



**REQUEST FOR PROPOSAL  
RFP NO: PAG-020-004**

**BANKING SERVICES**

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

**RORY J. RESPICIO  
General Manager**

**March 2020**



**PORT OF GUAM**  
ATURIDAT / 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  
Website: [www.portguam.com](http://www.portguam.com)



Lourdes A. Leon Guerrero  
Governor of Guam  
Joshua F. Tenorio  
Lieutenant Governor

**REQUEST FOR PROPOSAL  
RFP NO. PAG -020-004**

**BANKING 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 banking institutions to provide banking 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](http://www.portguam.com).

**Deadline for Request for Proposal (RFP) is Monday April 20, 2020 no later than 4:00pm. Chamorro Standard Time (Guam Time).** All proposals must be submitted and addressed to the attention of RORY J. RESPICIO, PAG General Manager.

**Deadline for Questions and Concerns is Friday April 3, 2020 no later than 4:00 p.m. All questions should be submitted to General Manager Rory J. Respicio at [rjrespicio@portofguam.com](mailto:rjrespicio@portofguam.com). Attn: Steven P. Muna at [spmuna@portofguam.com](mailto:spmuna@portofguam.com).** Except to the above persons named, direct or indirect contact with Port Management, Staff, Board Members, or any person participating in the selection process is prohibited.

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).

For additional information, contact Mr. Steven P. Muna, Contract Management Administrator at 477-5931-5, ext. 269 or by email at [spmuna@portofguam.com](mailto:spmuna@portofguam.com).

**RORY J RESPICIO  
General Manager**

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

**PORT AUTHORITY OF GUAM (PAG)**

**Request for Proposal: RFP NO. PAG-020-004  
BANKING SERVICES**

**TABLE OF CONTENTS**

RFP Announcement  
Basic Information  
General Terms and Conditions  
Special General Provisions

**ATTACHMENTS**

Attachment No. 1	Scope of Work
Attachment No. 2	Sample Contract
Attachment No. 3	Required Forms

- Special Reminder to Prospective Offerors
- Affidavit Disclosure Ownership and Commission, Form 002
- Affidavit re Non-Collusion, Form 003
- Affidavit Non-Gratuity/Kickbacks, Form 004
- Affidavit re Ethical Standards, Form 005
- Declaration re Compliance with U.S. DOL Wage Determination, Form 006
- Affidavit re Contingent Fees, Form 007
- Sex Offender Provision

**REQUEST FOR PROPOSAL**  
**RFP No: PAG-020-004 BANKING SERVICES**

**BASIC INFORMATION**

**I. BACKGROUND OVERVIEW:**

The Jose D. Leon Guerrero Commercial Port ("Port") a public corporation and autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified and interested banking institution to submit formal proposal to provide banking services for the Port Authority of Guam.

**II. INTRODUCTION**

- A. The Jose D. Leon Guerrero Commercial Port ("Port") will require Offeror(s) who may be supported by a sub-consultant to be ultimately responsible for services provided as part of the Proposal of Offeror(s).
- B. 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](http://www.guamcourts.org/CompilerofLaws/GCA/Title5.html) and Guam Procurement Regulations is [www.guamcourts.org/CompilerofLaws/GAR/02gar.html](http://www.guamcourts.org/CompilerofLaws/GAR/02gar.html).
- C. Offerors are expected to have and shall have sole responsibility for working knowledge of these laws and regulations.
- D. 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 to the General Manager of the Port Authority of Guam:

Mr. Rory J. Respicio  
General Manager  
Port Authority of Guam  
Jose D. Leon Guerrero Commercial Port  
1026 Cabras Hwy, Ste. 201  
Piti, Guam 96925  
Email: [rjrespicio@portofguam.com](mailto:rjrespicio@portofguam.com)

**Attn:** Mr. Steven P. Muna  
Contract Management Administrator  
Procurement Division  
Jose D. Leon Guerrero Commercial Port  
Tel: (671) 477-5391/5 Ext. 302 or 269  
Email: [spmuna@portofguam.com](mailto:spmuna@portofguam.com)

**Address:** Jose D. Leon Guerrero Commercial Port  
1026 Cabras Highway, Suite 201  
Piti, Guam 9692525  
Tel: (671) 477-5931/5 Ext. 302 or 269  
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.**

**III. DESCRIPTION OF THE WORK:**

A Preliminary Scope of Work, describing the work to be performed is detailed in **Attachment No. 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:**

The term of the Banking Services Agreement ("Agreement") will be for five (5) years and subject to an annual review of costs and pricing and will be executed with a contract.

**V. TYPE OF CONTRACT:**

A Service Agreement will be consummated between the Banker 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) selected must 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 2<sup>nd</sup> floor of the Port Authority of Guam (PAG) Administration Building, and shall be to the attention of the General Manager, **no later than 4:00 pm, Monday, April 20, 2020 Chamorro Standard Time (Guam Time)**. No proposals shall be received after such date and time. Additionally, proposals transmitted via facsimile or email will not be accepted.

Offeror(s) must provide one (1) original, three (3) copies and one (1) CD or USB containing electronic file copy in PDF format of the proposal. All items should be sealed in one package and inscribed on the outside, the name of the Offeror, address, and the name of the project title for which the proposal is submitted and shall be submitted no later than the deadline specified above.

**VII. REQUEST QUESTIONS AND CONCERNS:**

**All Requests for questions, concerns or clarifications must be submitted no later than 4:00 pm on Friday April 3, 2020 Chamorro Standard Time (Guam Time) Day, date.** Questions and concerns shall reference the RFP Number, Project Title and addressed to the Port Authority of Guam:

**To:** General Manager  
Mr. Rory J. Respicio  
Email: [rjrespicio@portofguam.com](mailto:rjrespicio@portofguam.com)

**Attn:** Contract Management Administrator  
Mr. Steven P. Muna  
Email: [spmuna@portofguam.com](mailto:spmuna@portofguam.com)

**VIII. LATE PROPOSALS:**

Proposals submitted after the above submission deadline will **NOT** be accepted.

**IX. OPENING OF PROPOSALS:**

Proposals and modifications shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more procurement officials or designees of the Port. A register of Proposals shall be established which shall include all proposals, the name of each Offeror,

the number of modifications received, if any, and a description sufficient to identify the services offered. The register of Proposals shall be opened for public inspection only after the contract has been awarded. Proposals of Offerors who are not awarded the contract shall not be opened for public inspection.

**X. BUSINESS LICENSE:**

Firm/Offeror(s) must be fully licensed to do business in Guam prior to the execution of any contract resulting from this RFP.

**XI. 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.

**XII. 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 stationery, 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 the project title, Banking Services, the 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 No. 1. 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 five (5) 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 No. 1.
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. A listing and description of other contracts under which services similar in scope, were performed or undertaken within the past five (5) years.

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 detailed plan specifying how the scope of work/services will be accomplished to include time and personnel resources.
5. A plan giving as much detail as is practical explaining how the services will be provided, including but not limited to, tasks or activities, deliverables, timeline, etc.
6. A statement that the Offeror has established and implemented an Affirmative Action Plan.
7. A letter affirming the existence of a Drug Free Workplace Program and Policy at the firm.
8. 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.
9. All items submitted in response to the RFP will become the property of the Port and none will be returned.

### **XIII. 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. These discussions, 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 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.

3. **Mandatory features:**

- a. Delivery of a Proposal with a Technical portion/volume;

- b. The Proposal and transmittal letter are signed by an individual authorized to bind the company or firm;
- c. The Proposal is valid for ninety (90) days from the deadline or close of the RFP;
- d. The minimum format and content required by the RFP is presented in the Proposal;
- e. Compliance with the Required Forms identified in Section XVI; and
- f. Contract Terms and Conditions described in the RFP have been agreed to.

Failure to comply with any of the aforementioned mandatory features or requirements shall result in the disqualification or rejection of the submitted Proposal. Minor irregularities in the Proposals that are immaterial or inconsequential in nature may be waived by the Committee whenever it is deemed in the best interest of the Commercial Port.

#### **XIV. EVALUATION CRITERIA:**

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

##### **A. Evaluation and Selection Committee**

All Proposals received by the closing deadline will be evaluated by an Evaluation and Selection Committee ("Committee"), comprised of Commercial Port employees selected by the Commercial Port's General Manager based on possessing the necessary skills and or experience for such an undertaking and as such with the guidance of the Procurement Official(s).

##### **B. Qualifying Proposals**

1. The Procurement Official(s) and the Committee will first review each proposal for compliance with required RFP mandatory features. Each RFP's mandatory feature must be addressed and agreed to by the Offeror.
2. The mandatory features are:
  - a. Delivery of one (1) original plus three (3) copies and a CD or USB (containing an electronic copy of the proposal in PDF format) of the Proposal;
  - b. The Proposal and transmittal letter of interest are signed by an individual authorized to bind the company or firm;
  - c. The Proposal is valid for 90 days from the deadline or close of the RFP;
  - d. The minimum format and content required by the RFP is presented in the Proposal;
  - e. Compliance with Disclosure of Major Shareholders statutory provision, Non-Collusion, Non-Gratuity, Ethical Standards statutory requirements and Good Standing Affidavit, Wage Determination and Restriction Against Sex Offenders;
  - f. All Terms and Conditions described in the RFP have been agreed to.

3. Failure to comply with any of the aforementioned mandatory features or requirements shall result in the disqualification or rejection of the submitted Proposal. Minor irregularities in Proposals that are immaterial or inconsequential in nature may be waived by the Procurement Official and or its Designee, whenever it is deemed in the best interest of the Commercial Port.

**C. Technical Evaluation of Proposals**

1. All Proposals found to be in compliance with the mandatory features or requirements of this RFP will be evaluated based on the technical merits of the Offeror's Proposal.
2. The evaluation factors or criteria that will be used by the Evaluation and Selection Committee for the technical evaluation of the proposals are listed below.
3. Each Proposal shall be evaluated on the following evaluation factors using scale of one (1) to one hundred (100) points per evaluator.
  - a) Ability to advise and manage investments of available funds with approved accounts of the Authority. **(10 Points)**
  - b) Ability to provide Cash Management Services utilizing controlled disbursements, presentment reporting and a sweep account. **(25 Points)**
  - c) Ability to manage a sweep account in order to maximize the Authority's investment returns. **(30 Points)**
  - d) Ability to provide electronic funds transfer for transfer between the Authority's accounts, payments to vendors, payments to the Authority's employees, funds transfer to other government entities with required audit trails. **(10 Points)**
  - e) Ability to establish structure account such that cash is automatically transferred to avoid overdraft in accounts. **(5 Points)**
  - f) Ability to utilize EDI to receive customer payments and/or provide automated debits to the Authority's accounts for vendors and the ability to use ACH capabilities for tax payments, and other liabilities. **(5 Points)**
  - g) Ability to provide the Authority's employees with statements and financial information. **(5 Points)**
  - h) Ability to assign responsible management to manage accounts for the Jose D. Leon Guerrero Commercial Port of Guam. **(5 Points)**
  - i) Ability to correct any errors in a timely and responsive manner for all accounts. **(5 Points)**
4. During the technical evaluation phase, the Procurement Officer or the designee heading the Committee reserves the right to obtain clarification with Offeror(s) of pertinent items in their proposal. These discussions, if any, will be in accordance with Guam Procurement Laws and General Services Agency Procurement Regulations.

**D. Selection of Best Qualified Offeror and Proposal**

1. After the Technical Evaluation, the Procurement Officer and or the Designee will assign a final score to each Proposal from each Committee Member, to which, establishing a ranking of the acceptable Offeror's deemed to be the best qualified to provide the required service, from highest to the lowest score.
2. An Offeror who is deemed to be the highest and best qualified will be notified to submit its Cost Proposal portion/volume and will be distributed to the Committee by the Procurement Officer or Designee following the completion of the technical evaluation.
3. The Cost Proposal portion/volume of the Offeror who obtained the highest score or was ranked highest as the best qualified Offeror will be opened and the Designee heading the Committee and the Committee will begin negotiations with that best qualified Offeror. If no agreement is reached with the Offeror with the highest score or ranked highest, the Procurement Officer or Designee may terminate negotiations. The Commercial Port may then proceed to the next highest score to submit its Cost Proposal and commence negotiation with that next most qualified Offeror.
4. Once the Commercial Port decides to negotiate with the next most qualified Offeror, the previous Offeror will not be considered for negotiations again.

**E. Award**

The Commercial Port shall negotiate and execute a contract with the best qualified Offeror for the required services at compensation determined in writing to be fair and reasonable, which can be sufficiently evidenced by virtue of the executed itself. Award, if any, resulting from this RFP are subject to appropriate Commercial Port approvals. The signature of the Commercial Port's General Manager or his designated representative is the only signature that will bind the Commercial Port. The Contract shall also stipulate the commencement date of the services.

**XV. 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.

**XVI. 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.

1. Affidavit Disclosing Ownership and Commissions, **AG-Form 2**
2. Affidavit re Non-Collusion, **AG-Form 3**
3. Affidavit re No Gratuities or Kickbacks, **AG-Form 4**
4. Affidavit re Ethical Standards, **AG-Form 5**
5. Declaration re Compliance with U.S. DOL Wage Determination, **AG-Form 6**
6. Affidavit re Contingent Fees, **AG-Form 7**
7. Restriction against Sex Offenders Employed by Service Providers of Government of Guam from Working on Government Property

**\*\*\*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](http://www.guamcourts.org/CompilerofLaws/GCA/Title.html)  
[www.guamcourts.org/CompilerofLaws/GAR/\)/@gar.html](http://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 best 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 bona fide 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:**

In compliance with the 14<sup>th</sup> Amendment to the Constitution, Section 5 (Bill of Rights) and 9(a) (Merit System), and federal laws; Title VI and VII of the Civil Rights Act; the Civil Rights Act of 1991; Title I of the American Disabilities Act; the Equal Pay Act; the Age Discrimination in Employment Act; Section 504 of the Vocational Rehabilitation Act; Title IX of the Education Amendments of 1972; other pertinent federal laws and Guam laws; Title 4 of the Guam Code Annotated; Title 17, Chapter 2 of the Guam Code Annotated; Public law 14-28, Section 5; Public Law 15-17; Public Law 28-68; Public law 28-112 and other pertinent laws, it is the intent of the Government of Guam, hereinafter the Government:

- A. To provide equal employment opportunity for all applicants and employees to compete and be considered for jobs on the basis of merit and ability to perform, and to prohibit discrimination in any aspect, term, condition or privilege of employment on the basis of race, religion, color, sex, including sexual harassment and orientation, national origin, age, physical or mental disability, marital status, or political affiliation and retaliation. \*Such discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration is prohibited.

- 
- *Except where specific factors legally constitute a bona fide occupational qualification or in the case of specifically funded programs to facilitate employment of disadvantaged persons, but only with the prior approval of the Equal Opportunity Administrator.*

- B. To carry out all government programs and activities in compliance with applicable Federal and Territorial laws and in such a manner that no person shall, on a basis of race, religion, color, sex, including sexual harassment and orientation, national origin, age, physical or mental disability, marital status, or political affiliation and retaliation be excluded from participation in, be denied the benefits of, or be subjected to discrimination with respect to any program or activities.

**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 omissions other changes in a proposal must be explained or noted over by 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. Scope of Service and Contract may be modified to enhance the quality of services provided during cost 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/her 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 any/all 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/Consultants 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/consultant 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/Consultants 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 the 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/Consultant 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/Consultant/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 as defined in the 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 individual.

- 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](mailto: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 represent 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**

The Scope of Services defines the specific criteria that all proposals submitted shall address. The Offeror responses to these specific criteria shall be evaluated based on assigned weights as show in the evaluation worksheet. The Offeror shall provide or conform to the following:

**1. Remittance Accounts.**

An account established by the Jose D. Leon Guerrero Commercial Port of Guam to accommodate payment by the Authority's customers that are not received by the Authority.

**2. Depository Accounts.**

This is an account set up in which money to be received by the Authority is deposited.

**3. Disbursement/Transaction Accounts.**

These accounts are set up as a controlling feature in conjunction with presentment reporting. The Jose D. Leon Guerrero Commercial Port will utilize a minimum of three (3) disbursement/transaction accounts;

- a) The **General Account** will be used as the primary account for the Authority's disbursement
- b) The **Payroll Account** will be used for disbursements to the Authority's employees. (This account is optional)
- c) A **Special Purpose Account** will be used as a depository and disbursement account for federal for local grant related items. Other Accounts will be established as circumstances warrant.

**4. Presentment Reporting.**

A report listing what checks presented for payment will clear the bank that day.

**5. A Sweep Account.**

The sweep account is an investment option for the Authority. Excess cash balances from selected the Jose D. Leon Guerrero Commercial Port accounts will be transferred to his sweep account on a regular basis to increase the rate of return on the Authority's funds. The Offeror shall provide the option for the Authority to automatically transfer cash on a daily basis to a sweep account for the purpose of eliminating any overdraft balances in the disbursement accounts.

In addition, the Offeror shall advise the Authority as to the appropriate management of excess funds within the accounts as approved by the General Manager, Controller or designee to maximize investment returns.

**6. Structure of Accounts.**

The Offeror shall establish the following account structure:

- a) Receipts Concentration Account, made up of:

- Master Depository Account - Primary Account
- Branch Depository Account - Subsidiary Account
- Branch Remittance account - Subsidiary Account

b) General Disbursement Concentration Account, made up of:

- General Account - Primary Account
- Payroll account - Subsidiary Account]

The Offeror shall:

- Process collections through forms approved by the Jose D. Leon Guerrero Commercial Port;
- Provide account maintenance and reports for all deposits and collections processed by the bank for all the Authority's accounts.

## **7. Electronic Transactions and Wire Transfers.**

The Offeror shall accept electronic deposits into a primary account that is either a depository or remittance account, and transmit electronic disbursements from a primary account for the following purposes:

- Funds transfer through the automated clearinghouse (ACH) system for tax payments, and other liabilities, as well as to receive payments from customers;
- Funds transfer between the Authority's accounts;
- Payments to vendors;
- Payments to Jose D. Leon Guerrero's employees;
- Funds transfer to other government entities with required corresponding audit trails. The Offeror shall execute wire transfer only through transaction accounts.

## **8. Returned Items.**

Jose D. Leon Guerrero Commercial Port will accept all returned items that are deposited by or on behalf of the Authority. Jose D. Leon Guerrero Commercial Port may request of a check or replacement with another check as management directs or circumstances warrant such actions.

## **9. Overdraft Policy.**

The Offeror shall, to the greatest extent possible, work with the Authority to avoid any fees for daylight overdraft nor withhold the transfer of funds for payment of Authority checks due to inadvertent overdraft.

## **10. Funds Availability.**

The Offeror shall, to the greatest extent possible, make immediately available money deposited on behalf of the Authority or deposited by the Authority.

**11. Coin, Currency, and Deposit Bags.**

The Offeror shall provide, as needed, locking cash and coin bags used by the Authority.

**12. Paid Interest on Excess Balances.**

The Offeror shall pay interest on a monthly basis on excess balances available after deductions of float and/or reserves from the Authority accounts. The Offeror shall disclose the monthly interest paid on the balances in the account analysis statement.

**13. Bank Statements, Transmittals and Reporting Requirements**

a) The Offeror shall compile and deliver on a daily basis to the General Accounting Section of the Authority statements of all cash accounts, to include:

1. Deposit Slip Advices
2. Remittance Advices
3. Returned Item Advices
4. Debit Advices
5. Credit Advices

b) The Offeror shall compile and deliver on a weekly basis to the General Accounting Section of the Authority statements of all cash accounts, to include:

- 1) Debit Advices
- 2) Credit Advices
- 3) Refund Items

c) The Offeror shall compile and deliver on a monthly basis to the General Accounting Section of the Authority statements of all cash accounts, to include:

1. All requirements defined as daily or weekly, or not otherwise defined, shall also be made at month end.
2. Investment schedules.

d) The Offeror shall:

1. Compile and make available daily statements and/or inclusions by 11:00 a.m. the next government working day.
2. Compile and make available weekly and Monthly statements and or inclusions by 11:00 a.m. on the third government working day following the end of the week or month.

**14. Delivery Location.**

For these accounts, the Bank shall be required to deliver the statements and included items to the following:

**Financial Affairs Controller, Finance Division**

**2nd Floor, Suite 201**

**Jose D. Leon Guerrero Commercial Port Administration Building,**

**Cabras Island, Piti, Guam 96925**

**Telephone: 477-5931-5 Ext. 323**

**Facsimile: 477-2689**

## **15. Electronic Reporting**

- a) The Offeror shall generate and deliver on-line, on a daily basis, all checks cashed from all of the Authority's accounts. At a minimum, this information shall include:

1. Account Balance
2. Check Number
3. Amount of Check
4. Date cashed

The format required may be subject to change based on manual agreement.

- b) The Offeror shall provide cash balance reporting services on a daily basis. The preferred method of delivery is on-line reporting with the ability to print information from the reporting system at a local or remote location. The alternate method of delivery is through facsimile, in a format developed by the Offeror and approved by the Authority.
- c) The Offeror shall generate and deliver on-line, on a monthly basis, all bank statements and inclusions for all of the Authority's accounts. At a minimum, this information shall include:
1. All Bank Statements
  2. Cancelled Checks

## **16. Time Limit for Honoring Checks.**

Checks honored by any bank on or after the void date will not be charged to the account that it was drawn. Checks honored by any bank before the void date stated on the face of the check can be properly charged to the account in which it was drawn.

- a) Time Limit:
1. General Checks - Void six (6) months from date of issuance.
  2. Payroll Checks - Void six (6) months from date of issuance.
  3. Special Purpose Checks - Void six (6) months from date of issuance
- b) The Authority shall return to the Offeror all void checks honored or cashed in error by the Offeror for a credit to the account from which they were drawn.
- c) The Offeror shall indemnify and hold harmless the Jose D. Leon Guerrero Commercial Port from any void checks that are honored or cashed by the Offeror.

## **17. Stop Payment Orders and Revocation Policy.**

The Offeror shall provide an electronic means to the Authority to deliver stop payments orders. In the event that electronic stop payment means is not accessible, then facsimile notice of stop payment orders and stop payment order revocations shall be used. The Offeror's standard stop payment order format will be utilized. The stop payment order expires six (6) months after issuance of the stop payment order. The Offeror shall provide two (2) separate monthly consolidated reports of all stop payment order and stop payment revocations that are outstanding at the end of the previous month for all disbursement accounts. The report shall be in a format developed by the bank and approved by the

Authority, and include the following information:

- a) Account Number
- b) Date the stop payment order or revocation of such was placed
- c) Check Number
- d) Check Date
- e) Check Amount
- f) Payee Name
- g) Reason for Stop Payment

**18. Forgery Endorsement Charge backs.**

The Offeror shall respond to the Authority's claim for forgeries, and following receipt of forgery affidavit and copy of the forged check remit payment by credit advice to the Authority within the following time frames:

- a) The Offeror's client account: Within three (3) banking days.
- b) Presenting bank (other than Offeror) located in Guam: Within seven (7) banking days.
- c) Presenting bank located outside of Guam: Within thirty (30) calendar days.

**19. Deposit Slip Stock.**

The Offeror shall provide deposit slip stock for the following accounts:

- a) Depository Account
- b) Special Purpose Account

**20. Minimum Expectations**

- a) The minimum expectations for General Checking and Payroll Accounts:
  - 1. Fast and accurate posting of cash receipts to account;
  - 2. Accurate debits to account with daily presentment reporting;
  - 3. Accurate bank statements and timely (2 weeks) reversal of bank errors if any;
  - 4. Weekly bank statements or statements on demand;
  - 5. Stop payment features;
  - 6. Notification if account balance approaches a predetermined limit
  - 7. The ability to access on-line information regarding funds availability.
- b) Minimum expectation for Electronic Funds Transfer:
  - 1. Elimination of paper checks but an audit trail provided;
  - 2. Use of electronic funds transfer information to accurately update accounts payable and accounts receivable subsidiary ledgers.
- c) Minimum expectation for Direct Deposit Services for Payroll:
  - 1. That the net pay for each of the Authority's employee is credited to their respective accounts and made available by 1300 hours on the designated payday.

**21. Other Banking Services**

- a) Assign responsible personnel to manage banking services for the Jose D. Leon

Guerrero Commercial Port of Guam;

- b) Provide modem facilities, security measures and data recovery capabilities. (Site visits by authorized personnel of the Authority will be required);
- c) Provide the Authority's employees financial information or programs for the employees. Applicable disclosure statements shall be provided in any presentation submitted;
- d) Provide credit cards facilities to receive customer payments utilizing the Authority's Point of Sale Terminal or other alternative means;
- e) Provide credit cards upon request;

**\*\*\* End of Scope of Work \*\*\***

## **ATTACHMENT 2 SAMPLE AGREEMENT**

**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN  
JOSE D. LEON GUERRERO COMMERCIAL PORT  
AND  
(Name of Bank)**

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

**WHEREAS**, the Port issued a Request for Proposal ("RFP") No. PAG 020-004, seeking a qualified banking institution to provide the Port with the Banking Services identified in the RFP No. PAG-020-004.

**WHEREAS**, the Banker responded to the RFP 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, the Banker 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 Banker to provide the specific banking services on the terms and conditions set forth in this Agreement and Banker has agreed to accept such terms and conditions;

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

**I. Statement of Services to be Performed.**

A. Scope of Work. The Banker shall provide banking services as identified in the RFP and Banker's proposal, a copy of each which are attached respectively as Exhibit 1 and 2 and incorporated as part of this Agreement. Banker shall provide status reports on the services performed and required under this Agreement each month or as requested by the Port. Banker recognizes that failure to perform any services required under this Agreement per the terms and conditions herein constitutes a material breach of this Agreement.

B. Banker Provisions of Resources. Banker agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement. Banker 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 Banker engaged in the same and similar field as Banker herein. The Port may, in its sole discretion and based upon availability, provide staff assistance to Banker in furtherance of this Agreement. The Banker 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 Banker 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 in any way conflict with or hinder the performance of services herein. In the event the Port discovers or determines that the Banker is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Banker 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.

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

## II. Term of Agreement.

The contract period shall be for five (5) years from the effective date of contract signing and renewal shall be subject to an annual review of cost and pricing and the availability of funds. The renewal will be at the sole discretion of the Port Authority of Guam.

## III. Compensation.

A. Compensation. In consideration for the services performed under this Agreement, payment will be in accordance to the cost proposal mutually agreed upon by the Port and the Banker which is attached hereto as Exhibit 3. All cost listed in the Cost proposal include four percent (5%) Business Privilege Tax. Such payments shall be subject to the terms and conditions contained in this Agreement.

B. Payment Terms. Payment shall be made as set forth in this Agreement including its Exhibits. Payment shall only become due upon the receipt and certification by the Port of documents and reports described in the Scope of Work and upon satisfactory performance by Banker 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 the Banker, Banker 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. Banker shall be solely responsible for all expenses incurred in the performance of services under this Agreement.

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

E. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Banker under this Agreement. Prior to the final payment due Banker, and as a condition precedent thereto, Banker shall execute and deliver to the Port a release in a form approved by the Port of claims against the Port arising under this Agreement. Banker expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.*

F. Payment. All rates and prices and payments to the Banker 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 for reasons including, but not limited to the following:

(i) Termination without Cause: The Port may terminate this Agreement, without cause, upon the delivery of written notice to the Banker at least ninety (90) 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 Banker and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Banker's successful completion of services under this Agreement to the satisfaction of the Port.

(iii) Termination for Cause/Default: The Port shall notify Banker in writing of deficiencies or default in the performance of its duties under this Agreement. The Banker 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 Banker 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 Banker 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 Banker 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 Banker for all satisfactory services rendered up to that point. 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 Banker.

(i) Termination without Cause: Banker reserves the right to terminate this Agreement prior to its completion, without cause, upon thirty (30) days written notice to the Port. Upon Banker's termination of this Agreement without cause, the Banker 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 obligation to Banker. The Banker 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: Banker 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 twenty (20) days to correct the deficiency or cure the default, which period may be extended by Banker (said extension not to be unreasonably denied). Upon Banker's termination of this Agreement for cause, Banker 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 have no further obligations to Banker. Banker 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 Banker and within twenty (20) 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 Banker shall take timely and reasonable and necessary action to protect

and preserve the property in the possession of Banker in which the Port has an interest.

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 defense with respect to rights to either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

#### **V. Contact Person.**

The Banker agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsible for responding to the questions and direction of the Port. The contact person must be identified in writing within five (5) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person designated by the Banker under this Agreement.

#### **VI. Confidentiality.**

A. Information. Except as provided herein, the Banker 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 Banker to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Banker 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. Banker shall include a letter attesting to the return of Information and documenting the destruction of copies and derivations with the returned Information.

The Banker 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 Banker 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 Banker 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 Banker to liability, including all damages and injunctive relief.

#### **VII. Conflicts of Interests/Ethics**

A. The Banker 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 Banker is a material breach of this Agreement and shall entitle the Port to immediately terminate this Agreement. Banker 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 Banker without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Banker 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 and provide such statement to the Port.

## **VIII. Prohibition Against Gratuities and Kickbacks**

A. **Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

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 prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

## **IX. 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.

## **X. 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.

## **XI. 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.

## **XII. Fees and Expenses.**

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

## **XIII. Notices.**

All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language, in writing. All notices required to be given under this Agreement

by either party to the other may be effected 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, which 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:

Rory J. Respicio, General Manager  
JOSE D. LEON GUERRERO COMMERCIAL PORT  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925

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

TO BANKER: :

(Name of Officer and the Address of the Bank)

#### **XIV. Assignment/Subcontractors.**

It is expressly acknowledged that Banker is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not the Banker utilizes one or more subcontractors for such purpose. The right and interest of the Banker under this Agreement (including, but not limited to, Banker's right to or interest in any part of or all 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 Banker, Banker agrees that any subcontractors retained by Banker or assignees shall be subject to all provisions of this Agreement.

#### **XV. 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.

#### **XVI. Scope of Agreement.**

This Agreement, RFP, Banker's Proposal and Payment Terms 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 Banker 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, Banker's Proposal and Payment Terms 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 Banker's Proposal and Payment Terms (as they may be clarified or amended from time to time).

#### **XVII. 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.

**XVIII. Counterparts.**

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

**XIX. 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.

**XX. Compliance with Laws.**

A. In General. The Banker shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Banker 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 Banker 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.

**XXI. Retention and Access to Records and Other Review.**

The Banker, 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 Banker to provide access to all documents and Port property reasonably necessary to the performance of Banker's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

**XXII. Liability.**

A. Indemnification. Banker 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 (but only to the extent caused or contributed to by) the negligent or wrongful act or omission of the Banker or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this 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 Banker and/or the Banker'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 Banker's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

### **XXIII. Delays, Extensions and Suspensions.**

The Port unilaterally may order the Banker 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 Banker agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or interruption. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Banker's services will be granted only for excusable delays that arise from causes beyond the control and without the fault or negligence of the Banker, 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.

### **XXIV. 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 Banker. The Port shall have the power to make changes in the Agreement and to impose new rules and regulations on the Banker 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 or due to a change in law. The Port shall give the Banker notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Banker. In the event the Port materially alters the obligations of the Banker, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Banker, then the Banker or the Port shall be entitled to an adjustment in the rates and charges established under the Agreement. The Banker 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 Banker 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 changes in law. When such modifications are made to the Agreement, the Port and the Banker shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Banker directly and demonstrably due to any modification in the Agreement under this clause.

### **XXV. Independent Banker and its Employees.**

A. Status of Banker. The Banker 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 Banker 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. Banker agrees that Banker 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 Banker 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 or the Banker.

B. Liability. The Banker 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. Banker 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 Banker and Banker's employees or agents under this Agreement or the compensation paid to Banker for services performed under this Agreement. Furthermore, Banker shall maintain at the Banker's expense all necessary insurance for its employees including but not limited to Worker's Compensation, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Banker 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 Banker or Banker's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Banker's failure to comply with terms of this subparagraph B.

#### **XXVI. Disclosure.**

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

#### **XXVII. 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 Banker is in possession of such Work Product, and may be used by the Port without permission from Banker 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. Banker explicitly acknowledges that the Port possesses exclusive rights to the Work Product arising out of this Agreement. Banker shall not use or permit others to use in any way or form the Work Product without the express written consent of the Port.

#### **XXVIII. Employment of Persons Convicted of a Sex Offense.**

Banker warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry shall provide services on behalf of the Port while on the Port or Government of Guam property, with the exception of public highways. If any employee of Banker is providing services on government or Port property and is convicted subsequent to an award of a contract, then Banker warrants that it will notify the Port of the conviction within twenty-four (24) hours of the conviction, and will remove immediately such convicted person from providing services on government or Port property. If Banker is found to be in violation of any of the provisions of this paragraph, then Banker shall take corrective action within twenty-four (24) hours of the notice from the Port, and Banker shall notify the Port when action has been taken. If Banker fails to take corrective steps within twenty-four (24) hours of the notice from the Port, then the Port in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

**XXIX. Attachments, Exhibits, Schedules, and Entire Agreement.**

This 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.

**XXX. 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.

**XXXI. 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.

**XXXII. Amendments/Modifications.**

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

**XXXIII. Additions**

A. The signatory for Consultant represents and warrants under penalty of perjury that his/her signature alone is sufficient to legally bind the Consultant to this Agreement.

B. The Consultant represents and warrants that it is solvent and has sufficient financial resources and ability to complete its performance under this Agreement.

C. The Consultant acknowledges that it and any subcontractor performing under this agreement are subject to 5 GCA § 5426 governing the Chief Procurement Officer's Authority to Debar or Suspend and represents and warrants that, as of the date of this Agreement, Contractor suffers no cause in 5 GCA § 5426(b) which would authorize the Chief Procurement Officer to Debar or Suspend Contractor. If such a cause shall arise, the Contractor shall notify the Port within 3 days of the Contractor's having reason to know of such cause.

D. The Contractor represents and warrants that, it is in compliance with Guam's laws including its business licensing laws and contract's licensing laws to render the services to be provided herein; that, is a legally organized entity with the power to enter into this Agreement with the Port, and that, it is in compliance with the Business Privilege Tax laws, 11 GSA § 26101 et seq.

\*\*\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*\*\*

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

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

**(Name of Bank)**

\_\_\_\_\_  
**RORY J. RESPICIO**  
General Manager

\_\_\_\_\_  
**Name of official**  
(Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**CERTIFICATION OF AVAILABILITY  
OF FUNDS:**

\_\_\_\_\_  
Port Legal Counsel

\_\_\_\_\_  
**Jose B. Guevara III**  
Financial Affairs Controller  
Jose D. Leon Guerrero Commercial Port

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**REQUIRED FORMS  
(MUST BE SUBMITTED WITH YOUR PROPOSAL)**



## REQUEST FOR PROPOSALS (RFP) NO. PAG-020-004

PROJECT DESCRIPTION: BANKING 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, three (3) copies, one (1) CD containing electronic file copy**, at the date and time for it is due.

- ☒ STATEMENT OF QUALIFICATION
- ☒ AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS (AG Form 002)
- ☒ AFFIDAVIT RE NON-COLLUSION (AG Form 003)
- ☒ AFFIDAVIT RE NO GRATUITIES OR KICKBACKS (AG Form 004)
- ☒ AFFIDAVIT RE ETHICAL STANDARDS (AG Form 005)
- ☒ DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (AG Form 006)
- ☒ AFFIDAVIT RE CONTINGENT FEES (AG Form 007)
- ☒ RESTRICTION AGAINST SEX OFFENDERS EMPLOYED BY SERVICE PROVIDERS OF  
GOVERNMENT OF GUAM FROM WORKING ON GOVERNMENT PROPERTY
- ☒ 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.**

CITY OF \_\_\_\_\_ )  
 ) SS.  
**ISLAND OF GUAM** )


\_\_\_\_\_

Page 40

## AFFIDAVIT RE NON-COLLUSION

CITY OF \_\_\_\_\_ )  
ISLAND OF GUAM ) SS.  
 )

\_\_\_\_\_, *[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 \_\_\_\_\_, 20\_\_\_\_

**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 § 111 07(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 \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

**AFFIDAVIT RE ETHICAL STANDARDS**

CITY OF \_\_\_\_\_ )

ISLAND OF GUAM )

)SS.

)

\_\_\_\_\_ [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 \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires -----

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 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

## AFFIDAVIT RE CONTINGENT FEES

CITY OF \_\_\_\_\_ )

ISLAND OF GUAM )

)SS.

\_\_\_\_\_, [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. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 111 08(f).

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 4 111 08(h).

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 \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

### **SPECIAL PROVISIONS**

#### **Restriction against Sex Offenders Employed by service providers to Government of Guam from working on Government Property**

If a contract for services is awarded to the bidder or offeror, then the service provider must warranty that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25: Title 9 of Guam Code Annotated, or of an offense defined in Article 2, Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed in the Sex Offender Registry, shall provide services on behalf of the service provider while on Government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on Government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four (24) hours of the conviction, and will immediately remove such convicted person from providing services on Government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service providers fail to take corrective steps within twenty-four (24) hours of notice from the Government, then the Government in its sole discretion may suspend temporarily and contract for services until corrective action has been taken.

\_\_\_\_\_  
Signature of Bidder/Offeror

\_\_\_\_\_  
Date

- Proposer, if an individual;
- Partner, if a partnership;
- Officer, if a corporation.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**THIS SPECIAL PROVISION MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL**