



**REQUEST FOR PROPOSAL
RFP NO: PAG-014-005**

**RISK MANAGEMENT CONSULTANT
SERVICES**

**Port Authority of Guam
1026 Cabras Highway
Piti, Guam 96925**

**JOANNE M. S. BROWN
General Manager**

JUNE 2014

Port Authority of Guam

RFP NO. 014-005

RISK MANAGEMENT SERVICES

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**PORT OF GUAM**

ATURIDAT I PUETTON GUAHAN

Jose D. Leon Guerrero Commercial Port

1026 Cabras Highway, Suite 201, Piti, Guam 96925

Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445

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Governor of GuamRay Tenorio
Lieutenant Governor

**REQUEST FOR PROPOSAL
RFP NO. PAG -014-005
RISK MANAGEMENT CONSULTANT SERVICES**

The Jose D. Leon Guerrero Commercial Port Authority of Guam (PAG), a public corporation and an instrumentality of the government of Guam, is soliciting proposals from qualified persons or firms to provide for the Risk Management Consultant Services for the Port Authority of Guam.

Request for Proposal (RFP) package may be obtained at the PAG Procurement and Supply Division from Monday through Friday, excluding holidays, between 8:00 a.m. to 5:00 p.m. or through the PAG website at www.portguam.com.

Deadline for submission of all proposals is Friday, June 27, 2014 before 10:00 a.m. Chamorro Standard Time (Guam Time). All proposals must be submitted and addressed to the attention of Joanne M. S. Brown, PAG General Manager.

Deadline for submission of all questions and clarification (RFI) is Monday, June 16, 2014 by 2:00 p.m. All questions should be submitted via email to abjavier@portguam.com

PAG shall have the right to reject, in whole or in part, proposals or offers which have been submitted in response to the RFP, and/or cancel the RFP if it is determined to be in the interest of the PAG and/or for whatever reason allowed by law and/or regulations. This right to reject and/or cancel is also pursuant to GSA Procurement Regulation 3115 (d) (2) (A).

All questions or concerns regarding the proposal should be in writing and addressed to Joanne M. S. Brown, General Manager. Except to the above persons named, direct or indirect contact with COMMERCIAL PORT Management, Staff, Board Members, or any person participating in the selection process is prohibited.

For additional information, contact Ms. Alma Javier, Procurement and Supply Manager at 477-5931-5, ext. 369 or by email at abjavier@portguam.com.


JOANNE M. S. BROWN
General Manager

This advertisement is paid with Government funds by The Jose D. Leon Guerrero Commercial Port

REQUEST FOR PROPOSAL (RFP)
RFP No. 014-005
FOR: RISK MANAGEMENT SERVICES

BASIC INFORMATION

I. INTRODUCTION

- A. The Jose D. Leon Guerrero Commercial Port ('Port') is soliciting proposals from qualified firms or individuals licensed to conduct business on Guam to submit proposals to provide risk management services to the Port.
- B. The proposals should demonstrate the ability of the Offeror to perform and provide services enumerated in the Scope of Services set out below.
- C. The Individual/Firm selected will work closely with the General Manager or her designee.
- D. The Port will use procedures prescribed by the Guam Procurement Act, 5 GCA §§5001-5805, and DEPARTMENT OF ADMINISTRATION General Services Administration Procurement Regulations to establish a contract. The website to review the Guam Procurement Act is www.guamcourts.org/CompilerofLaws/GCA/Title5.html and Guam Procurement Regulations is www.guamcourts.org/CompilerofLaws/GAR/02gar.html.
- E. Offerors are expected to have and shall have sole responsibility for working knowledge of these laws and regulations.
- F. Issuing Office: This Request for Proposals (RFP) is issued by the Port. No oral explanations in regard to the meaning of the RFP will be made and no oral instructions will be given before award of a contract to the selected Offeror. All proposals and any inquiries of prospective Offerors regarding this RFP must be in writing and must be to the attention of:

Ms. Joanne M. S. Brown or
General Manager,
Email: jbrown@portguam.com

Ms. Alma B. Javier
Procurement & Supply Manager
Email: abjavier@portguam.com

Address: Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Tel: (671) 477-5931/35 Ext. 302 or 369
Fax. # (671)477-4445 or 472-1439

Except to the above person named, direct or indirect contact with Port Management, Staff, Board Members or any person participating in the selection process is prohibited.

II. GENERAL INFORMATION:

The Port, in accordance with its Master Plan requirements and based on the findings of the 2006 Guam Homeland Security Comprehensive Hazards, Vulnerabilities, and Risk Assessment Report, is requesting proposal from qualified individuals or firms with knowledge & experience in Marine liabilities and risk, to perform a risk assessment of the Port's potential exposures to loss and of its current insurance program and determine if changes or improvements are necessary.

Additionally, the Port will be upgrading its facilities to accommodate the anticipated increase in cargo volume and potential economic and construction boom precipitated due to an impending build-up of military personnel on Guam. Because of the modernization and expansion of Port facilities and possible changes in operational modes, it is critical for the Port to identify risk exposures, update exposure of data and determine if insurance policies would need to be amended.

The consultant will advise and assist the Port when services are needed.

Offerors Qualifications/Eligibility: Offerors must be in the business of providing risk management consultant services. As the scope of work includes the preparation of specifications for the purchase of insurance, the audit and evaluation of purchased insurance policies, claims settlement negotiations, it is imperative that the Risk Management Consultant be completely independent. Therefore, the Port shall not consider proposals from any Offeror who serve in the capacity of employee, agents, brokers or sales representatives or associates of any insurance company or insurance carrier.

Proposals will be considered only from Offeror who regularly engaged in the service specified. Offerors shall have a minimum of five (5) years' experience providing the services contained in the RFP. Such service provided in a public environment (government) is desired. All Offerors shall provide the Port with credentials to support prior experience and ability to provide the services as contained in the RFP specifications. Such credentials shall include, but not limited to: a list of client references, previous and current contracts related to Risk Management Services, training and the number of years providing such services.

III. SERVICES REQUIRED/DESCRIPTION OF THE WORK:

A Preliminary Scope of Work, describing the work to be performed, is detailed in Attachment 1. Upon final selection of the best qualified Offeror, the Scope of Work may be modified and refined during fee negotiations.

IV. TIME AND DURATION OF THE WORK INVOLVED:

It is anticipated that the selected Offeror will commence work on or about **July 1, 2014** or from the Agreement execution date. The initial term of this contract is for a period of one (1) year. PAG may choose to extend this contract for successive periods of one (1) year annually, for four (4) additional years, not to exceed the maximum of five (5) years. At the end of any renewal period will be subject to the consent of both parties if

reasonable and justified and subject to price adjustment and availability of appropriated and/or budgeted funds.

In the event of a third party involvement, any work provided by a third party will be approved by PAG before it is executed. PAG will have the authority to communicate with the third party as deemed necessary. All materials resulting from this contract will be the sole ownership of the Port Authority of Guam

V. TYPE OF CONTRACT:

A Service Agreement will be consummated between the Offeror and the Port. A sample agreement is attached herein as Attachment 2, for reference. The Port reserves the right to modify the sample Agreement during the proposal period or negotiation period. The Offeror(s) elected shall be fully licensed to conduct business on Guam prior to execution of any contract resulting from this RFP.

VI. SUBMISSION DEADLINE AND REQUIREMENTS:

All proposals in response to this RFP solicitation shall be in writing must be time-stamped and received at the Procurement and Supply Division, located at the 2nd floor of the Port Authority of Guam (PAG) Administration Building, **no later than 10:00 a.m., Chamorro Standard Time (Guam Time), Friday, June 27, 2014.** No proposals shall be received after such date and time. All proposals shall be addressed to the attention of the General Manager. **Additionally, proposals transmitted via facsimile or email will not be accepted.**

Offeror(s) must provide one (1) original, five (5) copies and one (1) CD containing electronic file copy in PDF format. All items should be sealed in one package bearing on the outside name of the Offeror, address, and the title of the project for which the proposal is submitted and shall be submitted no later than the deadline.

VII. DEADLINE FOR ALL QUESTIONS AND CLARIFICATION (RFI):

All Requests for Information (RFI) (inquiries, clarifications, or questions) must be submitted **no later than 2:00 p.m. Chamorro Standard Time (Guam Time), Monday June 16, 2014.** RFI shall reference the RFP number, project title and must be addressed to the attention of the General Manager, Port Authority of Guam with a copy provided to Ms. Alma Javier abjavier@portguam.com.

VIII. LATE PROPOSALS:

Proposals submitted after the above submission deadline will not be accepted.

IX. TRADE SECRETS AND PROPRIETARY DATA:

Offerors may designate those portions of their proposal that contain trade secrets or proprietary data, which are to remain confidential. The Port will examine any such request to designate portions of proposals as trade secrets or proprietary data as

confidential and determine the validity of such request prior to entering into negotiations with prospective Offeror.

X. CONTENTS OF THE PROPOSAL:

The Proposal, at the minimum, must contain the following:

A. Transmittal Letter:

1. A transmittal letter, prepared on the Offeror's business stationary, is to accompany the original and required copies of the Submission.
2. The purpose of this letter is to transmit the Proposal and should be brief.
3. The letter must be signed by an individual who is authorized to bind the Offeror to all statements contained in the submission.
4. The transmittal letter must make reference to the RFP number and Risk Management Services that Offeror is responding to.

B. Statement of Qualifications:

The proposal should demonstrate the ability of the Offeror to perform and provide the services enumerated in the Preliminary Scope of Work attached herein as Attachment I. The Statement of Qualifications must be current, accurate, and complete; thus, shall include the following:

1. The name of the Offeror, the location of Offeror's principal place of business and, if different, the place of performance of the proposed services, the age of the Offeror's business, the average number of employees over the past year; and the current workload of the Offeror.
2. The abilities, qualifications, experience and the role of the key person(s) that would be assigned to perform the services contained in Attachment 1, as well as a detailed professional resume. Include any relevant diplomas, credentials, and other supporting documents.
3. A list of all contracts under which services similar in scope, size and discipline for the required services, which the Offeror has substantially performed or accomplished as the Prime and/or Principal Firm over the past five (5) years, including client names, addresses, phone numbers and point of contacts. The list shall include at least five (5) contracts involving risk management services.

The information is required for the Offeror and each subcontractor, if any, but information on the Prime Offeror and subcontractor(s) should be presented separately. The purpose of this requirement is to provide the Port with a basis for determining the Offeror's and subcontractors financial and technical capability for undertaking this project. The Port is not interested in a voluminous description of all prior contracts undertaken, but rather a concise, thorough description of experience relevant to this project.

4. A plan giving as much detail as is practical explaining how the services will be provided or guide in accomplishing the objectives described in Attachment 1, including but not limited to, tasks or activities, deliverables, timeline, how communication and reports will be maintained, etc. Offeror shall include any special services that will be available for the Port.
5. A statement that the Offeror has established and implemented an Affirmative Action Plan.
6. A letter affirming the existence of a Drug Free Workplace Program and Policy at the firm.
7. A statement of agreement with the Port's General Terms and Conditions and the Special General Provisions, which are made part of this RFP documents.

XI. SELECTION OF BEST QUALIFIED PROPOSER AND PROPOSAL:

1. **Evaluation and Ranking:** After receipt of all proposals, the Evaluation Committee established by the General Manager, will conduct an independent evaluation of all proposals received under this solicitation. Each proposal shall be evaluated according to the criteria as reflected herein and shall be ranked accordingly. The ranking of the proposals will be based on the total points awarded to the proposals by each Evaluation Committee member.

Offerors may be required to be interviewed or hold discussions with the Evaluation Committee to clarify certain items from the submitted proposal. This discussion, if any, will be in accordance with the Guam Procurement Laws.

In the event of a tie between two or more evaluation scores, Offerors shall be invited to appear before the evaluation committee for further interviews for the purpose breaking this tie.

2. **Selection:** The selection of the best qualified responsible, responsive offeror shall be the highest rank offeror. A "Short Listing" will be established based on the ranking results of the evaluation process. The PAG reserves the right to short-list to a maximum of three (3) qualified offerors.

The highest ranked Offeror will be selected to enter into negotiations with the Port. If an agreement can be reached as to reasonable fees, a contract will then be prepared for signatures by both parties. The signature of the Port's General Manager or his designated representative is the only signature that will bind the Port.

If the Port is unable to negotiate a contract with the highest ranked Offeror, the General Manager or designee, may re-solicit for offers or enter into negotiations with the next highest ranked offeror based on the established short list.

XII. EVALUATION CRITERIA:

The following factors and their relative importance that will be used in the evaluation of the proposals are:

1. The plan detailing how the scope of work/services will be accomplished to include time and personnel resources, and schedule of activities to include begin/end dates. **(maximum 30 points)**
2. The ability to perform the services as reflected by the qualifications, technical training, education, general experience, and abilities of key personnel proposed to be assigned to perform the services; **(maximum 30 points)**
3. The record of past experience providing the required services in this RFP **(maximum 30 points)**
4. Compliance to specific requirements, **(total of 10 points);**
 - a. Evidence that the Firm has established and implemented an Affirmative Action Plan **(5 points);**
 - b. Evidence of establishment and implementation of a Drug Free Workplace Program **(5 points);**

The General Manager will review the recommendation of the Evaluation Committee and shall, in concert with appropriate technical staff representatives, make the final selection.

XIII. FEE PROPOSALS:

Offerors shall not submit any cost or pricing data with their proposal. Fee proposal will be solicited by the Port upon selection of the highest ranked proposal and be submitted at a time and in a format as determined by the Port.

XIV. REQUIRED FORMS:

Offerors must submit all forms required in this solicitation. Failure to submit any of the required forms may result in disqualification and rejection of the Offeror's proposal. The following required forms to accompany the Offeror's proposals are included and made part of this RFP:

1. Special Reminder to Prospective Offerors: This form is the checklist of the required forms to be submitted accompanying the proposals. By completion and submittal of this form, the offeror acknowledges and understand its intent and implications. Offerors are held responsible for ensuring that all documents required in this RFP, which may not appear on the checklist, are submitted with their proposal.
2. Affidavit Disclosing Ownership and Commissions: Guam Law requires that any partnership, sole proprietorship, or corporation doing business with the government of

Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship, or corporation at any time during the twelve (12) month period immediately preceding submission of the Proposal. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) months period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the work described in this RFP for the Offeror and shall contain the amounts of such commission, gratuity, or other compensation. The affidavit shall be opened and available to the public for inspection and copying.

3. Affidavit re Non-Collusion
4. Affidavit re No Gratuities or Kickbacks
5. Affidavit re Ethical Standards
6. Declaration re Compliance With U.S. DOL Wage Determination
7. Affidavit re Contingent Fees

***** END OF BASIC INFORMATION*****

GENERAL TERMS AND CONDITIONS

1. AUTHORITY:

This Request for Proposal (RFP) solicitation is issued subject to all the provisions of the Guam Procurement Act (Public Law 16-124) and the Guam Procurement Regulations (copies are available for inspection from the following website:

www.guamcourts.org/CompilerofLaws/GCA/Title.html
www.guamcourts.org/CompilerofLaws/GAR/@gar.html

The RFP requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

2. EXPLANATION TO OFFERORS:

No oral explanation in regard to the meaning of the specification will be made and no oral instructions will be given before the award of the proposal. Discrepancies, omissions, or doubts to the meaning of the specifications should be communicated in writing to the named contact individual of the requesting agency/department for interpretation. Offerors should act promptly and allow sufficient time for a reply to reach them before submission of their proposals. Interpretation, if required, shall be made in the form of an amendment or addendum to the RFP which will be forwarded to all prospective Offeror and its receipt by the Offerors should be acknowledged on the proposal form.

3. METHOD OF AWARD:

The PAG reserves the right to waive any minor informality or irregularity in proposals received. The PAG shall have the prerogative to award, amend, or reject proposals in whole or in part. It is the policy of the PAG to award contracts to selected Offerors duly authorized and licensed to conduct business in Guam.

4. REJECTION:

The PAG shall have the prerogative to reject proposals in whole or in part for if a determination is made that such action is in the interest of the PAG.

5. TAXES:

Offerors are cautioned that they are subject to Guam Income Taxes as well as other taxes on Guam transactions. Specific information on taxes may be obtained from the Department of Revenue and Taxation.

6. LICENSING:

Offerors are cautioned that PAG will not consider for award any offer submitted by a proposer who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Department of Revenue and Taxation.

7. COVENANT AGAINST CONTINGENT FEES:

The Offeror warrants that he has not employed any person to solicit or secure any resultant contract upon agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the PAG the right to terminate the contractor, or in its discretion to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commission payable by contractors upon contract or sales secure or made through bonafide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

8. JUSTIFICATION OF DELAY:

The Offeror who is awarded the proposal guarantees that the service will be completed within the agreed upon completion date. If, however, the Offeror cannot comply with the completion requirement, it is the Offeror's responsibility to advise the PAG in writing explaining the cause and reason of the delay.

9. EQUAL EMPLOYMENT OPPORTUNITY:

Section 3.01 of the Executive Order 10935 dated March 7, 1965 requires the proposer not to discriminate against any employee or applicant for employment because of race, creed, color, age, marital status, and ancestry, persons with disabilities or national origin. The Offeror will take affirmative action to secure that applications are employed and that employees are treated equally during employment without regard to their race, creed, color or national origin.

10. ASSIGNMENT:

Assignment will not be accepted without prior approval from PAG. Request for approval of assignment must be made with submission of proposal. No assignment will be accepted if request is not made with the proposal.

11. DETERMINATION OF RESPONSIBILITY OF PROPOSER:

The PAG reserves the right for securing from Offerors information necessary to determine whether or not they are responsible and to determine the responsibility in accordance with Section 3116(2) of the Guam Procurement Regulations.

END OF GENERAL TERMS AND CONDITIONS

SPECIAL GENERAL PROVISIONS

1. PROPOSALS:

The Offeror is required to read each and every page of the RFP document and by the act of submitting a proposal shall be deemed to have accepted all conditions contained therein. In no case will failure to inspect constitute grounds for a claim or for the withdrawal of a proposal after opening. Proposals shall be filled out and signed in ink or typewritten. Erasures or other changes in a proposal must be explained or noted over the signature of the Offeror. Proposals containing any conditions, omissions, unexplained erasures or alterations or items not called for in the Proposal, or irregularities of any kind shall be rejected by the PAG as being incomplete.

2. GENERAL INTENTION:

Unless otherwise specified. It is the declared and acknowledged intention and meaning of these Special General Provisions and General Terms and Conditions for the Offeror to provide the PAG with specified services.

3. AUTHORIZED REPRESENTATIVE AND CONTACT FOR CONTRACT ADMINISTRATION:

All proposals submitted in response to this RFP shall be signed by an individual authorized to bind the Offeror to all statements, information and the services contained in the proposal. The Offeror is required to include in the proposal a written authorization designating a representative for the purpose of negotiating and executing a contract pursuant to this RFP and allowing such representative to negotiate on behalf of the Offeror. The authorization shall include:

- a. Name of Authorized Person
- b. Title of the Authorized Person
- c. Contact Numbers: Office, Fax, Mobile Phone
- d. E-mail address, if any.

4. DISCUSSIONS:

The PAG may conduct discussions with all qualified Offerors who are prepared to discuss their proposals for the purpose of clarifying questions regarding the Proposal content and to afford Offerors an opportunity to further explain or clarify Proposal details. All qualified Offerors will be provided full and equal treatment with respect to any opportunity for discussion. During discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

Offerors will be afforded an opportunity to clarify and revise their proposals prior to the conclusion of discussions and prior to final ranking by the Evaluation committee. There will be no official call for best and final proposals. The submission of revisions pursuant to discussions will be optional and at the sole discretion of individual Offerors. All discussions with the Offeror will be recorded and preserved for the procurement record.

5. PAYMENT:

Payment shall be made using a method mutually agreed upon by the PAG and the successful Offeror.

6. RECEIPT AND HANDLING OF PROPOSALS:

Envelopes containing proposals shall be sealed and marked on the outside with the name and address of the Offeror, the description of the services being solicited and the time and date of submission. Telegraphic proposals will not be considered, nor will modification by telegraph of proposals already submitted not be considered. Proposals shall be mailed or hand carried so as to be received on or before the submission deadline as indicated in the RFP document. All Proposals received, hand delivered or through the mail, after the established submission date and time will not be accepted and shall be deemed "late proposals".

Proposals and modifications shall not be opened publically nor disclosed to unauthorized person, but shall be opened in the presence of two or more procurement officials or designees of the PAG. A Register shall be established which shall include all proposals, the name of each Offeror, the number of modification received, if any and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of Offerors who are not awarded the contract shall not be opened to public inspection.

7. WITHDRAWAL OF PROPOSALS:

Proposals may be withdrawn by written or facsimile notice received by PAG at any time prior to the conclusion of any discussion that may take place between PAG and one or more Offeror. Proposals may be withdrawn in person by an Offeror's authorized representative upon verification of the representative's authority and execution of a receipt for the Offeror's returned proposal.

Negligence on the part of the proposer, in preparing the proposal, grants no right for the withdrawal of the proposal, after it has been opened.

All items submitted in response to the RFP become the property of the PAG and none will be returned.

8. LATE PROPOSALS:

Late proposals will not be accepted.

9. LIABILITY FOR COST TO THE PROPOSAL:

The PAG is not liable for any cost incurred by the Offeror in connection with this RFP. By submitting a proposal, the Offeror specifically waives any claim against the PAG for any expenses incurred in proposal preparation. Submitted proposals become the property of the PAG and will be a part of the official procurement record. Offerors' request for the return of specific proprietary material may be considered by the PAG.

10. RIGHT TO AMEND, CANCEL OR REISSUE:

The PAG reserves the right to amend, supplement or cancel the RFP, in whole or in part at any time, or reject any or all proposals submitted in response, or reissue the RFP, when this action serves the best interest of the PAG.

11. CONTRACT PROVISIONS:

The PAG reserves the right to include any part of the Offeror's Proposal in the final agreement or contract. The Offeror's Proposal may be subject to additional conditions and terms as may be imposed by the PAG during contract negotiations.

All Offerors warrant that they have not employed any person to solicit or secure any resolution contract based upon a promise for a commission, percentage, brokerage or contingent fee. Breach of such warranty shall be grounds for the PAG the right to terminate clarifying discussion or pre contract negotiations or immediately terminate any contact that has been executed pursuant to this RFP.

The PAG will conduct negotiations with the best qualified Offeror. If the best qualified Offeror and the PAG are unable to agree on the terms and conditions of a contract, then the PAG may, at its sole and absolute discretion, terminate negotiations. In such instance, the PAG will have the right to initiate negotiations with the next highest ranked Offeror.

By submitting a proposal, the Offeror specifically understands and agrees that it has a duty to explain and clarify any and all conditions imposed on or included in its responses and questions in this RFP. The Offeror further understands that it has an affirmative duty to inquire about and clarify any section of the RFP that the Offeror does not understand or that the Offeror believes may be susceptible to more than one interpretation.

12. SPECIAL PERMITS AND LICENSES:

The Offeror shall, at his own expense, procure all permits, certificates and license and shall give all notices and necessary reports required by law for the execution of the work.

13. LAWS TO BE OBSERVED:

a. The offeror accepts sole responsibility for compliance with applicable federal and local laws, codes, ordinances, and regulations which in any affect those engaged or employed in the work, or the material or equipment used in or upon the site, contemplated by this RFP. No place of misunderstanding or ignorance on the part of the Offeror of applicable laws, codes, ordinances, or regulations will in any way serve to modify any contract executed pursuant to this RFP.

b. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues. (Subsection 5253 of Title 5 Guam code Annotated)

- i. No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam code Annotated, or an offense as defined in Article 2 of

Chapter 28, title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam other than a public highway.

- ii. All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
- iii. Duties of the General Services Agency or Procurement Administrators. All contracts, bids or Request for Proposals shall state all the conditions in §5253(b).
- iv. Any contractor found in violations of §5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

c. Port Security Guidelines: Any Offeror performing work on PAG property shall be required to comply with any applicable law, regulation, or policy regarding Port security, including but not limited to 33 CFR 105 and the following conditions:

- i. Contractors and/or vendors authorized to conduct business within the controlled or restricted areas must pre-arrange their visits a minimum of twenty-four (24) hours in advance. Such notice shall indicate contractor/vendor company name, list of employees with either Social Security number or Driver's License number requesting entry, the time and date of their anticipated visit, and the nature of the business/work.
- ii. No personnel, visitors or other non-employees shall have access to restricted areas without Port Police clearance or escort (when required) consisting of a properly identified employee authorized access.
- iii. The PAG Police division currently issues identification cards to Port Authority employees, tenants, users and other persons authorized to enter

the Commercial Port compound. Temporary I. D.'s, is without a photo, however bears a control number and must be signed out to visitors requesting access in exchange for an acceptable valid photo I.D. The temporary I.D. card must be worn and visibly displayed on the exterior of the bearer's clothing. Lost or misplaced temporary I.D. cards must be reported immediately to Commercial Port Police Division. Failure to report and/or return the issued temporary I.D. card constitutes a security breach and shall disallow holder to enter the terminal compound for the entire contractual period.

- iv. Contractor must comply with the commercial Port's Insurance Policy (Policy Memorandum 97-001); submit listing and attach copies of registrations and proof of insurance of each company vehicle and/or equipment to be utilized and brought into the area. Third party contractual services shall be required to adhere to the same conditions as the primary contractor. If third party cannot fulfill the minimum insurance requirements the primary contractor shall be responsible to ensure coverage under their policy and show proof of coverage to Commercial Port Police prior to initiating performance.
- v. Upon clearance of company vehicle and/or equipment documents submission, temporary passes will be issued by the Commercial Port Police division. In instances where Contractor/Vendors are required to conduct business or perform work in any of the areas within the terminal compound on a "near daily" seven (7) consecutive days basis, a written notice of twenty-Four (24) hours advance notice is required.

d. Transportation Workers identification Credential (TWIC)

- i. TWIC is a common identification credential for all personnel requiring unescorted access to secure areas of Maritime Transportation Security Act or MTSA-regulated facilities and vessels, and all mariners holding U.S. Coast Guard issued credentials. Transportation Security Administration will issue workers a tamper resistant "Smart Card" containing the worker's biometric (fingerprint template) to allow for a positive link between the card itself and the individuals.
- ii. In accordance with a U.S. Coast Guard approved security plan, owners/operators define the areas of vessels or facilities that are "secure areas" and therefore require access control measures.
- iii. It will be the responsibility of the successful Offeror to comply with TWIC Program. For additional information, contact TSA's TWIC Program Help Desk at 1-866-DHS-TWIC (1-866-347-8924). You may also correspond by email at uscg-twic-helpdesk@uscg.mil . For specific questions regarding implementation for 105 or 106 facilities owners/operators/facility security officer/CSO's are encouraged to seek directly from the local Captain of the Port.

14. STATUS OF OFFEROR:

Offeror and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the PAG, and are not employees of either the Port or the government of Guam. Offeror and its officers, agents, servants and employees shall not accrue vacation or sick leave; participate in the government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to government of Guam employees. Offeror agrees that Offeror and its employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam code Annotated, Chapter 5, Article 11 and its associated rules and regulations). Nothing in any contract pursuant to this RFP or any action taken pursuant to this RFP shall be deemed or construed in any manner or for any purpose to evidence or establish as between Offeror and the PAG a relationship of partnership, agency, association, joint, venture or representative, not authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the PAG for the Offeror.

15. INSURANCE:

The successful Offeror shall procure and maintain at their own expense all necessary comprehensive insurance for their employees including but not limited to Worker's Compensation and General Liability Insurance required by the PAG.

16. OWNERS RIGHT TO REJECT PROPOSAL:

The PAG may make such investigation as deem necessary to determine the ability of the Offeror to perform the work and the Proposer/Consultant shall furnish to the PAG all such information and data for this purpose as the PAG may request. The PAG reserves the right to reject Offeror if the evidence submitted by, or investigation of such Offeror fails to satisfy the PAG that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated herein. Conditional proposals will not be accepted.

Minor irregularities in proposals that are immaterial or inconsequential in nature may be waived by the PAG whenever it is deemed in the best interest of the PAG.

17. CONFIDENTIAL OR PROPRIETARY INFORMATION:

Proposals of Offerors who are not awarded the contract shall not be opened to public inspection, but will be part of the official procurement record. After award, the proposal of the Offeror receiving a contract will become available for public inspection. If the Offeror selected for award has requested in writing the non-disclosure of trade secrets or other proprietary data so identified, the PAG shall examine the designated information to determine whether such information shall become proprietary. If the PAG and the Offeror are unable to agree as to the disclosure of certain portions of the Offeror's proposal, the PAG shall inform the Offeror in writing what portion of the proposal will be disclosed and that, unless the Offeror withdraws the proposal or protests under 5GCA

Article 9 (Legal and contractual Remedies) of the Procurement Act, the information may be so disclosed. [Refer to Title 2, Guam Administrative Regulations, Division 4, Section 3114(h)(2)]

18. ETHICAL STANDARD:

The Offeror 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 Guam's Procurement Code or Regulations pertaining to ethics in public contracting. Offeror represents that it will comply with ethical obligations under Guam Procurement Law. See 5GCA Sections 5601-5677.

19. PROHIBITION AGAINST GRATUITIES AND KICKBACKS:

The respondents represents that it has not violated, is not violating, and promises that it will not violate the prohibition against any kickbacks set forth in the Guam Procurement law. The prohibition is as follows: It is 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 program requirement or a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation of proposal therefore. Further, it shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or order.

20. APPLICABILITY OF GUAM PROCUREMENT LAW:

If any part of this RFP is contrary to the Guam Procurement law or contains ambiguous terms, then such portion of the RFP shall be interpreted or resolved in favor of or according to the provisions of the Guam Procurement Law.

END OF SPECIAL GENERAL PROVISIONS

ATTACHMENT 1
Scope of Services

SCOPE OF SERVICES

RISK MANAGEMENT CONSULTANT SERVICES

Description of Work Involved: A Preliminary Scope of Services describes the work to be accomplished. Upon final selection of the best qualified Offeror, the Scope of Services may be modified and refined during the fee negotiation.

1. Prepare a comprehensive claims management program for the Port. This program shall include the following:
 - a. Preparation of a database of past claims for 10 years,
 - b. Assist the Port in closing reserve accounts under prior Port insurance programs with insurance carriers,
 - c. Acting on behalf of the Port, if authorized by the Port, in any claims situations,
 - d. In the event of a loss or claim, advise the Port on the most cost-effective measures to reduce the net cost of such claims,
 - e. Recommend procedures for the investigation, reporting, and administration of claims,
 - f. Prepare monthly reports to Management regarding the status of all open claims.
2. Advise the Port of new options or funding techniques in insured or self-insured areas.
3. Assist the Port in renewing its insurance policies. This work shall include the following:
 - a. Identify risk exposures and update exposure data.
 - b. Compile underwriting data and prepare insurance specifications for bidding,
 - c. Assist in the evaluation of responses to Invitations To Bid and assist in negotiations with insurance carriers to determine the most competitive net costs of insurance and to determine whether the purchase of insurance is warranted.
 - d. Review insurance policies for compliance with the specifications and follow-up with the Port to resolve all discrepancies,
 - e. Prepare a detailed policy digest for Management.
4. Assist the Port in arranging Owner Controlled Insurance Programs (OCIP's) to support the Port Modernization program.
5. Advise and assist the Port when other consultant services are needed and prepare appropriate Scopes of Work for these services.
6. Review leases, contracts, and other documents for appropriate insurance clauses and/or indemnification language and make suitable recommendations for any changes.
7. Perform other administrative functions related to insurance and risk management as needed.

ATTACHMENT 2
Sample Contract

AGREEMENT
BETWEEN
JOSE D. LEON GUERRERO COMMERCIAL PORT
(PORT AUTHORITY OF GUAM)
AND
(Name of Firm)
RISK MANAGEMENT CONSULTANT SERVICES

THIS AGREEMENT is entered into by and between the JOSE D. LEON GUERRERO COMMERCIAL PORT (PORT AUTHORITY OF GUAM)(hereinafter referred to as the "Port"), a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 and. (hereinafter referred to as the "Consultant"), authorized and licensed to do business in Guam, whose address is _____.

WHEREAS, the Port issued a Request for Proposal ("RFP") seeking to retain a consultant to provide risk management consultant services for the Port;

WHEREAS, the Consultant responded to the RFP-014-00X through submitting a proposal ("Proposal") to provide services in accordance with the RFP, and was selected as the most qualified offeror;

WHEREAS, in submitting the Proposal, Consultant warrants and represents that it possesses the necessary knowledge, resources and experience to perform the work and services herein described professionally, skillfully and diligently; and

WHEREAS, the Port desires to retain the Consultant as an independent contractor on the terms and conditions set forth in this Agreement and Consultant has agreed to accept such retainer

WITNESSETH, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

I. Statement of Work to be Performed.

A. Scope of Work. The Consultant shall furnish technical services on the Port's risk management consistent, pursuant to and in accordance with the Scope of Services as identified in the RFP, Consultant's Proposal and with specifics agreed to by both parties. A copy of the RFP and Proposal inclusive of fee proposal are attached as Exhibits 1 and 2, and incorporated as part of this Agreement. Consultant shall provide status reports on the services in response to Task Orders, and other reports performed and required under this Agreement on a monthly basis. Consultant recognizes that failure to perform all services required under this Agreement constitutes a material breach of this Agreement.

B. Consultant Provisions of Resources. Consultant agrees to furnish all qualified personnel, materials and transportation to perform the consulting services provided for in this Agreement. Consultant represents that it and its employees possess the professional and technical expertise necessary to perform the services called for in this Agreement in a competent,

professional manner, in line with the services of a typical consultant engaged in the same and similar field as Consultant herein. The Port may, in its sole discretion and based upon availability, provide staff assistance to Consultant in furtherance of this Agreement. The Consultant shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. Other Work. The Port acknowledges and agrees that Consultant may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not conflict with or hinder the performance of services herein. In the event the Port discovers or determines that the Consultant is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Consultant must immediately cease performing those third party services upon being provided written notice by the Port and the Port may invoke any further available remedies under the terms of this Agreement. Consultant shall further advise the Port of any potential conflict of interest that it may have related to this Agreement.

D. Location of Services. Consultant may perform the services under this Agreement at any suitable location as approved by the Port.

II. Term of Agreement.

The contract period will be for one (1) year with the option to renew annually for four (4) additional years and not to exceed the maximum of five (5) years. The renewal will be subject to the written agreement of both parties if reasonable and justified and subject to price adjustment and availability of appropriated and/or budgeted funds. If no funds are appropriated and/or budgeted in the next fiscal year, the contract may be terminated upon giving of a minimum of thirty (30) days prior written notice to the beginning of the next fiscal year.

III. Compensation.

A. Remuneration. As remuneration to Consultant for the performance of its duties under this Agreement, the Port shall pay the following:

- i. Fees: For the initial term of the agreement, the Port shall compensate the consultant at the rate of _____ for work conducted in accordance with the terms of this Agreement, and prorated at _____. Payments shall be made in monthly installments subject to the provisions of Section III. This rate shall be inclusive of the cost for clerical, mailing, telephone, fax and data transmission.
- ii. Invoice: Consultant will provide an invoice by email to the Port on a monthly basis outlining a report of all Task Orders and projects performed.
- iii. Travel & Other Expenses: Port will reimburse Consultant for reasonable travel expenses undertaken pursuant to the Agreement. All travel shall be approved by the Port prior to the trip, and a breakdown of costs of travel, duration of trip, and amounts of related expenses must be provided to Port for approval prior to said trip. The actual direct expenses incurred associated with the services set forth in this Agreement, excluding any costs associated

with Special Assignments, is discussed in III. A. iv, below. Consultant will provide an invoice to the Port by email following each trip for reimbursement subject to pre-approval of travel costs and expenses prior to trip.

- iv. **Cost Sharing:** Wherever possible, any travel costs or per diem for two or more clients on a single trip will be prorated to each client. Consultant further is engaged by the Port Authority of Guam as a consultant, and it is the intention of the Port that all expenses relating to pre-approved travel to Guam pursuant to this Agreement be prorated between the Port and other clients.
- v. **Special Assignment:** In the event the consultant is requested to carry out special assignments or travel for the Port, the cost for such work will be estimated and subject to the prior approval of the Port. Additionally, any travel shall be subject to the Port's Travel Policy, currently in force.

B. **Payment Terms.** Payment of Consultant's invoices for fees and expenses shall be made by the Port by wire transfer (less bank fees) to the Consultant's designated bank account within thirty (30) days after receipt by the Port. Payment shall only become due upon the receipt and certification by the Port of Task Order documents and reports described in the RFP and upon satisfactory performance by Consultant of the services in compliance with the terms of this Agreement, and shall be payable within thirty (30) days. Upon written notification by the Port of unsatisfactory performance by Consultant, Consultant shall immediately remedy its performance. Failure to remedy said unsatisfactory performance may result in the Port taking action in accordance with Section IV of this Agreement.

C. **Expenses.** Consultant shall be responsible for all expenses incurred in the performance of services under this Agreement, with the exception of travel and related expenses discussed in Section III A.

D. **No Compensation Prior to Approval of Agreement.** The Port shall not be liable to Consultant for any services performed by Consultant prior to full execution of this Agreement by all parties, and Consultant expressly waives any and all claims for services performed in expectation of this Agreement prior to its full execution.

E. **Payment.** All rates and prices and payments to the Consultant shall be in the currency of the United States.

IV. Early Termination.

A. **By the Port.** The Port reserves the right to cancel or terminate this Agreement prior to its completion:

(i) **Termination without Cause:** The Port may terminate this Agreement, without cause, upon the delivery of written notice to the Consultant at least thirty (30) days prior to the intended date of termination;

(ii) **Termination in the Best Interest of the Government of Guam:** The Port may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to

the Consultant at least thirty (30) days prior to the intended date of termination.

(iii) Termination for Cause/Default: The Port shall notify Consultant in writing of deficiencies or default in the performance of its duties under this Agreement. The Consultant shall have ten (10) days, which period may be extended by the Port (said extension not to be unreasonably denied), to correct the deficiency or cure the default or to request, in writing, a hearing from the Port. The Port shall hear and act upon same within thirty (30) days from receipt of said request and shall notify the Consultant of said action. The action by the Port shall be either to confirm, in whole or in part, the specified deficiencies or default, or find that there are no deficiencies or default, or such action as deemed necessary in the judgment of the Port. Failure of Consultant to remedy said specified default in notice by the Port within ten (10) days of receipt of such notice of such action, or such time reasonably necessary to correct the deficiency and/or cure the default, shall result in the termination of this Agreement, and the Port may be relieved of any and all responsibilities and liabilities under the terms and provisions of this Agreement.

(iv) Effects and Responsibilities of Parties for Early Termination by the Port: In the event of an Early Termination without cause or for the best interests of Guam under paragraphs (i) and (ii) of this section, the Consultant agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event. Following an Early Termination under paragraphs (i) and (ii) by the Port, the Port shall pay the Consultant for all satisfactory services rendered up to that point. In the event of an Early Termination by reason of an event described in clause (iii), above, the Port shall not reimburse and pay Consultant for services performed. The Port reserves all rights at law and equity in the event of an early termination, including arising out of a default or for other causes.

B. By Consultant.

(i) Termination without Cause. Consultant reserves the right to terminate this Agreement prior to its completion, without cause, upon thirty (30) days written notice to the Port. Upon Consultant's termination of this Agreement without cause, the Consultant shall be entitled to payment for satisfactory services (as determined in the sole discretion of the Port) rendered up to the termination date and the Port shall have no other or further obligations to Consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

(ii) Termination for Cause: Consultant shall notify the Port in writing of deficiencies or default in the performance of the Port's duties under this Agreement. The Port shall have ten (10) days to correct the deficiency or cure the default, which period may be extended by Consultant (said extension not to be unreasonably denied). Upon Consultant's termination of this Agreement for cause, the Consultant shall be entitled to payment, in accordance with Section III of this Agreement, for satisfactory services rendered up to the termination date and the Port shall then have no obligations to Consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

C. Termination/Modification for Lack of Funds. The Port may terminate or modify this Agreement based upon a lack of funding. In such an event, the Port shall promptly provide notice to Consultant and within thirty (30) days of the notice, the Parties shall

renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to Section IV of this Agreement as applicable.

D. Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from the Port, the Consultant shall take timely, reasonable and necessary action to protect and preserve the property in the possession of Consultant in which the Port has an interest. Upon termination, either by Consultant or Port, all work-product arising out of this Agreement in the possession of Consultant shall immediately be returned to the Port.

E. Additional Provisions. In the event that either party effects an Early Termination, it is expressly provided that the Port may issue a new Request for Proposal with respect to such terminated services. This provision shall not be deemed an admission or waiver of any rights and defenses with respect to rights of either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

V. Contact Person.

The Consultant agrees that, during the term of this Agreement, it shall identify a primary and secondary contact person who is familiar with the services being performed hereunder and who shall be responsive to the questions and direction of the Port. The contact persons must be identified in writing within thirty (30) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person(s) designated by the Consultant under this Agreement.

The Port agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services to be performed hereunder and who shall be responsive to the questions of the Consultant and who shall arrange to make available such records and documents to the Consultant that are necessary for Consultant to conduct its work under this Agreement. The contact persons must be identified in writing within thirty (30) days after full execution of this Agreement by all parties.

VI. Confidentiality.

A. Information. The Consultant hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Consultant to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Consultant shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by the Port. All of the Information shall be returned promptly after use to the Port and all copies or derivations of the Information shall be physically and/or electronically destroyed. Consultant shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information.

The Consultant shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of the Port, and then only if the Consultant requires the third party(ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party(ies) only for purposes of enabling the Consultant to discharge its responsibilities under this Agreement.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the Consultant to liability, including all damages and injunctive relief.

VII. Conflicts of Interests/Ethics

A. The Consultant warrants and covenants that it has not violated and will not violate Guam's procurement law or regulations pertaining to ethics in public contracting.

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Consultant is a material breach of this Agreement and shall entitle the Port to immediately terminate this Agreement. Consultant agrees that in the event of a breach or violation of this Section, the Port shall have the right to terminate this or any other Agreement with the Consultant without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Consultant agrees that with respect to any subcontractor it engages to perform any work contemplated by this Agreement, that any Agreements it enters into with such subcontractor(s) will include provisions which parallel this Section VII and shall require any subcontractor to execute a statement of no conflict of interests to the Port.

D. Non-Brokerage: Notwithstanding the fact that the Consultant may be a duly licensed insurance broker, Consultant covenants that in the performance of service hereunder, it will not receive any brokerage commission or fees in respect to any insurance premiums for any insurance coverage procured for the Port.

VIII. Waiver.

No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

IX. Severability.

If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid,

inoperative or unenforceable provision had not been included in the Agreement.

X. Survival of Warranties.

All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion of this Agreement and shall not merge in the performance of any obligation by any party hereto.

XI. Fees and Expenses.

Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of this Agreement.

XII. Notices.

All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language and in writing. All notices required to be given under this Agreement by either party to the other may be affected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO THE PORT:

JOSE D. LEON GUERRERO COMMERCIAL PORT

Attention:

Joanne M. S. Brown

General Manager

1026 Cabras Highway, Suite 201

Piti, Guam 96925

A copy shall be provided to the Port's Legal Counsel of Record.

TO CONSULTANT: (Consultant's address)

XIII. Assignment/Subcontractors.

It is expressly acknowledged that Consultant is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Consultant utilizes one or more subcontractors for such purpose. The right and interest of Consultant under this Agreement (including, but not limited to, Consultant's right to or interest in any part or all of payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Consultant, Consultant agrees that any subcontractors retained by Consultant or assignees shall be subject to all provisions of this Agreement.

XIV. Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

XV. Scope of Agreement.

This Agreement, RFP, Proposal, and Cost Proposal collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Consultant and the Port each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

In the event of a contradiction between the provisions of any one or more of the documents collectively comprising this Agreement, RFP, Proposal, and Cost Proposal, the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time); and, third, to the provisions of the Proposal and Cost Proposal (as they may be clarified or amended from time to time).

XVI. Captions.

All Section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of the Agreement.

XVII. Counterparts.

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

XVIII. Governing Law and Forum Selection.

Except to the extent U.S. federal law is applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

XIX. Compliance with Laws.

A. In General. The Consultant shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Consultant represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Consultant agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in

any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

XX. Retention and Access to Records and Other Review.

The Consultant, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the Agreement, for inspection by the Port. The Port agrees to comply with reasonable requests of Consultant to provide access to all documents and Port property reasonably necessary to the performance of Consultant's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

XXI. Liability.

A. Indemnification. Consultant shall indemnify and hold harmless the Port and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from the negligent or wrongful act or omission of the Consultant or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance under this Agreement. . The indemnification shall obligate Consultant to defend at its own expense or to provide for such defense, at Port's option, any and all claims, actions and suits brought against Port, which may result from Consultant's performance or nonperformance of services pursuant to the Agreement.

B. The Port not Liable. The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Consultant and/or the Consultant's officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of the Port. In addition, no Board member, officer, agent, or employee of the Port shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the Port assumes no liability for any accident or injury that may occur to Consultant's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

XXII. Delays, Extensions and Suspensions.

The Port unilaterally may order the Consultant in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Port. The Consultant agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or suspension. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Consultant's services will be granted only for excusable delays that arise from causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government of Guam or the Government of the United States in either its sovereign or contractual capacity, acts of another contractor in the performance of an

agreement with the Government of Guam, fires, floods, typhoons, earthquakes, epidemics, quarantine restrictions, strikes, freight, or embargoes.

XXIII. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.

The Port shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Consultant. The Port shall have the power to make changes in the Agreement as a result of changes in law and to impose new rules and regulations on the Consultant under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The Port shall give the Consultant notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Consultant. In the event of any future change in federal or Guam laws, the Port materially alters the obligations of the Consultant, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations for the Consultant, then the Consultant or the Port shall be entitled to an adjustment in the rates and charges established under the Agreement. Consultant shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. The Port and the Consultant agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the Port and the Consultant shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Consultant directly and demonstrably due to any modification in the Agreement under this clause.

XXIV. Independent Consultant and its Employees.

A. Status of Consultant. The Consultant and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the Port, and are not employees of either the Port or the Government of Guam. The Consultant and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees as a result of this Agreement. Consultant agrees that Consultant and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Consultant and the Port a relationship of partnership, agency, association, joint, venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the Port for the Consultant.

B. Liability. The Consultant assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for

social security and withholding taxes and for contributions to employment compensation funds, or any other payments required by the governments of the U.S. and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the compensation paid to Consultant for services performed under this Agreement. Furthermore, Consultant shall maintain at the Consultant's expense all necessary insurance for its employees including but not limited to Worker's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Consultant agrees to hold harmless and indemnify the Port, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Consultant or Consultant's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Consultant's failure to comply with terms of this subparagraph B.

XXV. Disclosure.

The Consultant hereby represents that it has disclosed to the Port all matters regarding Consultant which if not disclosed to the Port would materially affect the Port's decision to enter into this Agreement with Consultant

XXVI. Disposition of Property and Materials; Intellectual Property Rights.

A. All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this Agreement shall be and remain the property of the Port, regardless of whether Consultant is in possession of such Work Product, and may be used by the Port without permission from Consultant and without any additional costs to the Port.

B. All Work Products, including any and all intellectual property rights in said Work Product, arising out of the Agreement shall be the sole and exclusive property of the Port. Consultant explicitly acknowledges that the Port possesses exclusive rights to the Work Product arising out of this Agreement. Consultant shall not use or permit others to use in any way or form the Work Product without the express written consent of the Port.

XXVII. Attachments, Exhibits, Schedules, and Entire Agreement.

The Agreement, including its Attachments, Exhibits and Schedules, constitute the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

XXVIII. Computation of Time.

Whenever this Agreement provides for a time period of ten (10) days or less days, weekends and Government of Guam holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam

holidays are to be included in the computation.

XXIX. Partial Invalidity. If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue to be in full force and effect.

XXX. Amendments/Modifications. Any amendment or modification to this Agreement will be effective only if it is in writing and signed by both parties.

*****SIGNATURES WILL APPEAR ON THE NEXT PAGE *****

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year appearing opposite their respective signatures.

**RISK MANAGEMENT
CONSULTANT**

**JOSE D. LEON GUERRERO
COMMERCIAL PORT OF GUAM**

President

JOANNE M. S. BROWN
General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

Phillips and Bordallo
Legal Counsel

MIAMI ULBENARIO
Certifying Officer
Jose D. Leon Guerrero Commercial Port

Date: _____

Date: _____

REQUIRED FORMS



REQUEST FOR PROPOSALS (RFP) NO. PAG-014-005

PROJECT DESCRIPTION:

RISK MANAGEMENT CONSULTANT SERVICES

SPECIAL REMINDER TO PROSPECTIVE OFFERORS

Proposers are reminded to read the Request For Proposal and General Terms and Condition attached to the RFP to ascertain that all of the following requirements checked below are submitted in the proposal envelope, **one (1) original, five (5) copies, one (1) CD containing electronic file copy**, at the date and time for it is due.

- (x) STATEMENT OF QUALIFICATIONS (See Section XII B)
- (x) AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS (AG Form 002)
- (x) AFFIDAVIT RE NON-COLLUSION (AG Form 003)
- (x) AFFIDAVIT RE NO GRATUITIES OR KICKBACKS (AG Form 004)
- (x) AFFIDAVIT RE ETHICAL STANDARDS (AG Form 005)
- (x) DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (AG Form 006)
- (x) AFFIDAVIT RE CONTINGENT FEES (AG Form 007)
- (x) OTHER REQUIREMENTS: Valid Copy of Business License.

This reminder must be signed and returned in the PROPOSAL envelope together with the proposal. **Failure to comply with the above requirements will mean a disqualification and rejection of the proposal.**

On this ____ day of _____, 20____, I, _____, authorized representative of _____ acknowledge receipt of this special reminder to prospective offeror for the above referenced RFP and hereby attest that I have read and understand its intent and implications.

Signature of Authorized Representative

THIS REMINDER FORM MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL.

AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS

CITY OF _____)
) SS.
ISLAND OF GUAM)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

☐ The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

☐ The offeror is a corporation, partnership, joint venture, or association known as _____ *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

Signature of one of the following:

Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me
this ____ day of _____, 201__.

NOTARY PUBLIC
My commission expires: _____

AFFIDAVIT RE NON-COLLUSION

CITY OF _____)
) SS.
ISLAND OF GUAM)

_____ [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering company or individual is *[state name of company]* _____.

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other offeror or person, to put in a sham proposal or to refrain from making an offer. The offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of offeror or of any other offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other offeror, or to secure any advantage against the government of Guam or any other offeror, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126(b).

3. I make this statement on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:

Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this _____ day of _____, 201__.

NOTARY PUBLIC
My commission expires _____,

AFFIDAVIT RE GRATUITIES OR KICKBACKS

CITY OF _____)
) ss.
ISLAND OF GUAM)

_____[*state name of affiant signing below*], being
first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [*state name of offeror company*]
_____. Affiant is _____ [*state one
of the following: the offeror, a partner of the offeror, an officer of the offeror*] making the foregoing
identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,
representatives, agents, subcontractors, or employees have violated, are violating the prohibition against
gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of
offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 §
11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,
representatives, agents, subcontractors, or employees have offered, given or agreed to give, any
government of Guam employee or former government employee, any payment, gift, kickback, gratuity or
offer of employment in connection with the offeror's proposal.

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of
the offeror's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:

Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this _____ day of _____, 200__.

NOTARY PUBLIC

My commission expires _____, _____.

AFFIDAVIT RE ETHICAL STANDARDS

CITY OF _____)
) ss.
ISLAND OF GUAM)

_____ [state name of affiant signing below], being first
duly sworn, deposes and says that:

The affiant is _____ [state one of the following: *the offeror, a partner of the offeror, an officer of the offeror*] making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees of offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103(b).

Signature of one of the following:

Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me
this _____ day of _____, 201__.

NOTARY PUBLIC

My commission expires _____, _____.

DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

CITY OF _____)
) ss.
ISLAND OF GUAM)

Procurement No.: _____

Name of Offeror Company: _____

I, _____ hereby **certify under penalty of perjury**:

- (1) That I am _____ [*please select one: the offeror, a partner of the offeror, an officer of the offeror*] making the bid or proposal in the foregoing identified procurement;
- (2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

- (3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;
- (4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [*INSTRUCTIONS - Please attach!*]

Signature

CITY OF _____)
) SS.
ISLAND OF GUAM)

1. The name of the offering company or individual is *[state name of company]*

3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 11108(h).

Signature of one of the following:

Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

this _____ day of _____, 201_____.

My commission expires _____, _____.