



REQUEST FOR PROPOSAL
Project No. RFP-PAG-025-002

**PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A
DRUG-FREE WORKPLACE PROGRAM**

FUNDING SOURCE: PORT LOCAL FUNDS

PROJECT LOCATION: PORT AUTHORITY OF GUAM
1026 CABRAS HIGHWAY, SUITE 201
PITI, GUAM 96915

ISSUE DATE: OCTOBER 5, 2025
DEADLINE: OCTOBER 15, 2025
PAG DIVISION: HUMAN RESOURCES DIVISION



PORT OF GUAM
ATURIDAT / PUETTON GUAHAN
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

REQUEST FOR PROPOSAL No. RFP-PAG-025-002

PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM (DFWP)

The Port Authority of Guam (PAG) is issuing a Request for Proposal for **PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM (DFWP)** for the Port Authority of Guam. A PDF file is available for download at <https://portofguam.com/bids-and-rfps>, or a hard copy can be obtained at the PAG Procurement Office located on the 1st floor of the PAG Admin Bldg. from 8:00 a.m. - 5:00 p.m., Monday through Friday, excluding holidays.

Questions must be addressed to the single point of contact: Mr. Mark Cabrera, Buyer Supervisor macabrera@portofguam.com phone#: (671)477-5931 ext. 252. **DEADLINE FOR QUESTIONS IS TUESDAY, OCTOBER 7, 2025 at 4:00 p.m. C.S.T. (Chamorro Standard Time/Guam Time)**

DEADLINE FOR SUBMISSION OF ALL PROPOSALS IS WEDNESDAY, OCTOBER 15, 2025, 4:00 p.m., C.S.T. (Chamorro Standard Time/Guam Time). All proposals must be submitted to the attention of the PAG General Manager, Rory J. Respicio.

Offerors must register their current contact information with PAG to ensure they receive any notices regarding changes or updates to the RFP. The Port will not be liable for failure to provide notice to any party who did not register current contact information.

RORY J. RESPICIO
General Manager

THIS ADVERTISEMENT IS PAID WITH GOVERNMENT FUNDS BY PORT AUTHORITY OF GUAM



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SECTION I. INSTRUCTIONS TO OFFERORS

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These Instructions to Offerors contain the following lettered paragraphs:

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A. PURPOSE

The Port Authority of Guam ("PAG") is issuing this Request for Proposals ("RFP") because it is seeking an experienced and qualified Offeror to provide **PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM**. Please see Section III, Scope of Services and all pertinent documents attached in this Request for Proposal. The issuance of this RFP in no way constitutes a commitment by the PAG to award a contract.

B. TYPE OF CONTRACT TO BE OFFERED AND TERM

The estimated time for performance of the Services contained in the Scope of Services in this RFP is five years. The ability to implement a drug free workplace program is imperative. Therefore, the contract that results from this solicitation will be a Multi-Term Firm-Fixed Price Contract, based on agreed-upon rates.

1. Initial Term. The initial term of the contract shall be for (1) one year and shall begin upon the date that the Port Authority of Guam issues a written Notice to Proceed ("NTP") to the awarded contractor (the "Initial Term"). After the General Manager has approved the contract by executing it, the PAG will issue the NTP to notify the awarded contractor that services may begin.

2. Renewal Terms. At the sole option of the PAG, and upon satisfactory performance by the Contractor, the contract may be renewed for four (4) additional successive periods of one (1) year each, determined to be in the best interests of the government of Guam, for a total of up to four (4) additional years each year being a renewal term for the purpose of preventing duplicative procurements and save against high start-up costs. Any renewal term shall not be subject to negotiation, but shall be a continuation of the contract on the same terms, conditions, and pricing as in effect under the existing contract. All renewal Terms are subject to the availability of additional funds.

3. Option to Purchase. This solicitation does not provide the PAG an option to purchase. All options for Renewal Terms, Negotiated Extension Terms, No Cost Extension Terms and Options to Purchase are subject to the availability of funds. In no case shall any extension or renewal extend the total term of the contract beyond five (5) years. Unless cancelled for lack of funds, terminated, renewed, or extended prior to expiration, the contract shall expire at the end of the Initial term or at the end of any subsequent Renewal Term, any subsequent Negotiated Extension Term, or any No Cost Extension term exercised by the PAG.

C. INSTALLMENT PAYMENT

Offerors submitting Proposals in response to this RFP should be aware that payments for goods and/or services procured through this RFP will be made in installments agreed upon in any awarded contract and tied to satisfactory completion and progress of assigned tasks and/or deliverables.

D. REQUEST FOR PROPOSALS PACKAGE AND FORMS

The Request for Proposals package and forms will be available on the Port's website at the address: <http://www.portofguam.com>, under "about us," "Business Development," under the tab labeled "Bids and Proposals Notices," until January 2026. Be sure to register contact information with the Single Point of Contact listed in this RFP.

All persons or entities requesting a copy of the RFP are required to register accurate, current contact information and an authorized representative with the PAG either online or by contacting the Single Point of Contact listed in the publication notice and this RFP, in order to ensure they receive any notice regarding changes or updates to the RFP. The Port Authority of Guam will not be responsible or liable for failure to provide notice to any party who did not register current contact information.

E. SUBMISSION OF RESPONSES AND DUE DATE

If submitting in hard copy, sealed hard copy Proposals shall be submitted including one (1) fully executed original and four (4) copies. Faxed or E-mailed Proposals will be accepted. The Port Authority of Guam will accept electronic submission of Proposals by e-mail to the Single Point of Contact, Mark Cabrera, at macabrera@portofguam.com. Proposals electronically submitted in .pdf file to any other person through any other method of electronic transmission will not be accepted.

Proposals and Proposal Documents may be signed by the Offeror electronically, and in any number of counterparts, each of which shall be deemed an original, but all of which together shall be submitted with the Proposal and shall

constitute the Proposal. Failure to submit the required forms in the number or format required may be cause for rejection of Proposals due to non-responsiveness. See the Proposal Format and Content provisions for full instructions and minimum requirements for the content of the Proposal.

By submitting a Proposal in response to this solicitation, the Offeror agrees to accept and comply with the terms and conditions included in the attached sample contract, the terms and conditions incorporated in this RFP, and to be bound by all applicable federal law, the terms and conditions of any funding source, Guam's Procurement Law, and the Guam Procurement Rules and Regulations.

Proposals must be received not later than WEDNESDAY, OCTOBER 15, 2025 at 4:00 p.m., Chamorro Standard Time (C.S.T.). Proposals received after the closing time for receipt will not be considered. Office hours for receipt of Proposal are Monday through Friday (excluding government of Guam Holidays), 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. **Hard copy Proposals may be hand delivered, delivered by mail, or delivered by other courier service to:**

PORT AUTHORITY OF GUAM

Procurement and Supply Division, 1st Floor Administration Building
1026 Cabras Highway, Suite 201 Piti, GU 96915 Fax: (671) 472-1439

Each Offeror submitting a Proposal for any portion of the work covered by the RFP, the Proposal, or the Proposal Documents shall execute all required affidavits, declarations, and certification forms, in the form provided with this RFP. Such affidavits, declarations, and certification forms shall be attached to the Proposal. Any forms that are required to be notarized must be notarized no more than thirty (30) days prior to submission of the Proposal. Failure to submit all required forms will result in rejection of the Proposal.

F. PRE- PROPOSAL CONFERENCE/SITE VISIT

No Pre-Proposal Conference/ Site Visit will be held. The PAG reserves the right to conduct a Pre-Proposal Conference or Site Visit at any time prior to the date established herein for the submission of Proposals. The PAG will notify all offerors of any substantive clarification provided in response to any properly submitted inquiry. The Port Authority of Guam may extend any applicable dates or due dates if any information significantly amends the solicitation or makes compliance with the original proposed due dates impractical.

G. NO OTHER PRE-PROPOSAL DISCUSSIONS WITH OFFERORS

Except as part of a Pre-Proposal Conference, no oral discussion, explanation, or instructions in regard to the meaning of any provision of this RFP will be allowed or given on or before the submission due date for all Proposals. Any oral discussion, explanation, or instructions provided as part of the Pre-Proposal Conference shall not be bind and shall not be binding and shall not change the terms and conditions of this RFP unless formally issued in writing as an Amendment to the RFP.

H. QUESTIONS/COMMUNICATIONS WITH OFFERORS PRIOR TO PROPOSAL SUBMISSION AND SINGLE POINT OF CONTACT

All communications and any questions concerning possible discrepancies, omissions, or doubts as to the meaning of any provision of this RFP shall be raised before the submission due date for Proposals and shall be communicated in writing on or before **Tuesday, OCTOBER 7, 2025 at 4:00pm Chamorro Standard Time (Guam Time)** to the following Single Point of Contact for the PAG:

PORT AUTHORITY OF GUAM

c/o Mark Cabrera, Buyer Supervisor
Procurement & Supply Division
1026 Cabras Highway, Suite 201, Piti, GU 96915
Tel: (671) 477-5931 Ext.254 Fax: (671) 477-1439

POC: MARK CABRERA Email: macabrera@portofguam.com and pagprocurement@portofguam.com

Written answers to all timely and properly submitted written questions shall be provided within a reasonable time prior to the submission due date for Proposals. PAG will notify all Offerors of any substantive modification or clarification provided in response to any timely and properly submitted written questions. PAG may extend any

applicable dates or due dates if any circumstance or information significantly amends the solicitation or makes compliance with the original proposed due dates impractical. PAG is not required to respond to untimely or improperly submitted questions or communications.

No other oral or written communications concerning possible discrepancies, omissions, objections, or doubts as to the meaning of any provision of this RFP shall be submitted to PAG at any time prior to the submission date for Proposals, except as permitted by Guam's Procurement Law and Guam's Procurement Rules and Regulations. Any communication concerning the provisions of the RFP initiated by an Offeror, other than a timely submission of permitted pre-proposal questions: 1) shall contain a citation to the Guam code section or Guam procurement regulation that authorizes the communication; 2) shall be submitted in writing; and 3) shall only be communicated to the above-designated Single Point of Contact. PAG is not required to respond to any communication that does not comply with the requirements of this paragraph, or any communication that is untimely. PAG will notify all Offerors of any substantive modification or clarification of the solicitation provided in response to any properly submitted communication, as permitted by law. PAG may extend any applicable dates or due dates if any circumstance or information significantly amends the solicitation or makes compliance with the original proposed due dates impractical.

I. OTHER COMMUNICATIONS

Discussions after the submission due date for Proposals and prior to award for the purpose of clarifying and/or modifying timely Proposals submitted by the Offerors are permitted in accordance with 2 GARR, Div. 4 § 3114(i) and/or 2 GARR, Div. 4 § 3116. (See also General Terms and Conditions, Clarification/Discussion of Proposals.) Direct or indirect contact or communication concerning this RFP with any other PAG employees, other employees or representatives of the government of Guam who are participating in the solicitation process, or any other person participating in the solicitation process is strictly prohibited at all times during the solicitation process and prior to award of the contract, unless such contact or communication is specifically authorized by Guam's Procurement Law and Guam's Procurement Rules and Regulations.

J. PROPOSAL FORMAT AND CONTENT

All Proposals and Proposal Documents must be submitted in writing. Facsimile or E-mail submission of written Proposals will be accepted. If submitting a Proposal by e-mail it must be in .pdf format, the subject line of the e-mail transmission shall contain the Offeror's name and the name of Offeror's authorized representative, along with the following caption: "Proposal for Professional Services for the Implementation of a Drug-Free Workplace Program RFP-PAG-025-002."

If submitting a hard copy, Offerors shall submit their written Proposals and Proposal Documents in a sealed envelope to include one (1) original, four (4) copies and one USB or CD electronic copy in .pdf format. The outer envelope shall be marked in bold letters, "**PROPOSAL FOR RFP-PAG-025-002 PROFESSIONAL SERVICES FOR PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM**". The envelope shall also be marked with the Offeror's name and the name of Offeror's authorized representative. Proposals and Proposal Documents shall be filled out in ink or typewritten and signed in black or blue ink. Erasures, strikeouts, or other types of changes, made to a Proposal, which are evident on its face, must be explained or noted over the signature of the Offeror. Unexplained erasures or alterations, and omissions to the Proposal or Proposal Documents may be cause for rejection by the government.

The Proposals must include:

- A cover letter on the Offeror's letterhead, listing the legal name of the Offeror, location of Offeror's principal place of business, location of the formation of Offeror's business entity, and current place(s) of operation and other projects. This cover letter must be signed in the legal name of the Offeror and by an authorized officer, representative, agent or employee of the Offeror, who has authority to bind the Offeror. Proof of authority to bind the Offeror may be requested by the PAG;

- A detailed plan for performance of the Services listed in the Scope of Services as well as the implementation plan;
- A statement of the abilities, qualifications, and experience of all persons who would be assigned to provide the required Services under this RFP. Functional, Technical and Administrative requirements;
- A statement of the availability and capacity of the Offeror to perform the Services under this RFP pertaining to Personnel, Equipment Facilities, System Support, Data System Security, Training and References;
- A listing of other contracts under which services similar in scope, size, or discipline were performed.
- A listing of any other contracts under which any services were performed within the last five (5) years;

The Proposal must contain a concise narrative including a statement of qualifications addressing the aforementioned bulleted items, the evaluation criteria set forth in this solicitation, and information described in the Scope of Services. All costs associated with preparation of a Proposal in response to this RFP shall be solely the Offeror's responsibility. PAG shall not be liable for any costs incurred by a potential Offeror in connection with this RFP. By submitting a Proposal, the Offeror expressly waives any right it may have against the PAG for any expenses incurred in connection with the preparation of its Proposal, unless otherwise entitled to such expenses by law.

All Proposals should follow and address each of the evaluation criteria and must be complete as to the requested information. Failure to follow the prescribed format or omission of required information may result in a lower score on evaluation and may result in rejection of the Proposal. Supporting graphical information, i.e., photos, drawings, illustrations may be provided to support the information given in the Proposal; such material will not be separately evaluated; but may be utilized as supporting documentation.

NO PRICE PROPOSALS OR PRICE INFORMATION SHOULD BE SUBMITTED WITH WRITTEN PROPOSALS. Such information will be requested from an Offeror at the time the Offeror is selected for negotiations.

Cost or Pricing Data will be required from any Offeror selected to conduct contract negotiations, to be submitted prior to the negotiations. A Certification of the Cost or Pricing Data will also be required from the Offeror with whom a successful contract is negotiated. The Cost or Pricing Data and/or Certification of the Cost or Pricing Data shall be requested separately by PAG when required. Neither the Cost or Pricing Data nor a Certification of the Cost or Pricing Data shall be submitted with the Offeror's Proposal.

The following is a listing of all Proposal Documents that must be completed, signed and/or notarized if required, and included in the envelope with the written Proposals:

- Cover letter referencing **RFP-PAG-025-002** which lists the contents of the Proposal and all required information about the Offeror, as set forth in this Paragraph
- Offeror's Proposal addressing all informational items and factors required in the RFP
- Proof of any required licensure to perform the Services on Guam (unless not required until a later time pursuant to the terms of this RFP)
- Declaration Disclosing Ownership and Commissions (*AG Form 002*) (*attached*)
- Declaration re: Non-Collusion (*AG Form 003*) (*attached*)
- Declaration re: No Gratuities or Kickbacks (*AG Form 004*) (*attached*)
- Declaration re: No Gratuities or Kickbacks (*AG Form 004*) (*attached*)
- Declaration re: Ethical Standards (*AG Form 005*) (*attached*)
- Declaration re: Compliance with U.S. DOL Wage Determination (*AG Form 006*) (*attached*)
- Declaration re: Contingent Fees (*AG Form 007*) (*attached*)
- Current U.S. Department of Labor Wage and Benefit Determination (*SCA*) (*attached*)

- Subcontractor Utilization Form *(attached)*
- Conflict of Interest Disclosure Form *(attached)*
- Certification of Non-Employment of Convicted Sexual Offenders *(attached)*

The failure to include any items of information required by this Paragraph, or any of these documents and forms with the Proposal may result in rejection of the Proposal. All Proposals and Proposal Documents must be fully completed and signed. Any Proposal Documents that are required to be notarized must be notarized prior to submission, but no more than thirty (30) days prior to submission.

K. PLAN FOR PERFORMING THE SERVICES

As part of the written Proposal, Offerors shall submit a plan for the proposed Project outlining the components, qualities, uses, and benefits of the Offeror's proposed solution, along with a comprehensive plan for performing the Services, providing as much detail as is practical explaining the Offeror's Proposal and how any Services contained in the Scope of Services will be performed and how any objectives outlined in the Scope of Services will be achieved. The Offeror shall describe the advantages of the proposed plan, and Offeror's method for performing the Services, avoiding problems and delays, and resolving conflict. The Offeror's proposed plan should describe any processes in detail for the functions being addressed, and identify any outstanding issues the proposed solution may present. The proposed plan shall further describe Offeror's approach to completing this Project on budget, on schedule, with high quality, and how the Offeror's proposed plan will offer PAG and the government of Guam the most advantage. The proposed plan shall include a proposed Project schedule.

L. ABILITY, QUALIFICATIONS, EXPERIENCE, AND QUALITY OF PERSONNEL, EQUIPMENT, AND FACILITIES

As part of the written Proposal, Offerors shall submit the qualifications and a brief work history of the identified personnel to be assigned to the Project, addressing, in particular, any proposed Project Manager and core Project staff or Key Personnel. The Offeror shall also submit a detailed, but brief description of the following:

- Provide a Project Organizational Chart of designated or key personnel to be assigned to this Project with identification of their project roles and description of their area of responsibilities and the location of their office.
- Identify the Project principal, Project manager, assistant Project manager, key staff, subcontractors, and their qualifications and experience as it relates to this Project.
- List the Project Team, key personnel, and/or subcontractor experience on similar projects.
- Unique qualifications of key personnel or team members.
- Qualifications and relevant individual technical training, education, and experience including degree(s), year and discipline, and active registrations and licenses with number and jurisdiction. Include the description of the specific role performed by each individual on each project listed, highlighting projects of similar size and scope where the individual's role is similar to his/her role on this Project.
- Provide a detailed description of the resources, equipment, and facilities that are currently available to perform the Services or can be demonstrated to be available to perform the services at the time of contracting

Offerors shall also submit a detailed description of the benefits and quality of any resources, equipment, and/or facilities Offeror intends to utilize to perform the Services which may not be currently available, but will be made available, or can be demonstrated to be made available at the time of contracting. All Offerors, when identifying Key Personnel in their Proposal, must accurately, comprehensively and correctly provide the information about the key person(s) requested in the solicitation. Inaccurate information in the Proposal constitutes a material misrepresentation and could result in rejection of the Offeror's Proposal.

M. AVAILABILITY AND CAPACITY OF THE OFFEROR TO PERFORM

As part of the written Proposal, Offerors shall submit a brief explanation of when and how the Offeror is available or will be available and has the capacity to provide the services listed in the Scope of Services. The explanation shall address how the Offeror's current workload can accommodate the addition of a contract of this type; the Offeror's

current or demonstrated available resources; and how the Offeror will implement Quality Assurance/Quality Control measures.

The Proposal should provide a clear description of all specific project staff or subcontractors who are intended to work on the Project, the nature, extent, and manner of their involvement, and their availability for the Project. The Proposal shall also address the availability of any equipment or facilities that may be used to provide the services. As part of this Proposal description, Offerors must include the following:

- Identify and describe the current and projected workload of all designated personnel or subcontractor(s), including a list of ongoing projects and his/her role on these ongoing projects.
- Describe the procurement, involvement, management, and availability of any subcontractors.
- Describe the approach and organizational capabilities to perform the Services on time and within budget.
- Detail the extent of each designated personnel member's and subcontractor's involvement in providing the Services.
- Describe the internal quality and cost-control measures or procedures.
- Provide a disclosure of financial resources sufficient to demonstrate an ability to complete this Project.
- Provide a detailed description of how any required resources, equipment, and facilities will be obtained or made available to perform the Services.

N. OFFEROR'S RECORD OF PERFORMANCE ON SIMILAR PROJECTS

As part of the written Proposal, the Offeror is required to provide proof to PAG that it has delivered a quality work product on similar projects. The Offeror shall provide its past performance record on similar projects. Offeror should demonstrate a track record of effective planning, scheduling and on-time delivery, and successful performance on its projects. Offeror should also demonstrate a track record of teamwork, cooperation, fair dealing, client service, and relationships of mutual trust and confidence. Emphasis should include the quality of work and timeliness of delivery.

The Proposal shall include:

- A list of projects similar in scope and with emphasis on experience in **PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM** the list shall identify project name, project description, location, client references including contact name, address and telephone number, completion date, project budget, project role, type of services provided highlighting work performed similar in scope, and other pertinent information.
- A list of the Offeror's record of cost performance on these projects (i.e., original contract award amount versus final contract cost) and explain any cost deviations.
- A list of the Offeror's record of schedule performance (list original schedule versus final completion date) and explain any schedule deviations.
- A history of performance on projects similar in scope to this RFP that the Offeror was involved with over the past five (5) years. This description of Offeror's performance history should demonstrate Offeror's teamwork, cooperation, fair dealing, client service, and establishment of relationships of mutual trust and confidence.

O. OFFEROR'S GENERAL EXPERIENCE AND PAST PERFORMANCE

As part of the written Proposal, the Offeror is required to provide proof to PAG that it has delivered a quality work product in a majority of its areas of work and projects. PAG is interested in Offeror's overall experience on Guam, other U.S. Territories, and the fifty (50) states. The Offeror shall provide its past performance record on any projects performed in the last five (5) years, for all projects which are not encompassed by the list required in the previous Paragraph. Offeror should demonstrate a track record of effective planning, scheduling and on-time delivery, and successful performance on its projects. Offeror should also demonstrate a track record of teamwork, cooperation, fair

dealing, client service, and relationships of mutual trust and confidence. Emphasis should include the quality of work and timeliness of delivery. The Proposal shall include:

- A list of all projects performed in the last five (5) years, which are not included in the list required in the paragraph above for similar projects. This list shall identify project name, project description, location, client references including contact name, address and telephone number, completion date, project budget, project role, type of services provided highlighting work performed and other pertinent information.
- A list of the Offeror's record of cost performance on these projects (original contract award amount versus final contract cost) and explain any cost deviations.
- A list of the Offeror's record of schedule performance (list original schedule versus final completion date) and explain any schedule deviations.
- A history of performance on these other projects that the Offeror was involved with over the past five (5) years. This description of Offeror's performance history should demonstrate Offeror's teamwork, cooperation, fair dealing, client service, and establishment of relationships of mutual trust and confidence.

P. AGE AND SIZE OF OFFEROR'S BUSINESS

The Proposal shall include a statement of the age of the offeror's business and average number of employees over the last five (5) years.

Q. OTHER FACTORS

The aforementioned factors (Paragraphs L through P above) will be used to score proposals. No other factors will have affect on offeror's score.

R. EVALUATION FACTORS FOR PROPOSALS

Proposals will be evaluated only on the Evaluation Factors listed in this RFP. The quality of Offerors' written Proposals shall be determined using the following Evaluation Factors and the listed associated possible scoring totals. Written Proposals scoring less than 70 points may be rejected from consideration for the award of the contract. The total of 100 possible points is broken down as follows:

EVALUATION FACTORS	SCORE
<p>Quality of Proposal Content and Plan for Performing the Required Services:</p> <p>Overall quality, comprehensiveness, and value of the Proposal's presentation regarding the Services that provides the most benefit to Guam and in responding to items described in the Scope of Services section of this RFP. Proposed plan and method for accomplishing the Services, avoiding problems and delays, and resolving conflict. The Offeror's approach to completing this Project on budget, on schedule, with high quality; and Offeror's plans to meet the Port Authority of Guam's goals for the Services.</p>	<p>25 Points</p>
<p>Ability, Qualifications, Experience, and Quality of Personnel, Equipment, and Facilities:</p> <p>Specialized experience and qualifications of designated Project personnel to perform the Services, as reflected by technical training and education, general experience, specific experience in providing the Services, and the qualifications and abilities of personnel proposed to be assigned to perform the Services. Specialized benefits and/or quality of the Offeror's resources, equipment, and/or any facilities Offeror intends to utilize to perform the Services.</p>	<p>20 Points</p>
<p>Availability and Capacity of Offeror:</p> <p>The Offeror's current capacity to successfully apply its skills and resources to perform and complete the Services on time and within budget at a level of quality expected by the PAG. This includes an evaluation of the resources, personnel, facilities, and equipment currently available to perform the Services or demonstrably available at the time of contracting, and an evaluation of the Project Organizational Chart to complete the Services.</p>	<p>20 Points</p>

Offeror's Record of Past Performance on Similar Projects: The Offeror's specialized experience on projects similar in scope and type. Successful performance on projects that are similar in nature and scope. A demonstrated track record of effective planning, scheduling and on-time delivery performance on those similar projects. Successful performance of similar past projects. A demonstrated track record of teamwork, cooperation, fair dealing, client service and relationships of mutual trust and confidence.	20 Points
Offeror's General Experience and Past Performance: The Offeror's general experience in all areas of its work. A demonstrated track record of effective planning, scheduling and on-time delivery performance on those schedules. Successful performance of all past projects. A demonstrated track record of teamwork, cooperation, fair dealing, client service and relationships of mutual trust and confidence.	10 Points
Age and Size of Offeror's Business: The age of the offeror's business and average number of employees over a previous period of time, as specified in Section K.	5 Points

S. REQUEST FOR NON-DISCLOSURE OF CONFIDENTIAL DATA

After award, the winning Proposal becomes a part of the public record of procurement. Offerors may request that portions of their Proposal be kept confidential. If an Offeror is submitting trade secrets or proprietary information in its Proposal that it wishes to keep confidential, then a written request for non-disclosure must be included with the Proposal and those portions of the Proposal which are proprietary must be clearly marked or designated. Material so designated shall accompany the Proposal and shall be readily separable from the Proposal in order to facilitate inspection of the non-confidential portion of the Proposal. However, prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment of the winning Proposal shall be publicly available at the time of the Notice of Award regardless of any designation to the contrary. Any Proposals marked or designated as "Confidential" or "Proprietary" for the entirety of the Proposal shall be rejected.

After receipt of a request to designate portions of the Proposal as confidential, the PAG will examine the request. PAG may review the material declared to be confidential to determine the validity of any requests for non-disclosure of trade secrets and other proprietary data identified in writing. The PAG will then inform the Offeror of its decision on the request in writing. If the parties do not agree as to the disclosure of certain data, the Offeror may then withdraw the Proposal or submit a protest if permitted by law. If the Proposal is not withdrawn and no protest is received, then the PAG may disclose those portions of the Proposal for which a non-disclosure request was not granted.

T. MULTIPLE, ALTERNATE, OR LATE PROPOSALS

Multiple or Alternate Proposals will not be accepted, and any multiple or alternate Proposals submitted will be rejected. Late Proposals will not be accepted, and any late Proposals will be rejected.

U. ALL OR NONE PROPOSALS

Proposals **may not** limit acceptance to the entire bid or Proposal offering. Proposals that violate this provision shall be deemed to be nonresponsive.

V. AMENDMENTS TO REQUEST FOR PROPOSALS

PAG reserves the right to amend this RFP at any time, as provided under Guam's Procurement Law and Guam's Procurement Rules and Regulations. Changes will be announced by an amendment or amendments to this RFP and shall be identified as such. Each Amendment shall refer to the portions of the RFP it amends. Amendments shall be sent to all parties known to have registered for and received an RFP package. PAG recommends that all prospective Offerors acknowledge receipt of all amendments issued. Amendments shall be distributed to allow prospective Offerors time to consider the amendments in preparing their Proposals or other documents. PAG may extend any due date if any amendment makes compliance with the original due date impractical.

W. PRICE PROPOSALS

The Price Proposal shall not be submitted with the Offeror's Proposal. It shall only be submitted when and if requested by the PAG. After evaluation of all Proposals, any Offeror selected for negotiations will be required to submit a Price Proposal.

All Price Proposals shall include a proposed Project budget addressing the first fiscal period to be charged on a monthly basis only. A unit price shall be given for each type of service, and such unit prices shall be the same throughout any resulting contract except to the extent price adjustments may be provided in the solicitation and resulting contract. All deliverables will be payable upon completion, delivery, approval, and acceptance by PAG. Monthly or other regularly scheduled deliverables should be itemized and priced by task. Regularly recurring monthly tasks, should each be listed as discrete items and the sum of all recurring monthly costs should equal the total monthly invoicing/pricing amount for regular recurring tasks. Travel expenses must be included in the Offeror's service rates and pricing (or the hourly rates which are built into the cost of the deliverable) and may not be billed or priced separately.

Any price adjustments must be agreed to by the Parties and shall be in accordance with the Price Proposal or any cost or pricing data submitted. Price adjustments in the Price Proposal may be considered as a result of documented changes in pricing of materials or labor.

X. COST OR PRICING DATA AND CERTIFICATION OF COST OR PRICING DATA

Cost or Pricing Data shall be submitted with the Offeror's Price Proposal. Any Certification of Cost or Pricing Data shall only be submitted when and as requested by PAG.

In addition, a Certification of the Cost or Pricing Data will also be required from the Offeror with whom a contract is successfully negotiated. The Certification of the Cost or Pricing Data shall be separately provided to the successful Offeror by the Port Authority of Guam when required. The Offeror shall certify as soon as practicable after the agreement is reached on price that, to the best of the Offeror's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

However, in the event that the Port Authority of Guam does not make a request, the Cost or Pricing Data must be submitted by the Offeror selected to participate in negotiations prior to the start of any negotiations. Failure to submit Cost or Pricing Data may result in the termination of contract negotiations.

Y. STATUS OF FUNDING AND COMPLIANCE WITH FUNDING TERMS AND CONDITIONS

Funds are presently available for this solicitation. These funds are currently available from the Port's revenue funds. The government's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. The issuance of this solicitation does not compel the award of any contract.

All Offerors are required to comply with the terms and conditions of the Port Authority of Guam's applicable funding requirements.

Z. WAGE AND BENEFIT REQUIREMENTS

Whenever the government of Guam enters into a procured contractual arrangement with an Offeror for the provision of a service to the government of Guam, and the Offeror employs a person(s) whose purpose, in whole or in part, is the direct delivery of the service contracted by the government of Guam, then the Offeror 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 the 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 the Offeror by the government of Guam shall be used to determine the wages which shall be paid to employees pursuant to Guam's Procurement Law, if applicable. 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 Guam's Procurement Law, that the Wage Determination promulgated by the

U.S. Department of Labor on a date most recent to the renewal date shall apply, if applicable. In addition to the required Wage Determination, any contract to which this requirement applies shall also contain provisions mandating health and similar benefits for employees, 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.

To ensure compliance with these provisions, Offeror must complete and attach Declaration re: Compliance with U.S. DOL Wage Determination (AG Form 006), located at Section VIII of this RFP, to the Proposal. Failure to complete, sign, and submit this document with the Proposal may result in rejection of the Proposal. Offeror must also attach the most current applicable Wage Determination issued by the U.S. Department of Labor for Guam and the Marianas Islands, located at Section X of this RFP, to the Proposal. Failure to submit this document with the Proposal may result in rejection of the Proposal.

AA. SUBCONTRACTORS

1. **Subcontractor.** A subcontractor is a person or entity who has a direct contract with the Offeror/Contractor or a higher tier subcontractor to perform a portion of the Services in this solicitation.
2. **Award of Subcontracts and Other Contracts for Portions of the Services.**
 - a. All Offerors shall furnish in writing to PAG the names of all known persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed to provide subcontracting services on each principal portion of the Scope of Services by completing, signing, and attaching the Subcontractor Utilization Form to the Offeror's Proposal. PAG may conduct discussions with the Offeror: (1) stating whether PAG has reasonable objection to any such proposed person or entity; or (2) stating whether PAG requires additional time for review or additional information concerning the utilization of a proposed person or entity. If the Offeror fails to submit this form with its Proposal, that Offeror may be disqualified. If this occurs PAG will select the next highest ranked qualifying Offeror for negotiations.
 - b. PAG, and the government of Guam reserve the rights to object to Offeror's utilization of any subcontractor and to require substitution of the subcontractor for cause. The Offeror shall not contract with a proposed person or entity to whom PAG, and the government of Guam has made reasonable and timely objection. In the case of substitution or any other issue with subcontractors, the Offeror shall not be required to contract with anyone to whom the Offeror has made reasonable objection in writing to the PAG.
 - c. The Offeror shall not substitute a subcontractor, person or entity set forth in its Proposal or in the Subcontractor Utilization Form, located at Section XI of this RFP, unless Offeror has obtained the written consent of the PAG, or unless PAG requires such substitution. Offeror must notify PAG in writing prior to any termination or substitution of a subcontractor listed in the Proposal or Proposal Documents. Failure by the Offeror to follow these requirements shall constitute a material breach of the terms of this RFP, which may result in the termination of any awarded contract or other legally available remedies.
 - d. The Offeror shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any subcontract in excess of \$10,000 at any tier of services under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
3. **Subcontractor Relations.** By appropriate written agreement, the Offeror shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Offeror by the terms of its Proposal and any resulting Contract, and to assume toward the Offeror all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Offeror assumes toward PAG. Each subcontract agreement shall preserve and protect the rights of PAG under this solicitation with respect to

the Services to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Offeror shall have full responsibility for the satisfactory performance of the Services under the RFP, the Proposal and Proposal Documents, the Scope of Services and any conditions, plans, or specifications, and any awarded contract, for any subcontracts which the Offeror may let.

4. **Subcontracts.** The Offeror and subcontractor(s) shall insert in any subcontracts the clauses set forth in this solicitation and any awarded contract, to include a clause requiring all subcontractors to include these clauses in any lower tier subcontracts. The Offeror shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Paragraph.

BB. DISCLOSURE OF MAJOR SHAREHOLDERS

In order to ensure objective contractor performance and eliminate unfair competitive advantage, Offerors that have developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation shall be excluded from competing for such procurements.

Offerors or Subcontractors that have developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation shall disclose this information in their Proposals.

If the Offeror and any Subcontractors determine that they have not developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation, the Proposal shall contain an affirmative statement that the Offeror and all Subcontractors have not developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation.

Offerors that have conflicts of interest, organizational conflicts of interest, or potential conflicts of interest may be excluded from competing for such procurements. Offerors or Subcontractors that have any conflicts of interest, organizational conflicts of interest, or potential conflicts of interest shall disclose this information in their Proposals.

If the Offeror and any Subcontractors determine that they have no conflicts of interest or potential conflicts of interest, including any organizational conflicts of interest, for this solicitation, the Proposal shall contain an affirmative statement that the Offeror and all Subcontractors have no conflicts of interest or potential conflicts of interest, including any organizational conflicts of interest related to this solicitation.

If any conflict of interest or potential conflict of interest, including any organizational conflict of interest, is determined to exist, PAG will attempt to determine whether the conflict of interest can be avoided or mitigated. Before determining to withhold an award based on conflict-of-interest considerations, PAG shall notify the Offeror, provide the reasons therefor, and allow the Offeror a reasonable opportunity to respond.

The failure of the Offeror or any Subcontractors to make any of the disclosures required by this paragraph will result in the rejection of the Proposal. Offeror shall comply with the Conflict-of-Interest Guidelines attached to this RFP at *Section XIII* and shall sign and submit the Conflict-of-Interest Disclosure Form attached to this RFP at *Section XIV*.

CC. CONFLICTS OF INTEREST

In order to ensure objective contractor performance and eliminate unfair competitive advantage, Offerors that have developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation shall be excluded from competing for such procurements.

Offerors or Subcontractors that have developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation shall disclose this information in their Proposals.

If the Offeror and any Subcontractors determine that they have not developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation, the Proposal shall contain an affirmative statement that the Offeror and all Subcontractors have not developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation.

Offerors that have conflicts of interest, organizational conflicts of interest, or potential conflicts of interest may be excluded from competing for such procurements. Offerors or Subcontractors that have any conflicts of interest, organizational conflicts of interest, or potential conflicts of interest shall disclose this information in their Proposals.

If the Offeror and any Subcontractors determine that they have no conflicts of interest or potential conflicts of interest, including any organizational conflicts of interest, for this solicitation, the Proposal shall contain an affirmative statement that the Offeror and all Subcontractors have they have no conflicts of interest or potential conflicts of interest, including any organizational conflicts of interest related to this solicitation.

If any conflict of interest or potential conflict of interest, including any organizational conflict of interest, is determined to exist, Port Authority of Guam will attempt to determine whether the conflict of interest can be avoided or mitigated. Before determining to withhold an award based on conflict-of-interest considerations, Port Authority of Guam shall notify the Offeror, provide the reasons therefor, and allow the Offeror a reasonable opportunity to respond.

The failure of the Offeror or any Subcontractors to make any of the disclosures required by this paragraph may result in the rejection of the Proposal.

SECTION II. GENERAL TERMS AND CONDITIONS

TABLE OF CONTENTS OF GENERAL TERMS AND CONDITIONS

These General Terms and Conditions contain the following lettered paragraphs:

- A.** Authority
- B.** RFP Terms for Multi-Term Contracts
- C.** Cancellation and Rejection
- D.** Taxes
- E.** Withholding Assessment Fee
- F.** Permits, Licensing, and Compliance with Laws
- G.** Mandatory Prohibitions
- H.** Mandatory Warranties
- I.** Equal Employment Opportunity
- J.** Compliance with Americans with Disabilities Act (ADA)
- K.** Guam Debarment
- L.** Proposals
- M.** Review of Proposals
- N.** Independent Price Determination
- O.** Acceptance of Solicitation Terms and Applicable Laws
- P.** Modification and Withdrawal of Proposals
- Q.** Clarification/Discussion of Proposals
- R.** Evaluation Criteria for Selection
- S.** Selection of Best-Qualified Offeror
- T.** Responsibility of Offerors
- U.** Negotiation and Award of Contract
- V.** Access to Records, Inspection, and Audit Review
- W.** Local Procurement Policy
- X.** Relations with Other Government Agencies
- Y.** Obligations of the Offeror
- Z.** Guam and Federal Debarment

A. AUTHORITY

This Request for Proposal ("RFP") solicitation is issued subject to the provisions of Guam's Procurement Law (as amended) and the Guam Procurement Regulations (copies are available for inspection at the General Services Agency of the government of Guam). By submitting a Proposal, Offerors agree to be bound by all the laws and regulations of Guam. The RFP requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

B. RFP TERMS FOR MULTI-TERM CONTRACTS

Any contract awarded under this RFP is subject to the availability of certified funds. The Procurement Officer will notify the Contractor on a timely basis whether the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period. In the event that funds are not available for any succeeding fiscal period, the contract shall be cancelled; however, this does not affect either Party's right to terminate under the termination clauses of the contract. If the contract is cancelled for insufficient funds, the awarded Contractor shall be reimbursed its unamortized, reasonably incurred, non-recurring costs.

C. CANCELLATION AND REJECTION

PAG shall have the right to cancel this solicitation in whole or in part at any time, and to reject in whole or in part any or all Proposals or offers which have been submitted in response to this RFP at any time if PAG determines such to be in the best interest of PAG and/or the government of Guam.

D. TAXES

Offerors may be subject to taxation, including but not limited to, Gross Receipts Tax, Guam Business Privilege Tax, Guam Income Tax, and the payment of any and all taxes which may be due as a result of entering into an agreement are the sole responsibility of the Offeror and its subcontractors and any permitted assignees or successors in interest. Specific information regarding applicable taxes may be obtained from the Director of the Guam Department of Revenue and Taxation.

E. WITHHOLDING ASSESSMENT FEE

All procurements of professional services are subject to a withholding assessment fee for non-resident persons or companies without a valid Guam Business License, which is equal to four percent (4%) of the total dollar value of any contract awarded for all government of Guam contracts for any professional services provided by a non-resident person or company residing outside of Guam, as a cost of doing business with the government of Guam, in accordance with 11 GCA § 71114 (P.L. 33-166).

F. PERMITS, LICENSING, AND COMPLIANCE WITH LAWS

The selected Offeror shall be required to obtain all permits and comply with all Federal and Territorial laws, ordinances, or rules applicable to its professional licensing and the provision of equipment and services to the government of Guam. Specific information on licenses required by the government of Guam may be obtained from the Director of Revenue and Taxation. The Offeror shall provide a copy of all of its current, valid, appropriate business licenses, and Guam Business License or a statement of exemption pursuant to Title 11 of the Guam Code Annotated, §§ 70126 and 70130, and any required Certificate of Authority ("COA") issued by the Director of Revenue and Taxation, Guam Board of Registration for Professional Engineers, Architects & Land Surveyors (PEALS), or other applicable regulating agency or board, pursuant to applicable Guam laws, included, but not limited to 22GCA §15307; 22GCA §15102; 18GCA§7102; and 11 GCA §106213 within 10 days of issuance of a Notice to Proceed from the PAG.

All Offerors agree by submitting a Proposal that they will follow all applicable federal and local laws and regulations governing their submissions and performance under any contract issued under this RFP.

G. MANDATORY PROHIBITIONS

1. Prohibition of Gratuities, Kickbacks, and Favors.

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.

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 for the award of a subcontract or order.

Favors to the Territory. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.

2. Prohibition of Employment of Sex Offenders. 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, shall work for his employer on the property of the government of Guam other than a public highway.

3. Prohibition of Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial contract 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.

4. Ethical Standard. It shall be a breach of ethical standards for an Offeror to knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the government of Guam Procurement Regulations.

H. MANDATORY WARRANTIES

1. Representation Regarding Gratuities and Kickbacks. The Offeror represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11-206 (Gratuities and Kickbacks) of the Guam Procurement Regulations. Offeror further agrees to execute and file a Non-Gratuity Affidavit before final payment under the contract is made by PAG.

2. Warranty against Employment of Sex Offenders. Offeror warrants that: (1) no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 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 on the Sex Offender Registry, shall provide services on behalf of Offeror while on government of Guam property, with the exception of public highways; and (2) that if any person providing services on behalf of Offeror 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 who is listed on the Sex Offender Registry at any time during the performance of the contract, that such person will be immediately removed from working on government property and Offeror warrants that it will notify the General Manager of the PAG within twenty-four (24) hours of such conviction. If Offeror is found to be in violation of any of the provisions of this paragraph, then PAG will give notice to Offeror to take corrective action. Offeror shall take corrective action

within twenty-four (24) hours of notice from PAG, and Offeror shall notify PAG when action has been taken. If Offeror fails to take corrective steps within twenty-four (24) hours of notice from PAG, then PAG in its sole discretion may temporarily suspend this agreement.

3. Covenant Against Contingent Fees. The Offeror warrants that it has not employed any person to solicit or secure any contract resulting from this RFP upon agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give PAG the right to terminate the contract, or in its discretion, deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by the Offeror upon contracts or sales secure or made through bona-fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business.

4. Representation Regarding Ethical Standard. 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 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the government of Guam Procurement Regulations.

I. EQUAL EMPLOYMENT OPPORTUNITY

By submitting a Proposal, the Offeror and all subcontractors agree to comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633. The Offeror and all subcontractors must also comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b). The Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Project activities and Services under this RFP. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this RFP. The Offeror shall not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, age or disability. If awarded the contract, the Offeror will take whatever steps are necessary to ensure that its employees are treated equally during employment without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

J. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Offerors must meet all applicable ADA regulations and requirements.

K. GUAM DEBARMENT PROVISION

Offeror warrants that it will comply with the provisions of 5GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension and that it will not employ any subcontractors who have been federally debarred or debarred by the government of Guam.

L. PROPOSALS

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

M. REVIEW OF PROPOSALS

PAG intends to review the Proposals as soon as possible after the submission due date for Proposals as provided herein. The Proposals submitted will be the primary documents for evaluation. PAG reserves the right to waive any

minor information or irregularity in the Proposals received. PAG may award, allow amendments, or reject Proposals in whole or in part as permitted by law. PAG is not responsible for any costs incurred by the Offerors. PAG reserves the right to retain copies of all Proposals submitted regardless of whether an Offeror is selected for negotiations or awarded a contract. Submission of a Proposal constitutes acceptance of these terms and conditions by the Offeror.

N. INDEPENDENT PRICE DETERMINATION

By submitting a Proposal, the Offeror certifies that if selected for negotiations, any price, pricing data, or Price Proposal submitted by the Offeror is independently arrived at without collusion.

O. ACCEPTANCE OF SOLICITATION TERMS AND APPLICABLE LAWS

The Offeror is required to read each and every page of this RFP, and by the act of submitting a Proposal shall be deemed to have accepted all conditions contained herein and to be bound by the laws of Guam and any other applicable laws. This RFP is issued subject to all the provisions of Guam's Procurement Law (5 GCA §§ 5001, et seq.) and the Guam Procurement Regulations, copies of which are available for inspection at the General Services Agency of Guam.

Guam's Procurement Law and this RFP require all parties involved in the preparation, evaluation, negotiation, performance, or administration of contracts to act in good faith. Proposals may not be withdrawn by Offeror on the basis of Offeror's unfamiliarity with the required terms or applicable laws. Offeror may not propose or negotiate any conditions, omissions, unexplained erasures, irregularities, alterations, or items that are in contravention of the terms and conditions of the RFP or applicable law. PAG may deem such proposed items to constitute a showing of bad faith, in whole or in part, which may result in debarment or other legal remedies against the Offeror.

If any part, term, or condition of this RFP is found to be contrary to the Guam Procurement Law, the Guam Code, any applicable Guam Administrative Rules and Regulations, or is found to contain 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 or other applicable Guam law or rules.

P. MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn at any time prior to the conclusion of discussions, as provided under Guam's Procurement Law and Guam's Procurement Rules and Regulations. In no case will failure to review or inspect constitute grounds for a claim or for the withdrawal of a Proposal after opening. The Government reserves the right to waive any minor informalities in Proposals received, or to have them corrected by the Offeror, in accordance with applicable regulations.

Q. CLARIFICATION/DISCUSSION OF PROPOSALS

After the receipt and opening of Proposals and at its option, PAG or its designee(s), may conduct discussions with Offerors that have submitted timely, valid Proposals for the purpose of clarification, to assure full understanding and responsiveness to the solicitation requirements, as permitted under Guam's Procurement Law and Guam's Procurement Rules and Regulations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision to Proposals and such revisions shall be permitted after submission and prior to award for the purpose of obtaining best and final offers. However, all Proposals should be submitted initially on the Offeror's most favorable terms. In conducting discussions there shall be complete confidentiality of any information derived from Proposals submitted by competing Offerors.

R. EVALUATION FOR SELECTION

Upon the receipt of all Proposals, a selection team will be convened to select the most responsive and qualified Offerors. PAG may conduct discussions with any Offeror to determine the Offeror's qualifications and/or to explore the scope and nature of the Services, the Offeror's proposed method of performance and the relative utility of alternative methods of approach to the Project. Following the validation of qualifications or other discussions, PAG or its designee(s), will select in the order of their respective qualification and evaluation ranking, no fewer than three acceptable Proposals (or such lesser number if fewer than three acceptable Proposals were received) by Offerors deemed to be qualified to provide the Services, and the Proposals shall be ranked in accordance with their evaluation scores.

5. SELECTION OF BEST-QUALIFIED OFFEROR

Upon the conclusion of the discussion and evaluations procedures as provided under this RFP and Guam's Procurement Law, PAG shall notify the selected Offerors of their rankings with the intent to begin negotiating a contract with the highest ranked and best qualified Offeror first.

T. RESPONSIBILITY OF OFFERORS

Before awarding a contract to an Offeror, PAG must be satisfied that the Offeror is responsible. Offerors shall supply information requested by PAG concerning the responsibility of the Offeror. The unreasonable failure of an Offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror. In determining the responsibility of the best qualified Offeror, PAG shall be guided by the following:

1. The Offeror's current capability in all respects to perform fully the contract requirements;
2. The Offeror's current integrity and reliability which will assure good faith performance;
3. Whether the Offeror has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
4. The Offeror's satisfactory record of integrity with regard to previous contracts and contract awards;
5. The Offeror's satisfactory record of performance with regard to previous contracts and contract awards;
6. Whether the Offeror has qualified legally to contract with the government of Guam; and
7. Whether the Offeror has supplied all necessary information in connection with any inquiry concerning responsibility.

U. NEGOTIATION AND AWARD OF CONTRACT

PAG will negotiate a contract with the best-qualified Offeror for the Services at a compensation determined in writing by the PAG to be fair and reasonable. PAG reserves the right to contract for the work hereunder in planned phases which is dependent upon need and funding availability. Contract negotiations will be directed toward: (1) making certain that the Offeror has a clear understanding of the scope of services, specifically, the essential requirements involved in providing the Services; (2) determining that the Offeror will make available the necessary personnel and facilities to perform the services within the required time; and (3) agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the Services, and the scope, complexity and nature of such services.

1. Successful Negotiation of Contract with Best-Qualified Offeror: If compensation, contract requirements, and contract documents can be agreed upon with the best-qualified Offeror, the contract will be awarded to that Offeror.
2. Failure to Negotiate Contract with Best-Qualified Offeror: If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified Offeror, a written record stating the reasons therefore shall be placed in the file and PAG will advise such Offeror of the termination of negotiations which shall be confirmed by written notice within three (3) days. Upon failure to negotiate a contract with the best- qualified Offeror, PAG will enter into negotiations with the next most qualified Offeror. If negotiations again fail, negotiations will be terminated as provided in this Paragraph and commence with the next most qualified Offeror.
3. Notice of Award: Written notice of award will be issued to the Offeror with whom a contract is successfully negotiated and will be public information which is made a part of the contract file.
4. Failure to Negotiate Contract with Offerors Initially Selected as Qualified: Should PAG be unable to negotiate a contract with any of the Offerors initially selected as qualified Offerors, Proposals may be re-solicited or additional Offerors may be selected based on original, acceptable Proposal submissions in the

order of their respective qualification ranking and negotiations may continue in accordance with the procedures and process herein specified.

V. ACCESS TO RECORDS, INSPECTION, AND AUDIT REVIEW

The PAG, and any of their authorized representatives must have the right of access to any documents, papers, or other records of the Offeror which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect supplies and services and audit records at any Offeror or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine the Offeror's responsibility and capability of performing any contract to be awarded under a solicitation, and to determine whether the Offeror's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded Offeror is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Offeror's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. By submitting a Proposal in response to this RFP, the Offeror agrees to abide by the following access, audit, and inspection terms:

A. *Access to Records and Retention.* The Offeror, including its subcontractors, if any, agrees that it shall maintain and retain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and relative to its cost or pricing data, and shall make such materials available at all reasonable times after submission of its Proposal, during any awarded contract term, and for three (3) years from the date of final payment under any awarded contract, for inspection in Guam or at any reasonable location designated by the PAG, and authorized representatives, unless the Offeror is notified in writing by the cognizant agency for audit, the oversight agency for audit, the cognizant agency for indirect costs, or the PAG to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. Each subcontract by the Offeror shall include a provision containing the conditions of this Paragraph for any contract awarded under this solicitation.

B. *Right to Audit.* Offeror shall establish and maintain a reasonable accounting system that enables PAG, or any of their authorized representatives to readily identify Offeror's assets, expenses, costs of goods, and use of funds. PAG, and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Proposal or this solicitation which are kept by or under the control of the Offeror, including, but not limited to those kept by the Offeror, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including Proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Offeror shall, at all times during the term of any awarded contract and for a period of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Offeror shall at any time requested by PAG, or any of their authorized representatives whether before, during, or after completion of an awarded contract, and at Offeror's own expense make such records available for inspection and audit (including copies and extracts of records as required) by PAG, or any of their authorized representatives. Such records shall be made available to PAG, or any of their authorized representatives during normal business hours at the Offeror's office or place of business and subject to a three-day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for PAG, or any of their authorized representatives. Offeror shall ensure PAG, or any of their authorized representatives has these rights with Offeror's employees, agents, assigns, successors, and

subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Offeror and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Offeror's obligations to PAG, or any of their authorized representatives. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by PAG, or any of their authorized representatives unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Offeror to PAG in excess of one-half of one percent (.5%) of the total contract billings, the Offeror shall reimburse PAG, or any of their authorized representatives for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, PAG, or any of their authorized representatives may recoup the costs of the audit work from the Offeror. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Offeror's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the findings of PAG, or any of their authorized representatives to Offeror.

C. *Right to Enter and Inspect.* PAG, or any of their authorized representatives may enter and inspect an Offeror's or subcontractor's facilities, place(s) of business, or any place(s) of performance of any awarded contract relating to Offeror's Proposal or this solicitation, or any contract awarded pursuant to this solicitation. PAG, or any of their authorized representatives may enter and inspect any plans, supplies, services, equipment, work and records at these locations which are related to the performance of any awarded contract and may conduct any testing deemed necessary to determine the Offeror's or subcontractor's compliance or conformity to the solicitation or contract requirements. The PAG, the government of Guam, and/or any authorized representatives may enter and audit the cost or pricing data, books, and records of the Offeror or any subcontractor, and/or investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to § 9102 (Authority to Debar or Suspend) of the Guam Procurement Rules and Regulations, or any applicable federal debarment provisions.

W. LOCAL PROCUREMENT POLICY

No specification, term, condition, or qualification of this RFP shall exclude any Offeror from consideration on the basis of Guam-only experience provided that the experience of such Offeror is otherwise responsive to the solicitation, in accordance with the requirements of 5 GCA § 5008(e).

X. RELATIONS WITH OTHER GOVERNMENT AGENCIES

All directions within the scope of the RFP and the awarded contract will be issued by the Project Manager and General Manager of the PAG; Offerors and any awarded Contractor shall not accept such direction from others. Information provided by other government agencies or entities which seemingly conflicts with information provided by the PAG in this solicitation will be discussed with the Project Manager and General Manager of the PAG immediately. This policy is not intended to prevent the Offerors or any awarded Contractor from obtaining necessary information from other governmental agencies or entities.

Y. OBLIGATIONS OF THE OFFEROR

The Offeror shall be responsible for the professional and technical accuracy of its Proposal and the coordination of all designs, drawings, specifications in its Proposal, and all designs, drawings, specifications, and any other work, services, and materials furnished under any awarded contract. The Offeror shall, without additional cost to the PAG or the government of Guam, correct and revise all errors or deficiencies in its Proposal, and if awarded a contract, shall correct and revise all errors or deficiencies in its designs, drawings, specifications, and in its work services, or materials furnished by the Offeror, if found to be defective by PAG.

The Offerors are responsible for securing all approvals for entry onto private property.

Z. GUAM AND FEDERAL DEBARMENT

Offeror warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension, and if awarded a contract under this RFP that it will not employ any subcontractors who have been federally debarred or debarred by the government of Guam.

SECTION III. SCOPE OF SERVICES
**PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A
DRUG-FREE WORKPLACE PROGRAM**

INTENT AND DESCRIPTION OF SERVICES REQUIRED:

It is the intention of the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (PAG) to retain the services of a qualified professional services firm, or individual, for the implementation and administration of the PAG's Drug-Free Workplace Program (DFWP). ***COPY OF THE PAG DFWP POLICY ATTACHED.***

1. Demonstrated experience and knowledge as required of the Guam and Federal Omnibus Drug Abuse Act of 1988 and other regulations related to Drug Free Workplace requirements and drug and alcohol testing requirements.
2. Demonstrated experience in implementing and administering drug free workplace programs.
3. Demonstrated experience in coordinating drug and alcohol screening and testing of specimen collection.
4. Ability to maintain a Quality Assurance program. The standard of industry which should be adhered to be 49 CFR Part 40.
5. Ability to educate and train supervisor on the Port's Drug Free Workplace Program and its requirements.
6. Ability to maintain professional conduct and confidentiality.

PAG is interested in contracting for a full range of services related to the implementation and administration of its DFWP. The selected services include, but not limited to the following:

TASK 1 - IMPLEMENTATION OF THE PORT'S DFWP PROGRAM

1. Provide education and training for supervisors on the administration of the DFWP and testing procedures.
2. Provide education and training for employees on Port's Drug Free Workplace program and its requirement.
3. Coordinate with PAG's DFWP Coordinator all drug and alcohol screening for applicants and employees.
4. Coordinate all follow-up drug testing for employees.
5. Maintain and administer PAG's comprehensive DFWP testing for all PAG employees.
6. Provide twenty-four (24) hour drug testing for all services as required by the Port's DFWP Program.
7. Provide periodic recommendations on ways to improve PAG's DFWP to ensure compliance with Guam and Federal Omnibus Drug Abuse Act of 1988 law and regulations.

OTHER TASKS:

PAG MAY REQUIRE OTHER RELATED TASKS SPECIFIC TO THIS PROGRAM. THESE TASKS SHALL BE EFFECTUATED THROUGH THE ISSUANCE OF A WORK ORDER WITH FEES SUBJECT TO NEGOTIATION.

PRELIMINARY SCOPE OF SERVICES FOR MEDICAL REVIEW OFFICER

INTENT:

It is the of the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (PAG) to award a professional service contract to a firm, or individual to serve as **Medical Review Officer** and provide services such as, but not limited to, interpret and evaluate all positive test results under the DFWP. At the minimum, the Firm/Individual shall have the following qualifications:

1. Must be a licensed physician.
2. Demonstrate the knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all position test results together with applicant's/employee medical history including any other relevant biomedical information.
3. Ability to maintain professional conduct and confidentiality.

PAG is interested in contracting for a full range of professional services related to the implementation and administration of its DFWP. The selected services include, but not limited to the following:

TASK 1 - PROFESSIONAL SERVICES

1. Responsible for receiving laboratory results generated the PAG's DFWP program.
2. Responsible for interpreting and evaluating all positive test results together with the applicant's/employee's medical history and any other relevant biomedical information.

OTHER TASKS:

PAG MAY REQUIRE OTHER RELATED TASKS SPECIFIC TO THIS PROGRAM. THESE TASKS SHALL BE EFFECTUATED THROUGH THE ISSUANCE OF A WORK ORDER WITH FEES SUBJECT TO NEGOTIATION.

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**DRUG TESTING POLICY
ACKNOWLEDGEMENT, CONSENT AND AGREEMENT TO COMPLY**

I have been given a copy of the Port Authority of Guam's Drug Free Workplace Program Policy and have had the opportunity to be orientated on the policy and ask questions. I have been advised by the Port that I should not be using drugs or misusing alcohol. I understand that the policy applies to me and my compliance with it is a condition of employment. The manual includes employment, reasonable suspicion, random and post-accident testing. I may refuse such tests but refusal to take the tests subjects me to formal disciplinary action taken against me by management.

I understand that if I am subject to drug testing and choose to be tested, a sample of my urine will be collected by a trained collector at the site chosen by the Port. I must verify my identity and follow normal collection procedures. My specimen will be identified and sealed in my presence and sent to a Port-selected, certified laboratory to be analyzed for the presence of drugs in the specified concentrations. If the evidence of drugs is detected in my specimen, the laboratory will forward the results to the Medical Review Officer (MRO) retained by the Port and the MRO will make reasonable attempts to contact me and the Port will give me a copy of my test results. If I am physically unable to authorize the drug testing, the Port may authorize the testing.

I further understand that employees who tested positive for drugs may be subject to formal disciplinary action. Employees allowed to continue employment must comply with conditions determined by the Port.

I hereby acknowledge receipt of and consent to abide by this policy including testing for drugs in the circumstances described in the policy. In the event that I am physically unable to consent to testing, by signing below I hereby consent to be tested as required.

Print Name: _____

I.D. No.: _____

Employee's Signature: _____

Date: _____

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STATEMENT OF POLICY

The Jose D. Leon Guerrero Commercial Port is committed to a drug-free work force to protect the safety of employees and public. The Authority administers a drug-screening program with strict policies and procedures in place to ensure its accuracy and integrity.

It is the policy of the Jose D. Leon Guerrero Commercial Port that applicants given conditional offer of employment shall submit to a drug screen. In order to protect the safety of the employees and the public, no applicant whose test shows illegal drug use will have his employment considered.

It is the policy of the Jose D. Leon Guerrero Commercial Port that employees may be required to take a drug screen to show they are drug-free if there is a reasonable suspicion or illegal drug use. The Authority will give current employees an opportunity to rehabilitate and return to their jobs as productive members of the work force, whenever applicable by law. Current employees who do not rehabilitate or who have a second confirmed test which shows illegal drug use may be disciplined in accordance with Civil Service Commission Adverse Action Procedures.

It is the policy of the Jose D. Leon Guerrero Commercial Port to inform applicants and employees of the drug screening program prior to being conducted. The Authority will consider the drug screening results and the medical information provided by applicants and employees as confidential.

I. PURPOSE AND GOAL

The Jose D. Leon Guerrero, Commercial Port Authority of Guam's (hereinafter "The Port") mission is to provide full services to ocean vessels in support of loading and unloading cargo for Guam and Micronesia. The Port is the main lifeline of consumer goods into the island, and as such, recognizes its responsibility to deliver these goods in a timely and efficient manner. In support of this mission the Port also provides land and infrastructure to private interests to further develop the maritime industries on Guam.

As a public corporation, the Board of Directors of the Port is committed to fulfilling its mission by protecting the health, safety and well being of all employees, customers and the public in the workplace. In addition, the Board recognizes

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that alcohol and drug use pose a significant threat to the Port's mission and therefore must protect the Port's assets from theft and destruction, maintain the integrity of our services to all and be in compliance with the requirements of the Federal Omnibus Drug Abuse Act of 1988 and federal and local statutes and applicable regulations.

Therefore, the Board of Directors of the Port has adopted this Drug-Free Workplace Program Policy that balances our respect for individuals with the need to maintain an alcohol and drug-free environment and encourages employees with drug and alcohol problems to voluntarily seek assistance.

This policy is implemented in accordance and compliance with all applicable statutes and regulations.

II. OBJECTIVES.

The objectives of the Port's Drug Free Workplace Program are as follows:

- A. Strengthen the leadership of the Port by promoting a safe, drug-free and alcohol-free work environment free of any adverse effects on job performance caused by drug or alcohol related problems and ensure the safety of all its employees, customers and the public.
- B. Ensure service quality and integrity by protecting the Port's assets from theft and destruction and providing for effective and efficient services to the Port's customers and users.
- C. Offer an Employee Assistance Program (EAP) that is totally confidential and available to all employees. The EAP provides professional services to employees whose performance is, or may be, adversely affected by emotional difficulties, alcoholism, drug dependence, family discord, or other personal problems.
- D. Satisfy and conform to the requirements of the Federal Omnibus Drug Abuse Act of 1988 and applicable Federal and local laws and regulations.

III. SCOPE AND APPLICABILITY

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- A. **Scope:** Any individual who conducts business for the Port, applies for a position vacancy, or conducts business on the Port's property is covered by the drug-free workplace policy. Our policy includes, but is not limited to, executive management, managers, supervisors, full-time employees, part-time employees, off-site employees, contractors, volunteers, interns and applicants. All are expected to comply fully with the Drug Free Workplace Program Policy as a condition of future and/or continued employment.
- B. **Applicability:** The Drug-Free Workplace Policy is intended to apply anyone representing or conducting business for the Port. Therefore, this policy applies during all working hours, whenever conducting business or representing the Port, while on call, paid standby, or while on Port property and at company-sponsored events.

IV. POLICY

- A. The Port is committed to providing a safe, efficient and productive work environment for all employees. The Port recognizes that the use and/or abuse of drugs or alcohol by employees presents a serious threat to the safety and health of the public and other employees. It is the policy of the Port that any employee, regardless of their status, should be free from the influence of drugs and alcohol. Reporting to work or performing work for the Port while impaired by or under the influence of illegal drugs or alcohol is prohibited.
- B. In order to further our goal of promoting a drug and alcohol-free work environment, the Port has implemented a controlled substance testing program. Each applicant, as a condition of employment upon selection, will be required to undergo and pass a pre-employment drug screen or test. Substance abuse is a significant public health problem, which has a detrimental effect on the Port and business community in terms of productivity, absenteeism, accidents, medical costs, theft, and workers' compensation costs.
- C. The illegal use, possession, dispensation, distribution, manufacture or sale of a controlled substance during work hours or while on duty, official Port

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business or stand-by duty, on Port premises and/or in its vehicles is prohibited. Employees are prohibited from being under the influence of any illegal drug or any drug not legally prescribed to them while on the job, on Port premises and/or in its vehicles. The consumption of alcoholic beverages or under the influence of alcohol while on duty and/or on Port premises is strictly prohibited at all times.

- D. Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe performance of his/her job. If the use of a medication could compromise the safety of the employee, fellow employees or the public, it is the employee's responsibility to use appropriate personnel procedures (e.g., call in sick, use leave, request change of duty, notify supervisor, notify company doctor) to avoid unsafe workplace practices.
- E. The illegal or unauthorized use of prescription or misuse of over the counter drugs is prohibited. It is a violation of the Drug-Free Workplace Policy to intentionally misuse and/or abuse prescription or over the counter medications. Violations of this policy are subject to disciplinary action up to and including termination of employment.
- F. It is a violation of this policy for employees to inform or share with other employees, information related to the notification of drug testing for the purpose of evading, avoiding, or adulterating drug tests.

V. DRUG FREE WORKPLACE POLICY AND AMERICAN DISABILITIES ACT

A. Under the terms of the ADA:

- 1. Employers cannot fire, refuse to hire, or refuse to promote someone simply because he or she has a history of substance abuse.

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2. They also cannot fire, refuse to hire, or refuse to promote someone merely because he or she is enrolled in a drug or alcohol rehabilitation program.

- B. However, illegal use, possession, dispensation, distribution, manufacture or sale of a controlled substance during work hours or while on duty, official Port business or stand-by duty, on Port premises and/or in its vehicles is subject to disciplinary including and up to termination of employment.

VI. NOTIFICATION

In accordance with Port Rules and Regulations 3.400 CRIMINAL CHARGES OR CONVICTION:

- A. **Employee's Duty to Report:** An employee in service of the Port, who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the General Manager (or designee) with written notice of the charges or the conviction within 72 hours thereof.

An employee convicted of a criminal drug violation shall report such conviction within five (5) calendar days of the date of the conviction or, the effective date of the policy if conviction occurred within one (1) year prior to the effective date.

- B. **Failure to Report:** An employee's failure to provide notice as required is grounds for a separate Adverse Action. The 60 day limitation imposed by Title 4, GCA, section 4406 commences when the employee gives notice of the charges or conviction of a crime to the General Manager (or designee)

The Port will take appropriate action within 30 days of notification. Federal contracting agencies will be notified within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace as required by the Drug-Free Workplace Act of 1988.

VII. SEARCHES

Entering the Port's property constitutes consent to searches and inspections. If an individual is suspected of violating the Drug-Free Workplace Program Policy,

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he or she may be asked to submit to a search or inspection at any time. Searches can be conducted of pockets and clothing, lockers, wallets, purses, briefcases, lunchboxes, desks, work stations, vehicles, and equipment.

VIII. DRUG TESTING PROGRAM

The Port will institute a Drug Testing Program for its current employees as well as for newly hired employees. Upon initial implementation of this program, all employees of the Port will be required to submit to a drug test. The first drug test for all employees shall be conducted and scheduled by the General Manager (or designee) after the effective date of this policy.

To ensure the accuracy and fairness of the Port's testing program, all testing will be conducted according to Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines where applicable and can include: a Drug Screen (On-site testing) test; a Federal DOT or Non - Federal mandated confirmatory test; review by a Medical Review Officer (MRO), including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody.

A. Scope of testing:

The Drug Free testing program applies to all Jose D. Leon Guerrero Commercial Port employees and newly hired employees. Each employee, as a condition of employment, will be required to participate in the following testing program. The term **employee** means all classified and unclassified employees (see Section 4102 of Title 4, Guam Code Annotated).

B. Types of Testing:

Each employee, as a condition of employment, will be required to participate in pre-employment, random, post-incident/post-accident, reasonable suspicion/cause, return-to-duty, follow-up, and periodic testing upon selection or request of management as defined below:

1. **Pre-Employment:** Pre-employment testing is conducted for the prevention of hiring individuals who illegally use drugs. This test is required after a conditional offer of employment has been made.

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All individuals will be required to submit to a drug test by urinalysis to screen for the illegal use of drugs prior to employment.

Applicants agree to be tested as a condition of employment and the effective date of employment will be upon satisfactory completion and passing the drug test. Failure to report to drug testing as scheduled will result in rescinding the job offer and the applicant's name will be removed from the list of applicants.

Note: Americans with Disabilities Act (ADA) of 1990 prohibits the use of pre-employment testing for alcohol use. We have removed alcohol testing from the pre-employment test requirement.

2. **Random:** Random testing is performed on an unannounced, unpredictable basis on employees whose identifying information (e.g., social security number or employee number) has been placed in a testing pool from which a scientifically arbitrary selection is made. This selection is usually computer generated to ensure that it is indeed random and that each person of the workforce population has an equal chance of being selected for testing, regardless of whether that person was recently tested or not.

3. **Critical Incident/Post Accident:** A circumstance which occurs while on duty for the Port, on Port property, or using Port property that includes:
 - a. an accident involving Port equipment causing damage to property or injury to person; or
 - b. behavior or activity which could cause damage to property or injury to person; or
 - c. mental or physical impairment sufficient to raise doubt that job duties can be safely or effectively performed; or
 - d. possession, sale, or use of an illegal drug or drug paraphernalia or open container of alcohol; and
 - e. reasonable suspicion that an employee's action or

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behavior are caused by alcohol or illegal drugs.

Since property damage or personal injury may result from accidents, testing following a Post- Incident/Post-accident can help determine whether drugs and/or alcohol were a factor. Any employee directly involved in an accident and/or any employee directly involved in any incident even if an accident or injury was averted, involving equipment or material damage or physical injury of any individual affected by the accident or incident shall be required to submit to a drug and/or alcohol test within two (2) hours after the incident/mishap/accident or after medical attention or emergency care is rendered if such is required.

4. Reasonable Suspicion: The Port may require, at its sole discretion, any employee to submit to controlled substance testing as a condition of employment if it determines that reasonable suspicion exists for such testing. Reasonable suspicion testing is similar to, and sometimes referred to, as "probable-cause" or "for-cause" testing and is conducted when supervisors document observable signs and symptoms based on a reasonable and articulable belief that the individual is using a prohibited drug or abusing drugs on the basis of specific contemporaneous physical, behavioral or performance indicators of probable drug use.

5. Return-to-Duty: Return-to-duty testing involves a one-time, announced test when an employee who has tested positive has completed the required treatment for substance abuse and is ready to return to the workplace. Some employers also use this type of testing for any employee who has been absent for an extended period of time.

6. Follow-up testing or post-rehabilitation testing is conducted periodically after an employee returns to the workplace upon completing rehabilitation for a drug or alcohol problem. It is administered on an unannounced, unpredictable basis for a period of one (1) year.

7. Periodic: Periodic testing is usually scheduled in advance and uniformly administered. The Port may choose to conduct Periodic testing on an annual basis.

C. Frequency: The frequency of testing for random testing and follow up testing is specified in the Standard Operating Procedures (SOP). The

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Port reserves the right to increase or decrease the frequency of testing based on the needs of Port, availability of resources, and experience in the program, consistent with the duty to achieve a drug free workplace.

- D. Substances to be Tested:** The Port will test for the following drugs:
- 1) Marijuana Metabolites/THC , (i.e. weed, grass, Mary Jane)
 - 2) Cocaine metabolites (i.e. coke, snow, crack)
 - 3) Phencyclidine (i.e. Angel dust, PCP),
 - 4) Amphetamines, Methamphetamine and ethylenedioxymethamphetamine (i.e. MDMA, Ecstasy)
 - 5) Opiate metabolites (i.e. Tylenol with Codeine, Morphine and Heroin)
 - 6) Barbiturates (i.e: downers, Nembutal, yellowjackets)
- E. Standardized Procedures for Cut-Off Levels for Drugs:** The Port will conform with established standardized procedures and cut-off levels for these drugs by the Substance Abuse and Mental Health Services Administration (SAMHSA).
- F. How Drug Testing Will Be Performed**
1. Testing for the presence of alcohol will be conducted by analysis of saliva and/or breath.
 2. Testing for the presence of the metabolites of drugs will be conducted by the analysis of urine.

VIX. SHARED RESPONSIBILITIES FOR A DRUG FREE WORKPLACE:

A safe and productive drug-free workplace is achieved through cooperation and shared responsibility. Both employees and management have important roles to play.

A. EMPLOYEE RESPONSIBILITIES:

Be concerned about working in a safe environment and continue to observe public trust and confidence by personal support and compliance appropriate to the intent and provisions of the Port's Drug Free Workplace Program.

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An employee shall:

1. Notify an appropriate supervisor before reporting to duty, before using Port equipment, or before or immediately upon entering Port property:
 - a. When taking any medication or drug, either prescription or non-prescription, which might impair the effectiveness or safety of job performance;
 - b. When having taken alcohol which might impair the effectiveness of safety or job performance a minimum of four (4) hours prior to reporting for duty.
2. Report dangerous behavior to their supervisor.
3. Consider volunteering for and completing an education, rehabilitation or treatment program if the employee has an addiction to alcohol or drugs which compromises safety on the job and might impair their effectiveness of job performance; or consider participating in an education, rehabilitation or treatment program when directed by the General Manager(or designee).
4. Support fellow workers in seeking help. Encourage other employees, who use a drug or alcohol which compromises safety and might impair the effectiveness of job performance, to volunteer for and complete an education, rehabilitation or treatment program.
5. The employee must pay all costs, resulting from participation in education, rehabilitation or treatment program, which may not be paid by the employee's insurance carrier or other available community resources.
6. The employee must acknowledge that he has received and read the Drug Free Workplace Policy and understands its purpose, objectives and employee responsibilities.

B. SUPERVISORS RESPONSIBILITIES:

It is the supervisor's responsibility to:

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1. Attend all Port sponsored training on drug and alcohol awareness and prevention.
2. Ensure that each of his subordinate employees receives a copy of the Drug Free Workplace Program Policy and be available to explain the purpose, objectives and responsibilities under the Drug Free Workplace Program Policy to each employee he supervises.
3. Observe employee performance.
 - a. Counsel employees as to expected performance improvement and
 - b. document negatives changes and problems in performance.
4. Ensure employees selected for testing are sent immediately to the collection site without delay and advise employees of the confidentiality of notification so as not to disseminate such information to anyone.
5. Clearly state consequences of policy violations.
6. If "reasonable suspicion" exists that an employee's work performance is affected by a drug or alcohol problem, initiate procedures for reasonable suspicion.
7. If a "critical incident/post accident occurs, have the responsibility to:
 - a. Summon law enforcement personnel; and/or
 - b. Summon medical assistance; and/or
 - c. Refer employee for drug testing.
 - d. Notify the Division Head, the DER and/or the General Manager (or designee) of the incident and to confer if further action is necessary prior to allowing the employee to report back for duty if drug screen results non-negative.

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e. Take necessary action based on agreed steps to be taken.

8. Submit recommendation to the General Manager (or designee) whether or not an employee should be directed to participate in an education, rehabilitation or treatment program or should be disciplined upon receipt of a confirmed positive test result.
9. Report all critical incidents immediately with seventy two (72) hours in writing to the General Manager (or designee). If a witness or witnesses are involved, make sure that the written reports are signed by such witness or witnesses.
10. Maintain the confidentiality, on a need-to-know basis of:
 - a. The advice or recommendations given to the General Manager (or designee).
 - b. Any education, rehabilitation or treatment program activity resultant from such advice or recommendation.
11. Promote the Port's Drug Free Workplace Program Policy.

C. DESIGNATED EMPLOYER REPRESENTATIVE/ PERSONNEL ADMINISTRATOR (DER/ADMINISTRATOR)

The DER/Administrator should have knowledge of and authority to make decisions about the testing process and answer questions about it.

1. The DER/Administrator or designee DER shall be responsible for implementing, directing, administering, and managing the Port's drug free program. The DER shall serve as the principal contact for collection activities in assuring the effective operation of the testing portion of the program.
 - a. The DER/Administrator shall appoint more than one DER: to ensure adequate coverage on all shifts and at all locations; to assist the DER/Administrator; to enforce the Port's Drug Free Workplace program; and to coordinate the entire program with consistency among DERs.
2. Ensure that all employees receive a copy of the Port's Drug Free Workplace Program Policy prior to implementation of the program,

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and that employees return a signed acknowledgment of receipt form;

3. Provide training and educational materials and training to managers, supervisors, and employees and oversee training and education on the Port's Drug Free Workplace.
 - a. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;
4. Coordinate DER duties wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.
5. Arrange for all testing authorized under this order;
6. Receive all drug test results.
7. In the interest of safety, the primary job of the DER/Administrator is to receive drug and alcohol test results and take immediate action to remove employees from their duties when they violate drug and alcohol testing rules, i.e. test positive or refuse to test.
 - a. The DER/Administrator shall immediately inform the Division Head and General Manager (or designee) who shall make until the final determination on the formal action to be taken thereafter.
8. Coordinate with the General Manager (or designee), the Medical Review Officer (MRO), Collectors and supervisors, as appropriate;
9. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
10. Refer employees to Employees Assistance Program, private EAP and or Substance Abuse Professionals (SAP).
11. Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in

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accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, and as updated from time to time;

12. Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs.
13. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.
14. Be consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator, and the appropriate official, including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings;

D. DIVISION HEAD RESPONSIBILITIES:

In addition to the employee and supervisor responsibilities, the Division Head shall:

- 1.. Have the responsibility to implement the Drug Free Workplace Program Policy and Standard Operating Procedures within the operating unit and ensure that the Plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.
2. Maintain a process so that an employee can advise the General Manager (or designee), either orally or in writing, of any violation of the Drug Free Workplace Program Policy.
3. Maintain a process so that a supervisor can contact the General Manager (or designee) as soon as possible after a "critical incident" to receive recommendations pursuant to the supervisory procedures.
4. Have the discretion to direct employee to participate in an education, rehabilitation or treatment program in consultation with the General Manager (or designee).

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5. Maintain the confidentiality, on a need-to-know basis, of:
 - a. Such advice or recommendation received from an employee or supervisor.
 - b. Any recommendation or advice by the Administrator/DER.
 - c. Any recommendation or advice by the General Manager (or designee).
6. Take reasonable steps to ensure that no employee is intimidated or coerced or retaliated against for acting in compliance with or enforcement of the provisions of this policy.
7. Enforce the provision of the procedure.

E. EMPLOYEE ASSISTANT PROGRAM (EAP) COORDINATOR RESPONSIBILITIES:

The EAP Coordinator shall implement and operate the EAP for the Port. The exception would be the use of a private EAP provider or SAP (Substance Abuse Provider) as specified in DOT 49CFR part 40. The EAPC of the Port will be responsible for the following duties:

1. Provide assistance to counseling and treatment services to all employees referred to the EAP by their supervisors, by self-referral, or the Administrator/DER and otherwise offer employees the opportunity for counseling and rehabilitation.
2. Coordinate with the General Manager (or designee), the Medical Review Officer and supervisors as appropriate.
3. Provide educational materials and training to management, supervisors and employees on illegal drugs in the workplace.
4. Monitor the progress of referred employees during and after the rehabilitation period and provide feedback to DER/ Administrator in accordance with the Drug Free Workplace Program Policy for return to work purposes.

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5. Be consistent with confidentiality requirements of this policy and take steps to ensure that an employee's involvement in a drug/alcohol related EAP is kept in the strictest confidence and that information is released on a need to know basis only, or as regulated by federal or local statutes.

X. CONSEQUENCES FOR VIOLATION OF DRUG FREE WORKPLACE PROGRAM POLICY:

One of the goals of the Port's Drug-Free Workplace Program is to encourage employees with alcohol and/drug problems to voluntarily seek help. If, however, an individual violates the policy, the consequences are serious. Any employee violating the Drug Free Workplace Program Policy is subject to disciplinary action up to and including termination from employment for the first offense.

- A. In the case of applicants, if he or she violates the Drug-Free Workplace Program policy, or is found to test "non-negative" or positive in a pre-employment drug screen or test, the offer of employment will be withdrawn. The applicant may reapply after eighteen months and must provide a certification of successful completion of an approved rehabilitation or treatment program or submit a "negative" result for the presence of controlled substance(s).
- B. If an employee violates the policy, he or she will be subject to disciplinary action and may be required to enter rehabilitation as a condition of continued employment. An employee who is required to enter rehabilitation, who fails to successfully complete the rehabilitation program, and/or repeats the violation of this policy, will be terminated from employment. Nothing in this policy prohibits the employee from being disciplined or discharged for other violations and/or performance problems. **Be aware that:**
 1. Involvement in illegal activity pertaining to the illegal use, sale, purchase, offer, or possession of a controlled substance while on duty or while on Port property, or while using Port equipment shall be reported to the appropriate law enforcement agencies.
 2. Being under the influence of a drug or alcohol while on duty or while on Port property, or while using Port equipment may result in being reported to appropriate law enforcement agencies and/or ordered off Port property and placed on immediate suspension.

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3. Violation of the Drug Free Workplace Program Policy may result in:

- a. Direction to participate in an education, rehabilitation or treatment program by the General Manager (or designee), which may include direction to participate and complete a drug or alcohol analysis testing process, and/or
 - b. A disciplinary action, up to including, termination.(Section 4203 of Title 4, Guam Code Annotated) will be implemented without exception.
 - c. Participation in an education, rehabilitation or treatment program without any indication(s) of work problems shall not be used in a performance evaluation report or disciplinary action.
 - d. The General Manager (or designee) should be advised either within seventy two (72) hours orally or in writing, of any violation of the Drug Free Workplace Program Policy.
- C. Selling of Controlled Substances or attempts to sell a controlled substance and/or the sale of paraphernalia for a controlled substance at the Port's workplace shall not be allowed to participate in a rehabilitation program and be immediately discharged from employment. In addition, any employee who engages in such conduct and is discharged for the same, shall not be eligible for re-employment by the Port.**
- D. Any employee who, on the basis of an event, e.g. the occurrence of an accident that requires a post accident, the findings of reasonable suspicion that lead to a reasonable suspicion test, will immediately be removed from duty and must submit to drug testing.**
- E. Upon receipt of a confirmed positive test from an Medical Review Officer (MRO), the employee will be; removed from duty and referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return-to-Duty test and sign a Return-to-Work Agreement, and be subject to ongoing, unannounced, follow-up**

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testing for a period of one (1) year and terminated immediately if he/she tests positive this second time or violates the Return-to-Work Agreement.

- F. An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates (*masking agents*) the specimen, substitutes the specimen with that from another person, sends an imposter in their place, or refuses to cooperate in the testing process in such a way that prevents completion of the test.
- G. A Positive test is in violation of this policy and is considered conduct detrimental to the Port's mission; to protect the health, safety, well being of its employees and patrons, and its services. This violation may result in disciplinary action, up to and including termination from employment, in accordance with the Port's Personnel Rules and Regulations.
- H. All drug-testing information will be maintained in separate confidential records. The willful exposure of drug-testing information or dereliction to keep drug-testing confidential on a need to know basis, is considered a violation of the Drug Free Workplace Program Policy and subject to disciplinary action up to and including termination from employment for the first offense.
- I. Any employee convicted of violating a criminal drug statute including (but not limited to) Chapter 67 of Title 9, Guam Code Annotated, must inform the General Manager (or designee) of such conviction within five (5) working days of the conviction, or the effective date of this Drug Free Workplace Program Policy, if the conviction occurred within one (1) year prior to the effective date of the policy.
 - 1. Failure to so inform the General Manager (or designee) subjects the employee to disciplinary action, up to and including termination from employment for the first offense.

XI. RETURN TO WORK AGREEMENTS

Following a violation of the drug-free workplace policy, an employee may be offered an opportunity to participate in a rehabilitation program. In such cases, the employee must sign and abide by the terms set forth in a Return-to-Work Agreement, sometimes known as "Last Chance Agreement", as a condition of continued employment. Any leave associated with participation in a

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rehabilitation program shall fall under the appropriate leave category in the Port's Personnel Rules and Regulations. Cases where an employee may be offered an opportunity to participate in rehabilitation program are as follows:

- A. Any employee who, on the basis of an event (e.g. the occurrence of an accident that requires a post accident test as defined by DOT), or the finding of reasonable suspicion that leads to a reasonable suspicion test, will immediately be removed from duty and submit to drug testing.
- B. Upon receipt of a confirmed positive test from an MRO, the employee will be, removed from duty and referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return-to-Duty test and sign a Return-to-Work Agreement, subject to ongoing, unannounced, follow-up testing for a period of one (1) year and terminated immediately if he/she tests positive a second time or violates the Return-to-Work Agreement.
- C. An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates (*masking agents*) or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter or refuses to cooperate in the testing process in such a way that prevents completion of the test.
- D. All drug-testing information will be maintained in separate confidential records. The willful exposure of drug-testing information or dereliction to keep drug-testing information confidential on a need to know basis, is considered a violation of the Drug Free Workplace Program Policy and subject to disciplinary action up to and including termination, for the first offense.
- E. All port employees listed in GCA 10 Chapter 75, ss 75100 (Port Security, Police and Police Chief), and under ss 75107, are not eligible for continued employment under a Return-to-work Agreement.

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XII. COMMUNICATION

Communicating the Port's drug-free workplace policy to both supervisors and employees is critical to the success of the Drug Free Workplace Program Policy. To ensure all employees are aware of their role in supporting our drug-free workplace program:

- All employees will receive a written copy of the policy.
- The policy will be reviewed and issued in orientation sessions with new employees.
- The policy and assistance programs will be reviewed at safety meetings.
- Employee education about the dangers of alcohol and drug use and the availability of help will be made accessible to all employees.
- Every supervisor will receive training to help him/her recognize and manage employees with alcohol and other drug problems, as well as recognizing and documenting observations that constitute reasonable cause/suspicion recommendations for testing.

XIII. EDUCATION AND AWARENESS PROGRAM

To complement and achieve a drug-free work force, the Port shall establish and implement a Drug Education and Awareness Program to help employees understand and avoid the perils of drug and alcohol abuse. The Port will use the program in an ongoing educational effort to prevent and eliminate substance abuse that may affect the Port's workforce and its operations.

A. The Drug Education and Awareness Program will include the following:

1. Dissemination of information to employees regarding the dangers of alcohol and drug abuse;
2. A copy of the Port's Drug Free Workplace Program Policy .
3. Availability of treatment and counseling information for employees who voluntarily seek such assistance; employee assistance programs (EAP's) and other community services that are available to those who have a drug and/or alcohol problem.
4. Sanctions the Port will impose for violations of its Drug Free Workplace Policy.

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- B. The Drug Free Workplace Program policy applies to all Jose D. Leon Guerrero Commercial Port employees. The term employee means all classified and unclassified employees (see Section 4102 of Title 4, Guam Code Annotated).
- C. Top management and supervisory employees will be trained to assist in identifying and addressing the matter of unlawful use of alcohol and/or a controlled substances by employees, including the making of referrals to appropriate agencies.
- D. In connection with the above, employees will be encouraged to seek counseling and other assistance on a self-referral basis if they feel they have a need for it. An employee who voluntarily seeks help and undergoes treatment for drug or alcohol abuse prior to any violation of any provision of this policy will not be subject to disciplinary action because of admitted substance abuse, provided he or she thereafter remains drug and alcohol free after commencing treatment. Failure to remain drug or alcohol free shall be considered a violation of this policy and will subject the employee to disciplinary action up to and including termination.
- E. The Port shall also provide proper training for the Administrator/DER, DER's, Employee Assistance Program Coordinators (EAPC), and Management/Supervisors; on properly documenting and initiating drug/alcohol testing and screening, on applicable laws and regulations to comply with, and the duties their specific position requires of them in the enforcement of this Drug Free Work Place Program Policy.

XIV. PROCEDURES

- A. As part of the Port's drug-free workplace program, controlled substance testing will be conducted and shall involve urinalysis for the following Disposition of Drugs Tested for: Marijuana, Cocaine, Opiates (Heroin), Amphetamines/ Methamphetamines, Phencyclidine (PCP), and Barbiturates and any other drugs should Federal or Local statutes require the Port to do so. The Port reserves the right to test for alcohol and/or other illegal drugs for reasonable suspicion. Employees and job applicants subject to controlled substance testing pursuant to this policy shall be requested to provide urine, saliva and/or breath specimens at the collection site.

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- B. The Port recognizes that from time to time, statistics change regarding the popularity of drugs of abuse. The Port reserves the right to amend the Disposition of Drugs Tested for in its testing process or upon adoption of a new Drug Free Workplace Program Policy (or amendment), in efforts to be proactive in the prevention of abuse. Upon such a change from the Port's Board of Directors, the new testing disposition will take effect immediately or as specified in the new policy's guidelines. Employees may be given advanced notice of such a proposed change, but advanced notice is not required if not specified under current personnel rules and regulations or local statutes.. The following exemptions to the Disposition of Drugs Tested for are as follows:
1. When Federal Regulations and Governing Authorities require a specific panel of drugs to be tested for employees covered under their jurisdiction (ie. Dept. of Transportation or DOT 49 CFR Part 40) and no other disposition is allowed.
 2. The drug is not listed in Chapter 67 of Title 9 GCA or schedule I thru V of the Controlled Substances Act.
- C. Employees and candidates formally offered a position shall be required to sign a form consenting to submit to controlled substance testing, to provide urine, saliva and/or breath specimens as part of the testing process, and to release the test result to the institution and/or its MRO. All specimens identified as positive for illegal drugs on an initial drug screening shall be confirmed with a test using gas chromatography/mass spectrometry (GC/MS) techniques or other future acceptable techniques approved by the Dept. of Health and Human Services (HHS) and/or the Dept. of Transportation (DOT).
- D. All positive results of controlled substance testing shall be reviewed and verified by the MRO to ensure accuracy of results and consistency of testing methods and procedures. All questions regarding the accuracy or validity of positive test results must be directed only to the Company's Medical Review Officer. If you call the Company's Medical Review Officer, please identify yourself as an employee of The Port Authority of Guam. In the event a confirmatory validity test is advised between the MRO and employee, all costs associated with such a test shall be the responsibility of the individual and not covered by the Port Authority of Guam.

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- D. All controlled substance testing conducted pursuant to this policy shall comply with applicable federal and local laws and regulations.

E. **Refusal to Submit to Test**

Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test result to the Port shall :

1. Be construed as a positive test result.
2. Constitute an act of insubordination and misconduct. This act shall be just and proper cause for termination. Employee may be placed on excused absence specified in Port's Personnel Rules & Regulations chpt. 9, sec 9.414 if it is determined by the DER/Administrator to do so to ensure a safe working environment.

F. **Tampering with the Drug Testing Process**

Any applicant or employee who intentionally tampers with a sample provided for drug screening, who willfully adulterates a sample provided for drug screening, violates the chain of custody or identification procedures, or falsifies test results, shall have the offer of employment or appointment withdrawn and such actions shall be grounds of disqualification for the position and/or subject for discharge.

1. **Current Employee:** Any current employee who intentionally tampers with a sample provided for drug screening, who adulterates a sample provided for—drug screening, violates the chain of custody or identification procedures or falsifies test results shall be subject to discharge according to the Port's established Personnel Rules & Regulations.
2. **Applicant:** Any applicant who intentionally tampers with a sample provided for drug screening, who adulterates a sample provided for—drug screening, violates the chain of custody or identification procedures or falsifies test results shall have the job offer rescinded according to the Port's established Personnel Rules & Regulations.

XV. EMPLOYEE ASSISTANCE AND REHABILITATION

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- A. The Port supports education and treatment for substance abuse. Employees with a substance abuse problem are encouraged to seek professional help or contact the Department of Mental Health and Substance Abuse for information and confidential assistance in entering a treatment and/or rehabilitation program.
- B. Any employee with a substance abuse problem who voluntarily seeks assistance prior to being found in violation of any provision of this policy or to being required to submit to the Port's mandated substance abuse test shall be permitted a one-time opportunity to seek rehabilitation for their problem. Such employee shall not be disciplined under this policy unless the employee's action or conduct otherwise violates this policy or any other Port policy or guideline.
- C. Employees who seek rehabilitation shall be responsible for related expenses.
- D. Upon successful completion of a rehabilitation program, an employee shall ensure that the Port's Designated Employer Representative (DER) receives a written certification of his or her successful completion of the rehabilitation program from a Substance Abuse Professional and a negative drug test result for use of alcohol and illegal drugs. Upon receipt of such certification and test result by the institution, the employee shall be returned to active employment status. Wherever possible, the employee shall be allowed to return to his or her former position, if available. The Port however, shall not guarantee that the employee's former position or salary will be available.
- E. Rehabilitation and its costs are the sole responsibility of the employee. Employees who are enrolled in the Port's medical insurance plan and who seek or are directed to obtain rehabilitation for substance abuse may be entitled to benefits as provided by the plan. Such employee should consult their medical insurance plan regarding coverage.

XVI. CONFIDENTIALITY

The Port shall implement and administer this policy and its substance abuse testing procedures as privately as practicable and as allowed under federal and local statutes and laws. All information received by the Port through the drug-free workplace program is confidential communication. Access to this information is

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limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

XVII. DEFINITIONS

The following are definitions used in the Port's Drug Free Workplace Program Policy or are used by the DER/Administrator, DERs', Supervisors, Managers, Division Heads, Human Resources Administrator, Employee Assistants Program Coordinator in the process of administering testing and compliance of this policy:

- A. **Alcohol or Alcoholic Beverage.** Any beverage with an alcohol content.
- B. **DER/Administrator.** The Personnel Services Administrator shall be the employee authorized by the Port to take immediate action(s) to remove employees from duties or cause employees to be removed from these covered duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of the Drugfree Workplace Policy of the Port. The DER/Administrator has the authority to designate other DER's. See Chpt. IX Section 1, subsection a, of the Policy
- C. **Adulterated Specimen.** A urine specimen containing a substance that is not a normal constituent for that type of specimen or containing an endogenous substance at a concentration that is not a normal physiological concentration or one that has been made an impure specimen by a masking agent (adulterants).
- D. **Adulterants.** A substance, which should not be contained within other substances for legal or illegal reasons, which may be added to other substances. For the purpose of this policy, adulterants will be defined as substances added to drug testing sample, such as urine, for the purpose of masking drug(s) usage, illegal or otherwise.
- E. **Applicant.** An individual offered employment in or being promoted, demoted or transferred to any position within the Port. For the purposes of this policy, an employee on probationary status is considered an applicant.

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- F. **Controlled Substance.** Any drug, narcotic or immediate precursor which is specified or referenced in Chapter 67 of Title 9, Guam Code Annotated, Uniform Controlled Dangerous Substance Act, which may subject a person to criminal penalties. Alternatively, any controlled substance which is listed in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812).
- G. **Conviction.** A finding of guilt by any judicial body charged with the responsibility to determine violations of the Federal or local government criminal statutes.
- H. **Disposition of Drugs Tested.** For the purpose of Port, these are :
 Marijuana (i.e. weed, MJ, Mary Jane)
 Cocaine (i.e. coke)
 Opiates (i.e. crack)
 Amphetamines/ Methamphetamines
 Phencyclidine (i.e. PCP, angel dust)
 Barbiturates (i.e. downers, nembutal)
 any or any other disposition as set forth under section B. part XII of the Port Authority of Guam's Drug Free Workplace Program Policy.
- I. **Division Head.** The head of a respective division of the port authority of Guam.
- J. **Drug-Free Workplace Program Operating Procedures (DFWPOP).** All parts of this Drug Free Work Place Policy, of the Jose D. Leon Guerrero Commercial Port Authority of Guam, as referenced in the Personnel Rules and Regulations for Maritime Positions Unique to Port Operations and Certified Technical & Professional Positions.
- K. **Employee Assistance Program (EAP).** The Port's counseling program that offers assessment, short term counseling, and referral services to employees for a wide range of drug, alcohol and mental treatment.
- L. **Employee Assistance Program Coordinator (EAPC).** The individual responsible for implementing and operating the EAP within the Port, by providing counseling, referral, and education services to employees and supervisors regarding the Port's EAP.
- M. **General Manager.** General Manager of the Jose D. Leon Guerrero Commercial Port. This position is empowered to appoint and exercise

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the power to discipline or discharge employees pursuant to Sections 4406 and 10112 of Title 4 and Section 10107 of Title 12, Guam Code Annotated.

- N. **Illegal Drug.** Any drug or controlled substance of which the sale, possession, or consumption is illegal. This includes, but is not limited to, marijuana, cocaine, opiates, amphetamines, methamphetamines, phencyclidine (PCP), and barbiturates.
- O. **Drug Paraphernalia.** Containers or other objects used, intended for use, or designed for use in storing or concealing illegal drugs, and objects, used, intended for use, or designed for use in consuming, inhaling or otherwise introducing any illegal drug into the human body.
- P. **Under the Influence.** Being in a physical or mental condition which affects work in any way; creates a possible risk to the safety and well-being of the individual, co-workers, the general public, and/or Company property; and/or having any detectable level of any illegal drug in the body; and/or having a blood-alcohol level that is considered to be under the influence pursuant to the local statutes.
- Q. **Vehicle.** Any motor vehicle, including but not limited to cars, vans and trucks.
- R. **Reasonable Suspicion.** A good faith belief, even if incorrect, that the actions and/or appearance and/or conduct of an employee are indicative of the use or under the influence of an alcoholic beverage and/or illegal drug. Factors to be considered when determining a reasonable suspicion include, but are not limited to, the following:
 - 1. Unsafe work habits or practices that endanger the employee himself/herself and/or other employees;
 - 2. Abnormal work performance;
 - 3. Physical conditions and/or symptoms such as unstable balance, alcohol on breath, glassy or reddened eyes;
 - 4. Frequent or unexplained absences from the workplace or jobsite during the employee's shifts;

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5. Abnormal personal behavior and/or poor inter-personal relations on the job;
6. Discovery of controlled substances, alcohol or controlled substance paraphernalia at the work area or on the jobsite, in the possession of or in the immediate proximity of an employee; and/or,
7. Objective evidence of unlawful use of a controlled substance or unlawful sale of a controlled substance as provided by a federal or local enforcement agency.

S. **Positive Drug Test.** The results of a urine sample which is positive.

XVIII. DEFINITIONS TO DETERMINE WHICH EMPLOYEES FALL UNDER DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) REQUIREMENTS

A. To determine which employees fall under HHS requirements, base identification on the following determinations.:

1. **Employee (Contract).** An employee of the contractor who is directly engaged in the performance of work under a government contract. "Directly engaged" is defined to include all direct-cost employees and any other contract employee who has other than minimal impact or involvement in contract performance.

2. **Employee (Grant).** Any person who is on the grantee's payroll and works in any activity under the grant even if not paid by grant funds. The definition includes all "direct charge" employees (those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (those who perform support or overhead functions related to the grant and for which the Federal government pays its share of expenses under the grant program.) Those indirect charge employees whose impact or involvement is insignificant to the performance of the grant are not included.

XIX. PERSONNEL RULES AND REGULATIONS SHOWING REFERENCE TO THE DRUG FREE WORKPLACE PROGRAM POLICY

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PERSONEL RULES & REGULATIONS CHPT 3, SEC. 3, L.: Employees shall refrain from unlawful use of drugs and alcohol. Drugs shall mean those identified in the Drug-Free Workplace Program Operating Procedures (DFWPOP).

PERSONEL RULES & REGULATIONS CHPT 3, SEC. 3.4.

CRIMINAL CHARGES OR CONVICTION

A. Employee's Duty to Report. An employee in the classified service who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the General Manager (or designee) with written notice of the charges or the conviction within 72 hours thereof.

B. Failure to Report. An employee's failure to provide notice as required is grounds for a separate Adverse Action. The 60 day limitation imposed by Title 4, GCA, Section 4406 commences when the employee gives notice of the charges or conviction of a crime to the General Manager (or designee) as required in Rule 3.400.A.

PERSONEL RULES & REGULATIONS CHPT 4, SEC 4.302:

Drug Testing. Applicants selected for and offered employment with the Port shall undergo and pass a mandatory drug test before being employed. Failure to submit to, or pass such drug test shall be grounds for rescinding the offer of employment, unless the applicant is undergoing treatment through a rehabilitation program approved or recognized by the Department of Mental Health and Substance Abuse, in which case the applicant must successfully complete the program within the prescribed time before being employed.

Employees selected for any position within the Authority will be tested as provided in the Drug Free Workplace Program Operating Procedures (DFWPOP).

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PERSONEL RULES & REGULATIONS CHPT 9, SEC 9.414:

Absence Pending Formal Investigation. An employee, who is under formal investigation by the Port for misconduct, or violation of a rule or statute, may be placed on excused absence from duty without charge to leave, not to exceed twenty (20) work days when the employee's absence from the work location is essential to the investigation.

PERSONEL RULES & REGULATIONS CHPT 9, SEC9.6:

Leave Without Pay (LWOP). A temporary, unpaid absence from work granted at the employees' request.

Employees must request LWOP and have it approved in advance, except in the case of emergencies. Supervisors may grant up to a **30 day period** of LWOP for any justifiable reason. LWOP in excess of 30 continuous days is regarded as **extended LWOP** and is subject to the following provisions:

a form SF-52, Request for Personnel Action, must be completed in order to request, authorize, and process extended LWOP;

Initial grants of extended LWOP (and any subsequent extensions) are limited to one calendar year; supervisors must be reasonably sure that any employees taking extended LWOP will return to duty once the LWOP has expired (except in the case of disabled veterans and employees applying for disability compensation or retirement); and extended LWOP may be granted **only** if such leave will benefit the Port and advance the welfare of the employees.

PERSONEL RULES & REGULATIONS CHPT 10, SEC 10.104:

Termination of Employment. The General Manager (or designee) shall terminate the employment of those employees who become disabled as a result of an injury, accident or illness that is not a result of misconduct or found to be medically non-qualified for their present position only for the following reasons:

- A. If no suitable placement can be made or if the employee refuses placement in a suitable position.

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- B. If the employee refuses or is ineligible for retirement
- C. If the General Manager (or designee) has evidence that the employee is permanently disabled from performing the job, or will be disabled for a long time that termination is necessary in light of demonstrated business realities.
- D. Such termination shall be consistent with the Adverse Action Procedures, Chapter 11.

PERSONEL RULES & REGULATIONS CHPT 11:

Adverse Action Procedures. The General Manager derives its authority and responsibility for employee discipline under the provisions of Section 4105, Title 4, of the GCA. The General Manager has the responsibility to remove suspend, or demote to another position on a fair and equal basis, any employee in the classified service whose conduct or capacity is such that his removal, suspension or demotion will promote the efficiency of government service.

The General Manager may delegate responsibility for administration of day to-day discipline to his line-management, to include such progressive discipline, as oral admonitions, letters of warning, letters of reprimands, and recommendation of adverse actions.

Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act Covers federal government agencies, federal contractors with contracts or purchase orders totaling \$25,000 or more, recipients of federal grants, and any individuals awarded federal contracts.

Definitions:

Employee(Contract) - An employee of the contractor who is directly engaged in the performance of work under a government contract. "Directly engaged" is defined to include all direct-cost employees and any other contract employee who has other than minimal impact or involvement in contract performance.

Employee(Grant) - Any person who is on the grantee's payroll and works in any activity under the grant even if not paid by grant funds. The definition includes all "direct

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charge" employees (those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (those who perform support or overhead functions related to the grant and for which the Federal government pays its share of expenses under the grant program.) Those indirect charge employees whose impact or involvement is insignificant to the performance of the grant are exempted.

Substance Abuse and Mental Health Services Administration (SAMHSA)

DEPARTMENT OF HEALTH AND HUMAN SERVICES Mandatory Guidelines for

Federal Workplace Drug Testing Programs Effective 10/1/2010

Division of Workplace Program

SAMHSA and the Center for Substance Abuse Prevention urge employers to clearly encourage prevention, early intervention, and treatment rather than waiting for problems to escalate to the point where they require discipline or termination.

Under the Act, employers must (a) establish an employee drug awareness and education program, (b) publish and provide workers with an antidrug policy statement, and (c) meet other requirements. The DOT's Drug Testing Rules cover employers in the air, rail, trucking, and mass transit industries and employers with operations otherwise covered by DOT. Those rules require the testing of employees in safety-sensitive positions for alcohol and illegal drug use.

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Return to Work Agreement Form (Last Chance Policy Agreement)

In lieu of terminating employment of an employee who tests positive for illegal substances, the Port Authority of Guam provides the employee a final opportunity to agree to comply with all the Port's policies and practices.

[] and the Port Authority of Guam agree to the
(Name of Employee)

following:

The employee tested positive for an illegal substance, a serious violation of the Port's policy. Instead of immediately terminating employment, [] (Name of Employee) will be suspended from work without pay for five (5) work days.

The employee agrees to abstain from the use of illegal substances. The employee has received another copy of the employers drug and alcohol policy and agrees to comply with all provisions of this policy.

The employee will actively participate in the company's employee assistance program (EAP). The employee will schedule [his/her] first EAP appointment no later than one week from the date of this Agreement.

If instructed by the EAP counselor to seek medical advice or a Substance Abuse Provider, the employee will seek this assistance regarding [his/her] use of illegal substances and will comply with all of the medical professionals recommendations. Employee further agrees to sign the appropriate Medical Release Authorization to allow [Jose D. Leon Guerrero Commercial Port Authority of Guam] to receive information from the medical professional or Substance Abuse Provider.

The employee agrees that all costs of medical consultation and treatment will be the responsibility of the employee and [his/her] medical insurance (as applicable).

If absence from work is necessary as part of the treatment or rehabilitation, the employer will designate the absence as Family and Medical Leave (FMLA) as long as all FMLA requirements under the Port's policy, including medical certification, are met. Available accrued sick leave, vacation and personal leave will be used as part of the FMLA leave.

The employee agrees to unannounced periodic follow-up drug testing for a period of one (1) year from the date of this agreement.

COPY OF PAG DFWP POLICY

(34 pages)

AUTHOR AND REFERENCE MATERIALS FOR SPECIFICATIONS

THE SPECIFICATIONS FOR THE SOLICITATION OF THE PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM HAS BEEN DEVELOPED BY THE HUMAN RESOURCES DIVISION- FRANCES T. CEPEDA- PERSONNEL SPECIALIST IV, REVIEWED BY SHAWN B. CEPEDA-PERSONNEL SERVICES ADMINISTRATOR, AND APPROVED BY RORY J. RESPICIO, GENERAL MANAGER.

SECTION IV.

DECLARATION DISCLOSING OWNERSHIP, INFLUENCE, COMMISSIONS AND CONFLICTS OF INTEREST

(Required by 5 GCA § 5233 as amended by P.L. 36-13 (4/9/2021))

CITY OF _____)
) ss.
ISLAND OF GUAM)

Preface. As a condition of submitting a Bid/Offer/Proposal or responding to any method of source selection under Guam's Procurement Law for the purpose of entering into a contract with the government of Guam, this Affidavit requires all Bidders/Offerors/Prospective Contractors to make disclosures of ownership, influence, commissions, gratuities, kickbacks, and conflicts of interest occurring during the 365 calendar days preceding the publication of this solicitation and until award of a contract. This includes the duty to disclose any changes to the facts disclosed herein throughout the solicitation process; and if the entity submitting this Affidavit is awarded a contract, the duty to disclose any changes to the facts disclosed herein continues throughout the life of the contract, including any extensions or renewals.

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the Bidder/Offeror/Prospective Contractor and that (please check and fill out all that apply):

- [] The Bidder/Offeror/Prospective Contractor is an individual with a business license, and all decisions are by, and all profit is for, that same individual, with principal place of business street address being:

_____.

- [] The Bidder/Offeror/Prospective Contractor is a business or artificial person (as defined in 1 GCA § 715 or 5 GCA §§ 5030(n) or 5233(b)), and is a sole proprietorship owned entirely (100%) by _____, with principal place of business street address being:

_____.

- [] The Bidder/Offeror/Prospective Contractor is a business or artificial person (as defined in 1 GCA § 715 or 5 GCA §§ 5030(n) or 5233(b)), and is owned by the following multiple individuals. Note: owners of more than 10% are statutorily required to be listed below, but other owners of smaller percentage are encouraged to be listed as well.

Name of Owner	Principal Place of Business Street Address	% of Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

- [] One or more of the more-than-10% owners listed above is a business or artificial person. Any more-than-25% owners of such a business or artificial person are listed below per 5 GCA § 5233. Note: any less-than-25% owners of such a business or artificial person is encouraged to also be listed below.

Name of >10% Owner Business or Artificial Person:

--

Names of owners of the >10% Owner Business or Artificial Person ("Second Tier Owner")	Owner's Principal Place of Business Street Address	% of Interest

Name of other >10% Owner Business or Artificial Person:

Names of owners of the >10% Owner Business or Artificial Person ("Second Tier Owner")	Owner's Principal Place of Business Street Address	% of Interest

- B. If any Second Tier Owner identified above is an artificial person, the natural or artificial owners of such Second Tier Owner who have held more than 49% of the shares or interest in the Bidder/Offeror/Prospective Contractor (Third Tier Owners) are as follows [if none, please so state]:

Second Tier Owner Name _____

Name of Third Tier Owner	Principal Place of Business Street Address	% of Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. If the name of no natural person has been identified as an owner, or a Second or Third Tier Owner of the Bidder/Offeror/Prospective Contractor, please identify the name, position, address, and contact information of the natural person having the authority and responsibility for the Bid/Offer/Proposal/Prospective Contract, and the name of any natural person who has the authority and power to remove and replace the designated responsible person:

Name of Natural Person	Position	Street Address of Principal Place of Business	Phone Number, Email Address, and other Contact Information

- D. Further, I say that the persons who have received or are entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the Bid/Offer/Proposal/Prospective Contract for which this Affidavit is submitted are as follows (if none, please so state):

Name	Principal Place of Business Street Address	Amount of Compensation
_____	_____	_____
_____	_____	_____

- E.** Further, I say that the persons who have directly or indirectly participated in this solicitation and who are also employees of the government of Guam or the government of the United States, if federal funds are to be used in the payment of the contract related to the Bid/Offer/Proposal/Prospective Contract for which this Affidavit is submitted, are as follows (if none, please so state):

Name	Principal Place of Business Street Address
_____	_____
_____	_____

- F.** Regardless of any ownership interest, the following individuals have the power to control the performance of the contract or to control the Bidder/Offeror/Prospective Contractor, directly or indirectly:

Name	Principal Place of Business Street Address
_____	_____
_____	_____

- G.** Until award of the contract, and throughout the term of any contract awarded to the Bidder/Offeror/Prospective Contractor represented herein, I agree to promptly make any disclosures not made previously and update changes in ownership, identities of owners and other required information, interests, compensation or conflicts of the persons required to be disclosed herein. I understand that failure to comply with this requirement shall constitute a material breach of contract.

- H.** I hereby declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed on: _____
(DATE)

Signature of one of the following:
Bidder/Offeror/Prospective Contractor, if a licensed individual
Owner of sole proprietorship Bidder/Offeror/Prospective Contractor
Partner, if the Bidder/Offeror/Prospective Contractor is a partnership
Officer, if the Bidder/Offeror/Prospective Contractor is a corporation

SECTION V.

DECLARATION RE: NON-COLLUSION

_____ [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. I hereby declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed on: _____
(DATE)

Signature of one of the following:

Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

SECTION VI.

DECLARATION RE: NO GRATUITIES, KICKBACKS, OR FAVORS

_____ [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 or Offeror]. 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, or are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of Offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).
3. To the best of affiant's knowledge, neither affiant, nor any of the Offeror's officers, representatives, agents, subcontractors, or employees have offered, given, or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity, or offer of employment in connection with Offeror's Proposal. violated, or are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e).
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.

Executed on: _____
(DATE)

Signature of one of the following:

Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

SECTION VII.

DECLARATION RE: ETHICAL STANDARDS

_____ [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).

I make these statements on behalf of myself as the authorized representative of the bidder, and on behalf of the bidder's officers, representatives, agents, subcontractors, and employees. I hereby declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed on: _____
(DATE)

Signature of one of the following:
Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

SECTION VIII.

DECLARATION RE: COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

PROCUREMENT No.: RFP-PAG-025-002

Name of Offeror Company: _____.

Name of declarant: _____, as the authorized representative of bidder, and on behalf of the bidder's officers, representatives, agents, subcontractors, and employees, with regard to all representations herein, hereby declares under penalty of perjury:

1. That I am _____ (the bidder, a partner of the bidder, an officer of the bidder) making the bid or proposal in the foregoing identified procurement;
2. That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

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

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

§ 5802. Benefits.

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

3. That the bidder is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein. I hereby declare under penalty of perjury under the laws of Guam that the foregoing is true and correct; and
4. That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [INSTRUCTIONS TO ALL BIDDERS – Please attach this Wage Determination to this Declaration Form 006 and include it in your Bid submission]

Executed on: _____
(DATE)

Signature of one of the following:

Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

SECTION IX.

DECLARATION RE: CONTINGENT FEES

_____ [state name of declarant signing below], declares that:

1. The name of the bidding company or individual is [state name of company]:

2. As a part of the bidding company's bid or proposal, the bidding 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 § 11108(f).
3. As a part of the bidding company's bid or proposal, to the best of my knowledge, the bidding company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 § 11108(f).
4. I make these statements on behalf of myself as a representative of the bidder, and on behalf of the bidder's officers, representatives, agents, subcontractors, and employees. I hereby declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed on: _____
(DATE)

Signature of one of the following:
Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

SECTION X.

U.S. DEPARTMENT OF LABOR WAGE AND BENEFIT DETERMINATION (SCA)

REGISTER OF WAGE DETERMINATIONS UNDER THE SERVICE CONTRACT ACT By direction of the Secretary of Labor | U.S. DEPARTMENT OF LABOR | EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION | WASHINGTON D.C. 20210 | Wage Determination No.: 2015-5693 Daniel W. Simms Director, Division of Wage Determinations | Revision No.: 25 Date of Last Revision: 07/08/2025

Note: Contracts subject to the Service Contract Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026.

Executive Order 14026 generally applies to the contract. If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022, the contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the Executive Orders is available at www.dol.gov/whd/govcontracts.

States: Guam, Northern Marianas, Wake Island Area: Guam Statewide Northern Marianas Statewide Wake Island Statewide

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE - TITLE	FOOTNOTE	RATE	
01000 - Administrative Support And Clerical Occupations			05010 - Automotive Electrician 17.97
01011 - Accounting Clerk I	14.85***		05040 - Automotive Glass Installer 16.81***
01012 - Accounting Clerk II	16.67***		05070 - Automotive Worker 16.81***
01013 - Accounting Clerk III	18.64		05110 - Mobile Equipment Servicer 14.42***
01020 - Administrative Assistant	23.15		05130 - Motor Equipment Metal Mechanic 19.14
01035 - Court Reporter	18.86		05160 - Motor Equipment Metal Worker 16.81***
01041 - Customer Service Representative I	14.06***		05190 - Motor Vehicle Mechanic 19.14
01042 - Customer Service Representative II	15.39***		05220 - Motor Vehicle Mechanic Helper 13.28***
01043 - Customer Service Representative III	17.22***		05250 - Motor Vehicle Upholstery Worker 15.64***
01051 - Data Entry Operator I	13.28***		05280 - Motor Vehicle Wrecker 16.81***
01052 - Data Entry Operator II	14.49***		05310 - Painter, Automotive 17.97
01060 - Dispatcher, Motor Vehicle	18.86		05340 - Radiator Repair Specialist 16.81***
01070 - Document Preparation Clerk	15.02***		05370 - Tire Repairer 12.90***
01090 - Duplicating Machine Operator	15.02***		05400 - Transmission Repair Specialist 19.14
01111 - General Clerk I	12.37***		07000 - Food Preparation And Service Occupations
01112 - General Clerk II	13.50***		07010 - Baker 13.43***
01113 - General Clerk III	15.15***		07041 - Cook I 16.18***
01120 - Housing Referral Assistant	21.02		07042 - Cook II 18.86
01141 - Messenger Courier	12.00***		07070 - Dishwasher 10.00***
01191 - Order Clerk I	13.76***		07130 - Food Service Worker 10.57***
01192 - Order Clerk II	15.02***		07210 - Meat Cutter 13.36***
01261 - Personnel Assistant (Employment) I	16.86***		07260 - Waiter/Waitress 9.09***
01262 - Personnel Assistant (Employment) II	18.86		09000 - Furniture Maintenance And Repair Occupations
01263 - Personnel Assistant (Employment) III	21.02		09010 - Electrostatic Spray Painter 19.70
01270 - Production Control Clerk	25.27		09040 - Furniture Handler 11.94***
01290 - Rental Clerk	11.10***		09080 - Furniture Refinisher 19.70
01300 - Scheduler, Maintenance	16.86***		09090 - Furniture Refinisher Helper 14.47***
01311 - Secretary I	16.86***		09110 - Furniture Repairer, Minor 17.15***
01312 - Secretary II	18.86		09130 - Upholsterer 19.70
01313 - Secretary III	21.02		11000 - General Services And Support Occupations
01320 - Service Order Dispatcher	16.86***		11030 - Cleaner, Vehicles 10.40***
01410 - Supply Technician	23.15		11060 - Elevator Operator 10.67***
01420 - Survey Worker	18.69		11090 - Gardener 16.81***
01460 - Switchboard Operator/Receptionist	10.90***		11122 - Housekeeping Aide 10.67***
01531 - Travel Clerk I	15.02***		11150 - Janitor 10.67***
01532 - Travel Clerk II	16.85***		11210 - Laborer, Grounds Maintenance 12.71***
01533 - Travel Clerk III	18.26		11240 - Maid or Houseman 10.59***
01611 - Word Processor I	15.02***		11260 - Pruner 11.37***
01612 - Word Processor II	16.86***		11270 - Tractor Operator 15.39***
01613 - Word Processor III	18.86		11330 - Trail Maintenance Worker 12.71***
05000 - Automotive Service Occupations			11360 - Window Cleaner 11.92***
05005 - Automobile Body Repairer, Fiberglass	19.14		12000 - Health Occupations
05010 - Automotive Electrician	17.97		12010 - Ambulance Driver 20.86
05040 - Automotive Glass Installer	16.81***		12011 - Breath Alcohol Technician 20.86
05070 - Automotive Worker	16.81***		12012 - Certified Occupational Therapist Assistant 28.62
			12015 - Certified Physical Therapist Assistant 28.62
			12020 - Dental Assistant 18.79
			12025 - Dental Hygienist 39.73
			12030 - EKG Technician 31.60

12035 - Electroneurodiagnostic Technologist	31.60	15010 - Aircrew Training Devices Instructor (Non-Rated)	24.23
12040 - Emergency Medical Technician	20.85	15020 - Aircrew Training Devices Instructor (Rated)	29.32
12071 - Licensed Practical Nurse I	18.65	15030 - Air Crew Training Devices Instructor (Pilot)	34.91
12072 - Licensed Practical Nurse II	20.85	15050 - Computer Based Training Specialist / Instructor	24.23
12073 - Licensed Practical Nurse III	23.25	15060 - Educational Technologist	31.17
12100 - Medical Assistant	14.30***	15070 - Flight Instructor (Pilot)	34.91
12130 - Medical Laboratory Technician	18.93	15080 - Graphic Artist	20.47
12160 - Medical Record Clerk	14.97***	15085 - Maintenance Test Pilot, Fixed, Jet/Prop	34.91
12180 - Medical Record Technician	17.77	15086 - Maintenance Test Pilot, Rotary Wing	34.91
12195 - Medical Transcriptionist	18.65	15088 - Non-Maintenance Test/Co-Pilot	34.91
12210 - Nuclear Medicine Technologist	45.85	15090 - Technical Instructor	17.67***
12221 - Nursing Assistant I	12.91***	15095 - Technical Instructor/Course Developer	23.78
12222 - Nursing Assistant II	14.52***	15110 - Test Proctor	15.70***
12223 - Nursing Assistant III	15.85***	15120 - Tutor	15.70***
12224 - Nursing Assistant IV	17.70	16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
12235 - Optical Dispenser	20.85	16010 - Assembler	11.60***
12250 - Optical Technician	18.65	16030 - Counter Attendant	11.60***
12250 - Pharmacy Technician	15.49***	16040 - Dry Cleaner	13.23***
12280 - Phlebotomist	18.65	16070 - Finisher, Flatwork, Machine	11.60***
12305 - Radiologic Technologist	31.60	16090 - Presser, Hand	11.60***
12311 - Registered Nurse I	25.85	16110 - Presser, Machine, Disinfecting	11.60***
12312 - Registered Nurse II	31.60	16130 - Presser, Machine, Shirts	11.60***
12313 - Registered Nurse II, Specialist	31.60	16160 - Presser, Machine, Wearing Apparel, Laundry	11.60***
12314 - Registered Nurse III	38.24	16190 - Sewing Machine Operator	13.75***
12315 - Registered Nurse III, Anesthetist	38.24	16220 - Tailor	14.34***
12316 - Registered Nurse IV	45.85	16250 - Washer, Machine	12.14***
12317 - Scheduler (Drug and Alcohol Testing)	25.85	19000 - Machine Tool Operation And Repair Occupations	
12320 - Substance Abuse Treatment Counselor	25.85	19010 - Machine-Tool Operator (Tool Room)	19.70
3000 - Information And Arts Occupations		19040 - Tool And Die Maker	24.77
13011 - Exhibits Specialist I	21.42	21000 - Materials Handling And Packing Occupations	
13012 - Exhibits Specialist II	26.53	21020 - Forklift Operator	15.87***
13013 - Exhibits Specialist III	32.45	21030 - Material Coordinator	25.27
13041 - Illustrator I	21.42	21040 - Material Expediter	25.27
13042 - Illustrator II	26.53	21050 - Material Handling Laborer	13.83***
13043 - Illustrator III	32.45	21071 - Order Filler	10.87***
13047 - Librarian	26.53	21080 - Production Line Worker (Food Processing)	15.87***
13050 - Library Aide/Clerk	17.05***	21110 - Shipping Packer	17.12***
13054 - Library Information Technology Systems Administrator	26.53	21130 - Shipping/Receiving Clerk	17.12***
13058 - Library Technician	18.11	21140 - Store Worker I	17.48***
13061 - Media Specialist I	19.15	21150 - Stock Clerk	24.56
13062 - Media Specialist II	21.42	21210 - Tools And Parts Attendant	15.87***
13063 - Media Specialist III	23.87	21410 - Warehouse Specialist	15.87***
13071 - Photographer I	19.15	23000 - Mechanics And Maintenance And Repair Occupations	
13072 - Photographer II	21.42	23010 - Aerospace Structural Welder	25.04
13073 - Photographer III	26.53	23019 - Aircraft Logs and Records Technician	19.47
13074 - Photographer IV	32.45	23021 - Aircraft Mechanic I	23.84
13075 - Photographer V	39.27	23022 - Aircraft Mechanic II	25.04
13090 - Technical Order Library Clerk	21.42	23023 - Aircraft Mechanic III	26.30
13110 - Video Teleconference Technician	19.15	23040 - Aircraft Mechanic Helper	16.58***
4000 - Information Technology Occupations		23050 - Aircraft, Painter	22.30
14041 - Computer Operator I	15.71***	23060 - Aircraft Servicer	19.47
14042 - Computer Operator II	17.22***	23070 - Aircraft Survival Flight Equipment Technician	22.39
14043 - Computer Operator III	19.19	23080 - Aircraft Worker	21.03
14044 - Computer Operator IV	21.33	23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	21.03
14045 - Computer Operator V	23.82	23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	23.84
14071 - Computer Programmer I (see 1)	15.73***	23110 - Appliance Mechanic	19.70
14072 - Computer Programmer II (see 1)	19.50	23120 - Bicycle Repairer	15.81***
14073 - Computer Programmer III (see 1)	23.84	23125 - Cable Splicer	24.19
14074 - Computer Programmer IV (see 1)		23130 - Carpenter, Maintenance	17.58***
14101 - Computer Systems Analyst I (see 1)	24.23	23140 - Carpet Layer	18.43
14102 - Computer Systems Analyst II (see 1)		23160 - Electrician, Maintenance	20.04
14103 - Computer Systems Analyst III (see 1)		23181 - Electronics Technician Maintenance I	18.43
14150 - Peripheral Equipment Operator	15.71***	23182 - Electronics Technician Maintenance II	19.70
14160 - Personal Computer Support Technician	21.33	23183 - Electronics Technician Maintenance III	20.98
14170 - System Support Specialist	21.24	23260 - Fabric Worker	17.15***
5000 - Instructional Occupations		23290 - Fire Alarm System Mechanic	17.12***
15010 - Aircrew Training Devices Instructor (Non-Rated)	24.23	23310 - Fire Extinguisher Repairer	15.81***

23310 - Fire Extinguisher Repairer	15.81***	27007 - Baggage Inspector	10.63***
23311 - Fuel Distribution System Mechanic	20.98	27008 - Corrections Officer	14.59***
23312 - Fuel Distribution System Operator	15.81***	27010 - Court Security Officer	14.59***
23370 - General Maintenance Worker	14.09***	27030 - Detection Dog Handler	11.89***
23380 - Ground Support Equipment Mechanic	23.84	27040 - Detention Officer	14.59***
23381 - Ground Support Equipment Servicer	19.47	27070 - Firefighter	14.59***
23382 - Ground Support Equipment Worker	21.03	27101 - Guard I	10.63***
23391 - Gunsmith I	15.81***	27102 - Guard II	11.89***
23392 - Gunsmith II	18.43	27131 - Police Officer I	14.59***
23393 - Gunsmith III	20.98	27132 - Police Officer II	16.21***
23410 - Heating, Ventilation And Air-Conditioning Mechanic	20.22	28000 - Recreation Occupations	
23411 - Heating, Ventilation And Air-Conditioning Mechanic (Research Facility)	21.51	28041 - Carnival Equipment Operator	13.60***
23430 - Heavy Equipment Mechanic	20.66	28042 - Carnival Equipment Repairer	14.95***
23440 - Heavy Equipment Operator	18.87	28043 - Carnival Worker	10.11***
23460 - Instrument Mechanic	20.98	28210 - Gate Attendant/Gate Tender	14.59***
23465 - Laboratory/Shelter Mechanic	19.79	28310 - Lifeguard	11.60***
23470 - Laborer	13.83***	28350 - Park Attendant (Aide)	16.21***
23510 - Locksmith	19.79	28510 - Recreation Aide/Health Facility Attendant	13.02***
23530 - Machinery Maintenance Mechanic	26.47	28515 - Recreation Specialist	20.00
23550 - Mechanist, Maintenance	20.98	28630 - Sports Official	12.91***
23580 - Maintenance Trades Helper	11.87***	28690 - Swimming Pool Operator	17.71***
23591 - Metrology Technician I	20.98	29000 - Stevedoring/Longshoremen Occupational Services	
23592 - Metrology Technician II	22.31	29010 - Blocker And Bracer	28.62
23593 - Metrology Technician III	23.62	29020 - Hatch Tender	28.62
23640 - Millwright	20.98	29030 - Line Handler	28.62
23710 - Office Appliance Repairer	19.46	29041 - Stevedore I	16.63
23760 - Painter, Maintenance	18.74	29042 - Stevedore II	30.60
23790 - Pipefitter, Maintenance	19.96	30000 - Technical Occupations	
23810 - Plumber, Maintenance	18.75	30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	46.07
23820 - Pneumatic Systems Mechanic	20.98	30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	31.77
23850 - Rigger	20.98	30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	34.99
23870 - Scale Mechanic	18.43	30021 - Archeological Technician I	18.41
23890 - Sheet-Metal Worker, Maintenance	20.00	30022 - Archeological Technician II	20.59
23910 - Small Engine Mechanic	18.43	30023 - Archeological Technician III	25.51
23931 - Telecommunications Mechanic I	20.98	30030 - Cartographic Technician	25.51
23932 - Telecommunications Mechanic II	22.31	30040 - Civil Engineering Technician	25.51
23950 - Telephone Lineman	22.08	30051 - Cryogenic Technician I	28.25
23960 - Welder, Combination, Maintenance	19.96	30052 - Cryogenic Technician II	31.21
23965 - Well Driller	21.13	30061 - Drafter/CAD Operator I	18.41
23970 - Woodcraft Worker	20.98	30062 - Drafter/CAD Operator II	20.59
23980 - Woodworker	15.81***	30063 - Drafter/CAD Operator III	22.96
24000 - Personal Needs Occupations		30064 - Drafter/CAD Operator IV	20.25
24550 - Case Manager	16.09***	30081 - Engineering Technician I	17.32***
24570 - Child Care Attendant	20.27***	30082 - Engineering Technician II	19.44
24580 - Child Care Center Clerk	13.25***	30083 - Engineering Technician III	21.74
24610 - Chore Aide	15.47***	30084 - Engineering Technician IV	26.94
24620 - Family Readiness And Support Services Coordinator	16.09***	30085 - Engineering Technician V	32.95
24630 - Homemaker	16.12***	30086 - Engineering Technician VI	30.86
25000 - Plant And System Operations Occupations		30090 - Environmental Technician	25.51
25010 - Boiler Tender	22.79	30095 - Evidence Control Specialist	25.51
25040 - Sewage Plant Operator	22.80	30210 - Laboratory Technician	22.96
25070 - Stationary Engineer	22.79	30221 - Latent Fingerprint Technician I	28.25
25190 - Ventilation Equipment Tender	15.72***	30222 - Latent Fingerprint Technician II	31.21
25210 - Water Treatment Plant Operator	22.80	30240 - Mathematical Technician	25.51
27000 - Protective Service Occupations		30361 - Paralegal/Legal Assistant I	21.15
27004 - Alarm Monitor	11.89***		

38862 - Paralegal/Legal Assistant II	26.20
38863 - Paralegal/Legal Assistant III	32.84
38864 - Paralegal/Legal Assistant IV	38.76
38875 - Petroleum Supply Specialist	31.21
38880 - Photo-Optics Technician	25.51
38895 - Radiation Control Technician	31.21
38481 - Technical Writer I	25.51
38482 - Technical Writer II	31.21
38463 - Technical Writer III	37.75
38891 - Unexploded Ordnance (UO) Technician I	29.28
38892 - Unexploded Ordnance (UO) Technician II	35.43
38895 - Unexploded Ordnance (UO) Technician III	42.46
38484 - Unexploded (UO) Safety Escort	29.28
38895 - Unexploded (UO) Sweep Personnel	29.28
38801 - Weather Forecaster I	28.25
38582 - Weather Forecaster II	34.36
38828 - Weather Observer, Combined Upper Air Or Surface Programs (see 2)	22.96
38621 - Weather Observer, Senior (see 2)	25.51
31800 - Transportation/Mobile Equipment Operation Occupations	
31800 - Airplane Pilot	35.43
31820 - Bus Aide	8.97***
31880 - Bus Driver	12.75***
31843 - Driver Courier	18.53***
31260 - Parking and Lot Attendant	9.91***
31280 - Shuttle Bus Driver	12.48***
31310 - Taxi Driver	11.41***
31361 - Truckdriver, Light	11.98***
31362 - Truckdriver, Medium	12.48***
31363 - Truckdriver, Heavy	17.88
31364 - Truckdriver, Tractor-Trailer	17.88
99800 - Miscellaneous Occupations	
99800 - Cabin Safety Specialist	17.27***
99809 - Cashier	18.51***
99850 - Desk Clerk	18.13***
99895 - Embalmer	29.28
98130 - Flight Followee	29.28
99251 - Laboratory Animal Caretaker I	25.81
99252 - Laboratory Animal Caretaker II	29.29
99260 - Marketing Analyst	21.54
99310 - Mortician	29.28
99410 - Pest Controller	16.00***
99510 - Photofinishing Worker	15.38***
99710 - Recycling Laborer	19.85
99711 - Recycling Specialist	25.72
99730 - Refuse Collector	18.84
99810 - Sales Clerk	11.36***
99820 - School Crossing Guard	19.81
99830 - Survey Party Chief	24.38
99831 - Surveying Aide	13.87***
99832 - Surveying Technician	18.82
99840 - Vending Machine Attendant	25.81
99841 - Vending Machine Repairer	34.14
99842 - Vending Machine Repairer Helper	25.81

***Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75 per hour). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands. The minimum wage requirements of Executive Order 14026 also are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$5.36 per hour, up to 40 hours per week, or \$214.40 per week or \$929.07 per month

HEALTH & WELFARE EO 13706: \$4.93 per hour, up to 40 hours per week, or \$197.20 per week, or \$854.53 per month*

*This rate is to be used only when compensating employees for performance on an SCA-covered contract also covered by EO 13706, Establishing Paid Sick Leave for Federal Contractors. A contractor may not receive credit toward its SCA obligations for any paid sick leave provided pursuant to EO 13706.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; and 4 weeks after 3 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of eleven paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: This wage determination does not apply to any individual employed in a bona fide executive, administrative, or professional capacity, as defined in 29 C.F.R. Part 541. (See 41 C.F.R. 6701(3)). Because most Computer Systems Analysts and Computer Programmers who are paid at least \$27.63 per hour (or at least \$684 per week if paid on a salary or fee basis) likely qualify as exempt computer professionals under 29 U.S.C. 213(a)(1) and 29 U.S.C. 213(a)(17), this wage determination may not include wage rates for all occupations within those job families. In such instances, a conformance will be necessary if there are nonexempt employees in these job families working on the contract.

Job titles vary widely and change quickly in the computer industry, and are not determinative of whether an employee is an exempt computer professional. To be exempt, computer employees who satisfy the compensation requirements must also have a primary duty that consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

Any computer employee who meets the applicable compensation requirements and the above duties test qualifies as an exempt computer professional under both section 13(a)(1) and section 13(a)(17) of the Fair Labor Standards Act. (Field Assistance Bulletin No. 2006-3 (Dec. 14, 2006)). Accordingly, this wage determination will not apply to any exempt computer employee regardless of which of these two exemptions is utilized.

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employee (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

**** HAZARDOUS PAY DIFFERENTIAL ****

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

**** SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS ****

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition (Revision 1), dated September 2015, unless otherwise indicated.

**** REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE, Standard Form 1444 (SF-1444) ****

CONFORMANCE PROCESS:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract, a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order the proposed classification title(s), a federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the U.S. Department of Labor, Wage and Hour Division, for review (See 29 CFR 4.6(b)(2)(ii)).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour Division's decision to the contractor.
- 6) Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination (See 29 CFR 4.6(b)(2)(iii)).

Information required by the Regulations must be submitted on SF-1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" should be used to compare job definitions to ensure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination (See 29 CFR 4.152(c)(1))."

SECTION XI.
SUBCONTRACTOR UTILIZATION FORM

RFP NO. _____

PROJECT TITLE:

NAME OF PRIME OFFEROR:

E-MAIL ADDRESS:

ADDRESS:

TELEPHONE NO.:

FAX NO.:

The following subcontractors¹ (if known at the time of proposal submission) will be used on this Project (continue list on additional page if necessary):

Company Name, Address, Phone
Number, And E-Mail Address:

Type Of Work to be Performed:

Estimated Dollar Amount of
Subcontract:

I certify under penalty of perjury that the foregoing statements are true and correct. In the event that substitution or replacement of a subcontractor is required, I will adhere to the substitution or replacement requirements of the government of Guam.

Signature of Offeror (Prime Contractor)

Date

Print Name

Title

¹ Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services to a prime contractor or higher tier subcontractor under a contract awarded or to be awarded by the government of Guam.

SECTION XII.

CONFLICT OF INTEREST (COI) DISCLOSURE FORM

Government of Guam PAG RFP No. RFP-PAG-025-002

Offerors under Contract or proposing to enter into a Contract with PAG must comply with the "Conflict of Interest Guidelines" attached to this solicitation. The definitions of terms used in this COI Disclosure Form shall be those provided in the Conflict-of-Interest Guidelines (note that "Public Employee" includes all PAG employees).

This COI Disclosure Form is submitted in response to:

- ☐ PAG RFP# _____ [or] IFB# _____ (check only one)
- ☐ Contract # _____ (if applicable)
- ☐ Changes to COI Disclosure Form previously submitted for RFP # _____ IFB # _____ (check only one), or Contract # _____ (if applicable)

This COI Disclosure Form must be signed in ink by an authorized representative of Offeror to certify that it is correct. An Offeror's certification that its disclosure form is correct includes the disclosure by its Associates and Subcontractors.

My signature certifies that as disclosed on or attached to the present form:

- (a) the Offeror's disclosures are complete, accurate, and not misleading.
- (b) the Offeror has provided the COI Guidelines to all Associates and Subcontractors (if any) and this form includes or has attached any required COI disclosures from those sources.

I hereby certify that I am authorized to sign this COI Disclosure Form as an Authorized Representative for the Offeror identified below:

Complete Legal Name of Offeror: _____

Address: _____

Telephone: _____ Fax No: _____

Signature: _____ Date: _____

Please answer all questions "Yes", "No" or "N/A" (if uncertain answer "Yes.") If the answer to any of the questions is "Yes," then use the applicable "Comments" fields to:

- (a) furnish all relevant facts that are necessary to make the response complete, accurate, and not misleading; and
- (b) identify any actions that must be taken to avoid, neutralize, or mitigate such conflict of interest (e.g. communications barriers, restraint or restriction upon future contracting activities, or other precaution)

Please add additional sheets as necessary to respond to the "Comments" field.

1. a) Is any Associate of the Offeror a former employee of PAG within the last year? No ☐ Yes ☐
- b) Is any Associate of the Offeror a Relative or Member of the Household of a current PAG employee that had or will have any involvement with this Procurement or Contract Authorization? No ☐ Yes ☐

If the answer to either of the above questions is "Yes", complete the attached "Relatives and Former PAG Employees - Roles and Signatures" table (Part A and/or Part B, as applicable).

2. Does the Offeror or any Associate of the Offeror have an Actual, Apparent or Potential Conflict of Interest ("Individual" or "Organizational") with regard to any known member of an PAG Procurement evaluation or selection team? No ☐ Yes ☐ Comments: _____

3. Did the Offeror or any Associate of the Offeror conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers? No ☐ Yes ☐ Comments: _____

4. Does the Offeror or any Associate of the Offeror have any past, present or currently planned personal or financial interests which are an Actual, Apparent or Potential Conflict of Interest ("Individual" or "Organizational"), with respect to the Procurement or award of this Contract or performing the work for PAG or acquisition of any real property for the Project? No ☐ Yes ☐ Comments: _____

5. Has the Offeror or an Associate of the Offeror offered to a Public Employee, or is the Offeror aware of any Public Employee that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Employee's vote, official action or judgment would be influenced thereby? No ☐ Yes ☐ Comments: _____

6. Has (or will) the Offeror or an Associate of the Offeror provided a direct beneficial financial interest to any person within two years after the person ceased to hold a position as a Public Employee who was involved in the Procurement or Authorization for the Contract, or is the Offeror aware of any such person or Public Employee who has or will receive a direct beneficial financial interest within the two-year period? No ☐ Yes ☐ Comments: _____

7. Is the Offeror aware of any current or former Public Employee that has an Actual, Apparent or Potential Conflict of Interest with respect to the Procurement or award of this Contract or performing the work for PAG?
No ☐ Yes ☐ Comments: _____

8. Does the prospective Contract/WOC include development of an Environmental Assessment (EA) or Environmental Impact Statement (EIS)? No ☐ Yes ☐

If yes, in accordance with the disclosure statement requirements of Council on Environmental Quality Regulation, 40 C.F.R 1506.5(c), does the Offeror have any financial or other interest in the outcome of this Project; and/or does the Offeror have any agreement, enforceable promise, or guarantee to provide any future work on this Project? No ☐ Yes ☐ Comments: _____

9. Have Subcontractors or other Associates furnished COI Disclosure Forms, separate from the present form, which included conflicts or potential conflicts of interest? (If yes, attach the disclosures.)
No ☐ Yes ☐ N/A ☐ Comments: _____

10. If the prospective Contract/WOC includes personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Offeror or an Associate or an Affiliate of the Offeror a party to the subject public contract?
No ☐ Yes ☐ N/A ☐ Comments: _____

11. Has the Offeror or any Associate of the Offeror entered into personal services contract(s) with PAG for the purpose of advising or assisting in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to this procurement?
No ☐ Yes ☐ Comments: _____

SPACE FOR ADDITIONAL COMMENTS TO ANY QUESTIONS ABOVE (PLEASE LIST QUESTION NUMBER AND CORRESPONDING COMMENT):

**(COI FORM FOR RELATIVES AND FORMER PAG EMPLOYEES - ROLES AND SIGNATURES
LISTING IS LOCATED ON THE NEXT PAGE)**

RELATIVES AND FORMER PAG EMPLOYEES - ROLES AND SIGNATURES

For each employee of the Offeror that was employed by PAG within the last year, state the job the employee performed for PAG, the role the employee now serves for the Offeror and the date the employee left PAG. Use Part B for Offeror Associates with Relatives or Members of the Household working for PAG that have had or will have involvement with this Procurement or Contract.

PART A: EMPLOYEES THAT LEFT PAG IN THE LAST YEAR.			
EMPLOYEE NAME/SIGNATURE	JOB PERFORMED FOR PAG	CURRENT ROLE WITH OFFEROR	DATE LEFT PAG
Name: _____ Sign: _____ Involved with this Procurement on behalf of PAG? No <input type="checkbox"/> Yes <input type="checkbox"/> Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/>			
Name: _____ Sign: _____ Involved with this Procurement on behalf of PAG? No <input type="checkbox"/> Yes <input type="checkbox"/> Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/>			
Name: _____ Sign: _____ Involved with this Procurement on behalf of PAG? No <input type="checkbox"/> Yes <input type="checkbox"/> Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/>			
Part B: Identify Associates of the Offeror that are Relatives or Members of the Household of PAG employees currently working for PAG, if the PAG employee had or will have any involvement with this Procurement or Contract.			
Offeror Associate's Name	Name and Relationship of Relative or Member of Household Employed at PAG	Role at PAG	PAG employee's Role with this Procurement

(MAKE COPIES OF THIS PAGE AS NECESSARY TO LIST ADDITIONAL EMPLOYEES OR ASSOCIATES.)

SECTION XIII. CONFLICT OF INTEREST GUIDELINES

Offerors shall follow these Conflict of Interest (COI) Guidelines when submitting any Proposal in response to a federally funded PAG solicitation or procurement or when entering into any federally funded Contract with PAG. The Contractor shall follow these COI Guidelines throughout the period during which the Proposal/Bid is open or the Contract is in effect. An Offeror shall provide the COI Guidelines and associated COI Disclosure Form to all of its Subconsultants and Subcontractors at any tier of a Proposal or Contract and shall ensure that the Offeror and each of its Subconsultants or Subcontractors make any disclosures required by these guidelines or as required by a specific Procurement or Contract. The PAG will follow and apply these COI Guidelines when conducting PAG procurements.

1. DEFINITIONS.

The definitions that apply to these COI Guidelines and the PAG's COI Disclosure Form are at the end of this document.

2. REQUIRED DISCLOSURES.

SUBMITTAL OF A CORRECT AND SIGNED COI DISCLOSURE FORM IS REQUIRED IF ANY OF THE FOLLOWING APPLY (NOTE THAT FOR THE PURPOSES OF THESE COI GUIDELINES "PUBLIC EMPLOYEE" INCLUDES ALL PAG EMPLOYEES):

- an Offeror or any of its Associates have any Apparent, Potential or Actual Conflicts of Interest per these COI guidelines or per the criteria of any COI Form included as part of a Procurement or Contract;
- a Procurement or Contract document specifically requires submittal of a COI Disclosure Form (e.g., if the prospective Project includes preparation of an Environmental Impact Statement or Environmental Assessment, submittal of COI Disclosure Forms is always required.);
- an Offeror has any changes to its staffing or organization (whether before or after entering into a Contract) that result in an Apparent, Potential or Actual Conflict of Interest per these guidelines or per the criteria of any COI form associated with a particular Procurement or Contract. Any such changes shall be disclosed within 10 business days via submittal of a complete and signed COI Disclosure Form.
- the response to any of the following questions is "yes" (with respect to a Procurement or current Contract with PAG):
 1. Is any Associate of the Offeror a former employee of PAG (within the last year)?
 2. Is any Associate of the Offeror a Relative or Member of the Household of a current employee of PAG who had or may have a role in this Procurement, Authorization of the Contract, Contract administration, or oversight of the Contractor's performance?
 3. Does the Offeror or any Associate of the Offeror have an Actual, Apparent or Potential Conflict of Interest ("Individual" or "Organizational") with regard to any member of an PAG Procurement evaluation or selection team?
 4. Did the Offeror or any Associate of the Offeror conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers?
 5. Does the Offeror or any Associate of the Offeror have any past, present or currently planned interests which are an Actual, Apparent or Potential Conflict of Interest ("Individual" or "Organizational") with respect to performing the work for PAG?
 6. Has the Offeror or an Associate of the Offeror offered to a Public Employee, or is the Offeror aware of any Public Employee that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Employee's vote, official action or judgment would be influenced thereby?

7. Has (or will) the Offeror or an Associate of the Offeror provided a direct beneficial financial interest to any person within one year after the person ceased to hold a position as a Public Employee who was involved in the Procurement or Authorization for the Contract, or is the Offeror aware of any such person or Public Employee who has or will receive a direct beneficial financial interest within the one-year period?
8. Is the Offeror aware of any current or former Public Employee that has an Actual, Apparent or Potential Conflict of Interest with respect to the Procurement or award of this Contract or performing the work for PAG?
9. Does the prospective Contract include development of an environmental assessment (EA) or environmental impact statement (EIS)?
10. If a Procurement is to obtain personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Offeror or an Associate or an Affiliate of the Offeror a party to the subject public contract?
11. Has the Offeror or any Associate of the Offeror entered into any contract(s) with PAG for the purpose of advising or assisting in developing any part of the solicitation documents, including specifications, requirements, a scope or statement of work, an invitation to bid, a request for proposals or other documents and materials used in, or related to this procurement?

If none of the foregoing apply, an Offeror shall provide a written and signed certification (specified by PAG) that the Offeror has read and complied with these COI Guidelines and the COI Disclosure Form and did not answer Yes to any of the questions, or, if required by the PAG, the Offeror shall complete and submit a Correct and signed COI Disclosure Form.

An Offeror shall incorporate in each required COI Disclosure Form any COI disclosure information provided by its staff and attach COI Disclosure Forms from each of its Subcontractors (that have required disclosures of conflicts or potential conflicts of interest), prior to such Offeror performing any services under a Contract.

The COI Disclosure Form is attached to the solicitation as a mandatory form that must be signed and submitted with Offeror's Proposal.

3. GOVERNING STANDARDS.

Both Guam and federal laws govern disclosure and management of conflicts of interest in contracting processes. The disclosure requirements of these COI Guidelines apply to all PAG contracting activities (Architectural and Engineering (A&E) and non-A&E, public improvements, goods, and trade services) without regard to which particular federal or Guam laws govern the activity. There are also Standards of Conduct Policies for conflicts of interest regarding current PAG employees, and the employment of former PAG employees, which are applicable to this procurement, and are explained below.

STANDARDS OF CONDUCT POLICY REGARDING FORMER PAG EMPLOYEES

When employees of firms which compete for or have Contracts with the PAG come to work for the PAG, and when PAG employees go to work for firms which compete for or have Contracts with the PAG, a Potential Conflict of Interest may exist.

Use of a former PAG employee by an Offeror on the same, or substantially similar Procurement, for which the employee performed a role or function for the PAG, unless mitigated to the satisfaction of the PAG, is prohibited for a period of one year following separation of employment with the PAG. Roles and functions of particular concern include drafting specifications or statements of work, reviewing or scoring a bid or proposal, authorizing service or assigning work, awarding a Contract, administering a Contract, or overseeing Contractor's performance. The PAG may determine that the role or Procurement is not substantially similar because of differences in location of the Project or work, because of the type and method of Procurement, because the employee did not participate personally or substantially in the procurement, because the role performed was minor in nature, such as a technical sufficiency

review, or because the Civil Service Commission has granted the employee an applicable waiver. Examples of mitigation that may, in appropriate situations, be acceptable to the PAG include separation of certain decision-making functions concerning the Project, not using the employee in preparation of proposals but allowing them to perform work on the Project, and not having the employee have direct contact with PAG staff formerly under his/her supervision.

For each Procurement, Offerors shall disclose to PAG the identification of any of Offeror's employee(s) that had been employed by PAG within the twelve-month period prior to the submission date for the Proposal or bid. Each Offeror's disclosure shall include a signed statement by the former PAG employee of their proposed role for the Offeror in the particular Procurement and any resulting Contract. The knowing failure of an Offeror to disclose such relationship or to remedy such potential violation will result in the rejection of the Offeror's Proposal or cancellation of any awarded Contract with the PAG as well as constituting grounds for cancellation of any Offeror's pre-qualification status, or designation of an Offeror as ineligible for future Procurements as a non-responsible bidder or offeror. (Also see below regarding the ban on any direct beneficial or financial interest.)

STANDARDS OF CONDUCT REGARDING CURRENT PAG EMPLOYEES' CONFLICTS OF INTEREST

The Guam Procurement Law statutory and regulatory framework, as generally applied, addresses conflicts of interest in public contracting by emphasizing the need for open and impartial Procurement methods and by prohibiting certain conflicts of interest involving public officials. The following statutes and administrative rules establish Guam's general policies and the restrictions and prohibitions regarding conflicts of interest for public contracts and Public Employees:

- The policies of the Guam Procurement Law (5 GCA § 5001, et seq) encourage public contracting competition that supports openness and impartiality to the maximum extent possible, while recognizing that the nature of effective and meaningful competition depends upon the service being procured.
- According to 5 GCA §§ 5001(b), 5003, and 5625, a sound and responsive public contracting system should instill public confidence through ethical and fair dealing, honesty, and good faith on the part of government officials and those who do business with the government.
- Article 11 of the Guam Procurement Law, Ethics in Public Contracting, and Article 2 of the Standards of Conduct for Elected Officers, Appointed Officers and Public Employees of the government of Guam prohibit conflicts of interest of Public Employees and prohibit Public Employees from obtaining outside financial benefits for the exercise of their official duties. Among the prohibitions are offering a public employee a fee, a pledge of future employment, or anything valued in excess of \$200 based on an understanding that the offer would influence the public employee's official action or judgment.
- 5 GCA § 5632(a) provides the following: "Contemporaneous Employment Prohibited. Except as may be permitted by regulations pursuant to this Chapter or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to this Chapter, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission."
- 5 GCA § 5632(c) and (d) provide the following: "(c) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:
 - (1) judicial or other proceeding, application, request for a ruling or other determination;
 - (2) contract;
 - (3) claim; or

(4) charge or controversy; in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of the employee's official responsibility, where the Territory is a party or has a direct and substantial interest.

(d) Selling to the Territory After Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed Twelve Thousand Dollars (\$12,000.00), to engage in selling or attempting to sell supplies, services other than personal services, or construction to the Territory for ninety (90) days following the date employment ceased.

The term sell as used herein means signing a bid, proposal, or contract; negotiating a contract, contracting any employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this Territory, nor shall a former employee be precluded from serving as a consultant to this Territory."

- 4 GCA § 15201 states: "No employee shall solicit, accept, or receive, directly or indirectly, any gift valued singly or in the aggregate from a single source in excess of \$200, whether in the form of money, prize, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, when a reasonable person would infer that the gift is intended to influence the employee in the performance of that individual's official duties or is intended as a reward for any official action on that individual's part."
- 4 GCA § 15204 (a), (b), (c), and (d) provide: "No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or herself, a spouse, children, or others, including but not limited to the following:
 - (a) seeking other employment or contract for services by the use or attempted use of the individual's office or position;
 - (b) accepting, receiving, or soliciting compensation for the performance of official duties or responsibilities except as provided by law;
 - (c) using government time, equipment, or other facilities for private business purposes;
 - (d) soliciting, selling, or otherwise engaging in a financial transaction with a subordinate or a person or business whom the employee inspects or supervises in official capacity."
- 4 GCA § 15205 (a), (b), (c), (d), and (e) provide: "Conflicts of Interest."
 - (a) No employee shall take any official action directly affecting:
 - (1) business or other undertaking in which the employee has a financial interest; or
 - (2) private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity. A department head who is unable to be disqualified on any matter described in item (1) or (2) of this Subsection may be in violation of this Subsection even if the individual has complied with the disclosure requirements of § 15208; and a person whose position on a board, commission or committee is mandated by statute, resolution or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which such person has a financial interest; provided that the financial interest is related to the member's particular qualifications.
 - (b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.
 - (c) No employee shall assist any person or business or act in a representative capacity before any territorial agency for any compensation in any transaction involving the Territory.

(d) No employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the employee has participated or will participate as an employee, nor shall the employee assist any person, or business, or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the Legislature or territorial agency of which the individual is an employee.

(e) No employee shall assist any person or business or act in a representative capacity before a territorial agency for a fee or other compensation, on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that agency unless such employee has complied with the disclosure requirements of § 15208.”

- 4 GCA § 15206 states: “Contracts.”

(a) A territorial agency shall not enter into any contract with an employee or with a business in which an employee has a controlling interest, unless the contract has been awarded through an open, public process. A territorial agency may, however, enter into such contract without resort to competitive bidding process when, in the opinion of the General Services Agency or the procurement officer of that branch of government, the property or services does not fall within the purview of competitive bidding; provided that written justification for the non-competitive award of such contract be made a matter of public record and shall be filed with the Guam Ethics Commission at least ten (10) days before such contract is entered into. With regards to members of boards, commissions, and committees, this Subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a territorial agency in which the board, commission, or committee to which the individual is appointed has jurisdiction.

(b) A territorial agency shall not enter into a contract with any person or business which is represented or assisted in a material manner in the matter by a person who has been an employee of that agency within the preceding twelve (12) months and who participated while in territorial office or employment in a material manner in the matter with which the contract is directly concerned.”

PAG’s COI Guidelines embody the intent of encouraging competition through openness, impartiality, and public disclosure of relevant information (and the avoidance of conflicts of interest) as described in Guam’s Procurement Law, Title 5, Chapter 5, Article 11, Ethics in Public Contracting; Title 4, Chapter 15, Standards of Conduct for Elected Officials, Appointed Officers, and Public Employees of the government of Guam, The Guam Department of Administration Personnel Code of Conduct and PAG’s afore-listed Standards of Conduct Policies or any other applicable governmental ethics policies.

The one-year prohibition against a Public Employee having a direct beneficial financial interest in a public contract as provided in 5 GCA § 5632(b) would generally preclude the person from working under the public contract and from representing the Offeror in dealings with the public agency for whom the person had worked. Sharing in the general profits of the Offeror (such as a year-end bonus for overall corporate profits) is likely not a direct beneficial financial interest, however, a bonus or other compensation paid just on the basis of the public contract would be subject to the prohibition.

STANDARDS OF CONDUCT FOR OFFERORS AND CONTRACTORS, AND ORGANIZATIONAL CONFLICTS OF INTEREST POLICY

It is the policy of PAG to avoid, neutralize, or mitigate organizational conflicts of interest that might exist for all procurements. Each individual contracting situation shall be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The principles underlying this policy are: (1) preventing the existence of conflicting roles that might bias an Offeror’s judgment; and (2) Preventing unfair competitive advantage. In addition to the other situations described in these COI Guidelines, an unfair competitive advantage exists where an Offeror competing for award of any PAG contract possesses: (1) proprietary information that was obtained from a Public Employee without proper

authorization; or (2) source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that Offeror in obtaining the contract.

The following situations constitute organizational conflicts of interest. This listing is not exhaustive:

- A conflict of interest exists when an Offeror that provides systems engineering and technical direction for a system is awarded a contract to supply the system or any of its major components; or is a subcontractor or consultant to a supplier of the system or any of its major components; even if the Offeror did not have overall contractual responsibility for the system's development, its integration, assembly, and checkout, or its production. In this example, systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore, this Offeror should not be in a position to make decisions favoring its own products or capabilities.
- A conflict of interest exists when an Offeror develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation covering non-developmental items, to be used in a competitive procurement, and also submits a proposal or bid to be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial contract.
- If a single contractor develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation for non-developmental equipment, that contractor should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.
- When an Offeror develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation to be used in competitively acquiring a system or services, or provides material leading directly, predictably, and without delay to such a statement of work, scope of services, or technical specifications, it is a conflict of interest if that Offeror submits a Proposal or bid to supply the system, major components of the system, or the services, unless:
 - (i) It is the sole source;
 - (ii) It has participated in the development and design work; or
 - (iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications.
- Agencies should normally prepare their own statements of work, and scopes of services. When contractor assistance is necessary to develop, prepare, furnish, or draft any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation, the contractor is in a position to favor its own products or capabilities. To overcome the possibility of bias, Offerors are prohibited from supplying a system or services acquired on the basis of a statement of work or scope of services growing out of their services, unless:
 - (i) It is the sole source;
 - (ii) It has participated in the development and design work; or

(iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications,

- It is a conflict of interest for a contractor to participate in the evaluation of products or services that it offers. Contracts for the evaluation of offers for products or services shall not be awarded to an Offeror that will evaluate its own offers for products or services, or those of a competitor.

The following situations are not considered to constitute organizational conflicts of interest. This list is not exhaustive:

- In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence this is not considered an organizational conflict of interest.
- It is not an organizational conflict of interest for Offerors that furnish, at Government request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product.
- It is not an organizational conflict of interest where Offerors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

It is further the policy of PAG to restrict Offeror's use of confidential or proprietary information obtained from previous affiliations with the PAG or the Government when competing for PAG contracts. When a contractor requires proprietary information to perform a government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information: (1) furnished voluntarily without limitations on its use; or (2) available to the Government or contractor from other sources without restriction.

In addition, a contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The Offeror shall provide PAG with copies of these agreements and ensure that they are properly executed.

Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage, and must disclose these relationships to PAG on the COI Disclosure Form.

SPECIFIC FEDERAL STANDARDS — PROCUREMENTS RELATED TO DESIGN-BUILD AND DESIGN-BID-BUILD

Pursuant to 23 USC § 112(b)(3), the FHWA has promulgated administrative rules that affect federally funded Design-Build procurements and related procurements. These rules, which are in Chapter 23 of the CFR Part 636, are used as the basis for PAG's guidelines on the subject and specifically regulate both Organizational and Individual Conflicts of Interest. PAG's COI Guidelines incorporate a number of concepts from these federal provisions.

The primary rule governing Organizational Conflicts of Interest in Design-Build transactions is 23 CFR § 636.116. This rule affects not only Design-Build procurements, but also "any contract for engineering services, inspection or technical support in the administration of the Design-Build contract." Following is a summary of this federal rule (PAG's COI Guidelines apply this rule to design-bid-build and non-A&E activities as well):

Generally, a consultant who assists the state in preparing a Request for Proposals (RFP) document may not, subsequently, propose in response to the RFP. However, the state may determine that the consultant does not have a conflict of interest for a subsequent Procurement, if the consultant furnished only "low-level" documents that were incorporated into the RFP and made available to all offerors, and did not assist the state in the development of instructions to offerors or evaluation criteria for the RFP. These Design-Build regulations also apply to "improper business practices and personal conflicts of interest" of the PAG's selection team members. 23 CFR § 636.117 indicates that Federal Acquisition Regulations ("FARs"- specifically 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest) will apply to the state's selection team members in the absence of relevant state laws and procedures. These regulations require government business to be "above reproach," conducted "with complete impartiality and with preferential treatment for none" and with "the highest degree of public trust and an impeccable standard of conduct" to avoid "even the appearance of a conflict of interest." In design-bid-build transactions, where engineering services are procured separately from the construction services, ordinarily the consulting Offeror providing the engineering services is not eligible to bid on the construction work for the Project.

No Offeror or any Associate of an Offeror in connection with a Transportation Project shall have, directly or indirectly, any interest, other than his employment or retention by a State or other governmental instrumentality, in any Contract in connection with such Project. No firm or an Associate of an Offeror shall have, directly or indirectly, any interest in any real property acquired or to be acquired for a Project unless such interest is openly disclosed upon the records of PAG and such Offeror or Associate has not participated and will not participate in such acquisition for and in behalf of PAG (see 23 CFR § 1.33).

SPECIFIC FEDERAL STANDARDS - NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

No Offeror preparing or providing environmental analysis or impact documents relating to a Project, including draft and final Environmental Assessments (EA) or Environmental Impact Statements (EIS) may have a financial or other interest in the outcome of the Project. A financial or other interest in the outcome of the Project includes any known benefits other than general enhancement of professional reputation, and includes any agreement, enforceable promise, guarantee or expectation of future work on the Project as well as any indirect benefit the Offeror is aware of such as if the Project would aid proposals sponsored by the Offeror's other clients. Compliance with 40 C.F.R. 1506.5(c) is required, which includes the requirement for a conflict-of-interest disclosure statement from each Offeror establishing that the Offeror does not have a financial or other interest in the Project.

4. COI CONSIDERATIONS RELATED TO PREVIOUS WORK ON PROJECTS.

No Offeror that has previously performed services on behalf of PAG for a Project may be a Proposer or participate as an equity owner, team member, Subcontractor of or to a Proposer on the Project, or have a financial interest in any of the foregoing entities with respect to the Project, unless PAG is satisfied in its sole discretion that:

- (a) such services were completed prior to initiation of the Procurement for the Project (exceptions may apply for NEPA services on a case-by-case evaluation of the project specifics against the applicable CFRs);
- (b) such services included only Low-Level Documents and did not include development of instructions to offerors or evaluation criteria for the RFP;
- (c) such services did not provide the Offeror with access to or knowledge of PAG confidential or inside information that could provide an unfair competitive advantage with respect to the Procurement;
- (d) the prior Contract and information provided to the Offeror in the performance of its services are either irrelevant to the Procurement or are available on an equal and timely basis to all Proposers;
- (e) the work product from the Offeror incorporated into or relevant to the Procurement is available through Public Disclosure on an equal and timely basis to all Proposers; and
- (f) any environmental documents prepared by the Offeror have been determined to be objective, and that the PAG demonstrated independent decision-making authority during the environmental process.

In such instances where PAG is satisfied in the manner described above, PAG may still, in its sole discretion, restrict the scope of Procurement services for which the Offeror shall be eligible to perform in order to further the intent and goals of these COI Guidelines.

Public Disclosure of services or products is an important consideration in determining if an Organizational Conflict of Interest exists. All COI Disclosure Forms will be considered public records, as permitted under Guam's Procurement Law.

5. COI DISCLOSURE PROCESS.

An Offeror shall certify its compliance with these COI Guidelines at the time of submitting a Proposal to PAG, during the Procurement Process, and during the time of performance of any awarded Contract with PAG. If submittal of COI Disclosure Form(s) is required per these COI Guidelines or a specific Procurement or Contract, an Offeror shall represent the correctness of a completed COI Disclosure Form. If an Offeror has any changes to its staffing or organization (whether before or after entering a Contract) that result in an Actual, Apparent or Potential Conflict of Interest (Individual or Organizational) per these COI Guidelines or per the criteria of any COI form associated with a particular Procurement or Contract, any such changes shall be disclosed within ten (10) business days via submittal of a Correct and signed COI Disclosure Form.

An Offeror shall assure that any COI Disclosure Form it submits includes any information required to be disclosed by its Subcontractors and other Associates, on behalf of the Offeror. An Offeror may submit either the Subcontractors' separate COI Disclosure Forms or incorporate Subcontractor information into its own COI Disclosure Form. The disclosure required with the proposal applies the prime and all proposed Subcontractors that are identified or anticipated at the time of proposal submission.

The identification, assessment, and management of Actual or Potential Conflicts of Interest are joint tasks among PAG, the Offeror and the Offeror's team. An Offeror must work together with PAG in an atmosphere of candor and accountability during the period of negotiation or performance of the Contract with PAG. PAG makes the final determination as to the adequacy of any COI disclosures or COI management plan offered by the Offeror.

PAG's COI determination is based on a number of factors such as:

- ✓ Situational Facts – description of the situation and all known facts specific to the actual or perceived COI
- ✓ Type of Work - specific product or service and Contract(s) involved
- ✓ Relationship to Management - specific interactions with PAG decision-makers
- ✓ Public Disclosure - timing and availability of product or service

The specific facts disclosed in any COI situation will be unique to that situation. Therefore, the decisions and conclusions reached in one situation may or may not be directly applicable to another. For example, the definition of "low-level" documents does not isolate an Offeror producing such documents from a potential COI situation. The ultimate determination will take into account the other factors described above.

5. EXAMPLES OF CONFLICT-OF-INTEREST SITUATIONS.

PAG offers the following examples to better illustrate conflict of interest situations that may arise during the course of the performance of a Personal Services Contract, Purchase Request, Purchase Order, or any Contract entered into between PAG and an Offeror, or during any government of Guam Procurement process, in order to provide guidance to Offerors as they determine if their specific situations warrant disclosure, evaluation, and management.

- a. A Design-Build solicitation requires the responding teams to propose how to manage site features that were uncovered by a geotechnical engineering Offeror. The Offeror's reports to PAG on the Project are available to the public. A multi-specialty engineering Offeror that is the parent company of the geotechnical engineering Offeror submits a proposal to design the overall Project. Depending on the particular mitigating facts, PAG might determine in writing that the multi-specialty engineering Offeror is eligible to propose.
- b. PAG seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Offerors employed a senior official from PAG who played a significant role in providing direction for

the solicitation, six months ago. PAG initially assesses this situation as a potential Organizational Conflict of Interest and provides information to potential Proposers of this assessment through an addendum to the RFP. In its proposal, the Proposer provides mitigating information and written assurances that this individual works in an area of the company that will not be working on their program management proposal and that the individual will be isolated inside the company from any information associated with the program, will not be lobbying PAG, will not engage in any activities that would violate the PAG Code of Conduct Policy for the prescribed one-year period, and for a period of one year will not have a direct beneficial interest in the contract. Depending on the particular facts, PAG might determine that, while the proposing Offeror has a potential Organizational Conflict of Interest, that conflict has been adequately mitigated and the Offeror will not be disqualified from submitting a proposal.

- c. PAG issues an RFP for design and oversight of an intelligent system to collect bridge tolls. The RFP provides that companies having a financial interest in the relevant telecommunications hardware will be excluded from bidding. A company under common ownership with a major electronics manufacturer's desire to bid. PAG initially assesses this situation as an Organizational Conflict of Interest, because it cannot know in advance whether the hardware products of this electronics manufacturer would be used in the Project, and PAG informs potential Proposers of its concern related to this type of conflict via addendum to the RFP. In its proposal, the company offers no mitigating facts or organizational plans that address PAG's concerns about the conflict. Depending on the particular facts, PAG determines that the company has an actual conflict of interest.
- d. PAG seeks advice of an industry advisory committee to formulate the specifications for an information technology (IT) RFP. An IT Offeror that participated in the advisory committee wishes to submit a proposal in response to the RFP. Depending on the particular facts, PAG might determine that the role of the Offeror was to represent the industry in the context of a public meeting where other Offerors were invited to submit comments, and that the Offeror therefore does not have an Organizational Conflict of Interest.
- e. PAG contracts with an A&E Offeror to develop "low-level" documents prior to establishing a schedule for an RFP in which the "low level" documents, still under development, will be used by prospective Proposers. The A&E Offeror has attended the pre-proposal meeting and wishes to propose on the RFP. PAG determines that the company has a potential Organizational Conflict of Interest because of the fact that the low-level documents have not been made public and the Offeror will still be developing the documents during the solicitation. The company then mitigates the potential conflict of interest by suspending development of new reports during the open period of the solicitation and making all data and information sources available on an PAG website prior to the RFP release. PAG determines that the potential conflict has been adequately managed and the Offeror will not be disqualified from submitting a proposal or being part of the proposing team.
- f. PAG contracts with a consulting Offeror to assist PAG in the development of an RFP and sample Contract for a Design-Build Procurement for construction of certain Transportation Projects. The Offeror has close contact with PAG decision-makers in the development of the evaluation criteria for the RFP and the proposed Contract terms, and that information is shared throughout the Offeror with all management and technical personnel. The Offeror will not be able to submit a proposal in the design-build Procurement, or participate as a team member with an Offeror submitting a proposal in response to the RFP.
- g. PAG seeks comprehensive program management services for a series of Transportation Projects. Prior to release of the RFP, PAG shared its interpretation of the applicable conflict of interest requirements with the industry. One of the proposing Offerors has a related entity with a planned interest in future design-build construction work related to the transportation program. The COI Disclosure Form does not clearly state whether the related entity is a subsidiary, major partner, Subcontractor, or affiliate of a Subcontractor. The proposing Offeror describes its intent to restrict the flow of information concerning construction Projects to the related entity and thereby to its affiliate construction company but does not clarify how much information will be shared between the principal and its Subcontractors and affiliates or the controls placed on the

principal Subcontractor-affiliate relationship. Furthermore, the proposing Offeror has provided mitigation information, indicating that the related entity will not participate in providing services under the program management Contract (i.e., design, source selection, award of Contract, etc.). PAG may conclude the proposing Offeror does not have a conflict of interest that detracts from its eligibility for the program management award. PAG may determine that the related entity has a conflict of interest in future design-build construction work related to the bridge repair and replacement program that has not been adequately mitigated by the measures and information provided by the proposing Offeror. As a result, if the proposing Offeror is awarded the program management Contract, the related construction company will be ineligible for construction work under the program. This determination will depend upon the precise relationship between the related entity and the Proposer.

- h. Completion of a project may encourage construction of a shopping center or industrial park from which an Offeror stands to benefit. If an Offeror is aware that it has such an interest in the decision on the proposal, it will be disqualified from preparing an EIS to preserve the objectivity and integrity of the NEPA process.
- i. PAG issues an RFP for A&E services to prepare plans, specifications, and estimate (PS&E) to replace a bridge. The PS&E will be completed as part of a design-bid-build process. One of the A&E firms proposing on the design services owns XYZ Inc., a subsidiary that provides program management services to PAG under a separate contract. PAG's intent, as advertised in the RFP, is to use XYZ Inc. for administration and oversight of the A&E design services for the bridge replacement project. The A&E firm that is the parent of XYZ Inc. would be ineligible for award of the A&E design contract.
- j. PAG issues an IFB for construction services to replace a bridge. The replacement is being done using the design-bid-build process. One of the construction firms bidding on the public improvement project owns XYZ Inc., a subsidiary that provides construction contract administration and inspection services to PAG under a separate contract. PAG's intent, as advertised in the IFB, is to use XYZ Inc. for administration and inspection of the bridge replacement project. The construction firm that is the parent of XYZ Inc. would be ineligible for award of the construction contract.

DEFINITIONS

The following definitions apply to these COI Guidelines and the PAG's COI Disclosure Form:

"Actual Conflict of Interest" means that an individual or Offeror is unable to render impartial assistance or advice to PAG, has impaired objectivity in performing the Project work, or has an unfair competitive advantage. "Actual Conflict of Interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of the circumstances described in the ORS Chapter 244 definition for "Potential Conflict of Interest" (see definition below).

"Affiliate" (of an Offeror) means a person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of the Offeror.

"Apparent Conflict of Interest" means that an individual or Offeror may reasonably be perceived to have an Actual Conflict of Interest or a Potential Conflict of Interest.

"Associate" (of the Offeror) means an employee, executive, director, key project personnel, consultant, contractor, or Subcontractor, or any immediate family member of the foregoing.

"Authorization" (of the Contract). A public contract is authorized by a Public Employee if the Public Employee participated substantially in the procurement selection process or performed a significant role in the selection of an Offeror or the execution of the Contract. A significant role includes recommending approval or signing of the

Contract, including serving as a reference, recommending selection or serving on a selection committee or team, or having the final authorizing authority for the Contract.

"Bidder" means a legally operating business entity submitting a bid in response to a Procurement solicitation.

"Conflict of Interest" or "COI" means an Individual Conflict of Interest or Organizational Conflict of Interest and includes an Actual, Potential, or Apparent Conflict of Interest.

"COI Disclosure Form" means a manually signed disclosure of any Actual Conflict of Interest, Apparent Conflict of Interest or Potential Conflict of Interest documented in the form of PAG's COI Disclosure Form.

"COI Guidelines" refers to this document and all references herein.

"Contract" means an Agreement, Contract, Purchase Request (PR), Work Order Contract (WOC), Purchase Order (PO), or any other type agreement with PAG, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction.

"Contractor" means a legally operating business entity that has been awarded a contract in response to a Procurement.

"Correct" means, in the context of determining the accuracy of a COI Disclosure Form, that the form, in all material respects, is complete, accurate, not misleading, and does not omit any material information.

"Offeror" means a Proposer or Bidder under a Procurement solicitation, a consultant or contractor under a Contract, or a Subcontractor at any tier of a Proposer, consultant, or contractor, and any partner or member of any of the foregoing. An Offeror includes all persons, individual or corporate, without regard to form of legal entity, and any partner or member of any of the foregoing.

"Member of the Household" (of the Public Employee) means any person who resides with the Public Employee.

"Individual Conflict of Interest" means that an individual has a conflict of interest because of a financial interest, gift, or other activities or relationships with other persons including but not limited to individuals with whom the individual has business, familial or household relationships.

"Interest" (in the context of a conflict of interest) means a direct or indirect interest and includes a personal as well as financial interest.

"Low-Level Document" means A&E, non-A&E and IT program or Project-related documents which provide a basic understanding of a specific aspect of the program or Project. With regard to A&E and related services, it means that the role of the consultant or subconsultant was limited to provision of preliminary design, reports, or similar "low-level" documents that will be incorporated into the solicitation, and did not include assistance in development of instructions to offerors or evaluation criteria.

"Organizational Conflict of Interest" means that a relationship or situation exists whereby an Offeror or any of its Associates has past, present, or currently planned interests or activities that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under the proposed Contract with PAG and which: (a) diminish the Offeror's or an Associate's capacity to give impartial, technically sound, objective assistance or advice; (b) may impair the Offeror's or an Associate's objectivity in performing the Contract; (c) may impair PAG's objectivity in oversight of the Contractor's performance; or (d) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the Contract.

"Potential Conflict of Interest" means that an individual or Offeror, as a result of current plans, may reasonably be expected to have an actual conflict of interest. "Potential Conflict of Interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the

person's relative is associated, unless the pecuniary benefit or detriment arises out of the following: (a) an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position; (b) any action in the person's official capacity which would affect, to the same degree, a class consisting of all inhabitants of the state or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged; or (c) membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

"Procurement" means a Request for Proposals (RFP), Request for Quotes (RFQ), Request for Information (RFI), Invitation for Bid (IFB), or any other form of solicitation or Procurement by PAG.

"Project" means any proposed or existing undertaking pertaining to such programs that are assigned to PAG under applicable law.

"Proposal" means a bid, proposal, or other submission appropriate to a Procurement.

"Proposer" means a legally operating business entity submitting a Proposal in response to a Procurement.

"Public Disclosure" means the work product or service (in connection with the preparation of a Procurement) is available for public review and analysis for a reasonable amount of time, typically at least thirty (30) calendar days.

"Public Employee" means any person who is serving the government of Guam or any of its political subdivisions or any other governmental body as defined in 5 GCA § 5125 as an elected official, appointed official, employee, agent, or otherwise, irrespective of whether the person is compensated for the services. (For the purposes of these COI Guidelines, all PAG employees are considered Public Employees under this definition.)

"Relative" (of a Public Employee) means:

- the Public Employee's spouse or domestic partner;
- the children, siblings, spouses of siblings or parents of the Public Employee or the Public Employee's spouse; or
- any individual for whom the Public Employee has a legal support obligation or for whom the Public Employee provides benefits arising from the Public Employee's public employment or from whom the Public Employee receives benefits arising from that individual's employment.

"Subcontractor" means a contractor or subcontractor at any tier lower than the awarded Contractor.

SECTION XIV.

REPRESENTATION AND ACKNOWLEDGMENT THAT SEX OFFENDERS EMPLOYED BY CONTRACTORS OF THE GOVERNMENT OF GUAM ARE PROHIBITED FROM WORKING ON GOVERNMENT PROPERTY

PURSUANT TO GUAM PUBLIC LAW 28-24, AS AMENDED BY GUAM PUBLIC LAW 28-98, if a contract for services is awarded to the bidder or offeror, then the contractor must warrant that no person in its employment who has been convicted of a sex offense under the provisions of chapter 25 of Title 9 of 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 in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam ("Government") property, with the exception of public highways. If any employee of a contractor is providing services on government property and is convicted subsequent to an award of a contract, then the contractor 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 contractor is found to be in violation of any of the provisions of this paragraph, then the government will give notice to the contractor to take corrective action. The contractor shall take corrective action within twenty-four (24) hours of notice from the Government, and the contractor shall notify the Government when action has been taken. If the contractor fails 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.

I, _____ being a duly authorized representative of the Offeror, acknowledge the
(PRINT NAME)

requirements described above, and have ensured that the bid/offer/proposal, as submitted addresses these requirements. I make these statements on behalf of myself as a representative of the Bidder/Offeror, and on behalf of the Bidder's/Offeror's officers, representatives, agents, subcontractors, and employees, and represent that if awarded the contract, the Bidder/Offeror will follow these mandates.

Executed on: _____
(DATE)

Signature of one of the following:

Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

SECTION XV.

PROPOSED CONTRACT

**AGREEMENT BETWEEN
JOSE D. LEON GUERRERO COMMERCIAL PORT
(PORT AUTHORITY OF GUAM)
AND
(CONTRACTOR)**

THIS AGREEMENT is entered into by and between the **PORT AUTHORITY OF GUAM (PAG)**, a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96915 and ("**CONTRACTOR**") authorized and licensed to do business in Guam, whose address is:

WHEREAS, Port Authority of Guam has not received any federal funding or funding from the Guam Legislature, or the Government of Guam's General Fund. All funding for this project is through Port generated local funds. The objective of the Project is for the Port Authority of Guam to find a qualified Offeror to provide services for **PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM** for the Port Authority of Guam. Effective date of this contract will commence when the final signature is affixed to this contract.

WHEREAS, the PAG issued a Request for Proposal ("RFP") **RFP No. RFP-PAG-025-002** seeking to retain a Contractor to perform **PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM FOR THE PORT AUTHORITY OF GUAM** at the Port Authority of Guam.

WHEREAS, the Contractor responded to the RFP through submitting a proposal to provide services in accordance with the RFP, (**Contractor**). was selected as the highest most qualified Offeror;

WHEREAS, in submitting the Proposal, Contractor 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 PAG desires to retain the Contractor as an independent contractor on the terms and conditions set forth in this Agreement and Contractor has agreed to accept such retainer;

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 SERVICES.** The Contractor shall furnish **PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM FOR THE PORT AUTHORITY OF GUAM** pursuant to and in accordance with the Scope of Services as identified in Section III of the RFP, Contractor's proposal and Cost proposal as agreed to by both parties. A copy of the RFP is attached as **EXHIBIT 1**, Contractor's Proposal and Rates and Fees are attached as **EXHIBIT 2** and **EXHIBIT 3**, agreed to by both parties. Contractor shall provide status reports on the services performed and required under this Agreement upon request by the PAG.

B. **CONTRACTOR PROVISIONS OF RESOURCES.** Contractor agrees to furnish all qualified personnel, materials and transportation to perform the consulting services provided for in this Agreement. Contractor 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 Contractor engaged in the same and similar field as Contractor herein. The PAG may, in its sole discretion and based upon availability, provide staff assistance to Contractor in furtherance of this Agreement. The Contractor shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. **OTHER WORK.** The PAG acknowledges and agrees that Contractor 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 PAG discovers or determines that the Contractor is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Contractor must immediately cease performing those third-party services upon being provided written notice by the PAG and the PAG may invoke any further available remedies under the terms of this Agreement.

D. **LOCATION OF SERVICES.** Contractor may perform the services under this Agreement at any suitable location as approved by the PAG.

II. TERM OF AGREEMENT

The contract period shall be for an initial one (1) year period commencing on the date of final signature by Port's General Manager. This contract will have an option to renew for four (4) additional one-year periods, and not to exceed five (5) years. The extension of this agreement after the initial term shall be at the sole discretion of the PAG.

III. COMPENSATION

A. **COMPENSATION.** In consideration for the **PROFESSIONAL SERVICES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE PROGRAM** performed under this Agreement, the PAG shall pay Contractor based on fees according to rates and fees negotiated. The services under this agreement shall consist of negotiated and approved rates and fees and will not exceed **DOLLAR AMOUNT (\$000,000.00)** for the life of this contract, and that all work shall be performed and compensated in accordance with the terms herein as agreed upon and authorized by the Parties.

B. **PAYMENT TERMS.** Payment shall be made upon the Payment Terms set forth in the RFP and based on deliverables. Payment shall only become due upon the receipt and certification by the PAG of documents and reports described in the RFP and upon satisfactory performance by Contractor of the services in compliance with the terms of this Agreement, and shall be payable within thirty (30) days. Upon written notification by the PAG of unsatisfactory performance by Contractor, Contractor shall immediately remedy its performance. Failure to remedy said unsatisfactory performance may result in the PAG taking action in accordance with Section IV of this Agreement.

C. **EXPENSES.** Contractor shall be responsible for all expenses incurred in the performance stipulated under this Agreement.

D. **NO COMPENSATION PRIOR TO APPROVAL OF AGREEMENT.** The PAG shall not be liable to Contractor for any services performed by Contractor prior to full execution of this Agreement by all parties, and all Contractor 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 Contractor under this Agreement. Prior to the final payment due Contractor, and as a condition precedent thereto, Contractor shall execute and deliver to the PAG a release in form approved by the PAG of claims against the PAG arising under this Agreement. Contractor 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 Contractor shall be in the currency of the United States.

IV. TERMINATION

A. Termination for Default, Nonperformance or Delay, Damages for Delay, Time Extensions.

1. **Default.** If Contractor refuses or fails to perform any of the provisions of the contract awarded under this solicitation with such diligence as will ensure its completion within the time specified, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of these terms, PAG may notify Contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by PAG, PAG may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part PAG may procure similar supplies or services in a manner and upon terms deemed appropriate by the PAG. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

2. **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the PAG, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the PAG or the Government has an interest.

3. **Compensation under Termination for Default.** Payment for completed supplies delivered and accepted by PAG shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and the PAG; if the parties fail to agree, the PAG shall set an amount subject to Contractor's rights under Article 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. PAG may withhold from amounts due Contractor such sums as the PAG deems to be necessary to protect the PAG against loss because of outstanding liens or claims of former lien holders and to reimburse the PAG for the excess costs incurred in procuring similar goods and services.

4. **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of the contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the PAG within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the Government and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the PAG shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the "Termination for Convenience" Section of this Termination clause. The term "subcontractor" means a subcontractor at any tier.

5. **Erroneous Termination for Default.** If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, be the same as if the notice of termination had been issued pursuant to the clause providing for termination for convenience.

6. **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this solicitation or awarded contract.

B. Termination for Convenience

1. **Termination.** PAG may, when the interest of PAG so require, terminate any awarded contract in whole or in part, for the convenience of PAG or the Government. PAG shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

2. **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified.

Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

3. *Right to Supplies.* The Procurement Officer may require the contractor to transfer title and deliver to the Government in the manner and to the extent directed by the Procurement Officer:

- (i) any completed supplies; and
- (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the Government has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, § 2706. Utilization of this Section in no way implies that the Government has breached the contract by exercise of this Termination for Convenience Clause.

4. *Compensation for Termination for Convenience.*

(i) Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2 GAR, Div. 4, § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If Contractor fails to file a termination claim within one year from the effective date of termination, the PAG may pay Contractor, if at all, an amount set in accordance with Subsection (iii) of this Section (C).

(ii) The PAG and Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by 2 GAR, Div. 4, § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the PAG, and the contract price of the work not terminated.

(iii) Absent complete agreement under Subsection (ii) of this Paragraph (4), the PAG shall pay Contractor the following amounts, provided payments agreed to under Subsection (ii) shall not duplicate payments under this Subsection (iii):

- (a) contract prices for services accepted under the Agreement;
- (b) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) that shall be no less than the fees due for the portion of the term calculated up-through the date of termination calculated on a pro-rata basis, less amounts paid or to be paid for accepted services; provided, however, that if it appears that Contractor would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(c) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section (ii) of this Paragraph (4). These costs must not include costs paid in accordance with Subsection (iii)(b) of this Paragraph (4);

(d) the reasonable settlement costs of Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Agreement for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement. The total sum to be paid Contractor under this Subsection (iii)(d) shall not exceed the total contract price plus the reasonable settlement costs of Contractor reduced by the amounts of payments otherwise made and the contract price of work not terminated.

(iv) Cost claimed, agreed to, or established under Subsections (ii) and (iii) of this Termination for Convenience Clause shall be in accordance with Article 7 (Cost Principles) of the Guam Procurement Regulations.

V. STOP WORK ORDER/SUSPENSION OF SERVICES

A. **Suspension for Convenience.** The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the services for such period of time as may be appropriate for the convenience of PAG.

B. **Adjustment of Cost.** If the performance of all or any part of the services is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of the awarded contract, or by the failure of the Procurement Officer to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of the contract necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent: (a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (b) for which an adjustment is provided for or excluded under any other provision of the contract.

C. **Time Restriction on Claim.** No claim under this clause shall be allowed: (a) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and (b) Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

D. **Adjustments of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Agreement.

VI. CONTACT PERSON

The Contractor 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 responsive to the questions and direction of the PAG. The contact person must be identified in writing within thirty (30) days after full execution of this Agreement by all parties. The PAG reserves the right to request replacement of the contact person designated by the Contractor under this Agreement.

VII. CONFIDENTIALITY

A. **Confidential Information.** Confidential Information means: (a) information the parties or their affiliates share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, and the terms of this Agreement.

B. **Obligations.** A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of HIPAA information, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section) or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating proposals for new services or performing this Agreement (including in the case of the parties to detect fraud, to check quality and to operate, maintain and enhance the Services).

C. Exceptions. The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

D. Privacy. Each party is responsible for complying with the privacy laws applicable to the Services. Contractor shall require its personnel, agents and contractors around the world who process Personal Data to protect Personal Data in accordance with the data protection laws and regulations applicable to Contractor's business.

E. Liability. Failure to comply with the provisions of Paragraph A shall subject the Contractor to liability for any breach, including all damages and injunctive relief.

VIII. CONFLICTS OF INTERESTS/ETHICS

A. The Contractor 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 Contractor is a material breach of this Agreement and shall entitle the PAG to immediately terminate this Agreement. Contractor agrees that in the event of a breach or violation of this Section, the PAG shall have the right to terminate this or any other Agreement with the Contractor without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Contractor 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 PAG.

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 affected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first.

Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO THE PAG: **PORT AUTHORITY OF GUAM**
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96915
Attn: Mr. Rory J. Respicio, General Manager

TO CONTRACTOR: **NAME OF CONTRACTOR**
Contract's Address
Attn:

XIV. ASSIGNMENT/SUBCONTRACTORS

It is expressly acknowledged that Contractor is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Contractor utilizes one or more subcontractors for such purpose. The right and interest of Contractor under this Agreement (including, but not limited to, Contractor's right to or interest in any part or all of payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the PAG. In the event of a permissive subcontract or assignment of this Agreement by Contractor, Contractor agrees that any subcontractors retained by Contractor 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, Proposal, and Cost Proposal collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Contractor and the PAG 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 of the documents collectively comprising this Agreement - Request for Proposal, The contractor, and the Offeror's Cost Proposal, the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time); and, third, to the provisions of the Proposal and Cost Proposal (as they may be clarified or amended from time to time).

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 Contractor shall comply with all U.S. and Guam Laws, Statutes, Regulations and Ordinances applicable to this Agreement. The Contractor 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 Contractor 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. DISPUTES

A. The Port and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the government in writing to issue a final decision within sixty days after receipt of the written request. If the government does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as though the government had issued a decision adverse to the Contractor.

B. The Port shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

C. The Port decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.

D. This subsection applies to appeals of The Port decision on a dispute. For money owed by or to The Port under this Agreement, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by the Port or from the date when a decision should have been rendered. For all other claims by or against the Port arising under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the Port. Appeals to the Office of the Public Auditor must be made within sixty days of The Port decision or from the date the decision should have been made.

E. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

F. The Contractor shall comply with the Port decision and proceed diligently with performance of the Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the Agreement, except where the Contractor claims a material breach of the Agreement by the Port. However, if the Port determines in writing that continuation of services under the Agreement is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Port.

XXII. REMEDIES

Any dispute arising under or out of this Agreement is subject to the provisions of Article 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

XXIII. RETENTION AND ACCESS TO RECORDS AND OTHER REVIEW

The PAG must have the right of access to any documents, papers, or other records of the Contractor which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect

supplies and services and audit records at any Contractor or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine responsibility and capability of performing any contract to be awarded under a solicitation, and to determine whether the Contractor's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded contractor is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The Contractor agrees to abide by the following access, audit, and inspection terms:

A. Access to Records and Retention. The Contractor, including its subcontractors, if any, agrees that it shall maintain and retain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and relative to its cost or pricing data, and shall make such materials available at all reasonable times after submission of its Proposal, during any awarded contract term, and for three (3) years from the date of final payment under any awarded contract or for three (3) years from the date that all other pending matters are closed, whichever is later, for inspection in Guam or at any reasonable location designated by the PAG, unless the Offeror is notified in writing by the PAG to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Each subcontract by the Offeror shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.

Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by the PAG. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the PAG or delegate.

B. Right to Audit. Contractor shall establish and maintain a reasonable accounting system that enables the PAG to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The PAG shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Proposal, the solicitation, or this Agreement, which are kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including bids of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Contractor shall, at all times during the term of any awarded contract and for a period of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by PAG whether before, during, or after completion of an awarded contract, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by PAG. Such records shall be made available to PAG during normal business hours at the Contractor's office or place of business without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for PAG. Contractor shall ensure PAG has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to PAG. Costs of any audits conducted under the authority of this right to audit and not

addressed elsewhere will be borne by PAG. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to PAG in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the PAG or the entity that conducted the audit for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the PAG may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of PAG findings to Contractor.

C. **Right to Enter and Inspect.** PAG may, at any time, without notice, enter and inspect the Contractor's or subcontractor's facilities, place(s) of business, or any place(s) of performance of this Agreement. The PAG may enter and inspect any plans, supplies, services, equipment, work and records at these locations which are related to the performance of this Agreement, and may conduct any testing deemed necessary to determine the Contractor's or subcontractor's compliance or conformity to the solicitation or contract requirements. The government of Guam may enter and audit the cost or pricing data, books, and records of the Contractor or any subcontractor, and/or investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to § 9102 (Authority to Debar or Suspend) of the Guam Procurement Rules and Regulations.

D. **Access to Systems and System Records.** The Contractor must allow the PAG access to the system in all of its aspects, including pertinent state staff, design developments, operation, and cost records of contractors and subcontractors at such reasonable intervals as are deemed necessary by the PAG to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system (This section only applies if systems are involved).

XXIV. INSPECTION AND TESTING OF FACILITIES AND EQUIPMENT

Solicitation and Contractual Provisions. Port of Guam contracts may provide that the territory may inspect supplies and services at the contractor or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or, after award, to contract requirements, and are, therefore, acceptable. Such inspection and test shall be conducted in accordance with the terms of the solicitations and contract. 2GAR, Div. 4, §3123(c)(1).

XXV. LIABILITY

A. **Indemnification.** Contractor shall indemnify and hold harmless the PAG 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 Contractor or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance under this Agreement.

B. **The PAG is not Liable.** The PAG assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Contractor and/or the Contractor'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 PAG. In addition, no Board member, officer, agent, or employee of the PAG shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the PAG assumes no liability for any accident or injury that may occur to Contractor's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

XXVI. DELAYS, EXTENSIONS AND SUSPENSIONS

The PAG unilaterally may order the Contractor 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 PAG. The Contractor agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or

suspension. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Contractor's services will be granted only for excusable delays that arise from causes beyond the control and without the fault or negligence of the Contractor, 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.

XXVII. MODIFICATIONS INCLUDING THOSE DUE TO PUBLIC WELFARE, CHANGE IN LAW OR CHANGE IN MARKETING CONDITIONS

The PAG shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Contractor. The PAG shall have the power to make changes in the Agreement as a result of changes in law and to impose new rules and regulations on the Contractor under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The PAG shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. In the event of any future change in federal or Guam laws, the PAG materially alters the obligations of the Contractor, or the benefits to the PAG, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations for the Contractor, then the Contractor or the PAG shall be entitled to an adjustment in the rates and charges established under the Agreement. Contractor 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 PAG and the Contractor agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the PAG and the Contractor shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Contractor directly and demonstrably due to any modification in the Agreement under this clause.

XXVIII. INDEPENDENT CONTRACTOR AND ITS EMPLOYEES

A. Status of Contractor. The Contractor and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the PAG, and are not employees of either the PAG or the Government of Guam. The Contractor 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. Contractor agrees that Contractor and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the PAG 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 Contractor and the PAG 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 PAG for the Contractor.

B. Liability. The Contractor 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. Contractor 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 Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services

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

XXIX. DISCLOSURE

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

XXX. 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 PAG, regardless of whether Contractor is in possession of such Work Product, and may be used by the PAG without permission from Contractor and without any additional costs to the PAG.

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 PAG. Contractor explicitly acknowledges that the PAG possesses exclusive rights to the Work Product arising out of this Agreement. Contractor shall not use or permit others to use in any way or form the Work Product without the express written consent of the PAG.

XXXI. ATTACHMENTS, EXHIBITS, SCHEDULES, AND ENTIRE AGREEMENT

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

XXXII. 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.

XXXIII. 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.

XXXIV. AMENDMENTS/MODIFICATIONS

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

XXXV. CHANGE ORDER

A. Change Order. The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

(1) changes in the services within the scope of the Agreement; and

(2) changes in the time for performance of the Agreement that do not alter the scope of the Agreement.

All contract change orders must be approved in writing by the PAG on a form approved by PAG to record change orders.

B. **Adjustments of Price or Time for Performance.** PAG reserves the right to increase or decrease the number of any unit priced quantity as may be deemed reasonable or necessary in order to complete the Services contemplated under this Agreement. If any such change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the services under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Standard Price Adjustment Clause of this Agreement. Failure of the Parties to agree to an adjustment shall not excuse a Contractor from proceeding with the Agreement as changed, provided that the government of Guam promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the services, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion. All changes must be recorded on a contract change order before they can be included in an application for payment/invoice.

C. **Written Certification.** The Contractor shall not perform any change order in excess of \$5,000 unless it bears, or the Contractor has separately received, a written certification, signed by the Procurement Officer/CEO or other responsible official that funds are available therefor; and, if acting in good faith, the Contractor may rely upon the validity of such certification.

D. **Time Period for Claim.** Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the government of Guam is prejudiced by the delay in notification.

E. **Claim Barred After Final Payment.** No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Agreement.

F. **Claims Not Barred.** In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the Agreement, if pursued in accordance with the clause entitled Claims Based Upon PAG's Actions or Omissions or for breach of contract.

G. **Other Modification or Amendment of Agreement.** Any modification to this Agreement that is not affected through a Change Order shall only be effective if it is in writing and signed by both Parties to the Agreement.

XXXVI. MULTI-TERM AND AVAILABILITY OF FUNDS/CANCELLATION PROVISIONS

This Agreement is contingent upon the availability of certified funds. Funds are available for the first fiscal period of this Agreement. The source of the funds for this Agreement is Port Local Funds. In the event that funds are not available for any succeeding fiscal period, the remainder of this Agreement shall be cancelled; however, this does not affect either Party's right to terminate under the termination clauses of the contract. If the Agreement is cancelled for insufficient funds, the awarded Contractor shall be reimbursed the reasonable value of any nonrecurring costs reasonably incurred but not amortized in the price of the supplies delivered or services performed under the Agreement. The Procurement Officer will notify the Contractor on a timely basis whether the funds are, or are not, available for the continuation of the Agreement for each succeeding fiscal period. The PAG may modify this Agreement based upon the availability of funds in succeeding fiscal periods. In such an event, the PAG shall provide notice to Contractor, and the Parties may attempt to renegotiate the terms of this Agreement in good faith. If the

parties are unable to reach an agreement on the renegotiation, or decide not to attempt renegotiation, then the PAG shall cancel this Agreement in accordance with the Guam Procurement Regulations. The government of Guam and the PAG shall have no liability under this Agreement to the Contractor or to anyone else beyond the certified funds available for this Agreement.

XXXVII. STANDARD PRICE ADJUSTMENT CLAUSE

A. Price Adjustment Methods. Any adjustment in contract price pursuant to clauses in this Agreement shall be made in one or more of the following ways:

1. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
2. by unit prices specified in the Proposal, Agreement, or subsequently agreed upon;
3. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
4. in such other manner as the parties may mutually agree; or
5. in the absence of an agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Law.

B. Submission of Cost or Pricing Data. The Contractor shall submit cost or pricing data for any price adjustments subject to the provision of Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations. PAG may require the Contractor to provide invoices, paid bills, or any other proof it deems appropriate to determine compliance with this provision.

C. Price Adjustment for Inaccurate Cost or Pricing Data. Any Change Order, amendment, or modification to this Agreement which increases the price of the Agreement shall be adjusted to exclude any significant sums by which the PAG finds that such price was increased because the contractor- furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the Parties. The price shall also be adjusted to reflect the nonpayment by the Contractor of any taxes which would have been paid by the Contractor were it not for the exclusion provided by 11 GCA § 26203(k)(14) (Business Privilege Tax). Adjustments shall conform to the Defective Cost or Pricing Data Clause of this Agreement.

XXXVIII. EMPLOYEE BENEFITS, TAXES AND INSURANCES

Contractor agrees there shall be no government of Guam employee benefits accruing to Contractor under this Agreement, including, but not limited to:

1. Insurance coverage provided by the PAG;
2. Participation in the government of Guam retirement system
3. Accumulation of vacation leave or sick leave; and
4. Workers Compensation coverage.

A. Status of Contractor. The Contractor and its officers, agents, servants, subcontractors and employees are independent contractors performing Services for the PAG, and are not employees of either the PAG or the government of Guam. The Contractor 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. Contractor agrees that Contractor and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the PAG 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 Contractor and the PAG 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 PAG for the Contractor.

B. **Tax and Withholding Liability.** The Contractor 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, employee benefits, or any other payments or tax payments required by the governments of the United States and Guam. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes or business privilege taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement, unless Contractor is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to five percent (5%) of the total dollar value of this Agreement will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166).

C. **Insurance.** Contractor shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Workman's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Contractor agrees to hold harmless and indemnify *AGENCY*, 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 Contractor or Contractor's employees, officers, contractors, directors, agents, representatives, successors, or assigns; or (ii) Contractor's failure to comply with terms of this sub-paragraph B.

D. **Wage and Benefits Compliance.** Contractor warrants it shall comply with all applicable federal and local laws, rules, and regulations regarding the payment of minimum wages and benefits, in particular in accordance with the Wage Determination for Guam issued and promulgated by the U.S. Department of Labor and with Guam Public Law 26-111. Contractor guarantees health and similar benefits for its employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, as required by any applicable law. Contractor further guarantees a minimum of ten (10) paid holidays per annum per employee, as required by any applicable law. Contractor assumes all liability for, and hereby indemnifies the PAG from, any violation of any applicable law, rule, or regulation relating to the payment of wages or benefits. In addition, this Agreement contains extension and/or renewal clauses. Therefore, at the time of any extension or renewal adjustments, there shall be a stipulation contained in the extension or renewal document stating that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the extension or renewal date shall apply, as required by any applicable law. Any renewal or extension to which this provision applies shall also contain provisions mandating health and similar benefits for employees, 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, as required by any applicable law.

XXXIX. CLAIMS BASED UPON PAG'S ACTION OR OMISSIONS

A. **Notice of Claim.** If any action or omission on the part of the PAG or any entity within the government of Guam, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the Agreement in compliance with the directions or orders of the PAG, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

1. Contractor shall have given written notice to the PAG:

a. prior to the commencement of the work involved, if at that time, Contractor knows of the occurrence of such action or omission;

b. within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or

c. within such further time as may be allowed by the PAG in writing. This notice shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time. The PAG, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the PAG.

2. The notice required by Subparagraph (A) of this Paragraph describes as clearly as practicable at the time the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and

3. Contractor maintains and, upon request, makes available to the PAG within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. Limitations of Clause. Nothing herein contained, however, shall excuse Contractor from compliance with any rules of law precluding any government of Guam officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.

XXXX. STATUTORY INTEREST

Interest on amounts ultimately determined to be due to Contractor or the government of Guam or the PAG shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

XXXXI. MANDATORY PROHIBITIONS

A. Prohibition of Gratuities, Kickbacks, and Favors.

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.

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 for the award of a subcontract or order.

Favors to the government of Guam. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the government of Guam or for any employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any matter related to procurement, including contract performance warranty periods.

B. Prohibition of Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government of Guam contract 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.

XXXXII. CONTRACTOR'S ETHICAL WARRANTIES

A. **Warranty against Employment of Sex Offenders.** Contractor warrants that: (1) no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 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 on the Sex Offender Registry, shall provide services on behalf of Contractor while on government of Guam property, with the exception of public highways; and (2) that if any person providing services on behalf of 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 who is listed on the Sex Offender Registry at any time during the performance of the contract, that such person will be immediately removed from working on government property and Contractor warrants that it will notify the General Manager of the PAG within twenty-four (24) hours of such conviction. If Contractor is found to be in violation of any of the provisions of this paragraph, then the PAG will give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four (24) hours of notice from the PAG, and Contractor shall notify the PAG when action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of notice from the PAG, then the PAG in its sole discretion may temporarily suspend this agreement.

B. **Covenant against Contingent Fees.** Contractor represents that it has not retained a person to solicit or secure a government of Guam contract 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.

C. **Representation Regarding Gratuities, Kickbacks, and Favors.** The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities, kickbacks, and favors set forth in the Guam Procurement Law.

D. **Ethical Standard.** Contractor 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 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the government of Guam Procurement Regulations.

XXXXIII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor stipulates that Title 5 GCA Chapter 37, the False Claims and Whistleblower Act apply to this Agreement and to all Contractor's actions pertaining to this Agreement. The False Claims and Whistleblower Act was passed as Public Law 34-116, Chapter III, Section 20 (lapsed into law August 24, 2018) and codified at Title 5 GCA Chapter 37.

XXXXIV. SIGNATURES

This Agreement may be signed by the parties electronically, and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by electronic transmission.

***** AUTHORIZED SIGNATURES APPEAR ON THE FOLLOWING PAGE *****

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DAY AND YEAR APPEARING OPPOSITE THEIR RESPECTIVE SIGNATURES.

CONTRACTOR

PORT AUTHORITY OF GUAM

JOSE D. LEON GUERRERO COMMERCIAL PORT

NAME
Chief Executive Officer

RORY J. RESPICIO
General Manager

Date: _____

Date: _____

REVIEWED BY:

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

JESSICA TOFT
Legal Counsel Port Authority of Guam

JOSE B. GUEVARA III
Chief Financial Officer

Date: _____

Date: _____