionaires by mutual agreement without litigation. Resolution may be by informal discussions, mediation or other dispute resolution processes agreed to by the parties.
- (2) **Scope.** This Section is applicable to controversies between GIAA and a Concessionaire that arise under, or by virtue of, a Concession Agreement between them. The word *controversy* is meant to be broad and all-encompassing and includes without limitation controversies based upon breach of contract, mistake, misrepresentation, modification, reformation, or rescission.

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(b) **Failure to Resolve.**

(1) **Final Decision.** When a controversy cannot be resolved by mutual agreement, the Executive Manager shall, after written request by the Concessionaire for a final decision, promptly issue a written decision. Such decision must state that it is the “Final Decision” of GIAA on the controversy.

(2) **Contents of Final Decision.** The Executive Manager shall immediately furnish a copy of the decision to the Concessionaire, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:

- (i) a description of the controversy;
- (ii) references to pertinent contract provisions;
- (iii) a statement of the factual areas of agreement or disagreement;
- (iv) the basis for the decision;
- (v) the following statement: “This is the final decision of the Executive Manager regarding this matter.

(3) **Failure to Timely Issue a Final Decision.** If the Executive Manager does not issue a written decision within sixty (60) days after the Executive Manager’s receipt of written request from the Concessionaire for a final decision, or within such longer period as may be agreed upon by the parties, then the Concessionaire may proceed as if an adverse final decision had been received.

(4) **Appeal of Final Decision.** For claims involving money damages, the Concessionaire must file a claim with GIAA in accordance with the Government Claims Act.

(c) **Controversies Involving GIAA Claims Against the Concessionaire.** All controversies involving claims asserted by GIAA against a Concessionaire that cannot be resolved by mutual agreement shall be the subject of a final decision by the Executive Manager.

(d) **Disputes Clause.** Language substantially similar to the following clause shall be inserted in all Concession Agreements:

DISPUTES

(1) The Authority and Concessionaire agree to attempt resolution of all controversies that arise under, or by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by the Authority in writing within sixty (60) days after Concessionaire’s written request that the Authority issue a final decision concerning the controversy. If the Authority does not issue a written decision, within sixty (60) days after Concessionaire’s written request for a final decision, or within such longer period as may be agreed upon by the parties, then Concessionaire may proceed as if an adverse decision had been received.

(2) The Authority shall immediately furnish a copy of the decision to Concessionaire, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(3) The Authority’s decision shall be final and conclusive, unless fraudulent, or unless for disputes involving money owed by or to Concessionaire under this

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Agreement, Concessionaire files appeal an of the decision in accordance with the Government Claims Act by filing a government claim with the Authority no later than eighteen months after the decision is rendered by the Authority or from the date when a decision should have been rendered.

(4) Concessionaire shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

(5) Concessionaire shall comply with the Authority's decision and proceed diligently with performance of this Agreement pending final resolution of any controversy arising under, or by virtue of, this Agreement, except where Concessionaire claims there has been a material breach of the Agreement by the Authority. However, if the Authority determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then Concessionaire shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Authority.

§ 4104. Determination that a Solicitation or an Award Violates Law.

(a) **Applicability.** This Section applies where it is determined administratively that a Solicitation or award of a Concession Agreement is in violation of law.

(b) **Determination that a Solicitation or an Award Violates Law.**

(1) **Determination.** A Solicitation or award may be in violation of the law or these Policies and Procedures due to actions of GIAA employees, proposers, Concessionaires, or other Persons. After consultation with GIAA counsel, the Executive Manager, or in an appeal over which it has jurisdiction, the Appeal Panel may determine that a Solicitation or award is in violation of the provisions of law or these Policies and Procedures. Any such determination shall be made in writing after an opportunity to be heard is given, and such determination by the Executive Manager is subject to appeal to the Appeal Panel.

(2) **Finding of Bad Faith or Fraud.** Bad faith or fraud shall not be assumed. Specific findings showing reckless disregard of clearly applicable laws or regulations must support a finding of bad faith. A finding of fraud must be supported by specific findings showing knowing, willful acts in disregard of such laws or regulations.

§ 4105. Violations of Law Found Prior to Award.

(a) **Remedies Prior to an Award.** If prior to award it is determined that a Solicitation or proposed award of a Concession Agreement is in violation of the law, then the Solicitation or proposed award shall be:

- (1) cancelled; or
- (2) revised to comply with the law.

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- (b) **Cancelling or Revising Solicitation or Proposed Award to Comply with the Law.** A finding by the Executive Manager, after consultation with GIAA counsel, that the Solicitation or proposed award is in violation of law will constitute a cogent and compelling reason to cancel or revise a solicitation or proposed award. Such cancellation shall be made in accordance with Section 3107 (Cancellation of Solicitations) of these Policies and Procedures.

§ 4106. Ratification, Termination, or Cancellation of Concession Agreement to Comply with the Law.

- (a) **Remedies After an Award.** If after an award it is determined that a Solicitation or award of a Concession Agreement is in violation of law, then:
- (1) if the Person awarded the Concession Agreement has not acted fraudulently or in bad faith:
 - (i) the Concession Agreement may be ratified and affirmed, provided it is determined that doing so is in the best interests of GIAA; or
 - (ii) the Concession Agreement may be terminated and the Person awarded the Concession Agreement shall be compensated for the actual expenses reasonably incurred under the Concession Agreement prior to the termination;
 - (2) if the Person awarded the Concession Agreement has acted fraudulently or in bad faith:
 - (i) the Concession Agreement may be declared null and void; or
 - (ii) the Concession Agreement may be ratified and affirmed if such action is in the best interests of GIAA, without prejudice to GIAA's rights to such damages as may be appropriate.
- (b) **No Fraud or Bad Faith by Concessionaire.**
- (1) **General.** Upon finding after award that GIAA has made an unauthorized award of a Concession Agreement or that a Solicitation or award is otherwise in violation of law where there is no finding of fraud or bad faith, the Executive Manager may ratify or affirm the Concession Agreement or terminate it in accordance with this Section after consultation with GIAA counsel.
 - (2) **Ratification and Affirmation.**
 - (i) **Waiver of violation.** If the violation can be waived without prejudice to GIAA or other Proposers, the preferred action is to ratify and affirm the Concession Agreement if such action is in the best interests of GIAA.
 - (ii) **No waiver of violation.** If the violation cannot be waived without prejudice to GIAA or other Offerors or Proposers and:
 - (A) if performance has not begun, and if there is time for resoliciting, the Concession Agreement shall be terminated. If there is no time for resoliciting, the Concession Agreement may be amended appropriately, ratified, and affirmed if such action is in the best interests of GIAA.
 - (B) if performance has begun, the Executive Manager shall determine in writing whether it is in the best interest of GIAA to terminate or to amend,

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ratify, and affirm the Concession Agreement. Termination is the preferred remedy.

(iii) Best interests of GIAA. The following factors are among those pertinent in determining GIAA's best interest:

(A) the costs to GIAA's best interest;

(B) the progress made toward performing the whole contract; and

(C) the possibility of obtaining a more advantageous contract by resoliciting.

(iv) **Termination.** Concession Agreements based on awards or Solicitations that were in violation of law shall be terminated at no cost to GIAA, if possible. If a termination claim is made by the Concessionaire, settlement shall be made in accordance with the Concession Agreement. If there are no applicable termination provisions in the Concession Agreement, settlement shall be made on the basis of actual costs reasonably incurred by the Concessionaire through the time of termination. Such costs shall be established in accordance with generally accepted accounting principles. Anticipated profits are not allowed.

(c) **Fraud or Bad Faith by the Concessionaire.**

(1) **General.** Upon finding after award that a Solicitation or award is in violation of law and that the recipient of the Concession Agreement acted fraudulently or in bad faith, the Executive Manager may, after consulting with GIAA's counsel, declare the contract null and void or ratify and affirm it in accordance with this Section.

(2) **Declaration of Concession Agreement Null and Void.** The Concession Agreement shall be declared null and void unless ratification and affirmation is found to be in GIAA's best interest under Subsection 4106(b)(2)(iii) of this Section.

(3) **Ratification and Affirmation.** The Concession Agreement shall not be modified, ratified, and affirmed unless it is determined in writing that there is a continuing need for the Concession under the Concession Agreement and:

(i) there is no time to resolicit and award the Concession Agreement; or

(ii) the Concession Fee is higher than it could be otherwise.

(4) **Effect of Declaring a Concession Agreement Null and Void.** In all cases where a contract is voided, GIAA is entitled to recover damages under any applicable legal theory from the faithful performance guaranty

(5) **Effect of Ratification.** GIAA shall be entitled to any damages it can prove under any theory including, but not limited to, contract and tort regardless of its ratification and affirmation of the Concession Agreement.

§ 4107. Interest. Interest on amounts ultimately determined to be due to a Concessionaire shall be payable at the statutory rate from the date the claim arose through the date of decision or judgment, whichever is later. Interest on amounts ultimately determined to be due to GIAA shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

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§ 4108. Reserved.

§ 4109. Reserved.

DRAFT

Appendix A: Notice of Appeal Form

**APPEAL
GIAA CONCESSION RULES AND REGULATIONS**

**PART I- To be completed by APPEAL PANEL /
DESIGNATED GIAA ADMINISTRATIVE STAFF**

In the Appeal of _____)
_____))
_____))
_____))
_____))
(Name of Company), APPELLANT)
_____))
_____)

NOTICE OF APPEAL

PART II- Appellant Information

Name: _____
Mailing Address: _____
Business Address: _____
Daytime Contact No: _____

I. PART III- Appeal Information

- A) Agency: Antonio B. Won Pat International Airport Authority, Guam (GIAA)
- B) Identification/Number of Solicitation or Concession Agreement: _____
- C) Decision being appealed was made on _____ (date) by GIAA Executive Manager.

Note: You must serve GIAA with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

- ____ Decision on Protest of Method, Solicitation or Award
- ____ Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of GIAA)

1
2 E) Names of Competing Proposers or Concessionaires known to Appellant:

3 _____
4 _____
5 _____
6 _____

7 **PART IV- Form and Filing**

8 In addition to this form, the Rules of Procedure for Appeals (Art. 5 of GIAA Concession
9 Policies and Procedures) require the submission together with this form of additional
10 information, including BUT NOT LIMITED

11 TO:

- 12 1. A concise, logically arranged, and direct statement of the grounds for appeal;
13 2. A statement specifying the ruling requested;
14 3. Supporting exhibits, evidence, or documents to substantiate any claims and the
15 grounds for appeal unless not available within the filing time in which case the
16 expected availability date shall be indicated.

17 Submitted this ___ day of _____, 20__.

18 By: _____
19 APPELLANT

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- § 5101 Appeal Panel
 - § 5101.1 Appointment and Authority of Hearing Officer
 - § 5102. Jurisdiction; Exhaustion of Remedies.
 - § 5104. Form and Filing of Appeal.
 - § 5105. Agency Report.
 - § 5106. Making Information on Appeals Available.
 - § 5107. *Ex Parte* Communications with Hearing Officer.
 - § 5108. Hearing Procedures.
 - § 5109. Reserved.
 - § 5110. Decisions of the Hearing Officer.
 - § 5111. Finality of Decisions.
 - § 5112. Appeal to Appeal Panel relative to Method, Solicitation, or Award.
 - § 5113. Reserved.
 - § 5114. Appeal to Appeal Panel of Debarment or Suspension.
 - § 5115. Review of Award Pending Protest or Appeal.
 - § 5116. Reserved.
- Appendices A-D.

§ 5101. Appeal Panel. (a) A three-person Appeal Panel, designated by I Maga Hagan Guahan shall be constituted to administratively consider appeals from decisions of the Executive Manager, as allowed by these Concession Policies and Procedures. Prior to any solicitation for a concession agreement, GIAA shall enter a memorandum of understanding with I Maga Hagan Guahan to constitute such panel, which shall include the Director of the Department of Administration, the Chief Procurement Officer of the General Services Agency and the General Services Agency Procurement Counsel. If one or more of these positions are vacant or there is a conflict of interest precluding an individual's designation or participation at any time I Maga Hagan Guahan makes such designation, then I Maga Hagan Guahan may appoint any other appropriate individual employed within the Executive Branch of the Government of Guam, provided at least one individual is an attorney employed by Government of Guam Executive Branch.

(b) GIAA shall designate administrative staff responsible for handling any Appeal, and for supporting the needs of the Appeal Panel. These staff members shall be called the "Designated GIAA Staff."

(c) GIAA shall provide the necessary facilities for all proceedings required in an appeal.

(d) GIAA shall maintain records of every Appeal, including a complete docket of all documents filed concerning an Appeal, which shall be publicly posted on GIAA's website while an Appeal is ongoing and for a least 6 months following the final decision related to any Appeal.

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(e) GIAA shall bear all administrative costs concerning Appeals under this section, including for providing necessary facilities, maintaining an electronic and physical docket with all documents filed concerning an Appeal, and for any audio or other recordings for any hearings.

(f) The Appeal Panel shall be an ad hoc committee, and is not intended to be a Public Agency within the meaning of the Guam Open Government Law.

§ 5101.1 Appointment and Authority of the Hearing Officer. For any hearing required under this Article, the Appeal Panel shall appoint its attorney member as the Hearing Officer related to the Appeal. The Hearing Officer shall receive written, oral, or otherwise presented testimony, evaluate such testimony and make recommendations to the Appeal Panel. No prior determination shall be final or conclusive. The Hearing Officer has the power, among others, to:

- (a) Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or *sua sponte*;
- (b) Require parties to state their positions with respect to the various issues in the proceeding;
- (c) Require parties to produce for examination those relevant witnesses and documents under their control;
- (d) Rule on motions, and other procedural items on matters pending before such officer;
- (e) Regulate the course of the hearing and conduct of participants therein;
- (f) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (g) Fix time limits for submission of written documents in matters before such officer;
- (h) Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
 - (1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (2) Excluding all testimony of an unresponsive or evasive witness;
 - (3) Expelling any party or person from further participation in the hearing; and
 - (4) Taking official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.
- (i) Compel attendance and testimony of and production of documents by any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission;
- (j) Consider testimony and evidence submitted by any competing proposer or Concessionaire of the protestant or appellant; and
- (k) Make written recommendations concerning any findings of fact or conclusions of law necessary for a final decision by the Appeal Panel.

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§ 5102. Definitions. As used in this Article, unless the context in which they are used requires a different meaning, the following definitions shall apply.

- (a) *Appeal* means an appeal of a decision of the Executive Manager to the Appeal Panel in accordance with these Concession Policies and Procedures.
- (b) *Appellant* means an aggrieved person who appeals a decision of the Executive Manager to the Appeal Panel.
- (c) *Designated GIAA Staff* mean those GIAA employees designated by GIAA to administratively support the Appeal Panel, who shall have no involvement, directly or indirectly, with GIAA's defense, response, or other litigation-related-action concerning an Appeal pending before the Appeal Panel.
- (d) *GIAA Administrative Offices* means the Executive Offices of the A.B. Won Pat International Airport Authority, Guam located at 355 Chalan Pasaheru, Tamuning, Guam 96913 on the 3rd floor.
- (e) *Hearing Officer* means the attorney member of the Appeal Panel designated pursuant to Section 5101.1 to *inter alia* preside over a hearing on an Appeal.
- (f) *Interested Party* means a Concessionaire or an actual or prospective Proposer who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied.
- (g) *Protestor* means any actual or prospective Proposer or Concessionaire who is aggrieved in connection with the Solicitation or Award of a Concession Agreement and who filed a protest, or who has received a notice of suspension or debarment. Such a Protestor is sometimes referred to herein as an "aggrieved person."
- (h) *Prospective proposer* means a Person who will actually submit a proposal in response to a RFP, and would provide a Concession if such Person would prevail in the Appeal.
- (i) *File and submit* mean receipt by the Administration Offices of GIAA, as the case may be.
- (j) In computing any period of time prescribed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, a Sunday, a Government of Guam holiday, in which event a period extends until the end of the next day which is not a Saturday, a Sunday, a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays shall be excluded in the computation.

§ 5103. Jurisdiction of the Appeal Panel; Exhaustion of Remedies.

- (a) **Jurisdiction.** The Appeal Panel shall have the power to review and determine *de novo* any matter properly submitted to it. The Appeal Panel or the Hearing Officer shall have the power to compel attendance and testimony of, and production of documents by, any employee of the government of Guam, including any employee of any autonomous agency, public corporation or board or commission. The Appeal Panel may consider testimony and evidence submitted by any party to the Appeal.

§ 5104. Form and Filing of Appeal.

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- (a) **When Filed.** Appeals shall be made in writing to the Executive Manager and shall be filed in triplicate. An Appeal is considered filed when received by the GIAA Administrative Offices, which shall cause evidence of the date of filing to be stamped upon each Appeal and triplicate. Appeals filed after the allowable filing period set forth in statute or these rules shall not be considered.
- (b) **Form.** To expedite handling of Appeals, the envelope, transmittal letter, and the actual Appeal shall be labeled “Antonio B. Won Pat International Airport Authority Guam Concession Solicitation Appeal”. The written Appeal shall be in substantially the same format as **Appendix A** to this Article, and include at a minimum the following:
- (1) The name, mailing and business address of the Appellant;
 - (2) Appropriate identification of the Solicitation, and, if a contract has been awarded, its number; a concise, logically arranged, and direct statement of the grounds for Appeal;
 - (3) A statement specifying the ruling requested;
 - (4) Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for Appeal unless not available within the filing time in which case the expected availability date shall be indicated;
 - (5) A copy of the final decision on the protests or contract disputes or debarment action that are being Appealed; or copy of the request for final decision and any agreement to extend the decision deadline;
 - (6) An Appeal shall be signed by an Appellant, by an officer of the Appellant, or by the Appellant’s duly authorized representative or attorney, and the facts therein verified.
 - (7) A protest may be dismissed for failure to comply with any of the requirements of this section.
- (c) **Notice of Appeal, Submission of Report and Time for Filing of Comments on Report.**
- (1) The Appellant shall file a copy of the Appeal, and all supporting documents with the GIAA Administrative Offices. It shall be the duty of the Executive Manager to give notice of the Appeal to counsel for the Authority.
 - (2) The Executive Manager shall give notice of the Appeal to the Concessionaire if award has been made or, if no award has been made, to all Interested Parties; shall instruct said parties to communicate directly with the GIAA Administrative Offices regarding the status of the Appeal, and directly with the Executive Manager as allowed by law regarding the protested Solicitation.
 - (3) The Executive Manager shall submit to the Appeal Panel a complete copy of the Solicitation Record relevant to the Appeal within five (5) working days of receiving notice of an Appeal, in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents. It shall additionally submit an answer to the Appeal in the form of a detailed Agency Report, and shall furnish a copy of the report to the Appellant. This Agency Report shall comply to the requirements of § 5105 of this Article. The Agency Report shall be submitted within ten (10) working

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days of receipt of by the Executive Manager of the notice of Appeal. The Agency Report shall be submitted within twenty (20) days of receiving the notice of Appeal or notice of Appeal of a Debarment.

- (4) Comments on the Agency Report by an Appellant or an Interested Party, including testimony and evidence by any competing proposer or Concessionaire of the Appellant, shall be filed with the GIAA Administrative Offices within ten (10) days after receipt of the report. Any rebuttal by GIAA Management shall be filed with the GIAA Administrative Offices within five (5) working days after receipt by the Appeal Panel of the comments to which rebuttal is directed, with a copy to the Appellant. Unsolicited rebuttals by GIAA shall be considered if filed within five (5) working days after receipt by the GIAA Administrative Offices of the comments to which rebuttal is directed.
- (5) The failure of an Appellant or any Interested Party to comply with the time limits stated in this section may result in resolution of the Appeal without consideration of the comments untimely filed.
- (6) If the Appellant or GIAA considers that the Appeal, the Solicitation Record, the Agency Report, or any other report or material submitted contains material which shall be withheld pursuant to law or regulation, a statement advising of this fact must be affixed to the front page of the document and the allegedly exempted information must be so identified wherever it appears.
- (7) Requested Information Time for Filing. In order to expedite consideration of the Appeal, any additional information requested by the Hearing Officer shall be submitted within five working (5) days of receipt of such request unless another time is established in the request. Failure of any party to comply expeditiously with a request for information by the Hearing Officer may result in resolution of the Appeal without consideration of any information, which is untimely filed pursuant to such request.
- (8) After notice of an Appeal to the Appeal Panel has been filed a party may not discontinue such Appeal without prejudice, except as authorized by the Appeal Panel.

§ 5105. Agency Report. The Agency Report shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file and shall include the following, if not already submitted to the GIAA Administrative Offices as part of the Solicitation Record required by § 3114 of these Policies and Procedures:

- (a) A copy of the protest;
- (b) A copy of the proposal submitted by the Appellant and a copy of the proposal that is being considered for award or the proposal being protested, if any had been submitted prior to the protest;
- (c) A copy of the Solicitation;
- (d) A copy of the abstract of proposals or relevant or portions thereof relevant to the protest;
- (e) Any other documents which are relevant to the protest; including the Concession Agreement, if one has been awarded, and all amendments;

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(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant;

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal;

(h) If the award was made after receipt of the protest, the report will include the determination required under § 4101(g) of these Policies and Procedures; and

(i) A statement in substantially the same format as **Appendix B** to this Article, indicating whether the matter is the subject of a court proceeding.

§ 5106. Making Information on Appeals Available. GIAA shall, upon written request, make available to any Person information submitted that bears on the substance of the Appeal except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation or these Policies and Procedures. Persons who wish to keep such information submitted by them confidential shall so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information.

§ 5107. Ex Parte Communications with Hearing Officer.

(a) **No Ex Parte Communications.** No Person directly or indirectly involved in an Appeal shall communicate with the Appeal Panel or the Hearing Officer regarding any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an Appeal except:

(1) At a hearing; or

(2) With the written consent of all other parties or their counsel in such matters; or

(3) In the presence of all other parties or their counsel in such matters;

(4) By means of papers provided for or allowed by these rules or by law; Or

(5) Designated GIAA Administrative Staff shall maintain a record for every appeal, and may communicate with the Appeal Panel concerning the records maintained for the appeal.

(b) **Unrelated Matters.** Nothing in this rule shall prevent the Appeal Panel and GIAA staff from entertaining questions or complaints that are not related to the substance of a pending Appeal. Appeal Panel members and Hearing Offices shall report communications regarding a pending Appeal to all the parties in the pending Appeal.

§ 5108. Hearings Procedures.

(a) **Request for Hearing.** In all Appeals to the Appeal Panel of suspension or debarment, a hearing shall be conducted. In all other Appeals, the parties shall either request a hearing in writing or waive their right to a hearing and submit the case on the record without a

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hearing. Request for a hearing shall be made prior to the expiration of the time period allowed for filing comments on the Agency Report and shall be in a form substantially similar to **Appendix D** to this Article. Except in unusual circumstances found by the Appeal Panel, requests for a hearing received after such time will not be honored.

- (b) **Time and Place for Hearings.** Hearings shall be held at the place set by the Hearing Officer. The time for hearings shall be set by the Hearing Officer. Ordinarily, only one hearing will be held on an Appeal. Such hearing may be held by telephone conference call or other means at the discretion of the Hearing Officer.
- (c) **Notice of Hearing.** The Hearing Officer shall send a written notice of the time and place of the hearing to the Appellant and to the Executive Manager at least ten (10) days prior to the hearing unless the parties agree on a shorter period. It shall be the duty of each of these entities to notify its own counsel. Notice shall be sent by the Hearing Officer by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and shall state the nature and purpose of the proceedings, and shall substantially follow the format of **Appendix C** of this Article. The notice shall also state that the Appellant may be represented by counsel. Notices of hearings shall be promptly acknowledged by the parties. The Hearing Officer can require attendance of parties he or she deems appropriate.
- (d) **Hearing Proceedings.** Hearings shall be as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure except as provided by Guam law and the Concession Policies and Procedures. The testimony presented shall be written, oral or otherwise. The weight to be attached to evidence presented in any particular form will be within the discretion of the Hearing Officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate to the testimony that would be given by a witness if the witness were present. The Hearing Officer may require evidence in addition to that offered by the parties. Where not otherwise provided for by these Concession Policies and Procedures or statute, and where not inconsistent herewith, hearings shall be conducted in accordance with the Administrative Adjudication Law in Chapter 9 of Title 5, Guam Code Annotated, including those provisions on subpoenas and contempt.
- (e) **Record of Hearings.** A hearing shall be recorded by GIAA, at GIAA's cost, but need not be transcribed, except at the request and expense of the person making the request. The audio recording, together with the written record of the time, place, and persons present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record. An audio copy of the recorded hearing shall be made available to the parties in electronic or digital format.

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- (f) **Opening Statements.** Opening statements may be made unless a party waives this right, subject to time limits that may be set by the Hearing Officer.
- (g) **Public Hearings.** Hearings shall be open and accessible to the public.
- (h) **Judicial Notice.** In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of Guam. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, subject to time constraints imposed by the Hearing Officer.

§ 5109. Reserved.

§ 5110. Recommendation of the Hearing Officer.

- (a) **Time.** Within thirty (30) days of a hearing on an Appeal or after the parties have formally waived a hearing in accordance with § 5108(a) of these Policies and Procedures, the Hearing Officer shall issue a final written recommendation to the Appeal Panel, who shall within fourteen (14) days of receipt of such recommendation act by majority to either affirm or reverse, in whole or in part, the decision of the Executive Manager on Appeal.
- (b) **Distribution.** A copy of any final decision on an Appeal shall be immediately mailed via certified mail, return receipt requested, or furnished by any other method that provides evidence of receipt, to the Appellant, to any other participating party and to the Executive Manager. All decisions shall be posted on the GIAA website within ten (10) days of issuance.

§ 5111. Finality of Decision.

- (a) **Board Action.** Within 14 days of a Hearing Officer's Recommendation concerning an appeal under this Article, the Appeal Panel shall meet on the record of any Appeal and either confirm, deny or modify the recommendation of the Hearing Officer. The Appeal Panel's final decision, which shall be made part of the record, shall be in writing and shall recite the evidence relied upon which the decision is based.
- (b) **Appeal.** Any Person receiving an adverse recommendation, including GIAA, by the Hearing Officer may seek reconsideration, in writing, before the Appeal Panel prior to their action to confirm, deny or modify the recommendation. Such request for reconsideration shall be filed at the GIAA Administrative Offices within 7 calendar days of the Hearing Officer's recommendation. Any interested party may respond to such request for reconsideration by the Appeal Panel in writing within 4 calendar days of receipt.

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- (c) **Standard of Review.** Any determination of an issue or a finding of fact by the Hearing Officer shall be final and conclusive unless found to be arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law. Any decision of the Hearing Officer, including any determination regarding the application or interpretation of Guam law and the Concession Policies and Procedures, shall be entitled to great weight and the benefit of reasonable doubt, although it shall not be conclusive on the Appeal Panel.

§ 5112. Appeal Relative to Method, Solicitation, or Award. A Protestor may Appeal a decision under § 4101(h) relative to the protest of a method of selection, a Solicitation, an award of a Concession Agreement or regarding entitlement to costs, within fifteen (15) days of receipt by the Protestor of the decision. The Hearing Officer shall determine whether a decision on the protest of method of selection, Solicitation or award of a Concession, or entitlement to costs is in accordance with applicable statutes, regulations, these Policies and Procedures, and the terms and conditions of the solicitation.

§ 5113. Reserved.

§ 5114. Appeal of Debarment or Suspension.

This section applies to Appeals of debarment or suspensions of persons from consideration for award of Concession Agreements imposed by the Executive Manager. An aggrieved person may Appeal a suspension or debarment action within sixty (60) days of receipt of a decision under subsection § 4102 of these Policies and Procedures. The Appeal Panel shall review actions between GIAA and a person who is subject to a suspension or debarment proceeding, to determine whether, or the extent to which the debarment or suspension was imposed on a contractor in accordance with applicable statutes, regulations, these Policies and Procedures, and the best interest of GIAA, and was fair. A decision on Appeal of a suspension or debarment shall set for the reasons for such action and shall inform the debarred or suspended person involved of his right to judicial review as provided in these Policies and Procedures and Article 4 (Legal and Contractual Remedies) of these Policies and Procedures.

§ 5115. Review of Award Pending Protest or Appeal.

- (a) Any Protestor may protest a determination by the Executive pursuant to § 4101(g) of these Policies and Procedures that award of a Concession Agreement without delay pending Appeal is necessary to protect the substantial interests of GIAA. Said protest must be filed in writing at the Appeal Panel within two (2) days of receipt by Protestor of the notice of determination. The Appeal Panel shall either confirm or reject the determination during a duly noticed meeting of the Appeal Panel.
- (b) After an Appeal is filed with the Appeal Panel relative to method of selection, solicitation, or award pursuant to § 4101(h) of these Policies and Procedures, the hearing officer shall make a recommendation to confirm or reject any determination by the Executive Manager

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pursuant to § 4101(g) that award of a Concession Agreement without delay pending Appeal is necessary to protect the interests of GIAA.

(c) Reserved.

(d) Any additional information requested by the Hearings Officer shall be submitted within the time periods established by the requesting source in order to expedite review. Failure of any party to comply expeditiously with a request for information by the Hearings Officer may result in a recommendation by the Hearing Officer without consideration of any information that is untimely filed pursuant to such request.

§ 5116. Reserved.

DRAFT

1 *Appendix C: Notice of Hearing Form*

2 **APPEAL**

3 **GIAA CONCESSION POLICIES AND PROCEDURES**

4)
5 In the Appeal of)

NOTICE OF HEARING

6)
7 _____)
(Name of Company), APPELLANT)
8 _____)

9
10 You are hereby notified that a hearing will be held before the Hearing Officer for Appeals
11 at the _____ on the _____ day of _____, 20__, at the hour of _____,
12 relative to the above referenced Appeal. You may be present at the hearing; may, but need not
13 be, represented by counsel; may present any relevant evidence; and will be given full opportunity
14 to cross-examine all witnesses testifying against you. You are entitled to the issuance of
15 subpoenas to compel the attendance of witnesses and the production of books, documents or
16 other things by applying to the Hearing Officer for the Appeal Panel.
17

18 Please acknowledge receipt of this Notice and return it to the GIAA Administrative
19 Offices.

20 **Acknowledged receipt:**

21 _____
22 Receiver's Signature

23 _____
24 Print Name

25 _____
26 Date

Appendix D: Hearing Request/Waiver Form

APPEAL

GIAA CONCESSION POLICIES AND PROCEDURES

HEARING REQUEST/WAIVER

In the Appeal of

(Name of Company), APPELLANT

Please select one:

The undersigned party does hereby request a hearing on the appeal stated above.

The undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this ___ day of _____, 20__.

By: (Please select one)

___ APPELLANT

___ GIAA

Print Name

Sign Name

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ARTICLE 6
ETHICS IN PUBLIC CONTRACTING

- § 6101. Definitions of Terms Used in this Article.
- § 6102. Purpose and Policy.
- § 6103. General Ethical Standard for Non-GIAA Employees.
- § 6104. Criminal Sanctions.
- § 6105. Ethical Standard - Conflicts of Interest.

- § 6106. Ethical Standard – Gratuities, Kickbacks and Favors
- § 6107. Ethical Standard - Contingent Fees
- § 6108. Employment Prohibitions and Restrictions.
- § 6109. Use of Confidential Information
- § 6110. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards
- § 6111. Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards.
- § 6112. Recovery of Value Transferred or Received in Breach of Ethical Standards.
- § 6114. Ethics Enforcement.

§ 6101. Definitions of Terms Used in this Article.

- (a) *Bona Fide Employee* means an individual employed by a prospective proposer and subject to the prospective proposer’s supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain a Concession Agreement. In determining whether a bona fide employment relationship exists, the following factors should be considered:
 - (1) whether the employment is continuous;
 - (2) whether the person is subject to the supervision and control of the prospective offeror or proposer;
 - (3) whether the size of any contingent fee is reasonable in relation to the services performed;
 - (4) whether the method of payment of the contingent fee is customary in the trade; and
 - (5) whether the person is employed solely by the prospective offeror or proposer.
- (b) *Bona Fide Established Commercial Selling Agency* means a Person that neither exerts nor proposes to exert improper influence to solicit or obtain a Concession Agreement. In determining whether a Person is a Bona Fide Established Commercial Selling Business, the following factors should be considered:
 - (1) whether the Person is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such;
 - (2) whether the Person uses its own name and is characterized by the customary indicia of the conduct of a regular business;
 - (3) the degree to which the Person’s activities are directed toward the solicitation of

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Concessions;

- (4) whether the size of any contingent fee is reasonable in relation to the services performed; and
- (5) whether the method of payment to the contingent fee is customary in the trade.

§ 6102. Purpose and Policy.

- (a) **Purpose.** This Article prescribes the standards of conduct for Government Employees in general and establishes specific standards of conduct for non-government employees with regard to Solicitations.
- (b) **Policy.** Public employment is a public trust. It is the policy of GIAA to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by GIAA. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Government Employees must discharge their duties impartially so as to assure fair competitive access to Solicitations by responsible proposers. Moreover, Government Employees should conduct themselves in such a manner as to foster public confidence in the integrity of the Solicitation process. To achieve the purpose of and uphold the policies of this Article, it is essential that those seeking Concession opportunities at GIAA also observe the ethical standards prescribed herein.

§ 6103. General Ethical Standard for Non-Government Employees.

- (a) **No Influence.** Any effort to influence any Government Employee to breach the standards of ethical conduct set forth in this Article or 4 GCA Chapter 15 is also a breach of ethical standards.
- (b) **Required Declaration.** Every proposer shall submit a declaration regarding the ethical standard not to influence Government Employees. Such declaration shall be in a form established by GIAA.
- (c) **Required Clause.** The following clause shall be conspicuously set forth in every Solicitation and Concession Agreement:

REPRESENTATION REGARDING ETHICAL
STANDARD NOT TO INFLUENCE GOVERNMENT EMPLOYEES

Proposer or Concessionaire represents that it has not knowingly influenced and promises that it will not knowingly influence a Government Employee to breach any of the ethical standards set forth in Article 6 of the GIAA Concession Policies and Procedures or 4 GCA Chapter 15 (Standard of Conduct for Elected

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Officers, Appointed Officers, and Public Employees of the Government Of Guam).

§ 6104. Criminal Sanctions. To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of Title 9 GCA (Crimes and Corrections), they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Article.

§ 6105. Ethical Standard – Government Employee Conflicts of Interest.

- (a) **(Conflict of Interest.** It shall be a breach of ethical standards for any Government Employee to participate directly or indirectly in a Solicitation when the Government Employee knows that:
- (1) the Government Employee or any member of the Government Employee's Immediate Family has a Financial Interest pertaining to the Solicitation;
 - (2) a Business in which the Government Employee, or any member of the Government Employee's Immediate Family has a Financial Interest, has a Financial Interest pertaining to the Solicitation; or
 - (3) any Person with whom the Government Employee or any member of the Government Employee's Immediate Family is negotiating or has an arrangement concerning prospective employment has a Financial Interest in the Solicitation.
- (b) **Financial Interest in a Blind Trust.** Where a Government Employee or any member of the Government Employee's Immediate Family holds a Financial Interest in a Blind Trust, the Government Employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that Financial Interest, provided that disclosure of the existence of the Blind Trust has been made to the Civil Service Commission.
- (c) **Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.** Upon discovery of an actual or potential conflict of interest, a Government Employee shall promptly file a written statement of disqualification with the Executive Manager and shall withdraw from further participation in the Solicitation. The Government Employee may, at the same time, apply to the Civil Service Commission pursuant to 5 GCA 5676(b) for an advisory opinion as to what further participation, if any, the employee may have in the Solicitation.
- (d) **Notice.** Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission.
- (e) **Application for a Waiver of Prohibition Against Conflict of Interest.**
- (1) Application for Waiver. (Reserved).
 - (2) Grant or Denial of Waiver. The Civil Service Commission, may grant a Government

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Employee and/or the Concessionaire a waiver of the conflict of interest prohibition where the interests of the GIAA so require or when the ethical conflict is insubstantial or remote.

Prior to granting or denying a waiver, the Civil Service Commission shall make such investigation as it may deem appropriate and which is not in violation of the Government Employee's or the Concessionaire's rights, privileges, and immunities. Factors to be considered by the Civil Service Commission when determining whether to grant a waiver shall include:

- (i) the degree of involvement of the Government Employee or Concessionaire;
- (ii) the size and character of the Financial Interest of the Government Employee or a member of such employee's Immediate Family or a Concessionaire which relates to the particular Solicitation;
- (iii) the likelihood of the appearance of impropriety;
- (iv) the availability of prospective proposers with which a Concession Agreement would not present a conflict; and
- (v) the extent to which GIAA's interests will be affected by a waiver.

§ 6106. Reserved

§ 6107. Ethical Standard – Gratuities and Kickbacks.

- (a) **Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any Government Employee or former Government Employee, or for any Government Employee or former Government 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 Solicitation, influencing the content of any Solicitation 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 Concession or a Concession Agreement, or to any Solicitation or proposal therefor.
- (b) **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 Concessionaire or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.
- (c) **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.
- (d) **Favors to the Government of Guam.** For purposes of this subsection, a favor is anything, including raffle tickets, or more than de minimis value and whether intended for the

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personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a Concessionaire, a subcontractor under a Concession Agreement to the Concessionaire, or any person associated therewith, to offer, give or agree to give any Government Employee or agent of the government of Guam or for any Government Employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any Solicitation.

(e) **Intentionally Omitted.**

(f) **Gratuities Prohibition.**

- (1) Breach. It is a breach of § 6107(a) (Gratuities and Kickbacks - Gratuities) of these Policies and Procedures:
 - (i) for any Person to offer, give, or agree to give any Government Employee or former Government Employee a gratuity of offer of employment; or
 - (ii) for any Government Employee or former Government Employee to solicit, demand, accept, or agree to accept a gratuity or an offer of employment; provided that the gratuity or offer of employment is in relation to a particular matter in accordance with § 6107(f)(2) of these Policies and Procedures, and pertains to any Concession, Concession Agreement, subcontract, or Solicitation or proposal therefor.
- (2) Relationship of Gratuity. In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:
 - (i) decision;
 - (ii) approval;
 - (iii) disapproval;
 - (iv) recommendation;
 - (v) preparation of any part of a Solicitation;
 - (vi) action to influence the content of any Solicitation;
 - (vii) rendering of advice;
 - (viii) investigation;
 - (ix) auditing; or
 - (x) other advisory capacity.
- (3) Family. This prohibition extends to the giving of gratuities to anyone on the Government Employee's or former Government Employee's behalf such as a member of the Government Employee's or former Government Employee's Immediate Family.

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- (g) **When Prohibition Against Gratuities not Applicable.** Section 6107(a) (Gratuities and Kickbacks-Gratuities) of these Policies and Procedures does not prohibit:
- (1) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any Solicitation or Solicitation requirement with GIAA and is based upon a personal or family relationship;
 - (2) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;
 - (3) acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of Government Employees, such as home mortgage loans; or
 - (4) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value as described in § 1106(cc) (Definitions-Gratuity) of these Policies and Procedures.
- (h) **Payment of a Kickback.** The prohibition against kickbacks set forth in § 6107(b)11206(2) (Gratuities and Kickbacks-Kickbacks) of these Policies and Procedures applies whether a kickback is made prior to or after the award of a Concession Agreement.
- (i) **Contract Clause.** The following clause shall be conspicuously set forth in every Concession Agreement and Solicitation therefor:

REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The Proposer or Concessionaire represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in § 6107 (Gratuities and Kickbacks) of the GIAA Concession Policies and Procedures.

§ 6108. Contingent Fees.

(a) **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 Concession Agreement 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 a Concession.
- (2) Representation of Concessionaire. Every Person, before being awarded a Concession Agreement, shall represent, in writing, that such Person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitute a breach of ethical standards.

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(3) Contract Clause. The representation prescribed in Subsection (2) of this Section shall be conspicuously set forth in every Concession Agreement and Solicitation therefor.

(b) **Intentionally Omitted.**

(c) **Influence Peddling.** The prohibition in § 6108(a)(1) (Prohibition Against Contingent Fees-Contingent Fees) of these Policies and Procedures covers influence peddling and particularly that which might occur when a former Government Employee is hired on contingent basis by a business seeking a Concession Agreement.

(d) **Relationship of Commercial Selling Agency to the Prospective Concessionaire.** The relationship between a Bona Fide Established Commercial Selling Agency and the prospective Concessionaire should be characterized by the following:

(1) the fees charged by the commercial selling agency are commensurate with the nature and extent of the business's services actually rendered to the prospective Concessionaire; (2) the commercial selling agency has adequate knowledge of the the prospective Concessionaire which it represents to judge whether the the prospective Concessionaire may be able to meet GIAA's requirements; and (3) the relationship between the commercial selling agency and the prospective Concessionaire is or is contemplated to be continuing.

(e) **Improper Influence.** A business employee or commercial selling agency should be conclusively presumed not to be bona fide if GIAA determines that improper influence has been or is being used to secure a Concession Agreement.

(f) **Solicitation Clause.** Every Solicitation for a Concession shall conspicuously set forth the following provision to be completed and submitted with every prospective Concessionaire's proposal:

PROSPECTIVE CONCESSIONAIRE'S REPRESENTATION REGARDING
CONTINGENT FEES

The prospective Concessionaire represents as a part of its proposal that it has/has not (circle applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Concession.

(g) **Information on Contingent Fees.** Any prospective Concessionaire who has completed the clause set forth in § 6108(f) (Solicitation Clause) in the affirmative and is the apparently successful proposer shall submit the following information:

(1) the full name and business address of the business or person retained, and the type of business organization;
(2) the relationship of the business or person to the prospective Concessionaire;

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- (3) the terms of the retention agreement or copy of such agreement;
 - (4) if such person is a business employee: (i) the duration of employment; (ii) whether that employee is on the Concessionaire's payroll for purposes of social security and federal or local income tax withholding; (iii) whether that employee represents other businesses and, if so, the names and addresses of such businesses;
 - (5) whether the business or person represents the prospective Concessionaire on: (i) both government and commercial business; (ii) only government business; or (iii) only the present Concession;
 - (6) the extent of the duties of the business or person; and
 - (7) the duration the business or person has been engaged in a particular type of work and has performed this type of work for the Concessionaire.
- (h) **Contract Clause.** The following clause shall be conspicuously set forth in every Concession Agreement and Solicitation therefor:

REPRESENTATION REGARDING CONTINGENT FEES

The Concessionaire represents that it has not retained a Person to solicit or secure a Concession Agreement 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 a Concession.

§ 6109. Employment Prohibitions and Restrictions.

(a) Restrictions on Employment of Present and Former Government Employees.

- (1) Restrictions on Former Government Employees in Matters Connected with Their Former Duties.
 - (i) Permanent Disqualification of Former Government Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former Government Employee knowingly to act as a principal, or as an agent for anyone other than GIAA, in connection with any:
 - 1. judicial or other proceeding, application, request for ruling, or other determination;
 - 2. Concession Agreement;
 - 3. claim; or
 - 4. charge or controversy; in which the former Government Employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while a Government Employee, where GIAA is a party or has a direct and substantial interest.
 - (ii) One year representation restriction regarding matters for which a former Government Employee was officially responsible. It shall be a breach of ethical standards for any former Government Employee, within after cessation of the

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former employee's official responsibility, knowingly to act as principal, or as an agent for anyone other than GIAA, in connection with any:

1. judicial or other proceeding, application, request for a ruling, or other determination;
 2. Concession Agreement;
 3. claim; or
 4. charge or controversy; in matters which were within the former Government Employee's official responsibility, where GIAA is a party or has a direct or substantial interest.
- (2) Disqualification of Business When a Government Employee has a Financial Interest. It shall be a breach of ethical standards for a business in which an Government Employee has a Financial Interest knowingly to act as a principal, or as an agent for anyone other than GIAA, in connection with any:
- (i) judicial or other proceeding, application, request for a ruling, or other determination;
 - (ii) Concession Agreement;
 - (iii) claim; or
 - (iv) charge or controversy; in which the Government 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 Government Employee's official responsibility, where GIAA is a party or has a direct and substantial interest.
- (3) Selling to GIAA After Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former Government Employee, unless the former Government Employee's last annual salary did not exceed \$12,000, to engage in selling to the GIAA for ninety (90) days following the date employment ceased. The term Sell as used herein means signing a proposal or Concession Agreement; negotiating a Concession Agreement; contracting any employee for the purpose of obtaining, negotiating, or discussing changes in a Solicitation or other terms of a Concession Agreement; settling disputes concerning performance of a Concession Agreement; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual Concession Agreement, therefore, is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former Government Employee from accepting employment with private industry solely because the former Government Employee's employer is a Concessionaire with GIAA nor shall a former Government Employee be precluded from serving as a consultant to GIAA.

(b) Contemporaneous Employment Prohibition. (Reserved).

(c) Permanent Disqualification of Former Government Employee.

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- (1) Personal and Substantial Participation. For the Government Employee to have “participated personally and substantially” in a matter, such employee's involvement must have been more than merely ministerial in nature. Factors to be considered in determining personal and substantial participation of a former government employee while a government employee shall include but are not limited to:
- (i) the former Government Employee's degree of involvement in the particular matter;
 - (ii) the degree of involvement of the former employee with a subordinate who had substantial participation in the matter;
 - (iii) the effect or appearance of the involvement of the former government employee; and
 - (iv) the relative time spent on the particular matter by the former government employee.
- (2) Matter must be a Particular Matter Involving Identifiable Parties. The activities listed in § 6109(a)(1)(i) (Restrictions on Employment of Present and Former Employees-Permanent Disqualification of Former Employee Personally Involved in a Particular Matter) of these Policies and Procedures generally describe matters in which issues are defined and parties are identified, such as specific proceedings affecting the legal rights of parties, or isolated transactions or related sets of transactions between identifiable parties. Matters of general application, such as regulation and policy formulation, are not intended to be covered under those activities listed under § 6109(a)(1)(i). Therefore, only a particular matter involving an identifiable party or parties is subject to the permanent prohibition set forth under § 6109(a)(1)(i).
- (3) The Same particular matter must be involved. The prohibition set forth in § 6109(a)(1)(i) (Restrictions of Employment of Present and Former Employees-Disqualification of Former Employee Personally Involved in a Particular Matter) of these Policies and Procedures applies only with regard to those same particular matters in which the former Government Employee participated personally and substantially while a government employee. In determining whether two particular matters are the same, the following factors should be considered:
- (i) the factual basis of the matters;
 - (ii) the relationship of the issues involved in each matter;
 - (iii) the identity of the parties involved in each matter; and
 - (iv) the continued existence of an important GIAA interest.
- (d) **One year restriction for a former Government Employee.**
- (1) Official responsibility.
- (i) Intentionally Omitted.
 - (ii) Scope. The scope of a Government Employee's Official Responsibility is determined by the territory's statutes, regulations, executive orders, case law, or job descriptions, or may result from the lawful delegation of another Government Employee's duties.

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- (iii) Requirement That Matters Have Been Actually Pending. In order for a matter to have been within a former Government Employee's Official Responsibility, it must have in fact been assigned to or under consideration by persons under the former Government Employee's Official Responsibility.
- (2) One year restriction. The one year restriction set forth in § 6109(a)(1) (Restrictions on Employment of Present and Former Employees-Restrictions on Former Employees in Matters Connected with Their Former Duties) of these Policies and Procedures is measured from the time the former Government Employee's Official Responsibility ended in a particular matter.
- (e) **Disqualification of a Business.**
- (1) Personal and Substantial Participation. Personal and substantial participation is discussed in § 6109(c)(1) (Permanent Disqualification of Former Government Employee-Personal and Substantial Participation) of this Article.
- (2) Official Responsibility. Official Responsibility is discussed in § 6109(d)(1) (One Year Restriction for a Former Government Employee- Official Responsibility) of this Article.
- (3) Determination of Business Knowledge. In ascertaining whether a business has knowledge that a Government Employee has a Financial Interest in that business for the purpose of applying the prohibition in § 6109(a)(2) (Restrictions on Employment of Present and Former Employees-Disqualification of a Business When an Employee Has a Financial Interest) of these Policies and Procedures, the factors to be considered should include the following:
- (i) the size of the business;
 - (ii) the percentage of ownership in the business by the Government Employee;
 - (iii) the nature of the dealings of the Government Employee with the business regarding such employee's Financial Interest; and
 - (iv) such other evidence as may be relevant and material.
- (f) **Prohibition Against Selling to the Territory.**
- (1) Prohibition; Applicability. Section 6109(a)(3) (Restrictions on Employment of Present and Former Employees-Selling to the Territory After Termination of Employment is Prohibited) of these Policies and Procedures, prohibits a former Government Employee whose annual salary exceeded \$12,000 from selling or attempting to sell to GIAA within ninety (90) days following the date employment ceases. This prohibition applies with regard to any Government Employee who used to be employed.
- (2) Sell Defined. Section 6109(a)(3) (Restrictions on Employment of Present and Former Employees-Selling to GIAA After Termination of Employment is Prohibited) of these Policies and Procedures, defines sell for the purpose of prohibiting selling to GIAA to mean:
- (i) signing a proposal or Concession Agreement;

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- (ii) negotiating a Concession Agreement;
 - (iii) contracting any employee for the purpose of obtaining, negotiating, or discussing changes in a Solicitation or other terms of a Concession Agreement;
 - (iv) settling disputes concerning performance of a Concession Agreement; and
 - (v) any other liaison activity with a view toward the ultimate consummation of a sale although the actual Concession Agreement, therefore, is subsequently negotiated by another person. Requests for information are not included within the term "Sell."
- (g) **Employment with a Concessionaire.** The ninety (90) days prohibition against selling contained in § 6109(f) of these Policies and Procedures shall not prohibit a former Government Employee from obtaining employment with a Concessionaire, but such employee shall not Sell to GIAA as defined in § 6109(f)(2) (Prohibition Against Selling to the Territory-Sell Defined.)

§ 6110. Use of Confidential Information.

It shall be a breach of ethical standards for any Government Employee or former Government Employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

§ 6111. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards. (Reserved).

§ 6112. Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards.

- (a) **Existing Remedies Not Impaired.** Civil and administrative remedies against non-employees which are in existence on the effective date of these Policies and Procedures shall not be impaired.
- (b) **Supplemental Remedies.** In addition to existing remedies for breach of the ethical standards of this Article, GIAA, in connection with non-employees, may impose any one or more of the following: (a) written warnings or reprimands; (b) termination of transactions; and (c) debarment or suspension from being a Concessionaire under a Concession Agreement.
- (c) **Right to Recover From Non-Employee Value Transferred in Breach of Ethical Standards.** The value of anything transferred in breach of the ethical standards of this Article by a non-employee shall be recovered by GIAA.
- (d) **Right of the Territory to Debar or Suspend.** Debarment or suspension may be imposed by GIAA in accordance with these Concession Policies and Procedures (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action

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may not be taken without the concurrence of the Attorney General.

- (e) **Due Process.** All procedures under this Section shall be in accordance with these Concession Policies.

§ 6113. Recovery of Value Transferred or Received in Breach of Ethical Standards.

- (a) **General Provisions.** The value of anything transferred or received in breach of the ethical standards of this Article by a Government Employee or non-employee may be recovered from both the employee and non-employee.
- (b) **Recovery of Kickbacks by the Territory.** Upon a showing that a subcontractor made a kickback to a Concessionaire or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the territory and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

**FISCAL ASSESSMENT:
POLICIES AND PROCEDURES FOR THE SOLICITATION, SELECTION, AND
AWARD OF CONCESSION AGREEMENTS**

**A.B. WON PAT INTERNATIONAL
AIRPORT GUAM**



ATURIDAT PUETTON BATKON AIREN
GUAHAN ENTENASIONAT

November 7, 2025

SECTION 1: Executive Summary

The Antonio B. Won Pat International Airport Authority, Guam (“GIAA”) intends to adopt policies and procedures for the solicitation, selection, and award of concession agreements (“Concession Policies”) pursuant to § 1203.1(a)(1) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated (GCA) which was authorized pursuant to Public Law 38-21. Additionally, Executive Order 2025-05 (“E.O. 2025-25”) was signed and promulgated on August 1, 2025, which further establishes requirements for adoption of such Concession Policies to include the requirement that the Concession Policies shall become effective upon approval and signature of the Governor of Guam.

The proposed Concession Policies are recommended to be added to Title 4 – Commerce of the Guam Administrative Rules and Regulations (“GARR”) under a new Chapter 7B¹.

In addition to the proposed Concession Policies, P.L. 38-21 requires that the GIAA (1) prepare a Fiscal Assessment (“FA”) which shall be posted with a copy of the Concession Policies on its website, (2) allow for no less than thirty (30) calendar days for public comment, and (3) hold a public hearing noticed pursuant to 5 GCA § 8107 (Open Government Law).

The FA shall directly address, at a minimum, (1) the purpose and need for, (2) the financial impact upon those persons or entities directly affected by, and (3) the potential benefits expected to the GIAA by the proposed Concession Policies. Concessions include, but are not limited to retail, specialty retail, food and beverage, advertising, currency exchange, car rentals, and parking.

This Fiscal Assessment Report (“Report”) is made in compliance with the requirements of P. L. 38-21 and includes the following:

SECTION 1: Executive Summary

SECTION 2: Purpose and Need for the Proposed Concession Policies

SECTION 3: Financial Impact on Directly Affected Parties

SECTION 4: Potential Benefits to the GIAA from the Proposed Concession Policies

Because of the importance of non-aeronautical revenues to airport sponsors generally, it is not only a goal of the GIAA, but an imperative that such sources of revenues be expanded and diversified such that the continued self-sustaining requirement can be achieved.

¹ See § 1606, Chapter 16, Title 1 Guam Code Annotated – Powers of the Compiler of Laws Relative to Revision regarding the Compiler of Laws’ ability to number and renumber chapters, sections, and parts of sections; rearrange sections so that they fit harmoniously within the publication being prepared, as it relates to the creation of a new Chapter 7B in Title 4 GARR.

SECTION 2: Purpose and Needs for the Proposed Concession Policies

The proposed Concession Policies are intended to provide a competitive, transparent, accountable, and industry-standard process for the solicitation, selection, and award of concession agreements at the GIAA. This effort is driven by the need to enhance and expand the concession opportunities in the GIAA Main Terminal Building in order to increase its non-aeronautical revenues and to diversify and expand its operational income potential. Additionally, the currently-extended concession agreements authorized under Public Law 37-23—which allowed to be extended for up to an additional three (3) years from the end of the then-current terms—are set to lapse in calendar year 2026.

PART 1: Purpose - Create a Competitive, Industry-Standard, Accountable, and Transparent Solicitation Process.

The new process and framework for the Concession Policies:

- Aligns with federal regulations and industry standards;
- Facilitates improved customer experience and optimized revenue through industry-standard Request for Proposals (“RFP”) procedures²;
- Are modeled after the Guam Procurement Law and Regulations to the extent applicable; and
- Adheres to E.O. 2025-05 to the extent authorized.

The proposed Concession Policies creates a new Chapter 7B under Title 4 of the GARR and establishes six (6) Articles including the following:

Article 1: General Provisions

Article 2: Compliance with Federal Requirements

Article 3: Solicitation Method and Contract Formation

Article 4: Legal and Contractual Remedies

Article 5: Appeals to the Appeal Panel

Article 6: Ethics in Public Contracting

The drafting of the proposed Concession Policies are substantially similar to the Guam Procurement Law and corresponding rules and regulations as it relates to the competitive, industry-standard solicitation method—the Request for Proposal as well as ethics in public contracting. No other solicitation method is currently contemplated in the proposed Concession Policies. The legal and contractual remedies and the appeals process hold similar processes to Guam Procurement Law and corresponding rules and regulations with the exception that protest appeals are handled by an Appeal Panel rather

² See Chapter 10, Section 10.1 - Airport Cooperative Research Program (“ACRP”) Report 54 entitled “Resource Manual for Airport In-Terminal Concessions,” 2011 available at https://crp.trb.org/acrp0715/wp-content/themes/acrp-child/documents/045/original/ACRP_54_Resource_Manual_for_Airport_In-Terminal_Concessions.pdf

than under the Office of Public Accountability (“OPA”) – because P.L. 38-21 does not empower the OPA to hear appeals concerning GIAA concession related disputes.

PART 2: Need - Diversify and Expand Non-Aeronautical Revenues

The need to diversify and expand GIAA’s operational revenues cannot be overstated. Prior to the COVID-19 pandemic, concession fees collected by the Authority annually averaged \$23.55 million which represented approximately 35% of total operating revenues between Fiscal Year (“FY”) 2015 through FY 2019. From FYs 2020 through 2022, during the height of the COVID-19 pandemic, concession fees averaged approximately \$9.49 million or 29% of total operating revenues and from FYs 2022 through 2024³, averaged approximately \$9.6 million or 20% of total operating revenues as seen in Table 2.

The percentage of non-aeronautical revenues to total operating revenues of 35% pre-COVID-19 as compared to FYs 2022 to 2024 of just 20% shows a downward trajectory which places additional need to cover the costs to operate the airport from other revenues sources such as aeronautical revenues to include facilities and systems usage charges. The proposed Concession Policies are needed to diversify and expand these non-aeronautical revenues and expand concession services and offerings to passengers and airport users.

Table 2

Average Annual Operating Revenues⁴ - FYs 2015 - 2019 (Pre-COVID-19); FYs 2020 - 2021; & FYs 2022 - 2024

Millions of Dollars	(A)	(B)	(C)	(D)	(E)	(F)
Revenue Description	FYs 2015 - 2019 (Pre-COVID-19)	Percent (%) of Total	FYs 2020 - 2021	Percent (%) of Total	FYs 2022 - 2024	Percent (%) of Total
Facilities and systems usage charges	28.38	42%	11.42	34%	22.37	47%
Concession Fees	23.55	35%	9.49	29%	9.60 ⁵	20%
Rental income	11.69	17%	10.86	33%	10.61	22%
Miscellaneous	3.74	6%	1.40	4%	2.17	5%
Aviation fuel tax	.00	0%	.00	0%	4.21	9%
Average/Total	67.36	100%	33.17	100%	47.55	100%

Table 2 reflects the continued recovery focus of GIAA in managing its financial resources diligently while actively pursuing both aeronautical and non-aeronautical revenues to support the island’s only commercial airport. Given the importance of concession fees revenue to the GIAA’s finances during the pre-COVID-19 prior years, the proposed Concession Policies will authorize the potential to increase this non-aeronautical revenue

³ See Government Accounting Standards Board (“GASB”) 87 relative to Leases that were implemented for FYs 2022 to 2024. Figures herein include the relevant accounting adjustments and may differ from other parts of this report that report unadjusted figures.

⁴ Annual average operating revenues reflected in this table do not include non-operating revenues such as passenger facility charges and federal operating grants. See Annual Audited Financial Statements for the Guam International Airport Authority for FYs 2015 through 2024, available at the Office of Public Accountability website at www.opaguam.org.

⁵ *supra note 3*

source through expanded concessions in vacant terminal space as well as enhance revenues through potentially better efficiencies and concession offerings and services.

The types of concession agreements the GIAA has and/or currently holds includes specialty retail, retail, newsstand, food and beverage, rental cars, advertising, foreign exchange, commercial parking, etc. Given the additional concessionaire square footage available in the main terminal building, there are opportunities to continue to expand and enhance the GIAA's concession offerings to its passengers and airport users that can generate additional non-aeronautical revenue.

PART 3: Need - Continuity of Concessions due to Expiring Concession Agreements

Public Law 37-23 became law on April 5, 2023 and found that given the damage and uncertainty caused by the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that had arisen over the years prior to its enactment, it was projected to take several years for Guam's visitors industry and the GIAA to achieve its expected enplanement trajectory and financial stability it had prior to the COVID-19 pandemic. Accordingly, Public Law 37-23 found that then-current GIAA concessions were in the best interest of GIAA and Guam and that an extension of such concessions is in the best interest of GIAA and the island.

Given these findings, Public Law 37-23 authorized the GIAA to negotiate extensions of up to three (3) years to its existing concession agreements from the end of the then-current terms. The GIAA negotiated such extensions with its existing concessionaires in 2023 with many expiring between July and December 2026. Given the impending expiration of these concession agreements, there is a substantial need for the proposed Concession Policies to ensure continuity of concession services within the GIAA.

The proposed Concession Policies are essential to meet rising traveler expectations, generate non-aeronautical revenue, and support GIAA's operational and financial sustainability.

SECTION 3: Financial Impact on Directly Affected Parties

In its assessment of the parties that may be directly affected by the proposed Concession Policies, the GIAA determined there to be a number of persons or entities directly impacted. These include the following:

PART 1: Guam International Airport Authority

PART 2: Airlines Operating at GIAA

PART 3: Current Concessionnaires

PART 4: Prospective Concessionnaires

PART 5: Passengers and the Traveling Public

PART 6: Local Business Community

PART 7: External Government Entities

PART 1: Guam International Airport Authority

As the airport operator, the GIAA has the most significant financial and operational interest in the proposed Concession Policies. Airport concessions have historically represented a critical non-aeronautical revenue stream that supports the airport's budget, funding for capital improvements, and long-term financial sustainability. Clear, competitive, and standardized policies enhance the GIAA's ability to maximize return on its commercial leases, reduce solicitation risks, and strengthen internal controls.

Currently, a majority of the GIAA's concession fees revenue derive from specialty retail, food and beverage, rental car, commercial parking, and advertising concessions. Because of the lack of Concession Policies, several of the existing concession agreements have continued to be extended from their original contract start dates dating back to 2007 and further with the enactment of Public Law 37-23.

Current concessionaires include one (1) specialty retail; four (4) car rental; nine (9) food and beverage; one (1) parking lot; and one (1) advertising. The possible other concession opportunities include currency exchange, gift, novelty, souvenir, newsstand, bookstores, and other retail, non-airline club lounges, financial services, spa services, storage services, etc.

There is approximately up to 91,480 square feet of main terminal space available for concession operations with up to 16,425 square feet vacant and available for concession offerings. Given the amount of available space for concessions, there is expected to be additional non-aeronautical revenues that could be generated and increased passenger experience improvements that can be made.

Table 3.1
Average Annual Concession Fee Revenues - FYs 2015 - 2019 (Pre-COVID-19); FYs 2020 - 2021; & FYs 2022 - 2024

Millions of Dollars	(A)	(B)	(C)	(D)	(E)	(F)
Concession Type	FYs 2015 - 2019 (Pre-COVID-19)	Percent (%) of Total	FYs 2020 - 2021	Percent (%) of Total	FYs 2022 - 2024 ⁶	Percent (%) of Total
General merchandise	14.78	63%	6.70	71%	7.93	64%
Ground transportation	4.25	18%	.93	10%	1.01	8%
Car rental	1.42	6%	.59	6%	1.35	11%
Food and beverage	1.05	4%	.35	4%	.73	6%
In-flight catering	.87	4%	.41	4%	.78	6%
Money exchange	.37	2%	.06	1%	-.02	0%
Advertising	.37	2%	.18	2%	.19	2%
Parking lot	.23	1%	.09	1%	.18	1%
Other	.23	1%	.18	2%	.19	2%
Average/Total	23.56	100%	9.49	100%	12.35	100%

Table 2 reflected that total operating revenues have decreased from an annual average of \$67.36 million during FYs 2015 to 2019 to \$47.55 million during FYs 2022 to 2024 and that concession fees revenue has also reduced as a percentage of total operating revenues. Table 3.1 presents a breakdown of those concession fee revenues by concession type with total concession fees revenue averaging \$23.56 million during the pre-COVID-19 period, which has since reduced to an average of \$12.35 million from FYs 2022 to 2024. General merchandise reflecting the largest percent of total concession fees revenue at 63% during the pre-COVID-19 period, 71% from FYs 2020 to 2021, and 64% from FYs 2022 to 2024.

Given the vacant space available and the potential for enhanced and/or additional concession services and offerings, the financial impact of the proposed Concession Policies is expected to have a positive impact on the GIAA's financial position.

PART 2: Airlines Operating at GIAA

Airlines rely on the financial stability of the airport. A robust concession program increases non-aeronautical revenues, allowing the airport to potentially reduce the financial burden on airlines through lower or stabilized airline rates and charges. Improved passenger satisfaction, driven by better concession experiences, may also increase airline loyalty and route sustainability.

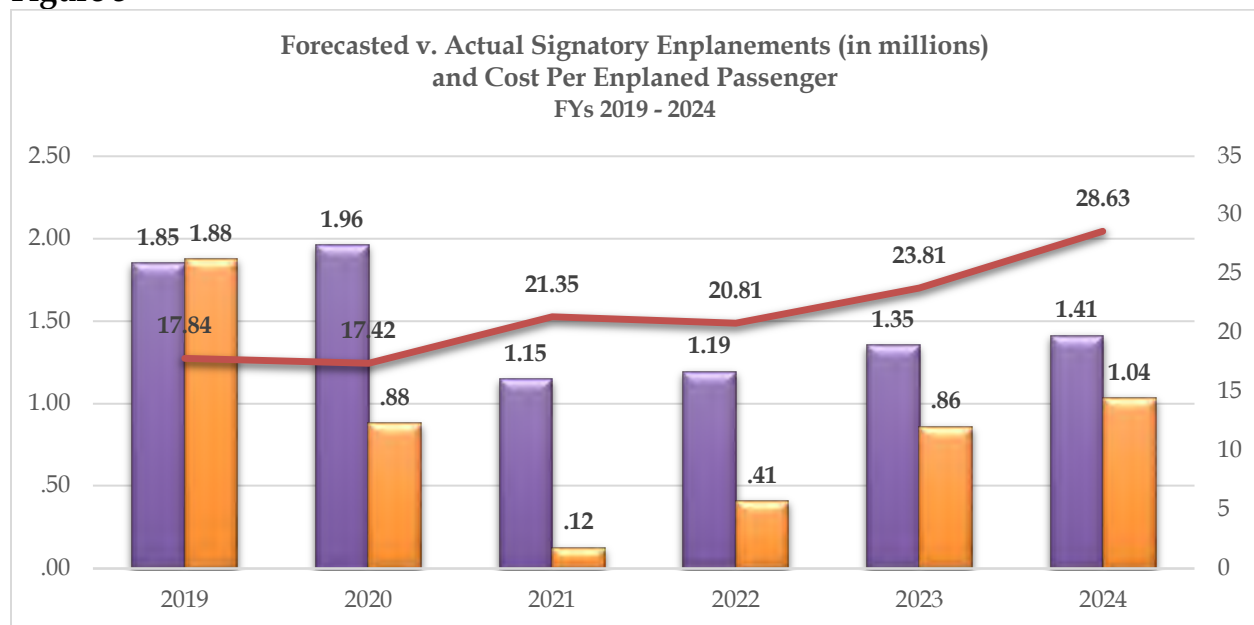
⁶ Data for FYs 2023 - 2024 does not include the Government Accounting Standards Board ("GASB") 87 adjustments. Figures herein may differ from other parts of this report that report adjusted figures.

Furthermore, because GIAA determines its airport rates and charges on a single till principle⁷, both aeronautical and non-aeronautical revenues are incorporated into the determination of airport rates and charges. By diversifying and generating increased non-aeronautical revenues through concession agreements and other means, this can further assist in the GIAA’s financial self-sustainability, enhance its ability to continue capital maintenance and improvement projects, and reduce pressure on rates and charges applied to airline partners.

Total operating revenues attributable to airlines are categorized under facilities and systems usage charges and include arrival fees, departure fees, immigration fees, and common use departure fees which are based on passenger count, passenger loading bridge usage charge which are based on use, public apron and landing fees which are based on a unit of 1,000 pounds of maximum gross take-off weight of aircraft, as well as fuel flowage fees and utility recovery charges and other fees.

Per Table 2, from FYs 2015 to 2019, facilities and systems usage charges revenue accounted for \$28.38 million or 42% of total operating revenues compared to FYs 2022 to 2024 where it accounted for \$22.38 million or 47% of total operating revenues, an increase of 5%. This is partly due to the reduction in other operating revenue categories to include concession fees revenue which was offset by the new aviation fuel tax revenue.

Figure 3



Enplanements or enplaned passengers are individuals departing from the airport or transiting through the the airport. The total operating revenues, including non-operating revenues such as passenger facility charge revenue and federal operating grants are

⁷ See International Air Transport Association (“IATA”) definition of “single till” available at <https://www.iata.org/contentassets/fa95ede4dee24322939d396382f2f82d/single-till.pdf>

considered when determining the Cost Per Enplaned Passenger (“CPE”) which is a key metric utilized to reflect the average passenger airline payments per passenger at a given airport. Figure 3 compares the forecasted signatory enplanements to the actual signatory enplanements from FYs 2019 through 2024. The CPE reflected in Figure 3 reflects the calculated rates charged to airlines based on the forecasted signatory enplanements.

For FYs 2019 through 2024, the facilities and systems usage charges applied to and paid by airlines were not adjusted even though actual signatory enplanements fell substantially short of the forecasted signatory enplanements from FYs 2020 through 2024 – the periods impacted by the COVID-19 pandemic and Typhoon Mawar. Because of the lower than forecasted enplanements, the GIAA reduced operating costs, restructured debt payments, and utilized federal operating grants to ensure financial performance was achieved in accordance with bond covenants.

Because of the continued enplanement recovery, the determining of airport rates and charges on a single till principle that considers non-aeronautical revenues in the determination facilities and systems usage charges to airlines, and the potential for increased concession fees revenue, the proposed Concession Policies are expected to have a positive financial impact to airlines operating at the GIAA.

PART 3: Current Concessionaires

Existing concession operators may experience changes in how future agreements are awarded as compared to the time in which they submitted proposals previously for their respective concession. Many current concessionaires have been operating under extended, but short-term agreements, which have limited their ability to fully invest in improvements to processes and/or infrastructure.

Additionally, the airport concession industry has continued to evolve post-COVID-19 pandemic, with changes in consumer preferences and industry advancements. Because current concessionaires’ contracts were from pre-COVID-19 pandemic timeframes, there may be a need to ensure concession agreements take full advantage of these evolving trends, consumer preferences, and industry advancements, which may require current concessionaires to adapt and adjust accordingly.

The revenue models collected from current concessionaires vary depending on the type of concession. Specialty retail concessions pay concession fees based on enplaned passengers plus an annual concession fee. Car rental concessions pay a customer facility charge, the greater of a minimum annual guarantee fee or percentage fee rate, plus counter and parking rental fees. Food and beverage concessions generally pay the greater of a percentage of sales, which vary between food sales, alcohol beverage sales, and merchandise and advertising sales and main terminal building rental rates plus CAM. Parking lot concessions pay the greater of minimum annual guarantee or a percentage of

total ticket sales based on the public parking rates published. Advertising concessions pay a specific percentage of sales.

The proposed Concession Policies introduce new opportunities to current concessionaires and ensures that all prospective concessionaires have an open, industry-standard and competitive solicitation process from which to participate. Incumbents will have the opportunity to compete under clear, published criteria that value both financial return and customer experience.

The proposed Concession Policies may have a different financial impact to each current concessionaire depending on the outcome of future solicitations.

PART 4: Prospective Concessionaires

New and emerging vendors stand to benefit from greater access to airport commercial opportunities. The proposed Concession Policies utilize the industry-standard competitive Request for Proposal process⁸, which allow qualified proposers to submit a proposal subject to the requirements in said RFP. This approach can stimulate innovation, improve diversity in offerings, and increase the number of qualified bidders.

The proposed Concession Policies may have a different financial impact to prospective concessionaires depending on the outcome of future solicitations.

PART 5: Passengers and the Traveling Public

Passenger experience is directly impacted by the quality and variety of food, retail, and service concessions at the airport. Policies that promote competitive selection ensure a broader mix of brands, better pricing, improved amenities, and greater responsiveness to customer needs. Because there is a strong connection between concessions and overall airport satisfaction, the proposed Concession Policies provide a process to competitively select the most qualified concessionaires for the specific needs indicated in the solicitation.

The proposed Concession Policies are expected to provide enhancements to concession services. The financial impact to passengers and the traveling public will depend on the outcome of future solicitations and the propensity for said customers to spend, utilize, or take advantage of such concession offerings.

PART 6: Local Business Community

Local entrepreneurs and regional firms may benefit from clear and fair entry points into airport concession programs. These policies support Guam's broader economic development goals by opening commercial opportunities within the airport

⁸ *supra note 2*

environment, fostering job creation, and promoting economic development. As of September 30, 2025, there are over 300+ employees that work in concessions operating or vendors supporting such concessions at the GIAA. To the extent more or less employees will be needed based on the outcome of future solicitations, this may have an impact on workforce availability outside of the GIAA concessions.

Furthermore, the proposed Concession Policies may have varying financial impacts on the local business community depending on the outcome of future solicitations.

PART 7: External Government Entities

The proposed Concession Policies intend to bring change to the GIAA in the form of new concession activity, updated solicitation and administrative processes, capital improvement projects and construction, and assured compliance with federal mandates. With the expectation of increased capital improvement activities related to additional or enhanced facilities that prospective concessionaires may conduct, external government entities to the extent permitting, business licensing, environmental and safety inspections, and workforce related increases may be financially impacted.

SECTION 4: Potential Benefits to the GIAA from the Proposed Concession Policies

In addition to the previously discussed financial benefits, the proposed Concession Policies will bring a number of other potential benefits to GIAA to include:

Revenue Optimization and Operational Excellence: Qualifications-based competitive solicitations allow GIAA to prioritize customer service, design, innovation, and investment. Given the GIAA's ongoing enplanement recovery and the impending expiration of concession agreements in 2026, the proposed Concession Policies will allow the GIAA to work toward continuity of concession services and non-aeronautical revenue generation.

For small hubs, like GIAA, non-aeronautical revenues have historically comprised between 45% to 50% of total operating revenue. Therefore, strengthening the policy and process framework for concessions is financially strategic. Competitive solicitations utilizing the RFP process aim to promote higher revenue guarantees, encourage capital investments, and reduce long-term risk of underperformance.

From an operational perspective, the proposed Concession Policies are substantially similar to existing Guam Procurement Laws and rules and regulations with certain exceptions, therefore adapting GIAA's existing procurement procedures and documents are expected to be much more streamlined.

Passenger Experience: Greater brand variety, improved service quality, and modern retail and dining offerings. "There is an increase in value-seeking consumers who prioritize a well-balanced combination of quality, affordability, and functionality in their buying choices."⁹ The proposed Concession Policies will create a process from which concession improvements and enhancements can be achieved through the competitive solicitation, selection, and award process. This will ultimately improve passenger experience and help to generate increased non-aeronautical revenues.

Public Trust: Transparent procedures strengthen accountability and community confidence. The proposed Concession Policies and its adoption process which requires this Fiscal Assessment, a thirty (30) day public comment period, a public hearing to be noticed in accordance with the Guam Open Government Law to be held no sooner than thirty (30) calendar days after posting of the proposed Concession Policies and Fiscal Assessment, and further review and approval by both the GIAA Board of Directors as well as *I Maga'hågan Guåhan* provides such a process for the adoption of the Concession Policies. Additionally, the proposed competitive RFP process upholds similar accountability and transparency principles.

⁹ See Page 17, Section 3.1.4 - Airport Cooperative Research Program ("ACRP") Project 03-70 entitled "Incorporating Technologies into Airport In-Terminal Concessions Programs," 2025, available at <https://nap.nationalacademies.org/29146>

B. Adoption of GIAA Policies and Procedures for the Solicitation, Selection, Award, and Operation of Lease Agreements authorized by Public Law 38-21



**ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
BOARD OF DIRECTORS**

EXECUTIVE SUMMARY

Draft Airport Lease Policy authorized by Public Law 38-21

January 8, 2026

Purpose

To adopt proposed policies and procedures for the solicitation, selection, award and operation of Airport Leases (“Lease Policies”) pursuant to § 1203.1(a)(2) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated, which was authorized pursuant to Public Law 38-21 which are expected to be posted *no later than* the end of next week.

Background

Public Law 38-21 provides authority to the A. B. Won Pat International Airport Authority, Guam (GIAA) to adopt Lease Policies between the GIAA and any other party for the use of airport facilities and properties for airport purposes and/or visitor-related activities.

Specifically, relative to lease agreements, Public Law 38-21 provides that such agreements shall be authorized for a term of up to fifty (50) years and shall be subject to applicable Federal Aviation Administration (FAA) requirements for aeronautical and non-aeronautical uses to include rates charged for non-aeronautical uses at fair market value pursuant to GIAA requirements and policies and procedures adopted from time to time by the GIAA Board of Directors.

At its meeting of November 13, 2025, the GIAA Board of Directors were provided notice of the GIAA Proposed Policies and Procedures for the Competitive Solicitation, Selections, Award, and Operation of Lease Agreements as reflected in the attached Executive Summary (attachment 1). Following this meeting and as part of the adoption process, the following were accomplished:

Notice for Public Comment. Notice for Public Comments (for no less than 30 calendar days) was posted on Guam Daily Post on November 21 & December 2, 2025.

Notices for public comments and access to proposed policies and procedures, along with the fiscal assessment were posted on GIAA website at www.guamairport.com on November 21, 2025 with a deadline for comments at 5pm, December 29, 2025.

Notices for public comments were also sent to over 85 companies via email that include current and prospective lessors, airlines, tenants, and stakeholders, industry partners to include the Guam Visitor’s Bureau, Guam Chamber of Commerce, Guam Hotel & Restaurant Association, local and federal partners.

Notice for Public Hearing. The Public Hearing (held no sooner than thirty (30) calendar days after posting of the fiscal assessment and policies and procedures) was noticed in the Guam Daily Post on December 15 and December 18, 2025. The Public Hearing was held at 3pm, December 22, 2025 at GIAA Conference Rooms 1&2, broadcast via www.guamairport.com and audio recorded.

It is noted that GIAA did not receive any public comments specific to the proposed policies and procedures.

Management Recommendation

Management recommends the adoption of the GIAA Proposed Policies and Procedures for the Competitive Solicitation, Selections, Award, and Operation of Lease Agreements, subject to legal review.



**ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
BOARD OF DIRECTORS**

EXECUTIVE SUMMARY

Draft Airport Lease Policy authorized by Public Law 38-21

November 13, 2025

Purpose

To give notice, advise, and present to the GIAA Board the proposed policies and procedures for the solicitation, selection, award and operation of Airport Leases (“Lease Policies”) pursuant to § 1203.1(a)(2) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated, which was authorized pursuant to Public Law 38-21 which are expected to be posted *no later than* the end of next week.

Background

Public Law 38-21 provides authority to the A. B. Won Pat International Airport Authority, Guam (GIAA) to adopt Lease Policies between the GIAA and any other party for the use of airport facilities and properties for airport purposes and/or visitor-related activities.

Specifically, relative to lease agreements, Public Law 38-21 provides that such agreements shall be authorized for a term of up to fifty (50) years and shall be subject to applicable Federal Aviation Administration (FAA) requirements for aeronautical and non-aeronautical uses to include rates charged for non-aeronautical uses at fair market value pursuant to GIAA requirements and policies and procedures adopted from time to time by the GIAA Board of Directors. Additionally, said policies and procedures shall not in any way authorize or permit gambling of any kind as defined in 9 GCA Chapter 64.

Overview: Proposed Lease Policies Adoption Process

Pursuant to Public Law 38-21 and applicable local and federal laws and requirements, prior to the adoption or any amendment of Lease Policies by the GIAA Board of Directors, the GIAA shall:

1. Prepare a fiscal assessment, which shall be posted with a copy of said policies and procedures on its website;
2. Allow for no less than thirty (30) calendar days for public comment;
3. Hold a public hearing noticed pursuant to 5 GCA § 8107 (Open Government Law) and held no sooner than thirty (30) calendar days after posting of the fiscal assessment and policies and procedures;
4. Be subject to applicable federal laws and regulations;
5. Be subject to the GIAA’s bond covenants; and
6. Ensure that any agreement between the Authority and any airline offering service to Guam shall charge the airline using the Antonio B. Won Pat International Air Terminal

facilities rates sufficient to cover the operating expenses of the air terminal and debt service coverage of the bonds authorized to be issued; and

7. Be compliant with the requirement that no one (1) or more airlines shall be unreasonably discriminated against in comparison with any other similarly situated airline.

Summary: Airport Lease Policy

The purpose of these proposed Lease Policies is to provide standard policies and procedures governing the selection, award, and operation of airport leases, as may be amended from time to time, and in conformity with industry practices. This purpose includes the distinguishing between different categories of Leases, and the basis for corresponding differences in policy approach.

The proposed Lease Policies divided into five (5) Articles to include:

1. General Provisions
2. Compliance with Federal Requirements
3. Airline Agreements
4. Other Leases
5. Ethics in Public Contracting

Article 1: General Provisions includes the Purpose, Policy, Objectives, Classification of Leases, Methods of Solicitation & Contracting, Scope and Policy, Requirement of Good Faith, and Definitions.

Article 2: Compliance with Federal Requirements requires that all solicitations comply with all federal laws and regulations that are applicable to the GIAA. Federal laws and FAA regulations that refer to airport lease arrangements are generally consistent with GIAA's policy in terms of fair and equitable treatment, financially self-sustainable, and generally consistent with industry practices.

Article 3: Airline Agreements provisions cover general provisions, contracting method and agreement formation, airline rates and charges, signatory airline preference are Not discriminatory, new signatory airlines, and other terms unique to airlines, i.e. regular coordination meetings, interim amendments, etc.

Article 4: Other Leases of airport property to persons not engaged in air transportation or concession activity. These other leases may be for land, buildings, or both that may be available for a potentially wide variety of uses – not the specialized and restricted categories of providing Air Transportation and selling goods and services to users of the Airport. The two methods of solicitation of these leases are through an application for lease or request for proposals.

Article 5: Ethics in Public Contracting prescribes the standards of conduct for government employees in general and establishes specific standards of conduct for non-government employees with regards to solicitations.

Fiscal Assessment

As previously indicated, statute requires that the GIAA prepare a fiscal assessment which shall be posted with a copy of the proposed Lease Policies on its website, allow for no less than thirty (30) calendar days for public comment, and to hold a public hearing noticed pursuant to 5 GCA § 8107 (Open Government Law).

The Fiscal Assessment shall directly address, at a minimum, the purpose and need for, the financial impact upon those persons or entities directly affected by, and the potential benefits expected to the GIAA by the proposed Lease Policies.

The GIAA is expecting to post both the proposed Lease Policies and the associated Fiscal Assessment *no later than* the end of next week.

DRAFT
**Proposed Policies and Procedures for the Competitive Solicitation,
Selection, Award, and Operation of Lease Agreements
at the**

**A.B. WON PAT INTERNATIONAL
AIRPORT GUAM**



ATURIDAT PUETTON BATKON AIREN
GUAHAN ENTENASIONAT

November 21, 2025

**ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
AIRPORT LEASE POLICY**

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**ARTICLE 1.
GENERAL PROVISIONS**

Section 1.01 Purpose.

The Government of Guam, through the Antonio B. Won Pat International Authority, Guam (“GIAA” or “Authority”), owns and operates the Antonio B. Won Pat International Airport, Guam. The purpose of this Airport Lease Policy is to provide standard policies and procedures governing the solicitation, selection, award, and operation of Airport Leases, as may be amended from time to time, and in conformity with industry practices and procedures. This purpose includes distinguishing between different categories of Airport Leases, and the basis for corresponding differences in policy approach.

Section 1.02 Policy

It is the policy of GIAA to promote efficiency and achieve the needs and best interests of GIAA in the award of Airport Leases by:

- (a) Developing sound policies and practices to achieve GIAA’s financial self-sustaining mandate;
- (b) Providing for public confidence in the procedures followed in the award of Airport Leases;
- (c) Exercising fair and equitable of all Persons who compete for Airport Leases;
- (d) Fostering effective broad-based competition within the free-enterprise system;
- (e) Providing safeguards for the maintenance of a solicitation procedures of quality and integrity.

Section 1.03 Objectives

The primary objectives of GIAA in entering into lease agreements are:

- (a) Maximize revenue generation to GIAA without creating an undue financial burden on those contracting with GIAA.
- (b) Minimize the cost and expenses incurred by GIAA in operating and maintaining the Airport.
- (c) Maintain a fee and rental structure that will make GIAA as financially self-sustaining as possible.
- (d) Provide the highest quality and broadest range of services to Airport users.
- (e) Enhance the growth and development of the Airport as a regional aviation center.
- (f) Preserve investments in the Airport and the level of service provided by GIAA and its Airlines, Concessionaires, and others.
- (g) Facilitate orderly development of the Airport.

- (h) Ensure provisions of consistent quality of services provided at the Airport.
- (i) Ensure compliance with applicable laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application and acceptance of federal funds.

Section 1.04 Classification of Leases

For purposes of this policy, Airport leases are classified in these categories:

- (a) **Airline Agreements.** The Airline Agreements provide for the use and occupancy of Airport facilities by certificated air carriers operating at the Airport. These agreements include lease of space, and rentals and fees to use the airfield and terminal building for airline operations.
- (b) **Other Leases.** The Other Leases are primarily leases for various property and buildings not directly associated with accommodating airline passengers, but important for GIAA revenue development.

Section 1.05 Methods of Solicitation & Contracting

The types of leases vary, and the business considerations associated with individual leases within each category may vary, which is reflected in the policy approach to soliciting and administering Airport Leases. The general methods of soliciting and awarding contracts are:

- (a) **Request for Proposals**—the process of using an RFP to obtain competitive proposals, in the case where it is appropriate for multiple factors--such as qualifications, operating plan, and proposed fee—to be considered for selection.
- (b) **Application for Lease**—the process of considering an Application for a Lease, and negotiating the potential award, in the case where a competitive solicitation is not necessary or appropriate.

The policy basis for the appropriate use of each method of soliciting and awarding contracts, in relation to the different types of Airport businesses and tenants, is explained respectively in Article 3 Airline Leases and Article 4 Other Leases.

Section 1.06 Scope of Policy

This Airport Lease Policy separately addresses each category of lease—Airline Agreements and Other Leases—in accordance with the different characteristics and requirements for each type. GIAA has a separate policy document concerning Concession Agreements.

Section 1.07 Requirement of Good Faith

This Airport Lease Policy requires all parties involved in the solicitation, negotiation, performance, or administration of Airport Leases to act in good faith.

Section 1.08 Definitions

Definitions of key terms used in this Airport Lease Policy are provided in the Definitions Appendix.

ARTICLE 2. COMPLIANCE WITH FEDERAL REQUIREMENTS

Section 2.01 Compliance with Federal Requirements

All Airport Leases shall be compliant with all federal law and regulations that are applicable to GIAA, and to the extent that such federal laws or regulations conflict with this Airport Lease Policy, the mandates of such federal laws or regulations shall prevail. Federal laws and FAA regulations that refer specifically to airport lease arrangements are generally consistent with GIAA's policy approach in terms of fair and equitable treatment and financially self-sustainability, and GIAA's policy is generally consistent with industry practices that have proven compliant with federal requirements.

ARTICLE 3. AIRLINE AGREEMENTS

Section 3.01 General

Airline Agreements are different from other forms of leases and are accordingly addressed separately for purposes of policy.

- (a) **Conditions Unique to Air Transportation and Airline Agreements.** Accommodating the Air Transportation provided by certificated air carriers ("Airlines") is the core mission of the Airport.
 - (1) **Airport Sponsor Obligation.** As the certificated operator of an FAA-regulated public-use airport (Airport Sponsor) and the only such facility in Guam, GIAA is obligated to accommodate air carriers choosing or desiring to conduct Air Transportation operations at the Airport.
 - (2) **Air Service is Not Contracted.** Airlines are free to increase or decrease service levels (frequency of service, origin-destination pairs, and aircraft type), and enter and exit markets, at their own discretion. As a result, airport operators such as GIAA must maintain standing Airline Agreements for whomever is offering Air Transportation at any given time.
 - (3) **Revenue to GIAA is Based on Activity.** Airlines determine their own service levels, and the Airline Agreements specify the rentals and fees to be paid based on the activity of each Airline, which will vary by Airline. Airlines do not bid or propose a specific amount of revenue to GIAA, but instead agree to pay for facilities they use based on their actual level of activity. GIAA manages the resulting aggregate generation of Airline revenue in relation to annual budgets and financial requirements. This means that, rather than a single solicitation bid or negotiation, the business arrangement involves and requires a practice of ongoing management and coordination.
- (b) **Conditions Specific to Airline Agreements.** Airline Agreements are more comprehensive than other typical Airport leases, because they must cover:

- i) **Aircraft Operations.** The use of the airfield for aircraft operations, including compliance with all relevant FAA requirements and standards.
 - ii) **Passenger Facilitation.** Airlines are responsible for processing Airport passengers, and ensuring passenger safety and security.
 - iii) **Facility Development, Use, and Occupancy.** Airlines, through their aircraft and passenger activities, are the primary drivers of the development, use, and occupancy of the core airfield and terminal facilities at the Airport.
 - iv) **Rentals and Fees.** Airline Agreements include a comprehensive set of rentals and fees to provide a fair and equitable cost recovery and revenue generation from a broad variety of facilities and activities, and a combination of exclusive use and joint use spaces.
- (c) **Financial Significance of Airline Agreements.** The development of Airport facilities is primarily in response to the Air Transportation requirements of airlines and their passengers. As a result, the Airline Agreements provide critical financial support for the Airport:
- (1) **Airfield Cost Recovery.** Airlines pay landing fees under the Airline Agreement to provide for the cost of developing and operating the airfield
 - (2) **Terminal Cost Recovery.** Together with revenue from Concession Agreements, the Airline Agreements provide for the cost of developing and operating the Terminal Building and associated landside facilities.
 - (3) **Airport Revenue Bond Debt Service Coverage.** While not the only source of revenue at the Airport, the Airline Agreements provide the foundation for revenue required to demonstrate revenue bond debt service coverage and support periodic issuance of bonds to fund capital improvements.
- (d) **Solicitation/Contracting Methods.** Because under federal regulations GIAA as Airport Sponsor is required to make the airport available to Airlines desiring to provide Air Transportation, the Airline Agreements are negotiated from time-to-time with any and all Airlines using the Airport, and not secured using a competitive solicitation process that selects some providers and excludes others. This is further explained in Section 3.02 Contracting Method and Agreement Formation.

Section 3.02 Contracting Method & Agreement Formation

GIAA policy is to have standard and substantially similar Airline Agreements in place and available at any given time, for Airlines currently providing or desiring to provide Air Transportation at the Airport.

- (a) **Contracting Method—Application for Lease.** Because under federal policy GIAA is required to make the airport available to any Airlines desiring to provide service, the Airline Agreements are negotiated from time-to-time with Airlines using the Airport, using the Application for Lease method, and not secured using a competitive solicitation process.
 - (1) **Signatory Airlines.** Signatory Airlines are the Airlines that have executed substantially similar agreements with GIAA covering the use and occupancy of facilities at the Airport, collectively resulting in a standard Airline Agreement.
 - (2) **Nonsignatory Airlines.** Nonsignatory Airlines are the Airlines that serve the Airport but have chosen to not apply for or execute an Airline Agreement.

- (b) **Contracting Process—Application for Lease.** Airline Agreements are negotiated between GIAA and Airlines serving the Airport such that there is always a standard Airline Agreement in place. Airlines can apply to become a Signatory Airline by participating in the negotiation and executing the resulting Airline Agreement. Airlines can also apply at any time to become a Signatory Airline by executing the standard Airline Agreement that is currently in place.
- (1) **Airline Agreements in Place.** At any given time, GIAA shall have standard and substantially similar Airline Agreements in place for Airlines currently serving the Airport.
 - (2) **Advance Planning.** Sufficiently prior to expiration of the term of Airline Agreements currently in place, GIAA shall engage in discussions with Airlines regarding the new Airline Agreement that will be required to establish a new and uninterrupted term, and establish a plan for negotiating and agreeing on a new Airline Agreement. This advance planning process shall be used to identify which Airlines are interested to apply to continue as or to become Signatory Airlines.
 - (3) **Negotiations.** Based on advance planning discussions with Airlines, the Executive Manager shall direct the drafting of a proposed new Airline Agreement for a proposed new term, and initiate a process of meetings, discussions, and negotiations with the Airlines interested in remaining or becoming Signatory Airlines.
 - (4) **Lease Execution.** At the conclusion of negotiations, Airlines wishing to apply for Signatory Airline status will be offered the new standard Airline Agreement, customized as appropriate for the anticipated space occupancy of each individual Airline. Airlines that subsequently execute the Airline Agreement will be Signatory Airlines for the new lease term.
- (c) **Agreements.** Key provisions to be included in standard Airline Agreements are:
- (1) **Term.** The term (duration) of the agreement can be negotiated between GIAA and Airlines, and is subject to any limits in Guam law.
 - (2) **Rights and Privileges.** The specific rights to use Airport facilities for Airline operations.
 - (3) **Premises.** Description of exclusive use and joint use space. Each individual Airline has a unique leasehold of exclusive use space.
 - (4) **Capital Improvements.** Description of the process for discussing and approving capital improvements, the cost of which will be included in airline rents and fees.
 - (5) **Rents and Fees (Rates and Charges).** Description of the various rents and fees, and the methodology for annual adjustments.
 - (6) **Subordination to Bond Indenture.** General requirement that the Airline Agreement is subordinate to the Bond Indenture with regard to GIAA use of Airport revenue, but not dictating the business terms negotiated between GIAA and Airlines.
 - (7) **Maintenance Obligations.** The respective obligations of GIAA and Airlines to maintain Airport facilities.
 - (8) **Other.** Other terms typically included in an airline lease, such as: security deposits, insurance requirements, and dispute resolution.

Section 3.03 Airline Rates & Charges

Federal policy requires that airline rates and charges are fair and nondiscriminatory, with reasonably transparent rates and charges methodology, but does not prescribe the precise methodology. GIAA may periodically revisit or renegotiate the rates and charges methodology in the Airline Agreements, but within the context of ensuring that Airline revenues, together with all

other revenues generated at the Airport, are sufficient to pay GIAA's annual operating expenses and debt service, and meet the Rate Covenant of the Bond Indenture.

Section 3.04 Signatory Airline Preferences are Not Discriminatory

Signatory Airlines are Airlines that have executed substantially similar Airline Agreements. Nonsignatory Airlines are Airlines that have not executed the Airline Agreement, but are still allowed to operate at the Airport under general rules, regulations, and tariff rates. GIAA benefits from the financial stability afforded by Signatory Airlines with executed Airline Agreements, so it is reasonable that, in exchange, the Signatory Airlines receive consideration of certain preferences, such as discounted rental and fee rates, preferential facility access, and consultation rights. This is typical of U.S. airport-airline agreements, and is not considered discriminatory.

Section 3.05 New Signatory Airlines

From time-to-time, new Airlines may begin service at the Airport and desire to become a Signatory Airline, or an existing Nonsignatory Airline may desire to transition to Signatory Airline status. GIAA will use the Application for Lease method. The applicant Airline will be offered the then-existing standard Airline Agreement.

Section 3.06 Other

- (a) **Regular Coordination is Required.** Because of the importance of the Airline Agreements in defining the conditions and requirements for the operations of Airlines at the Airport, GIAA shall maintain a process of regular coordination with Airlines, which will include opportunities to improve processes and approaches for the benefit of both GIAA and the Airlines.
- (b) **Interim Amendments are Permitted.** The Airline Agreements have fixed terms, and new or refreshed Agreements are negotiated as needed for each term cycle. In the interim, before the expiration of term, there may be reasons to mutually agree on certain amendments to the Airline Agreements to reflect changes in current circumstances or reflect an otherwise mutually agreed reason to modify one or more clauses. Such interim amendments are permitted, if mutually agreed between GIAA and Airlines.
- (c) **Customization is Permitted.** Customization of standard Airline Agreements for individual Airlines is permitted to appropriately reflect unique conditions such as space occupancy and utilization, as long as GIAA determines that the Airline Agreements remain substantially similar, without more favorable treatment, particularly in the application of rentals and fees.
- (d) **Extensions are Permitted.** Temporary extensions of Airline Agreements are permitted to provide for time required to conclude negotiations on a new Airline Agreement, to avoid any interruptions to Airline operations and revenue generation.

ARTICLE 4. OTHER LEASES

Section 4.01 General

Other Leases are leases of Airport Property to Persons not engaged in Air Transportation or Concession activity. These Other Leases may be for land, buildings, or both.

- (a) **Other Leases are Important.** Other Leases are important in providing sources of non-airline revenue and supporting the financially self-sustaining mandate of GIAA.

- (b) **Other Leases are Distinct.** Other Leases are distinct because, unlike Airline Agreements and Concession Agreements, they are available for a potentially wide variety of uses—not the specialized and restricted categories of providing Air Transportation and selling goods and services to users of the Airport. In addition:
- (1) Concessionaires must compete during a periodic official solicitation period to be selected for the restricted and commercially valuable privilege to sell goods and services to users of the Airport, and otherwise are not eligible to apply for or conduct Concession activity at the Airport. Other Leases can be awarded at any time that there is available Airport Property for any suitable purpose.
 - (2) Concessionaires must offer substantial Concession Fees for the privilege of operating a Concession. For most Other Leases, GIAA will use an approach of fair market rental value, in accordance with FAA policy, and price will not be the determinative factor.
 - (3) Thus, the solicitation and award process for Other Leases is not as competitively significant as it is for Concession Agreements.
- (c) **The Policy for Other Leases is More Flexible.** Because of the distinctions of Other Leases from Concession Agreements, the policy for Other Leases is more flexible, providing GIAA the ability to continuously explore non-airline revenue development while still adhering to overall Airport Lease Policy objectives of fair, transparent, and nondiscriminatory business practices. This includes:
- (1) Any acceptable solicitation and contracting method is available to use for Other Leases. The Executive Manager shall determine the most appropriate method in writing, based on the particular circumstances of the opportunity.
 - (2) Given the potential range of circumstances and opportunities that cannot be fully anticipated in advance, the Executive Manager shall have discretion in evaluating each potential new Other Lease, as it shall arise.

Section 4.02 Solicitation/Contracting Methods & Lease Formation

GIAA may use either of two methods of soliciting and contracting, depending on a written determination by the Executive Manager of which is more appropriate for the specific Other Lease opportunity.

- (a) Request for Proposals
- (b) Application for Lease

Section 4.03 Request for Proposals (RFP)

The method of Request for Proposals (RFP) is used to solicit competitive proposals that allows GIAA to evaluate proposals based on a variety of factors, including experience, business concept, proposed investments, and other relevant criteria.

- (a) **Determination of Use.** The Executive Manager may determine that the RFP method is in the best interests of GIAA, as compared to the Application for Lease method described in Section 4.04, in any one or more of the following circumstances:
 - (1) Prior to receiving any interest, GIAA decides to initiate an RFP process to obtain proposals for one or more parcels or units of Airport Property
 - (2) There are multiple Persons that have expressed interest in writing in the same parcel or unit of Airport Property;
 - (3) It is determined by the Executive Manager in writing, that a competitive RFP process is likely to result in a more favorable business outcome for GIAA, as compared to accepting an Application for Lease, and therefore warrants the additional management and administrative effort associated with the RFP process.

- (b) **Consideration of Alternatives.** For each potential Lease opportunity, the Executive Manager shall consider the advantages and disadvantages of the RFP method and the Application for Lease method, and determine which method is in GIAA's best interest and meets the policy objectives of fair treatment and fostering competition. Factors used in evaluation include:
 - (1) Anticipated competitive demand, and the likelihood of achieving a significantly more advantageous business outcome using the RFP process
 - (2) Cost savings and efficiency of direct negotiation in the Application for Lease process, compared to the requirements of the RFP process.
- (c) **Initiation of Process.** Unlike Concessions, Other Leases are not awarded during pre-determined procurement cycles. Instead, Other Leases are procured when interest is developed, in the form of either:
 - (1) **GIAA Interest.** GIAA may decide to advertise the availability of one or more properties for lease. At this time the Executive Manager shall determine in writing if GIAA will simply collect Applications for Lease, or instead use a more formal RFP process.
 - (2) **Potential Tenant Interest.** A potential tenant may approach GIAA and express interest in leasing Airport Property. Considering the specific circumstances, which will be unique to each instance, the Executive Manager shall determine if it is more appropriate to use the RFP process or the Application for Lease process.
- (d) **RFP Development.** When the Executive Manager determines that the RFP process is appropriate for a potential Other Lease, the Executive Manager shall direct the development of an RFP document that shall include relevant information, at a minimum:
 - (1) **Description of the Process.** The schedule for steps in the process.
 - (2) **Requirements of the Submittal.** Information that must be included in any Proposal that is submitted.
 - (3) **Description of the Property.** A description of the property to be the subject of the proposed Lease, including location, size, and any existing buildings.
 - (4) **Key Business Terms.** May include anticipated term (duration) of lease; permitted uses; required investments or other responsibilities; anticipated basis for rental rate.
 - (5) **Sample Agreement or Agreement Terms.**
 - (6) **Evaluation Criteria.** The factors to be used in evaluating proposals, and some qualitative or quantitative indication of relative importance.
- (e) **Process.** The RFP process shall include these steps:
 - (1) **Public Notice and Pre-Proposal Conferences.** Public notice is required, and in GIAA's best interest to generate interest in the proposed Lease opportunity. Pre-proposal conferences may be used if the Executive Manager determines useful and appropriate.
 - (2) **Proposal Evaluation.** The Executive Manager will direct an effort to evaluate and rank any proposals that are received, using the evaluation factors from the RFP.
 - (3) **Selection.** The Executive Manager shall select the highest-ranked Proposer from the evaluation process.
 - (4) **Negotiation and Award.** The Executive Manager and/or a designee shall negotiate an Agreement with the highest-ranked Proposer.
- (f) **Leases.** GIAA shall include a sample lease or sample lease terms in the RFP, which then forms the basis for the lease to be negotiated with the selected Proposer. Key terms include:
 - (1) **Premises.** A description of the premises.

- (2) **Use of Premises.** Permitted uses, and obligations to comply with laws, rules, and regulations.
- (3) **Term.** Duration of lease term.
- (4) **Rent.** Monthly rent, and any other considerations specific to the individual lease.
- (5) **Other.** Other standard terms of GIAA leases.

Section 4.04 Application for Lease

The method of Application for Lease is used to negotiate a lease with a prospective tenant interested in a specific parcel or unit of Airport Property. This is not a competitive selection process, but the same evaluation factors used in an RFP process—including experience, business concept, proposed investments, and other relevant criteria—may be used by the Executive Manager to determine if it is appropriate to continue through the process, to reject the application without proceeding further, or to transition to the RFP process.

- (a) **Determination of Use.** The Executive Manager may determine that the Application for Lease method is in the best interests of GIAA, as compared to the RFP method described in Section 4.03, in cases where:
 - (1) GIAA has advertised or made public that certain property parcels and/or units are available for interested Applicants.
 - i) If a single Application is received, the Executive Manager shall evaluate the Application, and determine the merits of proceeding through the lease negotiation process.
 - ii) If more than one Application is received for the same property parcel or unit, the Executive Manager shall determine if it is possible to clearly identify the preferred Applicant, to offer leases to all Applicants, or if instead it is appropriate to use an RFP process to determine the best qualified Applicant.
 - (2) GIAA has received an unsolicited Application for Lease, from a person interested in a specific property parcel or unit. The Executive Manager shall evaluate the Application, and determine if it is in GIAA's best interests to proceed to lease negotiation with the Applicant, or instead transition to the RFP process described in Section 5.04 Request for Proposals.
- (b) **Consideration of Alternatives.** For each potential Lease opportunity, whether initiated by GIAA or initiated by an Applicant, the Executive Manager shall consider the advantages and disadvantages of the RFP method and the Application for Lease method, and determine which method is in GIAA's best interest and meets the policy objectives of fair treatment and fostering competition.
- (c) **Initiation of Process.** Unlike Concessions, Other Leases are not awarded during pre-determined procurement cycles. Instead, Other Leases are procured when interest is developed, in the form of either:
 - (1) **GIAA Interest.** GIAA may decide to advertise the availability of one or more properties for lease. At this time the Executive Manager shall determine if GIAA will simply collect Applications for Lease, or instead use a more formal RFP process.
 - (2) **Potential Tenant Interest.** A potential tenant may approach GIAA and express interest in leasing Airport Property. Considering the specific circumstances, which will be unique to each instance, the Executive Manager shall determine if it is more appropriate to use the RFP process or the Application for Lease process.

- (d) **Application for Lease.** When it is determined that the Application for Lease process is most appropriate for a potential Other Lease, the Executive Manager shall proceed through the below process.
- (e) **Process.** The Application for Lease process shall include these steps:
 - (1) **Receipt of Application.** In cases either initiated by GIAA or initiated by an Applicant, GIAA receives an Application for Lease for a specific parcel or unit of property.
 - (2) **Evaluation of Application.** The Executive Manager will direct an effort to evaluate the Application:
 - i) First, to determine if it is in GIAA's best interests to proceed with lease negotiation, and
 - ii) Second, to determine if it is in GIAA's best interest to proceed with lease negotiation under the Application for Lease process, or instead transition an RFP.
 - (3) **Negotiation and Award.** The Executive Manager and/or a designee shall negotiate a lease with the Applicant, using standard lease terms.
- (f) **Leases.** GIAA shall maintain a standard sample lease or sample lease terms, which then forms the basis for the lease to be negotiated with the selected Applicant. Key terms include:
 - (1) **Premises.** A description of the premises.
 - (2) **Use of Premises.** Permitted uses, and obligations to comply with laws, rules, and regulations.
 - (3) **Term.** Duration of lease term.
 - (4) **Rent.** Monthly rent, and any other considerations specific to the individual lease.
 - (5) **Other.** Other standard terms of GIAA leases.

Section 4.05 Lease Term

The duration of lease term may or may be stated in the RFP or notice of availability of property, or this may be reserved for negotiation with the selected Proposer or Applicant. In any event, the duration of term is subject to limits in Guam law.

Section 4.06 Master Developer

In addition to leasing individual parcels and buildings, GIAA may consider leasing an amount of Airport Property to a master developer, who would improve the property and sublease to others, as is routinely done at U.S. airports.

- (a) **Initiated by GIAA.** GIAA may decide to pursue a master developer arrangement, in which case GIAA would initiate the RFP process described in Section 4.03 Request for Proposals.
- (b) **Initiated by Applicant.** A master developer as Applicant may propose, unsolicited, to lease Airport Property. In this case, the Executive Manager shall direct an evaluation the same as described in Section 4.04 Application for Lease, to determine if it is in GIAA's best interest to proceed with the Application for Lease process, or instead initiate an RFP process.

Section 4.07 Airport Planning

Ongoing Airport planning exercises, including periodic Master Plan Updates, should be used by GIAA to identify Airport Property that is available for non-airline revenue development using Other Leases.

Section 4.08 GIAA Investment

In some cases, it may be in GIAA's best interest to invest in improvements to enable a new Other Lease. For general Airport infrastructure, such as roads and utilities, or site preparation, this would likely be considered part of overall Airport development. For any investments more specific to the proposed tenant, such as assistance with building improvements, the Executive Manager shall

determine that this investment is appropriately reflected in the lease rental terms and the financial benefit to GIAA, so as not to produce any actual or apparent unduly favorable treatment and/or terms materially below fair market value.

ARTICLE 5. LEGAL AND CONTRACTUAL REMEDIES

An RFP for any Other Lease issued under Article 4 of these Policies may be protested in the same manner as a protest made under the Concession Policies and Procedures, which may be amended from time to time.

ARTICLE 6. ETHICAL STANDARDS

6.01. Definitions of Terms Used in this Article.

- (a) *Bona Fide Employee* means an individual employed by a prospective proposer or Lessee and subject to the prospective proposer's or Lessee's supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain a Lease Agreement. In determining whether a bona fide employment relationship exists, the following factors should be considered:
- (1) whether the employment is continuous;
 - (2) whether the person is subject to the supervision and control of the prospective offeror or proposer;
 - (3) whether the size of any contingent fee is reasonable in relation to the services performed;
 - (4) whether the method of payment of the contingent fee is customary in the trade; and
 - (5) whether the person is employed solely by the prospective offeror or proposer.
- (b) *Bona Fide Established Commercial Selling Agency* means a Person that neither exerts nor proposes to exert improper influence to solicit or obtain a Lease Agreement. In determining whether a Person is a Bona Fide Established Commercial Selling Business, the following factors should be considered:
- (1) whether the Person is one which has either been active for a considerable period of time or is presently a going concern and is likely to continue as such;
 - (2) whether the Person uses its own name and is characterized by the customary indicia of the conduct of a regular business;
 - (3) the degree to which the Person's activities are directed toward the solicitation of Lease Agreements;
 - (4) whether the size of any contingent fee is reasonable in relation to the services performed; and
 - (5) whether the method of payment to the contingent fee is customary in the trade.

6.02. Purpose and Policy.

- (a) **Purpose.** This Article prescribes the standards of conduct for Government Employees in general and establishes specific standards of conduct for non-government employees with regard to Solicitations for Lease Agreements at GIAA.
- (b) **Policy.** Public employment is a public trust. It is the policy of GIAA to promote and balance

the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by GIAA. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Government Employees must discharge their duties impartially so as to assure fair competitive access to Solicitations by responsible proposers. Moreover, Government Employees should conduct themselves in such a manner as to foster public confidence in the integrity of the Solicitation process. To achieve the purpose of and uphold the policies of this Article, it is essential that those seeking lease opportunities at GIAA also observe the ethical standards prescribed herein.

6.03. General Ethical Standard for Non-Government Employees.

- (a) **No Influence.** Any effort to influence any Government Employee to breach the standards of ethical conduct set forth in this Article or 4 GCA Chapter 15 is also a breach of ethical standards.
- (b) **Required Declaration.** Every proposer or prospective Lessee shall submit a declaration regarding the ethical standard not to influence Government Employees. Such declaration shall be in a form established by GIAA.
- (c) **Required Clause.** The following clause shall be conspicuously set forth in every Solicitation and Lease Agreement:

REPRESENTATION REGARDING ETHICAL
STANDARD NOT TO INFLUENCE GOVERNMENT EMPLOYEES

Proposer or Lessee represents that it has not knowingly influenced and promises that it will not knowingly influence a Government Employee to breach any of the ethical standards set forth in Article 6 of the GIAA Leasing Policies and Procedures or 4 GCA Chapter 15 (Standard of Conduct for Elected Officers, Appointed Officers, and Public Employees of the Government Of Guam).

6.04. Criminal Sanctions. To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of Title 9 GCA (Crimes and Corrections), they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Article.

6.05. Ethical Standard – Government Employee Conflicts of Interest.

- (a) **(Conflict of Interest.** It shall be a breach of ethical standards for any Government Employee to participate directly or indirectly in a Solicitation when the Government Employee knows that:
 - (1) the Government Employee or any member of the Government Employee's Immediate Family has a Financial Interest pertaining to the Solicitation;
 - (2) a Business in which the Government Employee, or any member of the Government Employee's Immediate Family has a Financial Interest, has a Financial Interest pertaining to the Solicitation; or

- (3) any Person with whom the Government Employee or any member of the Government Employee's Immediate Family is negotiating or has an arrangement concerning prospective employment has a Financial Interest in the Solicitation.
- (b) **Financial Interest in a Blind Trust.** Where a Government Employee or any member of the Government Employee's Immediate Family holds a Financial Interest in a Blind Trust, the Government Employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that Financial Interest, provided that disclosure of the existence of the Blind Trust has been made to the Civil Service Commission.
- (c) **Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.** Upon discovery of an actual or potential conflict of interest, a Government Employee shall promptly file a written statement of disqualification with the Executive Manager and shall withdraw from further participation in the Solicitation. The Government Employee may, at the same time, apply to the Civil Service Commission pursuant to 5 GCA 5676(b) for an advisory opinion as to what further participation, if any, the employee may have in the Solicitation.
- (d) **Notice.** Notice of this prohibition shall be provided in accordance with regulations promulgated by the Civil Service Commission.
- (e) **Application for a Waiver of Prohibition Against Conflict of Interest.**
- (1) Application for Waiver. (Reserved).
 - (2) Grant or Denial of Waiver. The Civil Service Commission, may grant a Government Employee and/or the Lessee a waiver of the conflict of interest prohibition where the interests of the GIAA so require or when the ethical conflict is insubstantial or remote.
Prior to granting or denying a waiver, the Civil Service Commission shall make such investigation as it may deem appropriate and which is not in violation of the Government Employee's or the Proposer's or Lessee's rights, privileges, and immunities. Factors to be considered by the Civil Service Commission when determining whether to grant a waiver shall include:
 - (i) the degree of involvement of the Government Employee or Lessee;
 - (ii) the size and character of the Financial Interest of the Government Employee or a member of such employee's Immediate Family or a Proposer or Lessee which relates to the particular Solicitation;
 - (iii) the likelihood of the appearance of impropriety;
 - (iv) the availability of prospective proposers with which a Lease Agreement would not present a conflict; and
 - (v) the extent to which GIAA's interests will be affected by a waiver.

6.06. Reserved

6.07. Ethical Standard – Gratuities and Kickbacks.

- (a) **Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any Government Employee or former Government Employee, or for any Government Employee or former Government 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 Solicitation, influencing the content of any Solicitation 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 Lease Agreement, or to any Solicitation or proposal therefor.

- (b) **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 Lessee or Proposer or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.
- (c) **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every Lease Agreement and solicitation therefor.
- (d) **Favors to the Government of Guam.** For purposes of this subsection, a favor is anything, including raffle tickets, or more than de minimis value and whether intended for the personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a Lessee, a subcontractor under a Lease Agreement to the Lessee, or any person associated therewith, to offer, give or agree to give any Government Employee or agent of the government of Guam or for any Government Employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any Solicitation.
- (e) **Intentionally Omitted.**
- (f) **Gratuities Prohibition.**
 - (1) Breach. It is a breach of § 6107(a) (Gratuities and Kickbacks - Gratuities) of these Policies and Procedures:
 - (i) for any Person to offer, give, or agree to give any Government Employee or former Government Employee a gratuity of offer of employment; or
 - (ii) for any Government Employee or former Government Employee to solicit, demand, accept, or agree to accept a gratuity or an offer of employment; provided that the gratuity or offer of employment is in relation to a particular matter in accordance with § 6107(f)(2) of these Policies and Procedures, and pertains to any Lease Agreement, subcontract, or Solicitation or proposal therefor.
 - (2) Relationship of Gratuity. In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:
 - (i) decision;
 - (ii) approval;
 - (iii) disapproval;
 - (iv) recommendation;

- (v) preparation of any part of a Solicitation;
 - (vi) action to influence the content of any Solicitation;
 - (vii) rendering of advice;
 - (viii) investigation;
 - (ix) auditing; or
 - (x) other advisory capacity.
- (3) Family. This prohibition extends to the giving of gratuities to anyone on the Government Employee's or former Government Employee's behalf such as a member of the Government Employee's or former Government Employee's Immediate Family.
- (g) **When Prohibition Against Gratuities not Applicable.** Section 6107(a) (Gratuities and Kickbacks-Gratuities) of these Policies and Procedures does not prohibit:
- (1) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any Solicitation or Solicitation requirement with GIAA and is based upon a personal or family relationship;
 - (2) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;
 - (3) acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of Government Employees, such as home mortgage loans; or
 - (4) acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items under nominal value as described in § 1106(cc) (Definitions-Gratuity) of these Policies and Procedures.
- (h) **Payment of a Kickback.** The prohibition against kickbacks set forth in § 6107(b)11206(2) (Gratuities and Kickbacks-Kickbacks) of these Policies and Procedures applies whether a kickback is made prior to or after the award of a Lease Agreement.
- (i) **Contract Clause.** The following clause shall be conspicuously set forth in every Lease Agreement and Solicitation therefor:

REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The Proposer or Lessee represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in § 6107 (Gratuities and Kickbacks) of the GIAA Leasing Policies and Procedures.

6.08. Contingent Fees.

(a) **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 Lease Agreement 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 a Lease.

- (2) Representation of Lessee. Every Person, before being awarded a Lease Agreement, shall represent, in writing, that such Person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitute a breach of ethical standards.
- (3) Contract Clause. The representation prescribed in Subsection (2) of this Section shall be conspicuously set forth in every Lease Agreement and Solicitation therefor.

(b) **Intentionally Omitted.**

(c) **Influence Peddling.** The prohibition in § 6108(a)(1) (Prohibition Against Contingent Fees-Contingent Fees) of these Policies and Procedures covers influence peddling and particularly that which might occur when a former Government Employee is hired on contingent basis by a business seeking a Lease Agreement.

(d) **Relationship of Commercial Selling Agency to the Prospective Lessee.** The relationship between a Bona Fide Established Commercial Selling Agency and the prospective Lessee should be characterized by the following:

- (1) the fees charged by the commercial selling agency are commensurate with the nature and extent of the business's services actually rendered to the prospective Lessee;
- (2) the commercial selling agency has adequate knowledge of the prospective Lessee which it represents to judge whether the prospective Lessee may be able to meet GIAA's requirements; and
- (3) the relationship between the commercial selling agency and the prospective Lessee is or is contemplated to be continuing.

(e) **Improper Influence.** A business employee or commercial selling agency should be conclusively presumed not to be bona fide if GIAA determines that improper influence has been or is being used to secure a Lease Agreement.

(f) **Solicitation Clause.** Every Solicitation for a Lease Agreement shall conspicuously set forth the following provision to be completed and submitted with every prospective Lessee's proposal:

PROSPECTIVE Lessee's REPRESENTATION REGARDING CONTINGENT FEES

The prospective Lessee represents as a part of its proposal that it has/has not (circle applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Lease Agreement.

(g) **Information on Contingent Fees.** Any prospective Lessee who has completed the clause set forth in § 6108(f) (Solicitation Clause) in the affirmative and is the apparently successful proposer shall submit the following information:

- (1) the full name and business address of the business or person retained, and the type of business organization;
- (2) the relationship of the business or person to the prospective Lessee;
- (3) the terms of the retention agreement or copy of such agreement;
- (4) if such person is a business employee: (i) the duration of employment; (ii) whether that employee is on the Lessee's payroll for purposes of social security and federal or local income tax withholding; (iii) whether that employee represents other businesses and, if

- so, the names and addresses of such businesses;
- (5) whether the business or person represents the prospective Lessee on: (1) both government and commercial business; (2) only government business; or (3) only the present Lease Agreement;
 - (6) the extent of the duties of the business or person; and
 - (7) the duration the business or person has been engaged in a particular type of work and has performed this type of work for the Lessee.

(h) **Contract Clause.** The following clause shall be conspicuously set forth in every Lease Agreement and Solicitation therefor:

REPRESENTATION REGARDING CONTINGENT FEES

The Lessee represents that it has not retained a Person to solicit or secure a Lease Agreement 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 a Lease Agreement.

6.09. Employment Prohibitions and Restrictions.

(a) **Restrictions on Employment of Present and Former Government Employees.**

(1) **Restrictions on Former Government Employees in Matters Connected with Their Former Duties.**

(i) **Permanent Disqualification of Former Government Employee Personally Involved in a Particular Matter.** It shall be a breach of ethical standards for any former Government Employee knowingly to act as a principal, or as an agent for anyone other than GIAA, in connection with any:

- 1. judicial or other proceeding, application, request for ruling, or other determination;
- 2. Lease Agreement;
- 3. claim; or
- 4. charge or controversy; in which the former Government Employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while a Government Employee, where GIAA is a party or has a direct and substantial interest.

(ii) **One year representation restriction regarding matters for which a former Government Employee was officially responsible.** It shall be a breach of ethical standards for any former Government Employee, within after cessation of the former employee's official responsibility, knowingly to act as principal, or as an agent for anyone other than GIAA, in connection with any:

- 1. judicial or other proceeding, application, request for a ruling, or other determination;
- 2. Lease Agreement;
- 3. claim; or
- 4. charge or controversy; in matters which were within the former Government Employee's official responsibility, where GIAA is a party or has a direct or substantial interest.

- (2) Disqualification of Business When a Government Employee has a Financial Interest. It shall be a breach of ethical standards for a business in which a Government Employee has a Financial Interest knowingly to act as a principal, or as an agent for anyone other than GIAA, in connection with any:
- (i) judicial or other proceeding, application, request for a ruling, or other determination;
 - (ii) Lease Agreement;
 - (iii) claim; or
 - (iv) charge or controversy; in which the Government 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 Government Employee's official responsibility, where GIAA is a party or has a direct and substantial interest.
- (3) Selling to GIAA After Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former Government Employee, unless the former Government Employee's last annual salary did not exceed \$12,000, to engage in selling to the GIAA for ninety (90) days following the date employment ceased. The term Sell as used herein means signing a proposal or Lease Agreement; negotiating a Lease Agreement; contracting any employee for the purpose of obtaining, negotiating, or discussing changes in a Solicitation or other terms of a Lease Agreement; settling disputes concerning performance of a Lease Agreement; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual Lease Agreement, therefore, is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former Government Employee from accepting employment with private industry solely because the former Government Employee's employer is a Lessee with GIAA nor shall a former Government Employee be precluded from serving as a consultant to GIAA.
- (b) Contemporaneous Employment Prohibition. (Reserved).**
- (c) Permanent Disqualification of Former Government Employee.**
- (1) Personal and Substantial Participation. For the Government Employee to have “participated personally and substantially” in a matter, such employee's involvement must have been more than merely ministerial in nature. Factors to be considered in determining personal and substantial participation of a former government employee while a government employee shall include but are not limited to:
- (i) the former Government Employee's degree of involvement in the particular matter;
 - (ii) the degree of involvement of the former employee with a subordinate who had substantial participation in the matter;
 - (iii) the effect or appearance of the involvement of the former government employee; and
 - (iv) the relative time spent on the particular matter by the former government employee.
- (2) Matter must be a Particular Matter Involving Identifiable Parties. The activities listed in § 6109(a)(1)(i) (Restrictions on Employment of Present and Former Employees-Permanent Disqualification of Former Employee Personally Involved in a Particular Matter) of these Policies and Procedures generally describe matters in which issues are

- defined and parties are identified, such as specific proceedings affecting the legal rights of parties, or isolated transactions or related sets of transactions between identifiable parties. Matters of general application, such as regulation and policy formulation, are not intended to be covered under those activities listed under § 6109(a)(1)(i). Therefore, only a particular matter involving an identifiable party or parties is subject to the permanent prohibition set forth under § 6109(a)(1)(i).
- (3) The Same particular matter must be involved. The prohibition set forth in § 6109(a)(1)(i) (Restrictions of Employment of Present and Former Employees-Disqualification of Former Employee Personally Involved in a Particular Matter) of these Policies and Procedures applies only with regard to those same particular matters in which the former Government Employee participated personally and substantially while a government employee. In determining whether two particular matters are the same, the following factors should be considered:
- (i) the factual basis of the matters;
 - (ii) the relationship of the issues involved in each matter;
 - (iii) the identity of the parties involved in each matter; and
 - (iv) the continued existence of an important GIAA interest.
- (d) **One year restriction for a former Government Employee.**
- (1) Official responsibility.
 - (i) Intentionally Omitted.
 - (ii) Scope. The scope of a Government Employee's Official Responsibility is determined by the territory's statutes, regulations, executive orders, case law, or job descriptions, or may result from the lawful delegation of another Government Employee's duties.
 - (iii) Requirement That Matters Have Been Actually Pending. In order for a matter to have been within a former Government Employee's Official Responsibility, it must have in fact been assigned to or under consideration by persons under the former Government Employee's Official Responsibility.
 - (2) One year restriction. The one-year restriction set forth in § 6109(a)(1) (Restrictions on Employment of Present and Former Employees-Restrictions on Former Employees in Matters Connected with Their Former Duties) of these Policies and Procedures is measured from the time the former Government Employee's Official Responsibility ended in a particular matter.
- (e) **Disqualification of a Business.**
- (1) Personal and Substantial Participation. Personal and substantial participation is discussed in § 6109(c)(1) (Permanent Disqualification of Former Government Employee-Personal and Substantial Participation) of this Article.
 - (2) Official Responsibility. Official Responsibility is discussed in § 6109(d)(1) (One Year Restriction for a Former Government Employee- Official Responsibility) of this Article.
 - (3) Determination of Business Knowledge. In ascertaining whether a business has knowledge that a Government Employee has a Financial Interest in that business for the purpose of applying the prohibition in § 6109(a)(2) (Restrictions on Employment of Present and Former Employees-Disqualification of a Business When an Employee Has a Financial Interest) of these Policies and Procedures, the factors to be considered

should include the following:

- (i) the size of the business;
- (ii) the percentage of ownership in the business by the Government Employee;
- (iii) the nature of the dealings of the Government Employee with the business regarding such employee's Financial Interest; and
- (iv) such other evidence as may be relevant and material.

(f) Prohibition Against Selling to the Territory.

(1) Prohibition; Applicability. Section 6109(a)(3) (Restrictions on Employment of Present and Former Employees-Selling to the Territory After Termination of Employment is Prohibited) of these Policies and Procedures, prohibits a former Government Employee whose annual salary exceeded \$12,000 from selling or attempting to sell to GIAA within ninety (90) days following the date employment ceases. This prohibition applies with regard to any Government Employee who used to be employed.

(2) Sell Defined. Section 6109(a)(3) (Restrictions on Employment of Present and Former Employees-Selling to GIAA After Termination of Employment is Prohibited) of these Policies and Procedures, defines sell for the purpose of prohibiting selling to GIAA to mean:

- (i) signing a proposal or Lease Agreement;
- (ii) negotiating a Lease Agreement;
- (iii) contracting any employee for the purpose of obtaining, negotiating, or discussing changes in a Solicitation or other terms of a Lease Agreement;
- (iv) settling disputes concerning performance of a Lease Agreement; and
- (v) any other liaison activity with a view toward the ultimate consummation of a sale although the actual Lease Agreement, therefore, is subsequently negotiated by another person. Requests for information are not included within the term "Sell."

(g) Employment with a Lessee. The ninety (90) days prohibition against selling contained in 6.09(f) of these Policies and Procedures shall not prohibit a former Government Employee from obtaining employment with a Lessee, but such employee shall not Sell to GIAA as defined in 6.09(f)(2) (Prohibition Against Selling to the Territory-Sell Defined.)

6.10. Use of Confidential Information.

It shall be a breach of ethical standards for any Government Employee or former Government Employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

6.11. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards. (Reserved).

6.12. Civil and Administrative Remedies Against Non-Employees who Breach Ethical Standards.

(a) **Existing Remedies Not Impaired.** Civil and administrative remedies against non-employees which are in existence on the effective date of these Policies and Procedures shall not be impaired.

(b) **Supplemental Remedies.** In addition to existing remedies for breach of the ethical

standards of this Article, GIAA, in connection with non-employees, may impose any one or more of the following: (a) written warnings or reprimands; (b) termination of transactions; and (c) debarment or suspension from being a Lessee under a Lease Agreement.

- (c) **Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards.** The value of anything transferred in breach of the ethical standards of this Article by a non-employee shall be recovered by GIAA.
- (d) **Right of the Territory to Debar or Suspend.** Debarment or suspension may be imposed by GIAA in accordance with these Leasing Policies and Procedures (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action may not be taken without the concurrence of the Attorney General.
- (e) **Due Process.** All procedures under this Section shall be in accordance with these Leasing Policies.

6.13. Recovery of Value Transferred or Received in Breach of Ethical Standards.

- (a) **General Provisions.** The value of anything transferred or received in breach of the ethical standards of this Article by a Government Employee or non-employee may be recovered from both the employee and non-employee.

Recovery of Kickbacks by the Territory. Upon a showing that a subcontractor made a kickback to a Lessee or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the territory and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

APPENDIX/REFERENCE--DEFINITIONS

§ 1106. Definitions. Terms used in this Airport Lease Policy have the following meaning ascribed to them unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular chapter in these Regulations.

- (a) *Air Transportation* shall mean the carriage for hire of persons, baggage, property, cargo, and mail by aircraft.
- (b) *Airport* shall mean the Antonio B. Won Pat International Airport.
- (c) *Airport Layout Plan* or *ALP* shall mean a plan that shows boundaries and proposed additions to all areas owned or controlled by GIAA for airport purposes, approved by the FAA and made a part hereof, as the same may be amended from time to time.
- (d) *Airport Property* shall mean all real property of GIAA as shown in the Airport Layout Plan.
- (e) *Airport Purpose* shall mean any action or undertaking by GIAA reasonably relating to the operation, maintenance, expansion and development and preservation of the Airport for air commerce.
- (f) *Blind Trust* shall mean an independently managed trust in which the GIAA Employee beneficiary has no management rights and in which the GIAA Employee beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (g) *Board of Directors* shall mean the duly appointed Board of Directors of GIAA acting collectively in the manner prescribed by law.
- (h) *Confidential Information* shall mean any information which is available to a GIAA Employee only because of the employee's status as an employee of GIAA and is not a matter of public knowledge or available to the public on request.
- (i) *Conspicuously* shall mean 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.
- (j) *Contract Modification* shall mean any written alteration, modification, amendment, or restatement of any provisions of an Agreement accomplished by mutual action of the parties to the contract.
- (k) *Concession(s) and Concession Privileges* shall mean the right given to a Person by GIAA to use a specific portion of Airport Property for the purpose of selling certain goods or providing certain services to users of the Airport to generate revenues, other than operating an Air Transportation business.
- (l) *Data* shall mean recorded information, regardless of form or characteristic.
- (m) *Designee* shall mean a duly authorized representative of a person holding a superior position.
- (n) *Direct or Indirect Participation* shall mean involvement through decision, approval, disapproval, recommendation, preparation of any part of a Solicitation, influencing the content of any terms or conditions of a Solicitation or Agreement, rendering of advice, investigation, auditing or in any other advisory capacity.
- (o) *Discussions*, as used in the Solicitation process, means an exchange of information or other manner of negotiation during which the Proposer and GIAA may alter or otherwise change the conditions and terms of a proposed Agreement. Discussions may be conducted in connection with Request for Proposals. *Executive Manager* shall mean the duly appointed Executive Manager of GIAA, as designated as such by the Board of Directors.

- (p) *FAA* shall mean the Federal Aviation Administration, U.S. Department of Transportation, or any federal agencies succeeding to its jurisdiction.
- (q) *FAR* shall mean the Federal Aviation Regulations as published by the FAA.
- (r) *Financial Interest* shall mean:
- (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, more than Two Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent;
 - (2) ownership or an interest in any property or any business; or
 - (3) a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (s) *GAR* shall mean the Guam Administrative Rules and Regulations, as may be amended from time to time.
- (t) *GIAA* shall mean the Antonio B. Won Pat International Airport Authority, Guam, a public corporation and autonomous instrumentality of the Government of Guam.
- (u) *GIAA Employee* means:
- (1) an individual elected to territorial office;
 - (2) a member of the GIAA Board of Directors;
 - (3) An individual, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from GIAA; and
 - (4) a non-compensated or minimally compensated individual who is performing personal services for GIAA.
 - (5) The term *GIAA Employee* does not include a Person who, as an independent contractor, performs professional, scientific, technical, or advisory service for GIAA and who receives a fee, honorarium, or similar consideration for the services performed.
- (v) *Governmental Body* shall mean any department, commission, council, board, bureau, committee, institution, agency, government corporation, authority or other establishment or official of the Executive Branch of the Government of Guam, except for Guam Community College, the University of Guam, the Department of Education, and the Guam Memorial Hospital Authority.
- (w) *Gratuity* shall mean 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. Gratuity may include any tangible and intangible benefit in the nature of gifts, favors, entertainment, discounts, passes, transportation, accommodation, hospitality, or offers of employment more than Nominal Value.
- (x) *Immediate Family* shall mean a spouse, children, parents, brothers and sisters.
- (y) *Main Terminal Building* shall mean that portion of Airport Property identified as such in the ALP.
- (z) *May* denotes the permissive.
- (aa) *Nominal Value* means actual worth or actual cost, whichever is greater, which does not exceed \$25 individually or cumulatively.
- (bb) *Official Responsibility* shall mean direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct territorial action.
- (cc) *Person* shall mean an individual, corporation, limited liability company, partnership sole

proprietorship, joint venture, union, committee, club, other organization or group of individuals acting as an entity. Person includes a trustee, receiver, assignee or similar representative.

- (dd) *Proposer* means a Person who has actually submitted a proposal in response to a RFP, unless the context indicates otherwise.
- (ee) *Prospective proposer* shall mean a Person who will actually submit a proposal in response to a RFP.
- (ff) *Request for Proposals* or *RFP* shall mean all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.
- (gg) *Responsible Proposer* shall mean 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.
- (hh) *Shall* denotes the imperative.
- (ii) *Signatory Airlines* shall mean a certificated air carrier providing Air Transportation to and from the Airport that have executed substantially similar agreements with GIAA covering the use and occupancy of facilities at the Airport.
- (jj) *Solicitation* means a Request for Proposals issued by GIAA for the purpose of soliciting proposals for a lease opportunity of Airport Property.

[Additional Definitions]

Airline means a certificated air carrier providing Air Transportation to and from the Airport.

Airline Agreement means the Agreement that provides for the use and occupancy of Airport facilities by certificated air carriers operating at the Airport.

Application for Lease means the process to consider an application to lease Airport Property.

Nonsignatory Airline means a certificated air carrier providing Air Transportation to and from the Airport that has not executed the GIAA Airline Agreement.

Other Lease means a lease other than an Airline Agreement or a Concession Agreement.

**FISCAL ASSESSMENT:
POLICIES AND PROCEDURES FOR THE SOLICITATION, SELECTION, AWARD,
AND OPERATION OF LEASES**

November 21, 2025

SECTION 1: Executive Summary

The Antonio B. Won Pat International Airport Authority, Guam (“GIAA”) intends to adopt policies and procedures for the solicitation, selection, award, and operation of leases (“Leasing Policies”) pursuant to § 1203.1(a)(2) of Article 2, Chapter 1, Title 12 of the Guam Code Annotated (GCA) which was authorized pursuant to Public Law 38-21.

The proposed Leasing Policies will be recommended to be added to Title 4 – Commerce of the Guam Administrative Rules and Regulations (“GARR”) under a new Chapter 7C¹.

In addition to the proposed Leasing Policies, P.L. 38-21 requires that the GIAA (1) prepare a Fiscal Assessment (“FA”) which shall be posted with a copy of the Leasing Policies on its website, (2) allow for no less than thirty (30) calendar days for public comment, and (3) hold a public hearing noticed pursuant to 5 GCA § 8107 (Open Government Law).

The FA shall directly address, at a minimum, (1) the purpose and need for, (2) the financial impact upon those persons or entities directly affected by, and (3) the potential benefits expected to the GIAA by the proposed Leasing Policies.

This Fiscal Assessment Report (“Report”) is made in compliance with the requirements of P. L. 38-21 and includes the following:

SECTION 1: Executive Summary**SECTION 2: Purpose and Need for the Proposed Leasing Policies****SECTION 3: Financial Impact on Directly Affected Parties****SECTION 4: Potential Benefits to the GIAA from the Proposed Leasing Policies**

Because of the importance of both aeronautical and non-aeronautical revenues to airport sponsors generally, it is not only a goal of the GIAA, but an imperative that such sources of revenues be expanded and diversified such that the continued self-sustaining requirement can be achieved.

¹ See § 1606, Chapter 16, Title 1 Guam Code Annotated – Powers of the Compiler of Laws Relative to Revision regarding the Compiler of Laws’ ability to number and renumber chapters, sections, and parts of sections; rearrange sections so that they fit harmoniously within the publication being prepared, as it relates to the creation of a new Chapter 7B in Title 4 GARR.

SECTION 2: Purpose and Needs for the Proposed Leasing Policies

The proposed Leasing Policies are intended to provide standard, transparent, accountable, and Federal Aviation Administration (“FAA”)-compliant process for the solicitation, selection, award, and operation of leases at the GIAA. This purpose includes the distinguishing between different categories of leases, and the basis for corresponding differences in policy approach. This effort is driven by the need to enhance and expand the GIAA’s aeronautical and non-aeronautical revenues, to diversify and expand its operational income potential, and to promote economic development utilizing airport facilities and properties for both the GIAA and the island of Guam.

PART 1: Purpose – Create a Standard, Transparent, Accountable, and FAA-Compliant Leasing Process.

The new process and framework for the Leasing Policies:

- Shall be subject to FAA requirements for aeronautical and non-aeronautical uses;
- That for non-aeronautical uses, that rates charged are at fair market value pursuant to FAA requirements;
- Shall not in any way authorize or permit gambling of any kind as defined in 9 GCA Chapter 64; and
- That terms authorized for such leases are only up to fifty (50) years.

The proposed Leasing Policies creates a new Chapter 7C under Title 4 of the GARR and establishes six (6) Articles including the following:

Article 1: General Provisions

Article 2: Compliance with Federal Requirements

Article 3: Airline Agreements

Article 4: Other Leases

Article 5: Legal and Contractual Remedies

Article 6 : Ethics

PART 2: Need – Diversify and Expand Aeronautical and Non-Aeronautical Revenues

The need to diversify and expand GIAA’s operational revenues cannot be overstated and the rental income revenue that comes with leasing airport facilities and properties has been a consistent source of funding for airport operations.

Prior to the COVID-19 pandemic, rental income revenue collected by the Authority annually averaged \$11.69 million which represented approximately 17% of total operating revenues between Fiscal Year (“FY”) 2015 through FY 2019. From FYs 2020 through 2022, during the height of the COVID-19 pandemic, rental income revenue averaged approximately \$10.86 million or 33% of total operating revenues and from FYs

2022 through 2024², averaged approximately \$10.61 million or 22% of total operating revenues as seen in Table 2.1.

The percentage increase of rental income revenue to total operating revenues reflects the consistency and resiliency of rental income revenue notwithstanding the effects of the COVID-19 pandemic where such revenue was not directly impacted by flight and passenger activity.

Table 2.1.

Average Annual Operating Revenues³ - FYs 2015 - 2019 (Pre-COVID-19); FYs 2020 - 2021; & FYs 2022 - 2024

Millions of Dollars	(A)	(B)	(C)	(D)	(E)	(F)
Revenue Description	FYs 2015 - 2019 (Pre-COVID-19)	Percent (%) of Total	FYs 2020 - 2021	Percent (%) of Total	FYs 2022 - 2024	Percent (%) of Total
Facilities and systems usage charges	28.38	42%	11.42	34%	22.37	47%
Concession Fees	23.55	35%	9.49	29%	9.60	20%
Rental income	11.69	17%	10.86	33%	10.61	22%
Miscellaneous	3.74	6%	1.40	4%	2.17	5%
Aviation fuel tax	.00	0%	.00	0%	4.21	9%
Average/Total	67.36	100%	33.17	100%	47.55	100%

Table 2.1 reflects the continued recovery focus of GIAA in managing its financial resources diligently while actively pursuing both aeronautical and non-aeronautical revenues to support the island's only commercial airport. Given the consistency and resilience of rental income to the GIAA's finances before, during, and after COVID-19, the proposed Leasing Policies is expected to lead to the potential increase in both aeronautical and non-aeronautical revenue sources through expanded opportunities to lease airport facilities and properties that is consistent with the GIAA's Airport Layout Plan and Master Plan Update.

Additionally, there is currently vacant properties and facilities which span from the GIAA's Industrial Park to its South Tiyan properties.

² See Government Accounting Standards Board ("GASB") 87 relative to Leases that were implemented for FYs 2022 to 2024. Figures herein include the relevant accounting adjustments and may differ from other parts of this report that report unadjusted figures.

³ Annual average operating revenues reflected in this table do not include non-operating revenues such as passenger facility charges and federal operating grants. See Annual Audited Financial Statements for the Guam International Airport Authority for FYs 2015 through 2024, available at the Office of Public Accountability website at www.opaguam.org.

SECTION 3: Financial Impact on Directly Affected Parties

In its assessment of the parties that may be directly affected by the proposed Leasing Policies, the GIAA determined there to be a number of persons or entities directly impacted. These include the following:

PART 1: Guam International Airport Authority

PART 2: Airlines Operating at GIAA

PART 3: Prospective Lessees

PART 4: Local Business Community

PART 5: External Government Entities

PART 1: Guam International Airport Authority

As the airport operator, GIAA has the most significant financial and operational interest in the proposed Leasing Policies. Airport leases in the form of rental income revenues have historically represented a critical revenue stream that supports the airport's budget, funding for capital improvements, and long-term financial sustainability. Clear, competitive, and standardized policies enhance the GIAA's ability to maximize return on its commercial leases, reduce solicitation risks, and strengthen internal controls.

Table 2.2.

Average Annual Rental Income Revenues - FYs 2015 - 2019 (Pre-COVID-19); FYs 2020 - 2021; & FYs 2022 - 2024

Millions of Dollars	(A)	(B)	(C)	(D)	(E)	(F)
Revenue Description	FYs 2015 - 2019 (Pre-COVID-19)	Percent (%) of Total	FYs 2020 - 2021	Percent (%) of Total	FYs 2022 - 2024	Percent (%) of Total
Operating Space - Airline	3.62	31%	2.82	26%	2.39	23%
Operating Space - Non-Airline	4.41	38%	4.28	39%	3.99	38%
Cargo Rentals	.27	2%	.29	3%	.29	3%
Building and Maintenance Shop Rentals	1.79	15%	1.83	17%	1.80	17%
Other Leases	1.61	14%	1.64	15%	1.71	16%
Average/Total	11.69	100%	10.86	100%	10.61	100%

Table 2.2 further reflects the consistency and resiliency of rental income revenue to the GIAA

Table 2.1 reflected that total operating revenues have decreased from an annual average of \$67.36 million during FYs 2015 to 2019 to \$47.55 million during FYs 2022 to 2024 but that rental income revenue remained consistent and stable. Further breaking down rental income revenue in Table 2.2 illustrates an average of \$8.08 million or 69% of total rental income revenue annually coming from non-airline-related leases during the pre-COVID-19 period; an average of \$8.04 million or 74% of rental income revenue annually from FYs 2020 to 2021; and an average of \$7.8 million or 74% of rental income revenue annually from FYs 2022 to 2024.

Given the vacant properties and facilities available and the potential for enhanced and/or additional aeronautical and non-aeronautical activities, the financial impact of the proposed Leasing Policies is expected to have a positive impact on the GIAA's financial position.

PART 2: Airlines Operating at GIAA

Airlines rely on the financial stability of the airport. Opportunities such as increasing rental income through further leasing in the short-, medium-, and long-term will undoubtedly help to build resilience and increase operating revenues, allowing the airport to potentially reduce the financial burden on airlines through lower or stabilized airline rates and charges.

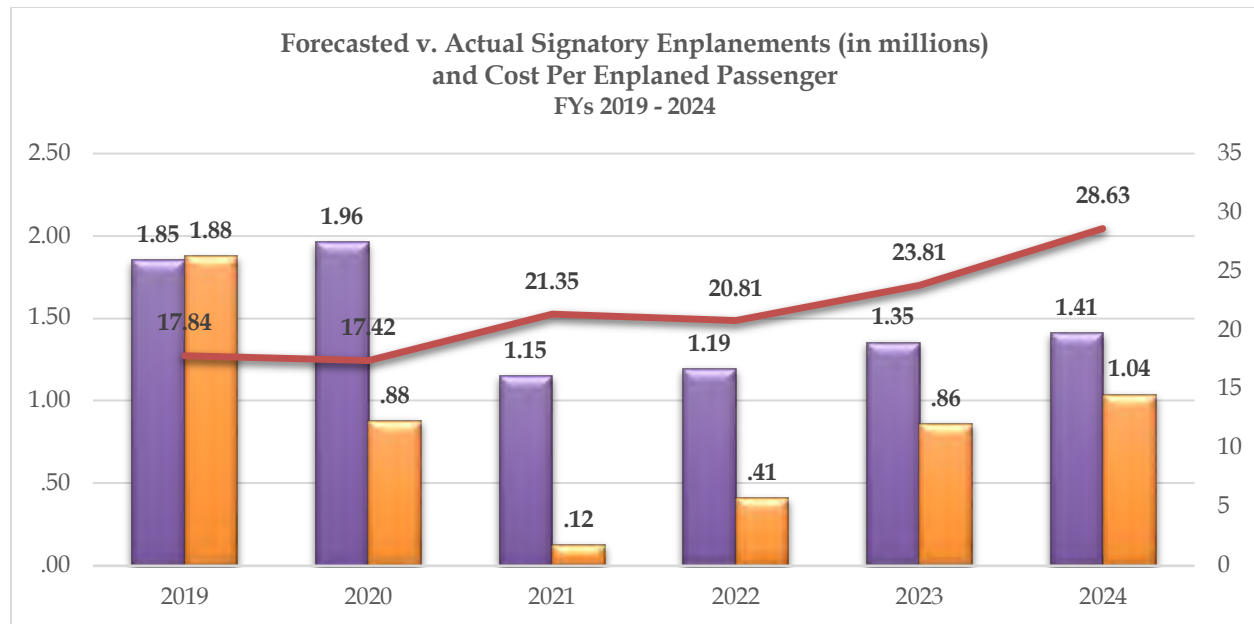
Furthermore, because GIAA determines its airport rates and charges on a single till principle⁴, both aeronautical and non-aeronautical revenues are incorporated into the determination of airport rates and charges. By diversifying and generating increased aeronautical and non-aeronautical revenues through increase leasing activities and other means, this can further assist in the GIAA's financial self-sustainability, enhance its ability to continue capital maintenance and improvement projects, and reduce pressure on rates and charges applied to airline partners.

Currently, GIAA leases its existing properties and facilities that span thousands of square feet of available commercial space and hundreds of acres of land both in and around the air operations area for aeronautical use or in its industrial park and other land spaces.

Per Table 2.1, from FYs 2015 to 2019, facilities and systems usage charges revenue accounted for \$28.38 million or 42% of total operating revenues compared to FYs 2022 to 2024 where it accounted for \$22.38 million or 47% of total operating revenues, an increase of 5%. This is partly due to the reduction in other operating revenue categories to include concession fees revenue which was offset by the new aviation fuel tax revenue.

Figure 3

⁴ See International Air Transport Association ("IATA") definition of "single till" available at <https://www.iata.org/contentassets/fa95ede4dee24322939d396382f2f82d/single-till.pdf>



Enplanements or enplaned passengers are individuals departing from the airport or transiting through the airport. The total operating revenues, including non-operating revenues such as passenger facility charge revenue and federal operating grants are considered when determining the Cost Per Enplaned Passenger (“CPE”) which is a key metric utilized to reflect the average passenger airline payments per passenger at a given airport. Figure 3 compares the forecasted signatory enplanements to the actual signatory enplanements from FYs 2019 through 2024. The CPE reflected in Figure 3 reflects the calculated rates charged to airlines based on the forecasted signatory enplanements.

For FYs 2019 through 2024, the facilities and systems usage charges applied to and paid by airlines were not adjusted even though actual signatory enplanements fell substantially short of the forecasted signatory enplanements from FYs 2020 through 2024—the periods impacted by the COVID-19 pandemic and Typhoon Mawar. Because of the lower than forecasted enplanements, the GIAA reduced operating costs, restructured debt payments, and utilized federal operating grants to ensure financial performance was achieved in accordance with bond covenants.

Because of the continued enplanement recovery, the determining of airport rates and charges on a single till principle that considers non-aeronautical revenues in the determination facilities and systems usage charges to airlines, and the potential for increased rental income revenue, the proposed Leasing Policies are expected to have a positive financial impact to airlines operating at the GIAA.

PART 3: Prospective Lessees

New and emerging lessees stand to benefit from greater access to airport commercial opportunities. The proposed Leasing Policies standardizes the process by which GIAA may lease available properties and facilities, which will unlock opportunities for longer term leases that can assist prospective lessees with terms that are commensurate with the needed investment in such properties and facilities.

The proposed Leasing Policies may have a different financial impact to prospective lessees depending on the needs of GIAA and in accordance with its Airport Layout Plan and Master Plan Update.

PART 4: Local Business Community

Local entrepreneurs, regional firms, and/or global companies may benefit from opportunities to lease properties and facilities up to 50 years at the GIAA. These policies support Guam's broader economic development goals by opening commercial opportunities within the airport environment, fostering job creation, and promoting economic development. Depending on aeronautical or non-aeronautical interest, there may be impacts on workforce needs, construction capacity, and resource demands.

The proposed Leasing Policies may have a different financial impact to prospective lessees depending on the needs of GIAA and in accordance with its Airport Layout Plan and Master Plan Update.

PART 5: External Government Entities

The proposed Leasing Policies intend to bring change to the GIAA in the form of new aeronautical and non-aeronautical activity, updated solicitation and administrative processes, capital improvement projects and construction, and assured compliance with federal mandates. With the expectation of increased capital improvement activities related to additional or enhanced facilities that prospective lessees may conduct, external government entities to the extent permitting, business licensing, environmental and safety inspections, and workforce related increases may be financially impacted.

SECTION 4: Potential Benefits to the GIAA from the Proposed Leasing Policies

In addition to the previously discussed financial benefits, the proposed Leases Policies will bring a number of other potential benefits to GIAA to include:

Revenue Optimization and Operational Excellence: Standardized leasing policies will help to expand and enhance aeronautical and non-aeronautical revenues. Given the GIAA's ongoing enplanement recovery, the proposed Leasing Policies will allow the GIAA to work toward improving its finances with stabilized revenue sources such as rental income revenue and also potential to add new aviation industries and business offerings leveraging airport properties and facilities.

Growth in Aeronautical and Non-Aeronautical Activities: The ability for the GIAA to lease its properties and facilities for up to a period of 50 years with a standardized and much more certain process will lead to the growth of not only revenues, but also economic development through expanded aeronautical and non-aeronautical revenues.

Public Benefit: Standardized procedures strengthen accountability and community confidence. The proposed Leasing Policies and its adoption process which requires this Fiscal Assessment, a thirty (30) day public comment period, a public hearing to be noticed in accordance with the Guam Open Government Law to be held no sooner than thirty (30) calendar days after posting of the proposed Leasing Policies and Fiscal Assessment, and further review and approval by the GIAA Board of Directors provides such a process for the adoption of the Leasing Policies.

C. Approval of GIAA Noise Compatibility Program
Measures – 14 CFR Part 150

DRAFT

Antonio B. Won Pat International Airport 14 CFR Part 150

Noise Compatibility Program Update Executive Summary

December 2025

Guam International Airport Authority
355 Chalan Pasaheru
Tamuning, 96913, Guam



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Executive Summary

The A.B. Won Pat International Airport Authority, Guam (GIAA) is committed to being a good neighbor and a responsible operator of the Antonio B. Won Pat International Airport (GUM, Airport). As the Airport proprietor, GIAA is updating its Noise Compatibility Program (NCP) in accordance with Title 14 of the Code of Federal Regulation Part 150 (14 CFR Part 150 or Part 150). GIAA completed the original Part 150 Study for the Airport in 2003. The Federal Aviation Administration (FAA) accepted the Noise Exposure Map (NEM) in May 2003 and provided a Record of Approval for the GIAA-recommended Noise Compatibility Program (NCP) measures in November 2003.

A Part 150 Study is a voluntary and federally supervised formal process for airport operators to address land use compatibility with noise from aircraft operations. A Part 150 Study includes the following two principal elements:

- The **Noise Exposure Map (NEM)** element describes the airport layout and operation, aircraft-related noise exposure, land uses in the airport environs, and the resulting noise/land use compatibility. Part 150 requires that the documentation address aircraft operations during two time periods: the year of submission and a forecast year at least 5 years following the year of submission.
- The **Noise Compatibility Program (NCP)** element describes the actions the airport proprietor recommends to address existing and future noncompatible land use with noise exposure from aircraft operations. When GIAA submits its NCP to the FAA, the FAA will review, evaluate, and make determinations on the individual proposed measures in the FAA's Record of Approval.

The Part 150 Study Update is divided into two phases:

- **Phase 1** focuses on the development and submittal of the NEM to the FAA for acceptance as being completed in accordance with 14 CFR Part 150, and
- **Phase 2** determines the GIAA-recommended measures to minimize noncompatible land uses from aircraft noise with the development and submittal of the NCP to the FAA for review and evaluation of the individual measures and FAA's determination of their consistency with the purposes of Part 150 that will be documented in the FAA's Record of Approval.

The NEM Update was submitted in December 2024 and was accepted by FAA in April 2025. The approved NEMs are shown on Figures ES-1 and ES-2. Submitting the NCP Update to the FAA is the last step in the process of updating the Part 150 study.

This document summarizes the results of the NCP phase of the Part 150 Study update which assesses actions an airport proprietor may consider to address existing and future noncompatible land use resulting from the noise of aircraft operations. The Part 150 Study is part of the broader effort to address noise exposure resulting from aircraft operations; it covers a study area that includes the Airport and adjacent communities on Guam.

The 2029 forecast NEM analysis indicates 251 of the 303 housing units within the DNL 65 dB noise contour and the one noise sensitive site (Best Western Guam Airport Hotel) are potentially noncompatible with noise from Airport operations. For the NCP, GIAA is recommending including one new noise abatement measure and continuing one prior noise abatement measure with modification for the updated NCP. The two GIAA-recommended noise abatement measures are:

- Use of Intersection Departures on Runway 6L
- Use of ICAO-A Departure Procedures

The implementation of these two measures would decrease housing units by 90 and population by 270 within the DNL 65 dB contour compared to the 2029 forecast NEM. Implementation of the recommended noise abatement measures would result in 148 noncompatible housing units remaining, which is a reduction of 103 noncompatible housing units compared to the 2029 forecast NEM.

GIAA is recommending continuing two prior remedial land use measures and three prior preventative land use measures with modification for the updated NCP. Two of the prior preventative land use measures would be combined into one measure for this update. The four GIAA-recommended land use measures are:

- Land Use Rezoning Support
- Acquire Noncompatible Land
- Sound Insulate Noise-Sensitive Structures
- Establish and Implement an Airport Noise Overlay Zone

GIAA is recommending including three new program management measures, continuing one prior program management measure and continuing one prior program management measure with modification for the updated NCP. The five GIAA-recommended program management measures are:

- Noise Compatibility Staff
- Noise/Land Use Advisory Committee
- Update the Noise Exposure Map
- Update the Noise Compatibility Program
- Noise Abatement Signage

In December 2025, GIAA completed the public outreach components of Part 150 with the completion of the 30-day public comment period, public workshop and public hearing.

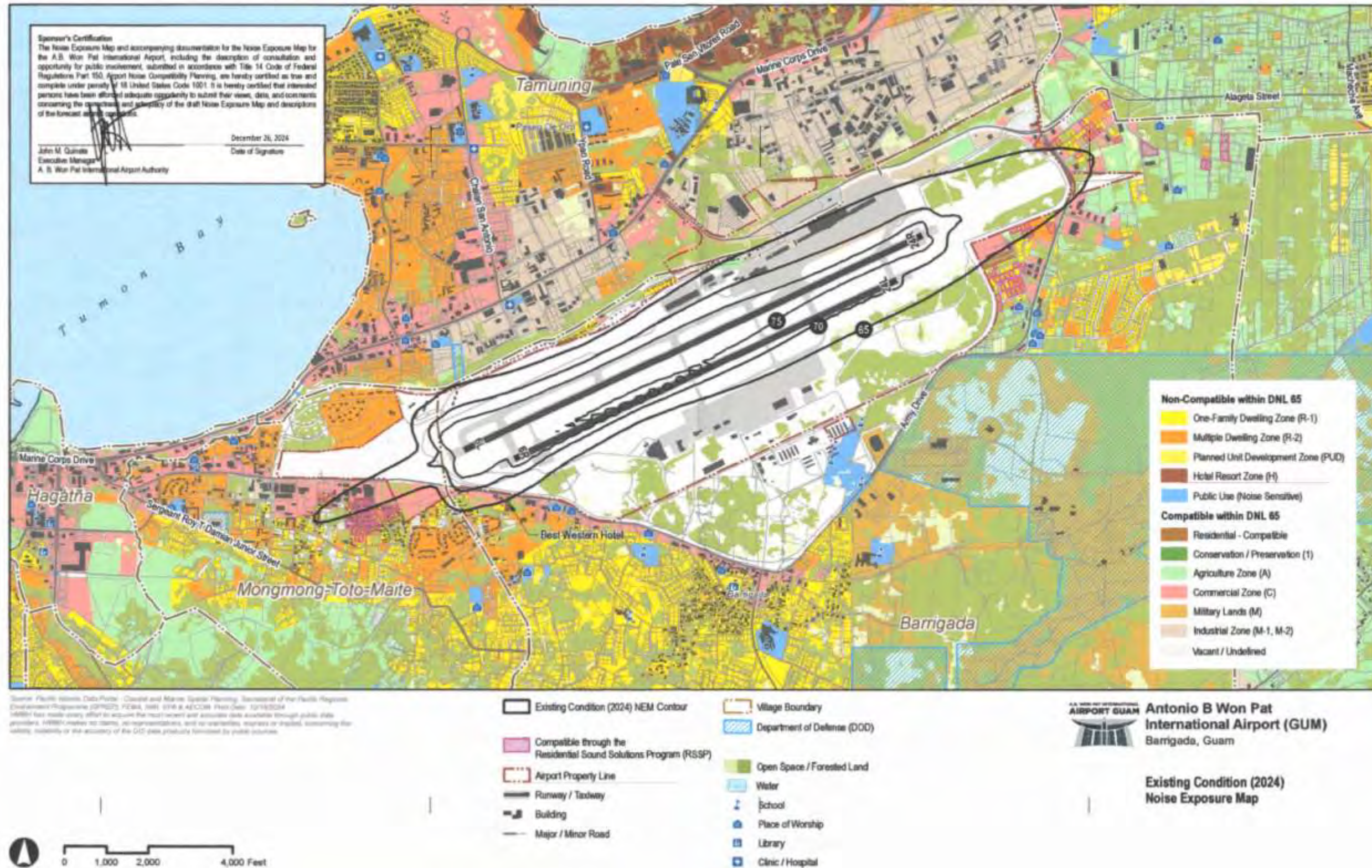


Figure ES-1. Existing Condition (2024) Noise Exposure Map

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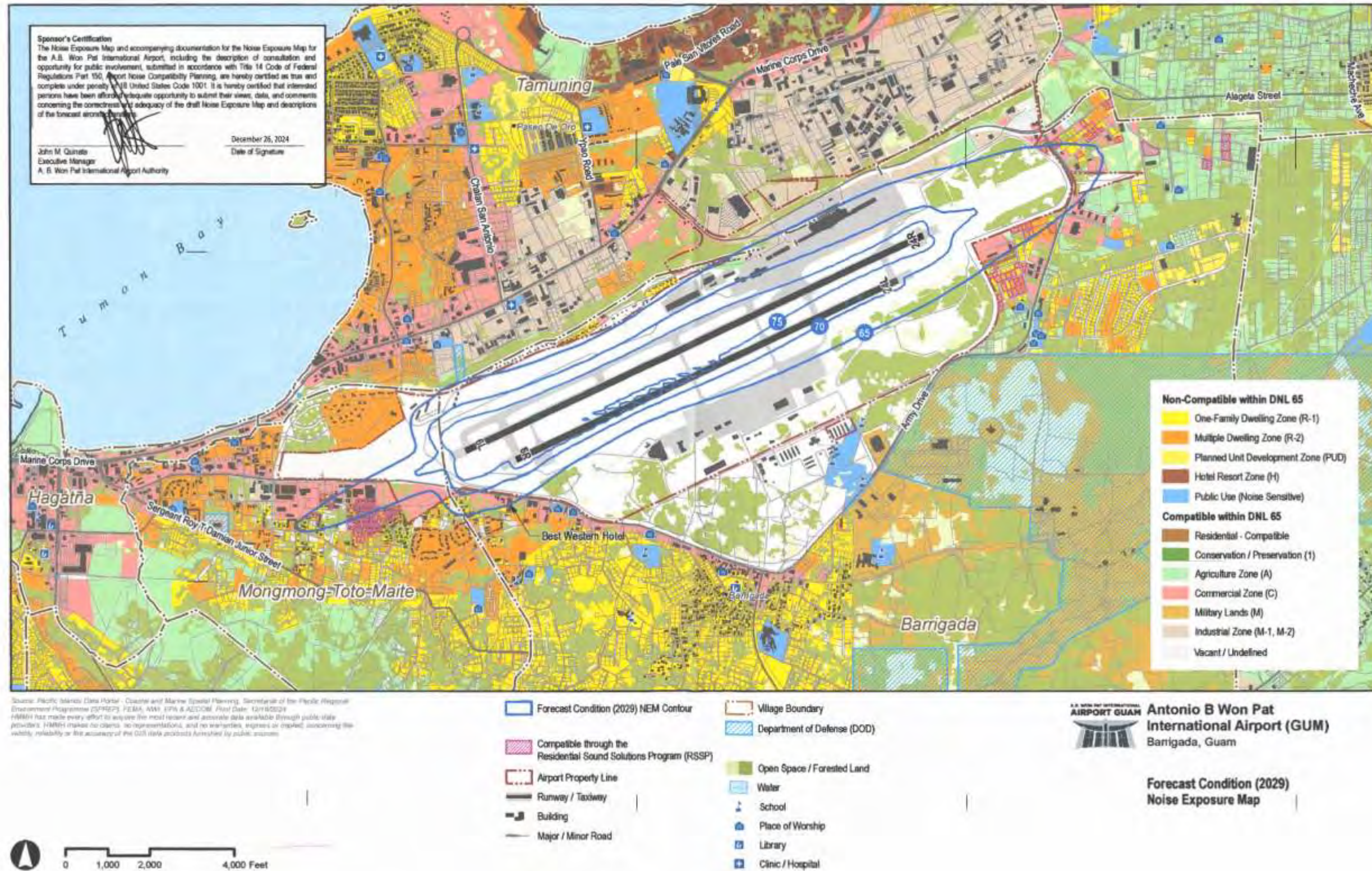


Figure ES-2. Future Conditions (2029) Noise Exposure Map

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The following is an expanded summary of the proposed NCP measures for the GIAA board. The full NCP report includes additional information for each measure and a description of all measures considered but not recommended as part of this study.

Noise Abatement Measures

Noise abatement measures are those that control noise at the source. Such measures include aircraft flight procedures, airport layout, preferential runway use, and arrival and departure procedures. The intention of noise abatement measures in the NCP is to reduce the number of people and noise-sensitive properties exposed to aircraft noise of day-night average sound level (DNL) 65 decibels (dB) and higher.

Recommended Noise Abatement Measures

This section describes GIAA-recommended noise abatement measures considered during the NCP update process including the potential benefits and implementation requirements for each measure. Implementation considerations include the responsible parties, estimated cost, funding sources, schedule, and requirements, such as the potential for environmental review. While many parties were involved in arriving at these recommendations for evaluation, the final NCP recommendations are solely those of GIAA and not those of the Planning Advisory Committee (PAC), consultants, or other stakeholders.

Use of Intersection Departures on Runway 6L

A single noise abatement measure under the airport layout category was considered for evaluation. This voluntary measure would have aircraft turn onto Runway 6L at Taxiway A to depart at the runway intersection except for heavy aircraft that require the full runway length or by pilot's request to use the full length. Runway 6L/24R is 12,014 feet long, and this measure would reduce the Takeoff Distance Available (TODA) to 11,014 feet. This measure would move the start of aircraft departures farther away from areas off Airport property. To evaluate measure, the B747-400, B747-8, and B777-3ER were modeled using the full length of the runway; all other aircraft were modeled departing from Taxiway A. The B777-200, A330-301, B767-3ER and MD-11s are all large wide-body aircraft also, but in most cases the 11,014-foot TODA is sufficient. The option to use the full runway would be available by pilot request.

The use of Intersection Departures at Taxiway A for Runway 6L results in a reduction of noncompatible land use directly south of the runway end in the residential area near Mongmong Toto Maite Loop Road. This alternative pulls the DNL 65 dB contour closer to the Airport in that area over compatible land use near Route 8 resulting in the reduction of approximately 40 noncompatible housing units. However, northeast of the Airport, the DNL 65 dB contour extends farther from the Airport almost to Pedro LG Benaventa Street. The DNL 65 dB contour is also wider on both sides of the Airport along Army Drive resulting in the addition of approximately 16 noncompatible housing units, some of which have received sound insulation treatment as they were previously included in the areas potentially eligible for sound insulation. This measure may be more effective combined with other measures.

Table ES-1 displays the reduction in housing units and population compared to the 2029 forecast NEM for this noise abatement measure. **Table ES-2** displays no change in noise-sensitive sites and a reduction in land area outside the Airport boundary when comparing this noise abatement measure to the 2029 forecast NEM. The results show that this noise abatement measure could increase compatible housing units by 17 (51 people) and decrease noncompatible housing units by 24 (72 people) resulting in a net decrease of seven housing units and 21 people within the DNL 65 dB contour compared to the 2029 forecast NEM.

Table ES-3 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this noise abatement measure. This voluntary measure would not require an update to the Airport Layout Plan and could be incorporated into the ATCT standard operating procedures.

Table ES-1. Estimated Housing Units and Population Counts for 2029 Forecast NEM and Use of Intersection Departures on Runway 6L within Different Noise Contour Intervals

Scenario (All changes are by housing unit or population within the DNL contour interval notated)	Number of Housing Units			Population		
	Noncompatible 65+	Compatible 65+	Total 65+	Noncompatible 65+	Compatible 65+	Total 65+
2029 Forecast NEM	251	52	303	753	156	909
Use of Intersection Departures on Runway 6L	227	69	296	681	207	888
Change from Forecast NEM	-24	17	-7	-72	51	-21

Note: Cell color indicates whether there is benefit in introducing this Noise Abatement Measure. No coloring indicates no change in housing units or population within the 65 DNL contour, green indicates a reduction in housing units or population within the 65 DNL contour and red indicates an increase in housing units or population within the 65 DNL contour.

Source: GIAA, 2025

Table ES-2. Estimated Noise Sensitive Sites for 2029 Forecast NEM and Use of Intersection Departures on Runway 6L within Different Noise Contour Intervals

Scenario (All changes are within the 65 DNL contour)	Number of Noise-Sensitive Sites					Land Area (Acres)
	Transient Lodging	School	Place of Worship	Daycare	Total	Total > 65 DNL
2029 Forecast NEM	1	0	0	0	1	1,104.5
Use of Intersection Departures on Runway 6L	1	0	0	0	1	1,122.6
Change from Forecast NEM	0	0	0	0	0	18.1

Source: GIAA, 2025

Conclusions: *Noise Abatement Measure: Use of Intersection Departures on Runway 6L* could reduce the total number of housing units exposed to DNL 65 dB or higher by seven and reduce the number of noncompatible housing units by 24. Use of Intersection Departures on Runway 6L could reduce the area of noise-sensitive land use southwest of the Airport and would not negatively affect safety or usage of the runway. Overall, there is a reduction of noncompatible land use and housing units.

Table ES-3. Implementation Summary for Recommended Noise Abatement Measure: Use of Intersection Departures on Runway 6L

Implementation Item	Discussion
Benefits	Reduction of up to 21 people in 7 dwelling units exposed to 65 DNL or higher with use of this measure.
Rationale	GIAA is recommending this Noise Abatement Measure because it could reduce noise levels over residential land use southwest of Runway 6L/R.
Responsible Parties	GIAA and FAA ATCT
Estimated Costs	\$50,000 to update pilot information and airfield signage. ¹ The expected costs associated with the development and implementation of this measure are unknown and internal to the FAA (e.g., Air Traffic Organization) and other coordinating agencies.
Funding Sources	80 percent of eligible costs FAA Airport Improvement Program and 20 percent GIAA.
Requirements	FAA approval; The ATCT to incorporate into Standard Operating Procedures as a voluntary measure and GIAA to update any airfield signage and pilot information.
Estimated Schedule	GIAA to submit a request for its development within six months of the FAA's Record of Approval for the NCP. FAA design, testing and implementation of the measure typically could take at least one year once GIAA requests initiation of the development process.

Source: GIAA, 2025

Use of ICAO-A Departure Procedures

FAA Advisory Circular 91-53A provides acceptable criteria for two safe Noise Abatement Departure Profile (NADP) procedures for commercial jet aircraft: Close-in NADP (NADP 1 or ICAO-A) and Distant NADP (NADP-2 or ICAO-B). As the names of the procedures suggest, the Close-in NADP provides noise benefit to areas adjacent to the Airport, whereas the Distant NADP provides noise benefit slightly farther out from the Airport. Airport operators cannot mandate the use of NADP at an airport because airport operators do not have the authority to require specific operating procedures for aircraft in flight; implementation of NADP is voluntary and at the choice of the pilot in command. However, FAA AC 91-53A encourages aircraft operators "...to use the appropriate NADP when an airport operator requests its use to abate noise for either a close-in or distant community."

Analysis in the 2024 NEM Report shows that International Airlines use ICAO-A Close-In departure profiles and Domestic Airlines use ICAO-B Distant departure profiles. See Appendix C in the 2024 NEM Report.² GIAA discussed the possibility of Domestic Airlines using ICAO-A procedures if requested, and the main domestic airline at the Airport explained this could be possible as they do operate those procedures at airports where they are requested.

Note: This evaluation assumes all aircraft types within AEDT that have available ICAO-A profiles were utilized.

The use of ICAO-A Departure Procedures results in a reduction of noncompatible land use directly northeast of the runway end in the residential area near Bello Road. This alternative pulls the DNL 65 dB contour closer to the Airport in that area over residential land use near Route 16, and the DNL 65 dB contour is also reduced south of the Runway 24 L/R ends along Army Drive resulting in the reduction of approximately 8 noncompatible housing units. This measure may be more effective combined with other measures.

Table ES-4 displays the reduction in housing units and population compared to the 2029 Forecast NEM for this noise abatement measure. **Table ES-5** displays no change in noise-sensitive sites and a reduction in land area outside the airport boundary when comparing this noise abatement measure to the 2029 Forecast NEM. The results show that

¹ Estimated costs to be refined by GIAA

² <https://www.guamairport.com/docs/pages/corporate/reports/14-cfr-part-150-noise-exposure-map-update/final-appendix-c-noise-modeling.pdf>

this noise abatement measure could decrease housing units by 18 and population by 54 within the DNL 65 dB contour compared to the 2029 Forecast NEM.

Table ES-6 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this voluntary noise abatement measure.

Table ES-4. Estimated Housing Units and Population Counts for 2029 Forecast NEM and Use of ICAO-A Departure Procedures

Scenario (All changes are by housing unit or population within the DNL contour interval notated)	Number of Housing Units			Population		
	Noncompatible 65+	Compatible 65+	Total 65+	Noncompatible 65+	Compatible 65+	Total 65+
2029 Forecast NEM	251	52	303	753	156	909
Use of ICAO-A Departure Procedures	243	42	285	729	126	855
Change from Forecast NEM	-8	-10	-18	-24	-30	-54

Note: Cell color indicates whether there is benefit in introducing this Noise Abatement Measure. No coloring indicates no change in housing units or population within the 65 DNL contour, green indicates a reduction in housing units or population within the 65 DNL contour and red indicates an increase in housing units or population within the 65 DNL contour.

Source: GIAA, 2025

Table ES-5. Estimated Noise Sensitive Sites for 2029 Forecast NEM and Use of ICAO-A Departure Procedures

Scenario (All changes are within the 65 DNL contour)	Number of Noise-Sensitive Sites					Land Area (Acres)
	Transient Lodging	School	Place of Worship	Daycare	Total	Total > 65 DNL
2029 Forecast NEM	1	0	0	0	1	1,104.5
Use of ICAO-A Departure Procedures	1	0	0	0	1	1,084.6
Change from Forecast NEM	0	0	0	0	0	-19.9

Source: GIAA, 2025

Conclusions: *Noise Abatement Measure: All Departures Use ICAO-A Departure Procedures* could reduce the total number of housing units exposed to DNL 65 dB or higher by 18 and reduce the number of noncompatible housing units by 8. Use of ICAO-A Departure Procedures could reduce the area of noise-sensitive land use northeast of the Airport and would not negatively affect safety or usage of the runway. Overall, there is a reduction of noncompatible land use and housing units.

Table ES-6. Implementation Summary for Recommended Noise Abatement Measure: Use of ICAO-A Departure Procedures

Implementation Item	Discussion
Benefits	Reduction of up to 54 people in 18 housing units exposed to DNL 65 dB or higher with use of this measure.
Rationale	GIAA is recommending this Noise Abatement Measure because it could reduce noise levels over residential land use northeast of Runway 24L/R.
Responsible Parties	GIAA and Airlines
Estimated Costs	Costs are internal to the Airlines that participate. \$25,000 to update pilot materials and information. ³
Funding Sources	80 percent of eligible costs FAA Airport Improvement Program and 20 percent GIAA.
Requirements	FAA approval; GIAA coordination with Airlines
Estimated Schedule	Within six months of the FAA's Record of Approval for the NCP, GIAA will initiate coordination with the Airlines and update materials.

Source: GIAA, 2025

Land Use Measures

Land use management measures address aircraft noise in areas of high noise exposure that cannot be fully addressed through the implementation of noise abatement measures. The two types of land uses measures are corrective and preventive. Corrective land use measures, which are typically implemented by an airport operator, include land acquisition, sound insulation treatments of noise-sensitive structures (e.g., residences, schools, and places of worship), and/or easement purchase. In contrast, preventive measures prohibit the introduction of new noncompatible land uses, through zoning and/or land use plans, and/or notifying potential buyers of properties affected by aircraft noise; such measures are typically implemented by the local land use planning and zoning municipalities.

GIAA and the FAA have no regulatory authority to control land uses around airports and recognize that state and local governments are responsible for land use planning, zoning, and regulation. However, as a condition of receipt of FAA funding for airport development projects, an airport operator must provide the FAA with written assurances that "appropriate action, including the adoption of zoning laws, have been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including the landing and takeoff of aircraft."⁴

Noncompatible land uses within the Forecast 2029 NEM provided the basis for the cost and schedule estimates for implementation of each recommended land use measure. However, per FAA guidance, the NEM must reflect airport-certified noise exposure or be updated to ensure the land use measures address noncompatible land uses with noise exposure from current or forecast aircraft operations. Eligibility to implement the land use measures will be dependent on the FAA-accepted NEM at the time of implementation.

Recommended Land Use Measures

Corrective Land Use Measures

GIAA is recommending the following corrective land use management measures as part of the NCP.

Land Use Rezoning Support

This measure would modify LU-2 from the 2003 NCP. To encourage future compatible land use, GIAA would provide letters of support to rezone properties to compatible use from noncompatible use, e.g., residential to industrial. To

³ Costs are estimated and will be refined by GIAA

⁴ Airport and Airway Development Act of 1970. Pub. L. 91-258. 84 Stat. 219-253. May 21, 1970

discourage future noncompatible land use, GIAA would provide letters not supporting the rezoning of properties to noncompatible use. Property owners interested in rezoning would be encouraged to rezone to a category that supports compatible land use and a letter of support from GIAA may strengthen their efforts to rezone the property.

In discussions with DLM and GIAA, this was seen as a potential measure for some areas near the Airport. Supporting rezoning of noncompatible residential parcels and/or other interests associated with such parcels is a corrective land use measure because it supports converting noncompatible land use to compatible land use.

Table ES-7 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this land use measure.

Table ES-7. Implementation Summary for Recommended Land Use Measure: Land Use Rezoning Support

Implementation Item	Discussion
Benefits	This measure could help reduce noncompatible land uses.
Rationale	GIAA is recommending this measure because it could help reduce noncompatible land use near the Airport.
Responsible Parties	GIAA
Estimated Costs	Internal to GIAA
Funding Sources	GIAA
Requirements	FAA approval of this measure
Estimated Schedule	GIAA could implement this measure within six months of FAA approval.

Source: GIAA 2025

Conclusions: *Land Use Measure: Land Use Rezoning Support* could provide a letter of support to property owners to rezone their properties to compatible land uses. GIAA could also provide a letter not supporting rezoning of a property to noncompatible land use. This could reduce or prevent new noncompatible land use near the Airport.

Acquire Noncompatible Land

This measure would combine RLU-1 and RLU-2 from the 2003 NCP. Acquisition of noncompatible residential parcels and/or other interests associated with such parcels is a corrective land use measure because it converts noncompatible land use to a compatible land use.

Pursuant to the requirements of FAA Order 5100.37B *Land Acquisition and Relocation Assistance for Airport Projects*, an airport that purchases a property with a noncompatible land use utilizing AIP grant funding may modify the land use by removing the noncompatible structure, working with the jurisdiction to rezone the property to a compatible land use, and reselling the property. The process must also comply with the current version of FAA Advisory Circular 150/5100-17, *Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects*.

This approach is intended to create “buffer zones” of compatible land use near the Airport. Another approach would be for an airport that has acquired a parcel with a noncompatible land use to sound insulate the structure (thereby making the land use compatible) and then resell it.

GIAA could consider the potential acquisition of residential properties within the DNL 65 dB and higher contours as a corrective mitigation measure to make the properties compatible. The program is voluntary, but any acquisitions must follow the provisions set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (49 CFR Part 24; Uniform Act). The 2029 Future NEM identifies 251 noncompatible housing units located within the DNL 65 dB contour. However, at this time no parcels have been identified for potential purchase.

GIAA would follow the recommendations in 49 U.S.C. § 47107 (c)(2)(A) when the land is no longer needed for noise compatibility purposes.

Table ES-8 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this land use measure.

Table ES-8. Implementation Summary for Recommended Land Use Measure: Acquire Noncompatible Land

Implementation Item	Discussion
Benefits	This measure helps eliminate noncompatible land uses.
Rationale	GIAA is recommending this measure because it would reduce noncompatible land use where other mitigation options are not viable.
Responsible Parties	GIAA
Estimated Costs	The current median sold home price in Guam is \$470,000. ⁵ Relocation costs are estimated at \$35,000 in addition to program management fees of \$90,000. At this time, no parcels have been identified for purchase.
Funding Sources	80 percent of eligible costs FAA Airport Improvement Program and 20 percent GIAA.
Requirements	FAA approval of this measure
Estimated Schedule	GIAA can apply for funding once this measure is approved by the FAA, assuming the property owners wish to sell.

Source: GIAA 2025

Conclusions: *Land Use Measure: Acquire Noncompatible land* could become beneficial as it allows for the repurposing of formerly noncompatible land and transforming it into useable noise compatible land.

Sound Insulate Noise-Sensitive Structures

This measure would continue RLU-3 from the 2003 NCP. Noise mitigation programs provide sound insulation treatment to eligible noise-sensitive structures located within the 65 DNL contour based on an FAA-accepted NEM. Sound insulation can be used as a corrective mitigation measure for noncompatible residences, schools, and other noise-sensitive properties as long as they were constructed prior to October 1, 1998. Sound-insulated buildings are considered compatible with aircraft noise.

Under Part 150, the types of dwelling units that could be sound insulated include, but are not limited to, single-family units, multi-family units, transient lodging, and multi-use structures (such as those with retail on the ground floor and dwelling units above). Multi-use structures with a mix of noise-sensitive and non-noise-sensitive uses (such as an apartment over a store) are not eligible for sound insulation if the zoning of the parcel is compatible with aircraft noise, such as commercial, retail, or industrial zoning. Non-residential noise-sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places are also eligible.

Sound insulation programs mitigate aircraft noise exposure by providing compatible noise environments inside the structures. Sound insulation treatments may include window and door replacement, caulking, weather stripping, and positive air ventilation. The purpose of the positive air ventilation is to allow for replacement windows and doors to remain closed to provide the full benefit of the sound insulation treatment to residents. Positive ventilation systems use a fan to draw outside air into an indoor space, pressurizing the space. Indoor air is exhausted out of the building through sound-insulated exterior openings.⁶ Mobile dwelling units are not eligible because the FAA has determined that there are no effective sound insulation methods or materials for mobile homes.

There are 251 noncompatible residential housing units and one transient lodging currently within the 2029 DNL 65 NEM contours. In residential sound insulation programs funded in part by FAA AIP grants, a dwelling unit is only eligible for sound insulation if it meets all of the criteria set forth in the FAA Order 5100.38D, Change 1 AIP Handbook, Appendix R and FAA Advisory Circular, 150/5000-9B, *Guidelines for Sound Insulation of Structures Exposed to*

⁵ <https://www.livingonguam.com/blog/guam-real-estate-market-update-what-may-2025-means-you/>

⁶ FAA Advisory Circular, 150/5000-9B, *Guidelines for Sound Insulation of Structures Exposed to Aircraft Noise*, dated 6/8/2022.

Aircraft Noise. A dwelling unit is not eligible for federally funded sound insulation just by virtue of its location inside the 65 DNL contour.

In order to be eligible, the dwelling unit must meet, at a minimum, the following criteria:

- 1) Located within the 65 DNL contour of an FAA-accepted NEM
- 2) Constructed before October 1, 1998
- 3) Adherence with local building codes⁷
- 4) An average noise level in habitable rooms at or above 45 DNL (with windows closed)

The goal of sound insulation under 14 CFR Part 150 is to provide an average interior noise level of 45 DNL or below and to provide at least a 5-dB improvement to the structure. Sound insulation does not change the outdoor noise environment (e.g., backyards, patios, and courtyards).

Block Rounding

According to Section 6.3.4 of the FAA Advisory Circular, 150/5000-9B, a dwelling unit located outside of the DNL 65 dB contour may be eligible for sound insulation in some circumstances. Dwelling units located on or immediately outside the 65 DNL contour may be eligible for sound insulation treatments under the concept of “block rounding.” Block rounding involves expanding noise mitigation just beyond the 65 DNL contour to “include parcels contiguous to the project area.”⁸ The FAA has the option, but is not obligated, to approve a request for block rounding if all requirements in Appendix R, including Table R-2 of the AIP Handbook are met, such as being a noise-sensitive land use, having an average sound level above 45 DNL in habitable rooms, and being constructed before October 1, 1998.

In addition, pursuant to Section 6.3.5 of the FAA Advisory Circular, 150/5000-9B, an airport sponsor may “consider the use of neighborhood equity when a few dwelling units in the eligible noise contour (pursuant to Paragraph R-6 in the AIP Handbook) that do not meet the interior noise level requirements are scattered among dwelling units that meet the interior noise level criteria.”⁹ The FAA has the option, but is not obligated, to approve such requests for consideration of neighborhood equity. The dwelling units in consideration would have to meet all other eligibility requirements, such as being a noise-sensitive land use, having an average sound level above DNL 45 in habitable rooms, and being constructed before publication of FAA- accepted noise contours.

Avigation Easements

In exchange for accepting sound insulation under this measure, GIAA will require the property owner to provide an avigation easement. An avigation easement grants rights of overflight in the airspace above or near a property. It also grants the right to create noise or other effects that may result from the lawful operation of aircraft, and the right to remove any obstructions to overflight, in the nearby airspace. The property owner has restricted use of their property subject to the airport sponsor’s easement for overflight and other applicable restrictions on the use and development of the parcel. Avigation easements run with the land (i.e., are attached to the property for so long as the easement is in effect).

Table 1 of Appendix A in 14 CFR Part 150 indicates that residential land uses are not compatible with aircraft noise exposure of 65 DNL or higher. Therefore, an avigation easement provided at the time of the sound insulation binds future property owners and informs them of the property’s exposure to aircraft noise while also restricting use of the parcel as described in the avigation easement.

Table ES-9 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this land use measure.

⁷ Areas within a structure that do not meet the local building code are not “habitable” under FAA requirements and, therefore, are not eligible for sound insulation that is funded with AIP grants. The AIP Handbook, Appendix R, provides the following example of an area that is not eligible for sound insulation: “A resident has converted part of a basement to a bedroom and the bedroom conversion does not meet the building code requirements to be categorized as a bedroom. The converted bedroom is not considered habitable space.”

⁸ FAA, AIP Handbook, https://www.faa.gov/airports/aip/aip_handbook/appendix#PR09

⁹ FAA, AIP Handbook, https://www.faa.gov/airports/aip/aip_handbook/appendix#PR10

Table ES-9. Implementation Summary for Recommended Land Use Measure: Sound Insulate Noise Sensitive Structures

Implementation Item	Discussion
Benefits	Installation of sound insulation and positive ventilation treatments provides adequate noise reduction inside people’s homes for compatibility with indoor activities. Once treated, a property is considered compatible with aircraft noise. This measure could benefit up to 753 people in 251 housing units exposed to noise levels 65 DNL or higher.
Rationale	GIAA is recommending this Land Use Measure because it continues an existing program and could be an effective way to provide appropriate noise level reduction inside eligible housing units.
Responsible Parties	GIAA.
Estimated Costs	\$21.9 million ¹⁰ to provide sound insulation treatments to approximately 251 housing units and 753 people, subject to the assumptions and eligibility limitations
Funding Sources	80 percent of eligible costs FAA Airport Improvement Program and 20 percent GIAA.
Requirements	FAA approval; identification of eligible properties; secured funding to sound insulate properties.
Estimated Schedule	GIAA would look to restart the RSSP within six months of FAA Approval. It could take several years to complete the remaining homes within the program.

Source: GIAA 2025

Conclusions: *Land Use Measure: Sound Insulate Noise Sensitive Structures* could provide immediate aid to those continually affected by the excessive aircraft noise. Sound Insulating buildings and creating a compatible noise level could be an effective way to improve compatibility with aircraft noise.

Preventive Land Use Measures

Based on the experience of other airports and according to the FAA, the preventive land use measures discussed in this section can be effective in preventing the development of new noncompatible land uses. It is up to state and local governments to decide whether to pursue preventive land use management measures to reduce noncompatible land use. Consistent with the requirements of 14 CFR Part 150, Sec.150.23, GIAA included land use planning entities in the communities surrounding the Airport as part of the PAC. As part of this consultation, GIAA educated the committee about the potential benefits of preventive land use measures and gauged their level of interest in potentially pursuing any of these approaches.

Establish and Implement an Airport Noise Overlay Zone

Airport noise overlay zones are intended to prevent noncompatible land uses from being developed near an airport. The noise overlay zone works in tandem with the local jurisdictions’ existing zoning and provides detailed information regarding the recommended land uses within the overlay zone, such as noise level reduction required for noise-sensitive structures. If the overlay zone allows for noncompatible land uses, such as residential, schools and churches, then the overlay zone could also include specific building codes to ensure compatibility and the addition of aviation easements. However, the FAA does not encourage the introduction of new noncompatible development within the DNL 65 dB contour.

The DLM and GIAA showed interest in establishing airport noise overlay zones to assist in better land use compatibility with aircraft operations. An Airport Noise Overlay Zone is typically defined by noise contours or

¹⁰ Costs were estimated based on average cost for mitigation in 2016 adjusted for inflation to 2025 costs and multiplied by 251 potential units (((\$65,567*33% = \$87,204) x 251 units = \$21.9 Million)

jurisdictional boundaries. A hypothetical Airport Noise Overlay Zone is defined by a rectangle encompassing the DNL 60 dB contour. This approach covers the arrival paths to both runway ends and provides a buffer beyond the contour to cover future changes to departure flight paths. This zone would provide a greater than 5 dB buffer to the 2029 DNL 65 dB contour to help prevent future noncompatible land use as operations at the Airport increase resulting in potentially larger noise exposure contours.

There are three areas defined in proposed Noise Overlay Zone and each area would have different levels of notification and recommendations.

- 1) An area where GIAA is notified of proposed development.
- 2) The DNL 60 dB contour would be the area where additional sound insulation for noise-sensitive structures is recommended.
- 3) The DNL 65 dB contour would be the area where new noise-sensitive development is not recommended.

Within the DNL 60 dB area, GIAA and local land use agencies would recommend developers/contractors consider sound attenuation standards for new construction of noise-sensitive structures. This would apply if DLM does not intend to pursue formal approval of soundproofing standards for new construction within the Airport noise overlay area. Adoption of sound attenuation standards would require interjurisdictional coordination and political advocacy. Because of this, GIAA and DLM will advocate for them informally through outreach to local villages and developers to encourage including sound attenuation standards for noise-sensitive development in their new building designs for construction in the Airport noise overlay area to provide sufficient noise level reduction.

GIAA would work with DLM and other local agencies to consider if new development meets noise level reduction requirements that meet or exceed a 45 dB DNL interior noise level as required for land use compatibility per Part 150 guidance.¹¹

Within the DNL 60 dB contour, at a minimum, new residential structures should be constructed using the following guidelines for acoustically rated products:

- Windows: product with at least an Outdoor Indoor Transmission Class (OITC) of 32.
- Exterior stand-alone doors: product with at least an OITC of 30 to 32 or a prime door with an OITC 27 to 28 in series with a storm door with an OITC 26 to 28 which achieves OITC 30 to 32.
- Walls:
 - Masonry exterior facades: No treatment required
 - Non-masonry exterior facades:
 - With existing insulation: No treatment required
 - Without existing insulation: Add insulation in existing exterior walls or add one layer of QuietRock 510
- Air Conditioning Units: Do not use through-wall units

The overlay zone and recommendations would be incorporated into the Guidebook to Development Requirements on Guam, published by the Bureau of Statistics and Plans.

¹¹ FAA Order 5100.38D or current version, Airport Improvement Handbook, Appendix R. and FAA Advisory Circular 150/5000-9B, Guidelines for Sound Insulation of Structures Exposed to Aircraft Noise

Table ES-10 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this land use measure.

Table ES-10. Implementation Summary for Recommended Land Use Measure: Establish and Implement an Airport Noise Overlay Zone

Implementation Item	Discussion
Benefits	This measure encourages compatible land uses in the airport affected area and increased public awareness of the airport affected area would promote compatible land uses.
Rationale	GIAA is recommending this measure because it may provide a long-term, cost-effective way to prevent future noncompatible land uses.
Responsible Parties	GIAA, local agencies
Estimated Costs	GIAA staff time and effort in pursuing the sub-measures
Funding Sources	GIAA
Requirements	FAA approval of this measure
Estimated Schedule	Pursuit of sound attenuation material recommendations can begin immediately and does not require FAA approval.

Source: GIAA 2025

Conclusions: *Land Use Measure: Establish and Implement an Airport Noise Overlay Zone* could allow for the creation of an area where GIAA is notified of new developments, an area where building methods would encourage sound reducing materials to help reduce future noise-related issues and not recommending additional development within the DNL 65 dB contour.

Program Management Measures

Program management measures enable the GIAA to monitor the implementation and compliance of the recommended noise abatement and land use management measures in the NCP, as well as enhance stakeholders' understanding of aircraft noise. Program management measures are critical to the implementation and success of the GIAA noise program as provided in the NCP.

Recommended Program Measures

After reviewing the prior measures, the prior NCP and other airport NCPs, and discussions from meetings with GIAA, six potential program management measures have been identified for recommendation.

Noise Compatibility Staff

The measure recommends the employment of one staff position to support the implementation and monitoring of the Airport-recommended Noise Compatibility Program measures. In addition, this position would provide coordination with airport management for the RSSP until its completion. This would be a continuation of PM-1 from the 2003 NCP.

Table ES-11 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this Program Management Measure.

Table ES-11. Implementation Summary for Recommended Program Management Measure: Noise Compatibility Staff

Implementation Item	Discussion
Benefits	Noise Compatibility staff will assist GIAA to understand, respond to, and address community concerns associated with aircraft noise from airport operations. In the future, staff will continue to maintain the existing NCP measures, facilitate the implementation of the new approved NCP measures and monitor adherence with them.
Rationale	GIAA is recommending this Program Management Measure because this new position would help respond to aircraft noise complaints from the public and interface with stakeholder representatives, the communities, and airport users. With the completion of the NCP, this position will be critical in successful implementation of the approved NCP measures.
Responsible Parties	GIAA
Estimated Costs	The FAA does not fund program operating expenses. GIAA will fund this position.
Funding Sources	GIAA
Requirements	FAA approval and GIAA development of the position
Estimated Schedule	GIAA would establish this position within six months of approval of the NCP.

Source: GIAA 2025

Conclusions: *Program Management Measure: Noise Compatibility Staff* will enable GIAA to continue to understand, respond to, and address community concerns associated with aircraft noise from airport operations. This position will facilitate the implementation of the new measures recommended in this NCP Report, as approved by the FAA.

Noise/Land Use Advisory Committee

This measure would establish a Noise/Land Use Advisory Committee that meets regularly (i.e., quarterly) where GIAA would meet with the land use agencies to discuss land use issues, challenges, and solutions related to noise compatibility. This would continue the coordination developed during the NCP development. This committee would allow GIAA to address compatible land use issues, noise issues related to zoning and permitting and engage the community in these discussions. The committee would enhance GIAA’s understanding of local issues with regard to noise compatible land use and foster an exchange of information between the land use agencies and GIAA. GIAA would arrange the meeting space and set the agendas for the meetings.

Table ES-12 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this Program Management Measure.

Table ES-12. Implementation Summary for Recommended Program Management Measure: Noise/Land Use Advisory Committee

Implementation Item	Discussion
Benefits	The Noise/Land Use Advisory Committee will enable the collaboration of various land use agencies on Guam and GIAA to share aircraft noise related information pertaining to comprehensive planning, land use issues, zoning issues, and noise mitigation efforts at the Airport.
Rationale	GIAA is recommending this Program Management Measure so that there can be a collaboration and sharing of information, with various agencies on Guam, pertaining to comprehensive planning, land use issues, zoning issues, and noise mitigation efforts for the Airport.
Responsible Parties	GIAA
Estimated Costs	GIAA staff time and resources
Funding Sources	Not applicable
Requirements	GIAA to determine committee members, work with members to set up meeting protocols and committee responsibilities, and begin meeting on a regular basis
Estimated Schedule	Schedule established within six months of FAA approval of the NCP

Source: GIAA 2025

Conclusions: *Program Management Measure: Noise/Land Use Advisory Committee* will enable the collaboration of various agencies on Guam to share information pertaining to comprehensive planning, land use issues, zoning issues, and noise mitigation efforts. The committee would include land use planning agencies, local zoning jurisdictions, and other stakeholders at the Airport.

Update the Noise Exposure Map

The FAA requires that an airport operator update their NEMs if there is substantial change in the noise contours over noncompatible land uses. Title 14 CFR Part 150 defines a DNL 1.5 dB change or more as substantial. In addition, the FAA requires by policy that if the FAA-accepted NEM used to document project eligibility for noise compatibility planning/projects are more than five years old, the airport operator must confirm in writing to the FAA Regional Airports Division and District Office that the NEMs upon which noise compatibility planning/projects are based continue to be a reasonable representation of current and/or forecast conditions.

In the event GIAA is continuing to address noncompatible land uses around the Airport, GIAA will plan to update their NEM in 2029 unless they are able to certify that the FAA-accepted NEM continues to represent existing and/or future conditions. GIAA will also consider updating the NEM prior to 2029 if a substantial change occurs resulting in an expected change of 1.5 dB over noncompatible land uses.

Table ES-13 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this Program Management Measure.

Table ES-13. Implementation Summary for Recommended Program Management Measure: Update the Noise Exposure Map

Implementation Item	Discussion
Benefits	This measure will enable GIAA to meet Part 150 requirements if applicable changes in the noise environment occur at the Airport.
Rationale	GIAA is recommending this measure to meet the requirements of 14 CFR Part 150, Section 150.21(d).1.125.
Responsible Parties	GIAA
Estimated Costs	\$800,000
Funding Sources	80 percent of eligible costs FAA Airport Improvement Program and 20 percent GIAA.
Requirements	FAA's approval of this measure; and GIAA to secure funding for the update of the Noise Exposure Map when warranted.
Estimated Schedule	To be determined when a significant change has occurred triggering the NEM update or when FAA requires an update for FAA funding of NCP measures.

Source: GIAA 2025

Conclusions: *Program Management Measure: Update the Noise Exposure Map* will enable GIAA to meet the requirements of 14 CFR Part 150, Section 150.21(d), if applicable changes in the noise environment occur at the Airport.

Update the Noise Compatibility Program

Title 14 CFR Part 150, Sec. 150.23(e)(9), states that NCPs must include a “[p]rovision for revising the program if made necessary by revision of the noise exposure map.” This may occur if a significant change is identified that results in a revision to the NEMs. Examples of changes are a large addition of noncompatible land uses, or new elements required to achieve land use compatibility. The NCP does not require an update with each NEM update.

GIAA would update the NCP only when additional measures and/or modified measures are required to reduce noncompatible land use.

Table ES-14 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this -Program Management measure.

Table ES-14. Implementation Summary for Recommended Program Management Measure: Update the Noise Compatibility Program

Implementation Item	Discussion
Benefits	This measure will enable GIAA to meet the requirements of 14 CFR Part 150 if a revision of the NCP is made necessary by revision to the NEM for the Airport.
Rationale	GIAA is recommending this measure to meet the requirements of 14 CFR Part 150, Section 150.23(e)(9).
Responsible Parties	GIAA
Estimated Costs	\$1,000,000
Funding Sources	80 percent of eligible costs FAA Airport Improvement Program and 20 percent GIAA.
Requirements	FAA's approval of this measure; and GIAA to secure funding for the update of the Noise Compatibility Program when appropriate.
Estimated Schedule	No schedule set at this time.

Source: GIAA 2025

Conclusions: *Program Management Measure: Update the Noise Compatibility Program* will enable GIAA to meet the requirements of 14 CFR Part 150, Section 150.23(e)(9), if made necessary by a revision of the NEMs for the Airport.

Noise Abatement Signage

GIAA would install noise abatement signs on the airfield near the ends of each runway, reminding pilots of the noise abatement program in place at the Airport. The signs could remind pilots that there are noise-sensitive areas near the Airport or that pilots should follow ICAO-A Departure profiles (if recommended in the NCP). Placing any informational signs for noise abatement procedures must comply with Advisory Circular 150/5340-18H, *Standards for Airport Sign Systems*.

Table ES-15 provides a summary of implementation requirements along with the benefits and rationale for the recommendation of this Program Management measure.

Table ES-15. Implementation Summary for Recommended Program Management Measure: Noise Abatement Signage

Implementation Item	Discussion
Benefits	Noise Abatement Signage would provide noise abatement information to the pilots using the Airport. This could include details on preferential noise abatement runway usage, and use of noise abatement departure procedures.
Rationale	GIAA could recommend this measure because the signs are an informational tool and are an effective communication method to remind pilots about noise abatement.
Responsible Parties	GIAA.
Estimated Costs	The installation of a new signage has an estimated cost of \$35,000 per sign. ¹² GIAA would be responsible for on-going maintenance.
Funding Sources	80 percent of eligible costs FAA Airport Improvement Program and 20 percent GIAA.
Requirements	Not applicable.
Estimated Schedule	Within one-year of FAA approval of the NCP.

Source: GIAA 2025

Conclusions: *Program Management Measure: Noise Abatement Signage will provide noise abatement information to the pilots to follow the recommended noise abatement procedures.*

¹² This is an estimated cost to be refined by GIAA

