



**INVITATION FOR BID  
IFB NO: PAG CIP-022-002**

**PROJECT:**

**Rebid of the Construction Rehabilitation of Hotel Wharf and  
Highway 11 Roadway Reconstruction**

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

**Rory J. Respicio  
General Manager**

**OCTOBER 2021**



**PORT OF GUAM**  
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Lourdes A. Leon Guerrero  
Governor of Guam  
Joshua F. Tenorio  
Lieutenant Governor

## INVITATION FOR BID IFB No. IFB-PAG-CIP-022-002

### **REBID OF THE CONSTRUCTION REHABILITATION OF HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION**

The Port Authority of Guam (PAG), a public corporation and autonomous agency of the Government of Guam, will receive sealed bids for the **REBID OF THE CONSTRUCTION REHABILITATION OF HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION**.

Invitation for Bid packets may be picked up at the Port's Procurement Office on the 1<sup>st</sup> floor of the Administration Building Monday through Friday between the hours of 8:00am to 5:00pm. All interested bidders must completely fill out the bidder's register. The Invitation for Bid is posted on the Port's website: [www.portofguam.com](http://www.portofguam.com), where bidders can register and download an electronic copy, in PDF, at no cost.

A PRE-BID meeting will be held in the PAG Board of Directors Conference Room on **TUESDAY, NOVEMBER 9, 2021 at 2:00 P.M., Chamorro Standard time (Guam Time)**. A site visit of the proposed project location will immediately follow. All attendees are encouraged to bring their personal safety equipment (hard hat, safety vest, closed toe shoes, rain gear, etc.). All bidders are encouraged to attend.

The deadline for all **QUESTIONS AND CONCERNS (Q&C)** will be on ~~XXXXXXXX~~ **FRIDAY, NOVEMBER 19, 2021 at 4:00pm, (Chamorro Standard Time) Guam Time**. All questions and concerns will be submitted to the Port Authority of Guam and addressed to Mr. Rory J. Respicio, General Manager at [rirespicio@portofguam.com](mailto:rirespicio@portofguam.com) and a copy sent to Mr. Steven P. Muna, Contract Management Administrator at [spmuna01@portofguam.com](mailto:spmuna01@portofguam.com), [pacastro@portofguam.com](mailto:pacastro@portofguam.com), and [pagprocurement@portofguam.com](mailto:pagprocurement@portofguam.com).

**BID SUBMITTALS** will be received, as described in the IFB and contract documents, on or before **MONDAY, DECEMBER 13, 2021 at 2:00 P.M., Chamorro Standard Time (Guam Time)**, at the Procurement Office, located at the 1<sup>st</sup> Floor of the PAG Administration Building. Immediately following the deadline, all bids will be publicly opened and read aloud in the PAG Board of Directors Conference Room. Late bid submittals **will not** be considered.

The PAG reserves the right to reject any and all bids, and to waive any and all informalities, and to disregard all nonconforming or conditional bids or counter proposals, when in PAG's opinion, such rejection or waiver will be in the Authority's best interest.

For additional information, contact Mr. Steven P. Muna, Contract Management Administrator at 477-5931 ext. 340 or via email: [spmuna01@portofguam.com](mailto:spmuna01@portofguam.com), [pacastro@portofguam.com](mailto:pacastro@portofguam.com) and [pagprocurement@portofguam.com](mailto:pagprocurement@portofguam.com).

**LUIS R. BAZA**  
Acting General Manager

This Advertisement is paid with Government funds: PORT AUTHORITY OF GUAM

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**NOTE: DUE TO THE LARGE SIZE OF THE SPECIFICATIONS, DRAWINGS AND REPORTS, AN ELECTRONIC COPY CAN BE OBTAINED AT THE PORT AUTHORITY OF GUAM'S PROCUREMENT OFFICE ON THE 1<sup>ST</sup> FLOOR OF THE PORT'S ADMINISTRATION BUILDING AT CABRAS ISLAND, PITI AT NO COST.**

**VOLUME 1**  
**GENERAL INFORMATION AND INSTRUCTIONS**  
**TO BIDDERS**



## GENERAL INFORMATION

### I. INTRODUCTION:

The Jose D. Leon Guerrero Commercial Port or Port Authority of Guam (PAG), hereinafter referred to as PAG, is inviting firms to participate in the Invitation for Bid (IFB), for the **Rebid of the Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction**.

#### PROJECT DESCRIPTION

This project is in the Port Authority of Guam's property identified as Hotel Wharf off the Highway 11 Roadway. It is for the construction rehabilitation, repair and upgrades of Hotel Wharf and Roadway Reconstructions.

*The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.*

### II. INSTRUCTIONS TO BIDDERS:

These instructions to bidders are intended to provide guidance in the preparation of bid submittals. Please note that the act of submitting a bid to this IFB, constitutes an acceptance on the part of the Bidder that they have read each and every provision; and thus, agree to all terms and conditions contained within this bid, as well as, that they have read and understand all of the bid documents, including all information contained within the appendices.

#### 1. RECEIPT OF BID OFFERS

Bids will be received at the Procurement and Supply Division, 1<sup>st</sup> Floor of the Port Authority of Guam (PAG) Administration Building, **no later than MONDAY, DECEMBER 13, 2021 at 2:00 P.M. Chamorro Standard Time (Guam Time)**, for the **Rebid of the Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, IFB No. PAG-CIP-022-002**. In response to this Invitation for Bid (IFB), interested parties shall submit bids in the format described in these bid documents and shall be addressed to Mr. Rory J. Respicio, General Manager, Port Authority of Guam, 1026 Cabras Highway, Suite 201, Piti, Guam 96925.

Two (2) copies, one (1) original, and one (1) electronic file copy CD or Flash Drive (in PDF format) of the complete bid submittal shall be enclosed in a sealed package or envelope, clearly labeled on the outside as **"Invitation for Bid – Rebid of the Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, IFB No. PAG-CIP-022-002"**. The package or envelope must be clearly labeled with the name of the Bidder.

All bid submittals submitted after the time and date set for receipt as indicated above, shall be considered Late Bids and will not be considered. Late bids will be returned "un-opened" to the bidder. Attention is called to the fact that bidders not only offer to assume the obligations and liabilities imposed upon the Contractor in the form of contract, but expressly make certain of the representations and warrants made therein. No effort is made to emphasize any particular provision of the contract, but bidders must familiarize themselves with every provision of the contract and its effect.

#### 2. PRE-BID CONFERENCE, SITE VISIT, INQUIRIES, AND COMMUNICATIONS

A pre-bid conference is scheduled on **TUESDAY, NOVEMBER 9, 2021 at 2:00pm, Chamorro Standard Time (Guam Time)** at the PAG Board of Directors' Conference Room. All prospective bidders are encouraged to attend. **A site visit of the proposed project location will immediately follow. All attendees are encouraged to bring their personal safety equipment (hard hat, safety vest, closed toe shoes, rain gear, writing material, media devices for photos or video, etc.)**

All Question and Concerns (Q & C) (inquiries, clarifications, or questions) must be submitted in writing no later than **THURSDAY, NOVEMBER 19, 2021 at 4:00 p.m.** Q & C's shall be submitted to the attention of Mr. Rory J. Respicio, PAG General Manager and may be sent via email [rjrespicio@portofguam.com](mailto:rjrespicio@portofguam.com). Please send a copy to Mr. Steven P. Muna, Contract Management Administrator, at [spmuna01@portofguam.com](mailto:spmuna01@portofguam.com), the Port will respond in writing to all written inquiries and/or clarifications via an addendum to this IFB. All formal communications shall be issued through the addendum process only and shall be distributed to all recognized registered bidders.

**Prohibited Communication:** Bidders shall conduct themselves with professional integrity and refrain from lobbying activities. During the procurement process (commencing with the issuance of this IFB and continuing until execution of a contract resulting from this solicitation or cancellation of the procurement), no employee, member, agent, advisor, or consultant of any Bidder shall have any communications, directly or indirectly, regarding this procurement with any representative of the Port, including their staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by this IFB to the attention of the General Manager or the Procurement and Supply Manager. Any verified allegation that the Bidder or an employee, agent, advisor, consultant, or subcontractor of the Bidder engaged in such prohibited communications or attempted to unduly influence any part of the solicitation may be cause for Port to disqualify the Bidder from participating at the discretion of the Port.

**Oral explanations or instructions should not be given, but if any are inadvertently or improperly given, no oral representations by any representative of PAG will be binding and any action taken by the Bidder based upon such oral advice or clarification will be at the sole risk of the Bidder.**

3. IFB DOCUMENTS

IFB Documents or Electronic Copies of the IFB are available and can be obtained at the Procurement and Supply Office or downloaded from the Port Authority of Guam website at [www.portofguam.com](http://www.portofguam.com) at no charge.

The IFB Documents are organized into five separate volumes, as follows:

- |          |   |  |
|----------|---|--|
| Volume 1 | - | General Information/Instruction to Bidders                       |
| Volume 2 | - | General Conditions and Special Provisions                        |
| Volume 3 | - | Required Forms and Affidavits                                    |
| Volume 4 | - | Sample Construction Agreement, Performance and Payment Bond Form |
| Volume 5 | - | Specifications, Drawings, and Reports                            |

4. BID SPECIFICATIONS

The Bid Specifications incorporated herein as the technical requirements of this Invitation for Bid for Port Authority, IFB-PAG-CIP-022-002 Rebid of the Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, were drafted by WSP USA Inc. acting as Owner's Agent Engineer. Bidders shall comply with these Specifications and all other requirements of the solicitation. Bids submitted shall address all of the requirements of these Specifications.

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

Funds are presently available for this solicitation. These funds are reasonably expected to be made available from the U.S. Department of Transportation Maritime Administrative Grant called the Transportation Investment Generating Economy Recovery Grant ("T.I.G.E.R") as well as the Port Authority's Bond Financing for all Port Capital Improvement Projects ("CIP"). Additionally, pursuant to Port Authority of Guam, Board of Director's Resolution 2021-07, This Resolution authorizes the General Manager to use Port revenues, Port unrestricted funds and/or other revenues and federal grants to supplement the funding of revenue bond projects, all of which shall remain subjected to procurement and public utilities statutory requirements (please see PAG website: [www.portofguam.com](http://www.portofguam.com) for a complete copy of Resolution 2021-07).

6. MODIFICATIONS AND SOLICITATION AMENDMENT

Any amendment, modification or addendum issued by the PAG prior to the opening of the bids, for the purpose of changing the bid requirements, clarifying the meaning, or changing any of the provisions of this IFB, shall be binding to the same extent as if written in the bid documents and will be deemed incorporated into the contract.

The PAG reserves the right to amend, supplement, cancel and/or reissue this bid in whole or in part at any time, when this action serves the best interest of the PAG. Any modification that are of a nature which requires material changes in quantities or prices to be bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer. In such cases, the addendum will include an announcement of the new date for opening proposals/bids. Such revisions, if any, will be announced by an addendum or addenda to this invitation for bid and bidders shall acknowledge receipt of such addenda by signature, which is to be returned to the Procurement and Supply Office by fax or by email. Failure to acknowledge receipt of any addenda will result in rejection of bidders' proposal/bid.

7. FAMILIARITY WITH LAWS

The bidder shall be familiar with all Federal (U.S.) and local laws, ordinances, rules, and regulations of Guam that in any manner affect the work. Ignorance of law or on the part of the bidder will not relieve the bidder from responsibility.

8. PREPARATION AND SUBMISSION OF BID

The bidder must submit his bid on the forms furnished by the PAG. All blank spaces in the bid forms must be correctly filled in where indicated and the bidder must state the prices (both in words and numerals) for which he proposes to do each item of the work contemplated or furnish each item of the materials required. In case of conflict between words and numerals, the words, unless obviously incorrect, will govern. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the submittal or irregularities of any kind may be rejected by the PAG as being incomplete.

All bids must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed in the name of the partnership by one of the members of the partnership or by an authorized representative followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the State of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president", (agent or other designation, without disclosing his principal), may be held to the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.

The PAG is not liable for any costs incurred by the bidder in connection with the preparation of this solicitation. By submitting a bid, the bidder specifically waives the right against the PAG for any expenses incurred in his bid preparation. Submitted bids become the property of the PAG. Bidder's request for the return of specific proprietary materials may be honored.

9. INDEPENDENT PRICE DETERMINATION

By submitting a Bid, the bidder certifies that the price submitted was independently arrived at without collusion. All bidders agree by submitting a Bid that they are bound by all terms and conditions contained in this Invitation for Bids (IFB) and will follow all applicable federal and local laws and regulations governing their submissions and performance under any award issued pursuant to the IFB.

10. TRADE SECRETS AND PROPRIETARY DATA

Bidders may request to have certain portions of their bid submittals designated as trade secrets or proprietary data. PAG will examine such request to determine the validity of any requests for

nondisclosure of trade secrets and other proprietary data identified in the request. If the PAG and bidder are unable to agree as to the disclosure of certain portions of the bidder's bid will be disclosed and that, unless the bidder withdraw its bid or protests under 5 GCA Article 9 (Legal and Contractual Remedies) of the Guam Procurement Act, the information may be so disclosed. The bids shall be opened to public inspections subject to any continuing prohibition on the confidential data.

11. WITHDRAWAL OF BIDS

Bids may be withdrawn on written or telegraphic request received from bidders prior to the time and date set for bid opening. Negligence on the part of the bidder in preparing the bid confers no right to the withdrawal of the bid after it has been opened.

12. BID SECURITY, PERFORMANCE, AND PAYMENT BOND

Each bid must be accompanied by a deposit in the amount of not less than fifteen percent (15%) of the highest bid price for which award can be made. Such deposit may be in the form of a bid bond, cashier's check, or certified check made payable to the Port Authority of Guam. Should the successful bidder fail or refuse to execute and deliver the contract and performance and payment bonds required within ten (10) working days after acceptance of his bid by the Government, he shall forfeit to the Government of Guam as liquidated damages for such failure or refusal, the security deposited with his bid.

13. MULTIPLE OR ALTERNATE BIDS

Multiple or Alternate Submittals will not be accepted, and any multiple or alternate bid submittals submitted will be rejected.

14. "ALL OR NONE" BIDS

Bids may not limit acceptance to the entire bid offering. Bids that violate this provision shall be deemed to be nonresponsive.

15. CONTRACTOR'S LICENSES

Bidders are reminded that all firms proposing and/or bidding on Government of Guam contracts must be fully licensed to do business in Guam at the time of submission of bids. Bidders must submit a copy of a current Contractor's License for constructions services issued by the Guam Contractor's License Board in conformance with Public Law 14-51 with the bid submission. **Failure to submit a conforming Contractor's License shall result in the bid being declared non-responsive, whereby bid will be rejected.**

Additionally, professional services firms as sub-consultants of Prime Bidder, are required to have a Certificate of Authorization (COA) through the Board of Professional Engineers, Architects, and Land Surveyors, Guam (PEALS) with the submission of bids. **Failure to submit a conforming Sub-Contractor's License shall result in the bid being declared non-responsive, whereby bid will be rejected.**

16. RIGHT TO ACCEPT AND REJECT BIDS

The PAG reserves the unqualified right, in its sole and absolute discretion, to reject any and all bids, or to accept that bid or combination of bids, if any, or waive informalities and minor irregularities in the bids, including the sole right to determine what constitutes irregularities in the bids which in its sole and absolute judgment will under all circumstances best serve the Government's interests. If the successful bidder fails to execute the contract upon his part or to furnish a satisfactory performance and payment bond, the Government, after declaring forfeited the security deposit of such bidder, reserves the option to accept the bid of any other bidder within ten (10) working days from such default, in which case such acceptance shall have the same effect as to such bidder as though he was the original successful bidder.

17. METHOD OF AWARD

Pursuant to 5 GCA §5211(g) of the Guam Procurement Act, the contract is to be awarded to the **lowest responsive, responsible bidder whose bid meets the requirements and criteria set forth in this Invitation for Bid.**

- a) For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items. PAG will evaluate Bids and award contract by using the lowest responsive and responsible bidder offering for the BASE BID only (Basis of Award). After contract award, PAG may consider adding item(s) in the additive bid into the contract by change order.

If the bid is within the amount of funds available to finance the construction Contract, then the award will be made to the lowest responsive and responsible bidder. In the event all bids exceed the available budget, PAG may reject bids by individual line items until the individual line items fit within the available budget. Failure to submit a bid that conforms to the requirements of the Bid Specifications in every respect may subject the bidder to being deemed non-responsive and therefore, having their bid rejected. Bidders are advised to completely fill out the forms provided in the Bid Specifications completely and fully and to provide all documents or other information otherwise required under the Bid Specifications in a timely manner and in the form requested.

18. CONTRACT TYPE AND TERM:

- a) The Contract to be awarded under this solicitation is a **Firm Fixed-Price Contract or Firm Fixed – Price Contract with Price Adjustment**. Work to be performed by the Contractor under the Contract shall commence upon issuance of a Notice to Proceed (“NTP”) by the Port Authority and continue until the completion of the Scope of Work, in accordance with the A/E Drawings (if applicable) and Technical Specifications. Contractor agrees to complete the Scope of Work within **Seven Hundred Ninety (790) calendar days from receipt of the NTP from the Port Authority**.
- b) At the option of the Port Authority, the contract is subject to a review by the Procurement Official for determination of the continued need for such contract, and availability of funds.

19. COMPETENCY OF BIDDER REQUIREMENTS

Bidders shall submit satisfactory evidence that they have sufficient experience and the capacity to perform Work which includes, but is not limited to, having the necessary capital or financial backing to pay for necessary materials in advance, having the necessary machinery, equipment and tools to carry out the Work; and having the skilled labor force necessary to carry out the Work in a safe and proficient manner, and within the required schedule.

As such, bidders shall fill out the **Bidder Qualification Statement/ Questionnaire Form**. PAG reserves the right to investigate the validity of the information submitted or request more information as it deems appropriate before an Award is made. PAG also reserves the right to disqualify any Bidder for lack of responsibility (i.e., capacity) if the PAG General Manager determines that doing so is in the best interest of PAG.

Only complete and accurate information shall be provided by the Bidder. The Bidder hereby warrants that, to the best of its knowledge and belief, the responses contained herein are true, accurate, and complete.

The Bidder also acknowledges that the Owner is relying on the truth and accuracy of the responses contained herein. If it is later discovered that any material information given in response to a question was provided by the Bidder, knowing it was false, it shall constitute grounds for immediate disqualification and termination or rescission by the Owner of any subsequent agreement between the Owner and the Bidder. The Owner shall also have and retain any other remedies provided by law.

**Technical Approach and Capacity to Perform the Work:** Each Bid shall contain a complete and clear description of how the Bidder proposes to meet all requirements of the bid. Assuming Notice to Proceed for the construction contract is issued by **February 26, 2022**. Bidder shall demonstrate in a narrative how it intends to construct the project to meet the Substantial Completion Date of **February 26, 2024** and a Final Completion Date of **April 26, 2024**.

Bidder shall describe their construction approach to performing all aspects of the work, including the preparation of a detailed and realistic project schedule with construction methods, procurement, long lead procurement, project management, schedule management, quality control, subcontractor management, labor management, and equipment management necessary to meet the milestone date for completion of construction. Identification and mitigation of construction risks, and methods for recovering lost time.

The technical approach and schedule shall not exceed fifteen (15) pages total. Minimum font size is ten (10) point. Standard paper sizes are 8½ inch x 11 inch and 11-inch x 17 inch. Failure to follow the prescribed format or omission of required information may result in a poor evaluation. Supporting graphical information, (i.e., photos, drawings, illustrations) may be provided that back up the information given in the response, however such material will not be separately evaluated, but may be utilized as supporting documentation of knowledge and experience.

Capacity to perform and complete all aspects of the work on time taking into consideration seasonal constraints on certain construction activities, the amount of work that will be self-performed by the Bidder, the depth of staff and equipment resources available to the Bidder, use of systems integrator, use and control of H2 visa workers, and the use of key subcontractors. If the Bidder is not the construction contractor, this information shall also be provided by the construction contractor and will be considered by PAG.

List of all pieces of major plant, machinery, and other equipment available for use on the Owner's Project.

The purpose of this requirement is to provide the Port with a basis for determining the Prime Contractor and its subcontractors' financial and technical capability for undertaking this project which shall deem the Bidder as responsive and responsible. The Port is not interested in a voluminous description of all prior contracts undertaken, but rather a concise, thorough description of experience relevant to this project.

Any bidder, who at the time of bidding has been determined by the PAG or the Dept. of Public Works to be liable to pay liquidated damages for delay in completion of the last two projects contracted with any Government of Guam projects, may be rejected.

### **III. COMPLIANCE WITH LAWS AND MANDATORY FORMS FOR SUBMITTAL**

#### **1. BIDDER QUALIFICATION STATEMENT/QUESTIONNAIRE:**

Each Bid shall contain a complete and clear description of how the Bidder proposes to meet all requirements of the bid.

All questions must be answered on the attached Bidder Qualification Statement/ Questionnaire forms or facsimile and the data given must be clear, comprehensive, and written in English. Bidder shall not attach information in lieu of completion of the application document. All information requested by PAG shall be provided within the application document, however, additional pages may be attached if more space is required or as otherwise instructed within the application document. All additional pages should be clearly labeled with the bidder's name, section name, item number, and page number. The Bidder may submit any additional information desired up to a limit of 15 additional pages.

Bidder's qualification will be determined based upon the information presented. All questions must be answered in full, without exception. Information requested shall be in the US English system including all unit measurements and US dollar amounts. **Failure to do so may result in the bidder being deemed non-responsive and result in the disqualification of his bid.**

#### **2. DISCLOSURE OF MAJOR SHAREHOLDERS:**

As a condition of bidding, any partnership, sole proprietorship, or corporation doing business with the Port Authority of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship, or corporation at any time during the twelve (12)-month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12)-month period. In addition, the affidavit shall contain the name

and address of any person who has received or who is or may become entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such actual or potential commission, gratuity, or other compensation. The affidavit shall be open and available to the public for inspection and copying. **Failure by any bidder to submit the Affidavit Disclosing Ownership and Commissions - AG Form 002, shall result in the disqualification of his bid.**

3. NON-COLLUSION AFFIDAVIT

Each person submitting a bid for any portion of the work covered by the bid documents shall execute an affidavit, in the form provided with the bid, to the effect that he has not colluded with any other person, firm or corporation in regard to any bid submitted. Such affidavit shall be attached to the bid. **Failure by any bidder to submit the Affidavit Re Non-Collusion - AG Form 003, shall result in the disqualification of his bid.**

4. REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The bidder, offeror or contractor 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 2 GAR, Div. 4, §11107, 5 GCA §5631 (a) and 2 GAR, Div. 4, §11108 of the Guam Procurement Regulations. **Failure by any bidder to submit the Affidavit Re No Gratuities or Kickbacks- AG Form 004, shall result in the disqualification of his bid.**

5. REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES

The bidder, offeror or 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, §5601 *et seq.* (Ethics in Public Contracting) of the Guam Procurement Act. **Failure by any bidder to submit the Affidavit Re Ethical Standards - AG Form 005, shall result in the disqualification of his bid.**

6. PROHIBITION AGAINST GRATUITIES AND KICKBACKS

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 bid 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.

7. COMPLIANCE WITH WAGE LAWS

The bidder who is awarded a contract shall pay employees, at a minimum, in accordance with the Federal Davis-Bacon 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 Port. In the event of a renewal of a

contract, the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date of the contract shall apply to that renewal contract. In addition to the applicable Wage Determination, the contract shall contain provisions mandating health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination promulgated by the U.S. Department of Labor and shall contain provision guaranteeing a minimum of ten (10) paid holidays per annum for each employee.

The bidder is required to execute and submit the **Declaration Re Compliance with U.S. DOL Wage Determination- AG Form 006**. **Failure to submit such form shall result in the disqualification of his bid.**

8. REPRESENTATION AGAINST CONTINGENT FEES

The bidder, offeror or contractor represents that it has not retained 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. **Failure by any bidder to submit the Affidavit Re Contingent Fees - AG Form 007, shall result in the disqualification of his bid.**

6. CONFLICTS OF INTEREST

This is a federally funded project and pursuant to 2 CFR §§ 200.318 (c)(2) and 200.319(a), in order to ensure objective contractor performance and eliminate unfair competitive advantage, bidders that have organizational conflicts of interest or who 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 must be excluded from competing for such procurements.

Therefore, all Bidders shall follow the Conflict of Interest (COI) Guidelines attached to this IFB when submitting a bid submittal in response to this federally funded PAG solicitation or procurement or when entering into any federally funded contract with the PAG. The Bidder shall follow these COI Guidelines throughout the period during which the Bidder's submittal is open or the contract is in effect. All Bidders shall provide the COI Guidelines and associated COI Disclosure Form to all of its Consultants and Subcontractors at any tier of a contract and shall ensure that the Offeror and each of its Consultants or Subcontractors make any disclosures required by these guidelines or as required by this IFB or any awarded Contract. The PAG will follow and apply these COI Guidelines when conducting procurements. If a conflict of interest or potential 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 Bidder, provide the reasons therefor, and allow the Bidder a reasonable opportunity to respond.

All Bidders must complete and submit the Conflict of Interest (COI) Disclosure Form located in **Volume 3** of this IFB with the Bidder's submittal. Each disclosure of a qualifying potential conflict on the Conflict of Interest Disclosure Form shall include a signed statement by the current or former PAG employee of their role or proposed role for the Bidder in the particular Procurement and any resulting Contract on the "Relatives and Former PAG Employees - Roles and Signatures" page of the form. Failure to complete and submit the COI Disclosure Form may result in the rejection of the bid.

7. PROHIBITION AGAINST CONTINGENT FEES

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.

8. PRODUCTS MANUFACTURED FROM RECYCLED GLASS

Pursuant to Title 5, GCA Section 5218, any individual or company submitting a response to this solicitation shall include the purchase of available recycled glass pulverized on Guam or appropriate



products manufactured therein. The contract awarded under this solicitation shall determine the suitable percentage of recycled glass to be used on the project and, as a condition of the contract award, shall require the Contractor to identify and certify in writing the percentage of recycled glass contained in the material offered.

9. APPRENTICE TRAINING PROGRAM

Pursuant to Executive Order No. 2000-10, the contractor shall employ at least one (1) apprentice for every ten (10) workers for the duration of the project, and not less than one (1) apprentice per project. This requirement may be waived only if the Department of Public Works and the Guam Community College both certify that no apprentice is available.

The Executive Order applies to all public works construction projects such as the erection, maintenance, rehabilitation, repair, or demolition of any public building, roadway, or any public facility as defined in §50106 of Title 5, GCA, and applies to all departments and agencies within the government of Guam. It also applies only to projects over One Hundred Thousand Dollars (\$100,000.00).

The Director of the Department of Public Works shall monitor the compliance with this Executive Order and enforce and exercise authority to achieve the objectives of the Executive Order and shall report to the Guam Community College on a quarterly basis, the impact of this program.

The Guam Department of Labor shall inform all employers applying for H-2 alien labor certification that to qualify for government of Guam construction projects, all conditions of Executive Order No. 2000-10 shall be met.

10. PROHIBITION AGAINST CONTRACTORS EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

- a. 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.
- b. All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
- c. Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Request for Proposals shall state all the conditions in §5253(b).
- d. Any contractor found in violation of §5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.
- e. Subject to the provisions of 12 GCA §10402 (Public Law 29-23), the contract will contain performance reviews at least annually, and provisions for contract termination and penalty based upon such review.

11. DOCUMENTS EXECUTED OUTSIDE GUAM

The Power of Attorney, affidavits, bonds, and/or any documents defining the constitution of the joint venture, consortium, company, or firm, if executed outside Guam, whether required to be submitted with the bid submittals or upon award of the contract, must be authenticated by a Notary Public or other official duly authorized by law in the jurisdiction where they are authorized to witness sworn statements.

12. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

\*\*\*\*\* END OF GENERAL INFORMATION \*\*\*\*\*

**VOLUME 2**  
**GENERAL CONDITIONS AND**  
**SPECIAL PROVISIONS**

## **GENERAL CONDITIONS**

### **I. DEFINITIONS**

**1. Owner**

The term "Owner" as used herein means the Port Authority of Guam, Cabras, Piti and shall include the Governor of Guam, and/or his authorized representatives.

**2. Contracting Officer**

The term "Contracting Officer" as used herein means the General Manager of the Port Authority of Guam and shall include his authorized representatives.

**3. Engineer**

The term "Engineer" as used herein means the Port Authority's Manager of CIP/Engineering and shall include his authorized representatives.

**4. Contractor**

The term "Contractor" as used herein means the party or parties who or which shall have duly entered a contract with the Port Authority of Guam to perform the work herein contemplated or his or their authorized assignee.

**5. Subcontractor**

A subcontractor is a person or entity who has a direct contract with the Bidder/Contractor or a higher tier subcontractor to perform a portion of the Services in this solicitation.

**6. Notice**

The term "Notice" as used herein shall mean and include all written notice demands, instructions, claims, approvals, and disapprovals required to obtain compliance with contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox. The Contractor must provide and maintain a post office address within Guam and file the same with the Contracting Officer.

**7. Owners Representative**

The term "Owners Representative" as used herein means the authorized representative employed by the Owner in observing the progress and quality of the Work.

**8. Regular Working Hours**

The term "Regular Working Hours" as used herein means 8:00 a.m. and 5:00 p.m. Monday through Friday, and excludes Saturday, Sunday, and all local and legal holidays.

**9. Forms Enclosed**

The copies of the Formal Contract and Bid Bond enclosed herewith are incorporated in these General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein.

### **II. CONSTRUCTION CONTRACT**

**1. Contract Documents**

- a) The contract documents consist of the Formal Contract, the Technical Specifications, and Plans (Drawings) including all addenda and alterations made in the documents prior to their execution.

- b) The contract documents shall be signed by the Owner and Contractor in as many original counterparts as may be mutually agreed upon.
- c) Anything required by one of the contract documents shall be of like effect as if required by all the contract documents whether the other contract documents have the same requirement or not. In case of conflict between the contract documents, the technical specifications shall take precedence over the plans, and the Formal Contract shall be controlling over the plans and technical specifications. Any discrepancies between the Contract documents shall be called to the attention of the Contracting Officer before proceeding with work affected thereby.
- d) It will be conclusively presumed that the Contractor has read, examined, and agreed to each and every term, conditions, provisions, covenant or agreement in the plans (drawings), technical specifications, bid forms, contract, and conditions related to the work to be carried on, said documents being on file in the Procurement Office, Port Authority of Guam; 1026 Cabras Hwy., Suite 201; Piti, Guam.

## **2. Drawings**

- a) In case of differences between small scale and large-scale drawings, the large-scale drawings shall govern. Figured dimensions on the drawings shall be considered primary compared with measurements obtained through scaling of drawings. The Contractor shall verify all dimensions, and if any may be lacking, he shall call the attention thereto and be governed by the decision of the Contracting Officer.
- b) Where the word "similar" occurs on the drawings, it shall be interpreted in its general sense and not as meaning identical.
- c) The approval of shop and setting drawings will be general and shall not be construed (1) as permitting any departure from the contract requirements, (2) as relieving the Contractor of the responsibility for any error in details, dimensions and otherwise that may exist; (3) as approving departures from additional details or instructions previously furnished by the Contracting Officer.
- d) The Contractor will be furnished additional instructions and detail drawings as may be necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor shall be consistent with the contract documents and true developments thereof and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

## **3. Contract Change Orders**

- a) The Contracting Officer at any time, without notice to the sureties may, by written order designated or indicated to be a change order, may make any change in the work within the general scope of the contract, including but not limited to changes:
  - (1) In the specifications (including drawings and designs).
  - (2) In the method or manner of performance of the work.
  - (3) In the Government-furnished facilities, equipment, materials, services for site;  
or
  - (4) Directing acceleration in the performance of the work.
- b) Any other written order (which terms as used in this paragraph (b) shall include: direction, instructions, interpretations or determination from the Contracting Officer) which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating the date,

circumstances and source of the order and that the Contractor regards the order as a change order.

- c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change order under this clause or entitle the Contractor to an equitable adjustment hereunder.
- d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly, provided, however, that except for claims based on defective specifications no claim for any change under (b) above shall be allowed for any costs incurred more than 20 calendar days before the Contractor gives written notice as therein required. And provided further, that in the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.
- e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 calendar days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under (b) above.
- f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

4. **Specifications and Drawings**

- a) The Contractor shall keep on the work site a copy of the drawings and specifications including all authorized change orders, and shall always give the Owner, Contracting Officer and their representatives access thereto.
- b) All drawings and specifications and copies thereof furnished by the Contracting Officer are his property and shall not be used on other projects without his consent. Upon completion of this project all copies of the drawings and specifications except the signed contract sets are to be returned to the Contracting Officer upon his request.

5. **Special Requirements**

Where special requirements, provisions or specifications or detailed specifications are attached hereto or are included in the bid submittal they shall be considered a part of these general conditions or specifications or detailed specifications as fully as if contained herein. Should any special provisions conflict with these general conditions or specifications or detailed specifications, said special requirements, provisions or detailed specifications shall govern.

6. **Explanation to Bidders**

No oral explanation regarding the meaning of the drawings and specifications will be made and no verbal instructions will be given before the award of the contract. Discrepancies, omissions, or doubts as to the meaning of bid submittal documents, contract provisions, drawings and technical specifications should be communicated in writing to the Contracting Officer for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them. Every interpretation made to a bidder will be in the form of an addendum to the Invitation for Bids documents which, if issued, will be sent as promptly as practicable to all persons to whom the bid documents have been issued. All such addenda shall become part of the contract documents.

### **III. BIDS, BIDDER RESPONSIBILITIES**

#### **1. Conditions at Site or Building**

- (a) Bidders should visit the site and shall be responsible for having ascertained pertinent conditions such as location, accessibility, and general character of the site or building, the character and extent of existing work within or adjacent to the site, and any other work being performed thereon at the time of the submission of their bids. No extra compensation will be made by reason of any misunderstanding or error as regards to the site, the conditions thereof, accessibility or the amount of kind of work to be performed.
- (b) If, in the performance of the contract, subsurface or latent conditions at the site are found to be materially different from those indicated by the drawings and specifications, or unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the attention of the Contracting Officer shall be called immediately to such conditions before they are disturbed. Upon such notice, or upon his own observation of such conditions, the Contracting Officer shall promptly make such changes in the drawings and specifications as he finds necessary to conform to the different conditions, and any increase or decrease in the cost of the work resulting from such changes shall be adjusted as provided under Changes in Work.

#### **2. Submission of Bids**

- (a) The bidder is required to bid on all items called for in the Bid Form.
- (b) Bids shall be submitted on the forms furnished or copies thereof and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the bid submittal or irregularities of any kind may be rejected by the Owner as being incomplete.
- (c) Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed in the name of the partnership by one of the members of the partnership or by an authorized representative followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the State of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president", (agent or other designation, without disclosing his principal), may be held to the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.

#### **3. Bid Guarantee**

Bids shall be accompanied by a bid guarantee of not less than fifteen percent (15%) of the total bid amount for which an award can be made. Bid guarantee may be bid bond (form enclosed), certified check or cashier's check. Bid bond shall be signed by the bidder, two major officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety and shall be accompanied with copies of current Certificate of Authority to do business in Guam issued by the Department of Revenue and Taxation, Power of Attorney issued by the Surety to the Resident General Agent and Power of Attorney issued by two major officers of the Surety to whoever is signing on their behalf. Certified check or cashier's check must be issued by a banking institution licensed to do business on Guam and shall be made payable to the Port Authority of Guam. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw his bid for a period of sixty (60) calendar days

after the scheduled closing time for the receipt of bids; that if his bid is accepted, he will enter into a formal contract with the Owner in accordance with the form of agreement included as a part of the contract documents, and that the required performance and payment bond will be given; and that in the event of the withdrawal of said bid within said period, or the failure to enter into said contract and give said bond within ten (10) working days after he has received notice of the acceptance of his bid, the bidder shall be liable to the Owner for the full amount of the bid guarantee as representing the damage to the Owner on account of the default of the bidder in any particular hereof. The bid guarantee shall be returned to all except the three lowest bidders within three days after the formal opening of bids. The bid guarantee of the second and/or third low bidder shall be returned thirty (30) calendar days after the bid opening date upon request, if he has not been notified by the Owner of the acceptance of his bid prior to the date of such request. The bid guarantee of the lowest qualified bidder shall be returned within forty-eight (48) hours after the Owner and the qualified bidder have executed the contract.

4. **Withdrawal of Bids**

Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right to the withdrawal of the bid after it has been opened.

5. **Publicity of Bids**

At the time fixed for the opening of bids, the contents of the bids will be made public for the information of bidders and others properly interested who may be present either in person or by representation.

6. **Receipt and Opening of Bids**

- (a) Bids will be opened publicly at the time and place stated in the invitation for bids. The officer whose duty it is to open them will decide when the specified time has arrived, and bids received thereafter will not be considered. No responsibility will be attached to any officer for the premature opening of a bid not properly addressed and identified.
- (b) Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to time set for opening.

7. **Rejection of Bids**

The Owner reserves the right to reject all bids when such rejection is in the interest of the Owner and to reject the bid of a bidder who is not in a position to perform the contract.

8. **Award of Contract**

- (a) The contract will be awarded as soon as practicable to the lowest responsive and responsible bidder, provided it is in the interest of the Owner to accept his bid.
- (b) The Owner reserves the right to waive any informality in bids received when such waiver is in the interest of the Owner. The Owner also reserves the right to accept any item in the bid and to reject any item in the bid unless otherwise specified by the Owner.

9. **Performance and Payment Bond**

The successful bidder must deliver to the Owner an executed performance and payment bond (forms enclosed) in an amount at least equal to one hundred percent (100%) of the accepted bid as security for the faithful performance of the contract and security for the payment of all persons performing labor and furnishing materials in connection with this contract. The sureties of all bonds shall be such surety company or companies as are approved by the Owner and as are authorized to transact business in Guam. The bonds must be approved by the Owner prior to execution of the formal contract.

10. **Cancellation of Award**

The Owner reserves the right to cancel the award of any contract at any time before the execution of same.



#### **IV. DUTIES OF CONTRACTING OFFICER AND CONTRACTOR SAFETY MEASURES**

**1. Authority of Contracting Officer**

The Contracting Officer shall give all orders and directions contemplated under this contract and specifications relative to the execution of the work. The Contracting Officer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid or under this contract and shall decide all questions which may arise in relation to paid work and the construction thereof. The Contracting Officer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Contracting Officer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

The Contracting Officer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute.

Any difference or conflicts regarding their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Contracting Officer.

**2. Contractor's Obligations**

The Contractor shall, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract within the time herein specified in accordance with the plans and drawings of the work covered by this contract and any and all supplemental plans and drawings, and in accordance with the directions of the Contracting Officer as given from time to time during the progress of the work. He alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances and methods, and for any damage which may result from their failure or their improper construction, maintenance or operations. The Contractor shall observe, comply with and be subject to all terms, conditions, requirements, and limitations of the contract and specifications and shall do carry on and complete the entire work to the satisfaction of the Contracting Officer and the Owner.

**3. Superintendence by Contractor**

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress with authority to act for him.

**4. Award of Subcontracts and Other Contracts for Portions of the Services**

(a) All Bidders shall furnish in writing to the 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 Bidder's Bid submittal. The PAG may conduct discussions with the Bidder: (1) stating whether the PAG has reasonable objection to any such proposed person or entity; or (2) stating whether the PAG requires additional time for review or additional information concerning the utilization of a proposed person or entity. If the Bidder fails to submit this form with its bid submittal, that Bidder may be disqualified. If this occurs the PAG will select the next lowest responsible and responsive bidder.

(b) The PAG, the government of Guam, and MARAD reserve the rights to object to Bidder's utilization of any subcontractor and to require substitution of the subcontractor for cause. The Bidder shall not contract with a proposed person or entity to whom the PAG, the government of Guam, or MARAD has made reasonable and timely objection. In the

case of substitution or any other issue with subcontractors, the Bidder shall not be required to contract with anyone to whom the Bidder has made reasonable objection in writing to the PAG.

- (c) The Bidder shall not substitute a subcontractor, person or entity set forth in its Bid submittal or in the Subcontractor Utilization Form, located in Volume 3 of this IFB, unless Bidder has obtained the written consent of the PAG, or unless the PAG requires such substitution. Bidder must notify the PAG in writing prior to any termination or substitution of a subcontractor listed in the Bid submittal or Bid Submittal Documents. Failure by the Bidder to follow these requirements shall constitute a material breach of the terms of this IFB, which may result in the termination of any awarded contract or other legally available remedies.
- (d) The Bidder 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.

5. **Subcontractor Relations**

By appropriate written agreement, the Bidder shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Bidder by the terms of its Bid submittal and any resulting Contract, and to assume toward the Bidder all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Bidder assumes toward the PAG. Each subcontract agreement shall preserve and protect the rights of the 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. Bidder shall have full responsibility for the satisfactory performance of the Services under the IFB, the Bid submittal and Bid Submittal Documents, the Scope of Services and any conditions, plans, or specifications, and any awarded contract, for any subcontracts which the Bidder may let.

6. **Subcontracts**

The Bidder 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 Bidder shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this subsection.

7. **Subletting**

Subletting part of the work is permitted. However, bidder must note that subletting more than the following is not allowed:

- (a) Where the subletting is for both labor and material, total cost of sublet work shall not exceed 50% of the contract amount.
- (b) Where subletting is for labor only, sublet work cost shall not exceed 30% of the total labor contract amount. Information concerning subcontracts must form a part of the bid documents and shall be submitted on standard "Subcontract" information form.

8. **Assignments**

The Contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the written consent of the Owner and of all the sureties executing any bonds on behalf of the Contractor in connection with said contract. In case the Contractor assigns the whole or any part of said contract or assigns all or any part of any monies due or to become due under said contract, the instrument of assignment shall contain a clause

substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor or otherwise shall be subject to all of the terms and conditions of said contract or supplemental thereto, the rights and remedies of the Owner thereunder or arising by operation of the law and to the liens of all persons, firms, and corporations for services rendered or materials supplied in connection with the performance of said contract.

9. **Equal Opportunity**

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. The Contractor will take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status, or national origin.
- (c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

10. **Hiring of Apprentices**

The Contractor shall, except of good cause shown, hire for performance of work under this contract, to the extent possible, apprentices in each occupation to be employed in the performance of work under this contract in accordance with Executive Order No. 2000-10 dated April 11, 2000.

11. **Laws, Permits and Regulations**

- (a) The DPW building, and federal permit that is required for the project shall be secured and paid for by the Contractor.
- (b) The Contractor shall pay all fees and charges for connection to outside service and use of property other than the site of the work for storage of materials or other purposes.
- (c) The Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to work hereunder unless in conflict with contract requirements. If the Contractor ascertains at any time that any requirement of this contract is a variance with applicable laws, ordinances, regulations, or building code requirements, he shall promptly notify the Contracting Officer and any necessary adjustment of the contract shall be made as specified under Changes in Work.

12. **Contractor's and Subcontractor's Insurance**

- (a) Prior to commencing the work, Contractor shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to Owner. The Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The limits of insurance shall be as follows unless a higher limit is required by statute:

- i. Comprehensive General Liability including products, completed operations and contractual coverage for this Agreement in the amount of \$1,000,000 combined single limit. Owner shall be an additional insured.
  - ii. Auto Liability Insurance covering bodily injury and property damage in the amount of \$1,000,000 combined single limit. Owner shall be an additional insured.
  - iii. Excess Liability Policy with limits of \$1,000,000 or higher.
  - iv. Owner shall be an additional insured.
  - v. Worker's Compensation and Employer's Liability - Statutory limits. Add Waiver of Subrogation endorsement in favor of Owner.
  - vi. Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor, which shall include Owner as named insured.
- (b) Contractor shall furnish certificates of insurance and waiver of subrogation endorsement to Owner prior to commencement of work showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least ten (10) working days after receipt of written notice to Owner. At all times Contractor's insurance shall be primary to any other insurance that may be carried by Owner. The statement of limits of insurance coverage shall not be construed as in any way limiting the Contractor's liability under this agreement. Owner and Owners Representative shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate as such.

**13. Indemnity**

Indemnity: The Contractor shall indemnify, defend and hold harmless Owner and Owners Representative against all loss, damage, or expense (including reasonable attorney's fees incurred by Owner or Owners Representative) arising out of the performance of the work, including injury or death to any person or persons resulting from the acts of omission of the Contractor or the Contractor's employees, servants, agents or subcontractors and from mechanics and material man's liens.

**14. Accident Prevention**

- (a) Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest edition of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America to the extent that such provisions are not in contravention of applicable laws.
- (b) Should typhoon warnings be issued, the Contractor shall take every practicable precaution to minimize damage and/or danger to persons, to the work, and to the adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and all other temporary work.

**15. Protection of Work and Property**

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work and that of adjacent property (as provided by law and the contract documents) from damage. All passageways, guard fences, lights and other facilities required for protection by laws and regulations and local conditions must be provided and maintained.

16. **Responsibility of Contractor to Act in Emergency**

In case of an emergency which threatens loss or injury of property and/or safety or life, the Contractor shall act, without previous instructions from the Owner or Contracting Officer, as the situation may warrant. He shall notify the Contracting Officer thereof immediately thereafter of any compensation claimed by the Contractor. Substantiating documents regarding expenses shall be submitted to the Owner through the Contracting Officer and the amount of compensation shall be determined by agreement or by the Contracting Officer subject to review procedures provided under Guam's Procurement Law and Claims Act.

17. **Mutual Responsibility of Contractors**

If the Contractor or any of his subcontractors or employees causes loss or damage to any separate contractor on the work, the Contractor agrees to settle with such separate contractor by agreement, if he will so settle. If such separate contractor sues the Owner on account of any loss so sustained, the Owner shall notify the Contractor who shall indemnify and save harmless the Owner against any expenses or judgments arising therefrom.

18. **Use of Premises and Removal of Debris:**

The Contractor expressly agrees to undertake at his own expense

- (a) to take every precaution against injuries to persons or damages to property;
- (b) to comply with the regulations governing the operation of premises which are occupied and to perform his contract in such a manner as not to interrupt or interfere with the operation of other facilities;
- (c) to perform any work necessary to be performed after regular working hours or on Sundays or legal holidays without additional expense to the Owner;
- (d) to store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
- (e) to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (f) to frequently clean up all refuse, rubbish, scrap materials and debris caused by his operation so that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- (g) to effect all cutting, fitting, or patching of his work required to make the same conform to the plans and specifications, and except with the consent of the Contracting Officer, not to cut or otherwise alter the work of any contractor;
- (h) before final payment to remove all surplus materials, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, to put the site in a neat, orderly condition and to thoroughly clean and leave reasonably dust free all furnished surfaces.

19. **Obstructions**

The Contractor shall at his own expense remove all obstructions, the removal of which shall be necessary for the proper reception, performance, construction, installation and completion of all work under this contract.

20. **Site of Contractor's Operations**

The Contractor shall confine all construction operations within the vicinity of the site and shall arrange his work so that all construction materials and equipment are placed in such manner and location that there may be a minimum of interference or inconvenience inflicted upon the public and employees of the Government.

21. **Barricades**  
The Contractor shall erect, install and maintain all temporary public walks, warning signs, barricades or other protective means in and around the site as deemed necessary or as may be ordered by the Contracting Officer for the effective protection of the public from injury and shall be held strictly liable for their safety.
22. **Electrical Energy**  
The Contractor shall make all necessary applications, pay all fees and charges, obtain necessary permits and provide and maintain his own electrical power and light as required and necessary in the progress of any branch of the work. He shall provide all temporary wiring necessary.
23. **Water**  
The Contractor shall make all necessary applications, pay all fees and charges, and obtain necessary permits for construction of temporary water required for use on this project. The nearest available source of water tap shall be verified by the Contractor. The Contractor shall be responsible for all expenses required for conveying water to the site from the available nearest source.
24. **Signs**  
The Contractor shall erect a sign at the project site at his own expense. The location of the sign shall be as directed by the Contracting Officer. Size of signs, lettering, and other pertinent data that should appear on the sign will be furnished by the Contracting Officer to the Contractor.

## **V. QUALITY OF WORK**

1. **Engineering and Layout**
  - (a) The Contractor shall provide competent engineering services to execute the work in accordance with the contract requirements. He shall verify the figures shown on the survey and approach drawings before undertaking any construction work and shall be responsible for the accuracy of the finished work.
  - (b) The Owner has established or will establish such general reference points as will, in his judgment, enable the Contractor to proceed with the work. If the Contractor finds that any previously established reference points have been destroyed or displaced, he shall promptly notify the Owner.
  - (c) The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in location without the written approval of the Owner. Any of them which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall be subject to prior approval by the Owner, be replaced and accurately located by the Contractor.
2. **Shop Drawings, Materials and Workmanship**

Unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new. All workmanship shall be first class and by persons qualified in the respective trades.

Shop Drawings

  - (a) The Contractor shall submit, for the approval of the Contracting Officer, shop and setting drawings and schedules required by the specifications or that may be requested by the Contracting Officer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given.
  - (b) Drawings and schedules shall be submitted in quadruplicate (unless otherwise specified) accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound in sets.

- (c) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking.
- (d) The drawings submitted shall be marked with the name of the project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for resubmission. If the shop drawings show variations from the requirements of the contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal in order that if applicable, suitable action may be taken for proper adjustment. Otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the contract even though such shop drawings have been approved.
- (e) If a drawing as submitted indicates a departure from the contract requirements which the Contracting Officer finds to be in the interest of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the drawings.
- (f) The approval of shop and setting drawings will be general and, except as otherwise provided in paragraph 2 (e), shall not be construed (1) as permitting any departure from the contract requirements; (2) as relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; (3) as approving departures from additional details or instructions previously furnished by the Contracting Officer.

3. **Standards**

- (a) Any material specified by reference to the number, symbol or title of a specific standard, such as a commercial standard, a Federal specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade or modified in such reference.
- (b) The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in the specifications. These standards are not furnished to bidders for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contracting Officer will furnish, upon request, information as to how copies of such standards may be obtained.
- (c) Reference in the specifications to any article, device, product, material, fixture, form, or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the Contractor, in such cases, may at his option use any article, device, product, material, fixture, form of type of construction which in the judgment of the Contracting Officer expressed in writing is equal to that specified.

4. **Samples**

- (a) The Contractor shall furnish for the approval of the Contracting Officer any samples required by the specifications or that may be required by the Contracting Officer of any and all materials or equipment he proposes to use and shall prepay all shipping charges on the samples.
- (b) No samples are to be submitted with bids.
- (c) No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Contracting Officer, save only at the Contractor's risk and expense.

- (d) Each sample shall have a label indicating the material represented, its place of origin and the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.
- (e) A letter in duplicate submitting each shipment of samples shall be mailed under separate cover by the Contractor and contain a list of the samples, the name of the building or work for which the materials are intended, and the brands of the materials and names of the manufacturers.
- (f) The approval of any sample shall be only for characteristics or for the named in such approval and no other. No approval of a sample shall be taken to change or modify any contract requirement. When a material has been approved, no additional sample of that material will be considered and no change in brand or make will be permitted. Approval of samples of hardware in good condition may be suitably marked for identification and used in the work.
- (g) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider under this contract any further samples of the same brand or make of that material.
- (h) Test samples as the Contracting Officer may deem necessary will be procured from the various materials or equipment delivered by the Contractor for use in the work. If any of these test samples fail to meet the specifications requirement, any previous approvals will be withdrawn and such materials or equipment shall be subject to removal and replacement by the Contractor with materials or equipment meeting the specification requirements, or at the discretion of the Owner, the defective materials and equipment may be permitted to remain in place subject to a proper adjustment of the contract price. The cost of the tests will be borne by the Owner except where laboratory tests as hereinafter specified are required by the specifications.

5. **Laboratory Tests**

Any specified laboratory tests of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories or agencies approved by the contracting Officer, and the reports of such tests shall be submitted to the contracting Officer. The cost of the testing shall be paid for by the Contractor.

6. **Methods**

The Contractor shall use proper and efficient methods and appliances for the performance of all the operations connected with work embraced under these specifications, drawings and contract to secure a rate of progress which will secure completion of the work within the time specified. If, at any time before commencement of work, or during the progress thereof, such methods, equipment or appliances are inefficient or inappropriate for securing said quality of work or said rate of progress, the Contracting Officer may order the Contractor to increase their efficiency or to improve their character, and the Contractor must conform to such order. The failure of the Contracting Officer to demand such increases of efficiency or improvement shall not relieve the Contractor or his sureties from the obligations to secure such quality of work and said rate of progress and the completion of the work as required herein.

7. **Labor and Materials**

The Contractor shall furnish all labor, materials and equipment for the execution of the work according to the drawings, specifications and contract, and where no specifications are contained therein for whatever may be necessary, shall do all that may be termed ordinary, customary or essential to a job to be well and reliably completed. This includes concealment of all pipes and other rough items of installation if not clearly so shown on the drawings in a manner acceptable to the Contracting Officer. Structural safety shall not be impaired by such



concealment. Work not particularly detailed, marked or specified shall be of equal quality as similar parts that are detailed, marked or specified. All material finished for and used in the job shall be of kind and grade specified and where not specifically called for at least of customary standard grade. All work shall be executed in accordance with their trades. Full structural safety is essential and the Contractor guarantees to accomplish same for the entire work.

8. **Guarantee of Work**

- (a) Except as otherwise specified all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion and acceptance by the Owner or from issuance of occupancy permit by the Department of Public Works, whichever is earlier.
- (b) If within any guarantee period, repairs or changes are required in connection with guaranteed work which, in the opinion of the Contracting Officer, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the Contractor shall promptly upon receipt of notice from the Owner and without expense to the Owner:
  - (1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein; and
  - (2) Make good all damages to the building or site or equipment or contents thereof which, in the opinion of the Contracting Officer, are the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract.
- (c) In any case wherein fulfilling the requirements of the contract or of any guarantee embraced in or required thereby the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the Contracting Officer and guarantee such restored work to the same extent as it was guaranteed under such other contract.
- (d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
- (e) All special guarantees applicable to definite parts of the work shall be stipulated in the specifications or other papers forming a part of the contract and shall be subject to the terms of this paragraph during the life of such special guarantee.

9. **Defective Work**

No work or material which may be defective in construction or quality or deficient in any of the requirements of the drawings and specifications will be considered accepted as a consequence of the failure of the Contracting Officer or the inspectors to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the work relieve the Contractor from the responsibility of securing the quality and progress of work as required by these specifications.

Any defective work that may be discovered before the completion of the work or within such time as required by the bond shall be replaced by work and materials that shall conform to the spirit and intent of the drawings, specifications and contract.

The fact that the Contracting Officer or his representatives may have overlooked defective work shall not constitute the acceptance of work.

**NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.**

The Contracting Officer may at any time by order given in writing stop any work not being done according to drawings and specifications and any order so given shall not in any way relieve the Contractor from completing his contract and shall not in any way terminate, cancel or abrogate the contract or any part thereof, and the Port Authority of Guam shall not in any way be responsible for the delay due to stopping the work as aforesaid.

**VI. INSPECTION OF WORK**

**1. Access to the Work**

The Contracting Officer and his representatives shall have access at all times to the work for inspection whatever it is in preparation or progress and the Contractor shall provide proper facilities for such access and inspection.

**2. Inspectors**

Inspectors may be placed by the Contracting Officer to supervise each and every subdivision of the work or any parts or process thereof. The Contracting Officer and the inspectors shall have free access to all parts of the work at all times and shall be given every facility, information and means of thoroughly inspecting the work done and the materials used or to be used.

The inspectors shall at all times be free to perform their duties and any intimidation of any inspector by the Contractor or the employees thereof shall be sufficient reason, if the Owner shall so decide, to annul the contract.

**3. As-Built Drawings**

A contract set of drawings shall be maintained at the site with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings not used for construction purposes which shall be kept up to date as the job progresses and shall be made available for inspection by the Contracting Officer at all times. The Contractor shall submit a record copy of as-built drawings and an electronic file of as-built drawings within thirty (30) days of the substantial completion and/or final acceptance of the project. As-built drawings shall be marked "As-Built Drawing" with Contractor's signature and date. The electronic file of as-built drawings shall be drawn in Auto Cad Release 14 or later version as required by the Contracting Officer.

**4. As-Built Record of Materials**

Unless provided under the contract specifications, furnish within 10 calendar days of the beneficial occupancy date a record of materials used prior to completion of the contract. Submission of this data is a condition for final payment under the contract.

**5. Inspection**

(a) "PAG, or their authorized designees may, at reasonable times, inspect the place of business of contractor or any subcontractor, or any other location which is related to the performance of the contract. In addition, all work, supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or testing conducted by PAG, the Government of Guam, or their authorized designees. If in any case the work, supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, PAG shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by PAG or the Government of Guam.

Under 5 GCA § 5240, the Government of Guam has the right to inspect the location of the contract performance or any part of the place of business of the contractor or any subcontractor which is related to the performance of the contract, and may test and inspect any supplies, equipment, or services. Thus, the IFB must contain a provision that

specifically sets forth the entire statutory requirement and sets forth all of the terms for examination of the location of the contract performance or place of business of the contractor at any time during the contract, and sets forth reasonable hours and terms of inspection. 5 GCA § 5240

All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination and testing by the Contracting Officer at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Contracting Officer shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be satisfactorily replaced with proper materials and the Contractor shall promptly segregate and remove the rejected materials from the premises. If the Contractor fails to proceed at once with the replacement of rejected materials and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in paragraph 5 of Section VII, Time for Performance, the Contractor and surety being liable for any damage to the same extent as provided in said paragraph 6 for termination thereunder.

- (b) The Contractor shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and tests that may be required by the Contracting Officer. All inspections and tests shall be performed in such manner as not to unnecessarily delay the work. Special, full-size and performance tests shall be as described in the specifications. The Contractor shall be charged with any cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.
- (c) Should it be considered necessary or advisable by the Contracting Officer at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any material respect due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction.

If, however, such work is found to meet the requirements involved in the examination and replacement, the cost of conducting the test plus 15 percent shall be allowed the Contractor and he shall in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

**6. Final Inspection**

When the work is substantially completed, the Contractor shall notify the Owner, in writing, that the work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least ten (10) calendar days in advance of said date and shall be forwarded through the Contracting Officer who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the work will be ready for final inspection or tests on the date given but such endorsement shall not relieve the Contractor of this responsibility in the matter.

**VII. TIME FOR PERFORMANCE**

**1. Prosecution of the Work**

The Contractor agrees that said work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the Contractor and the Owner

that the time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in the locality.

2. **Suspension of Work**

The Owner will furnish all land and rights-of-way necessary for the carrying out of this contract and the completion of the work herein contemplated. Should the Owner be prevented or enjoined from proceeding with the work or from authorizing its prosecution, either before or after the commencement by reason of any litigation, the Contractor shall not be entitled to make or assert any claim for damage by reason of said delay, or to withdraw from the contract except by consent of the Owner, but time for completion of the work will be extended to such time as the Contracting Officer determines will compensate for the time lost by such delay determination to be set forth in writing.

3. **Climatic Conditions**

(a) When so ordered by the Contracting Officer, the Contractor shall suspend any work that may be subject to damage by climatic conditions.

(b) "Adverse weather delays shall be based on the National Oceanic and Atmospheric Administration's (NOAA) historical monthly averages for days with precipitation, using a nominal 30-year, greater than 0.5 (1/2) inch amount parameter, as indicated on the Station Report for the NOAA location at GIAA Tiyan, Guam. The NOAA historical data will be used as the basis for establishing the number of anticipated non-workdays for each month due to adverse weather.

The following anticipated rain days are extrapolated from the NOAA Summary of Monthly Normals taken at the Guam International Airport from 1981 through 2010. The number of anticipated lost work days for each month due to adverse weather excludes Saturdays and Sundays, as detailed in the table below.

Monthly Anticipated Adverse Weather Delays  
(data based on five day work week, Monday through Friday)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2	2	1	1	2	3	5	7	7	5	4	2

The allowable work days for this contract were calculated after allowing for the following number of lost work days in each month. The Contractor's progress schedule must reflect these anticipated weather delays due to adverse weather inclusive in all-weather dependent activities.

If the number of actual adverse weather delay days exceeds the number of days anticipated for the month in which the delay occurs, only those excess days will be considered as a lost workday due to weather. A lost workday due to weather conditions is defined as days with precipitation greater than 0.5 (1/2) inch and which the Contractor cannot work at least 50 percent of the day.

Contractor shall not be entitled to an adjustment in contract price for any adverse weather delay days. These delays are considered non-compensable delays and are delays for which the Contractor may be entitled to a time extension only.

Adverse weather delay days will not be considered for contract time adjustment for weather delays of work not completed after the contractual final completion date."

4. **Progress Report**

The Contractor shall submit monthly progress report in triplicate to the Contracting Officer briefly setting forth work accomplished.

5. **Owner's Right to Stop Work or Terminate Contract, Delays, Damages**

(a) The Owner's shall have the Right to Stop Work or Terminate the Contract for delays if:

- (1) The Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors;
- (2) A receiver or liquidator shall be appointed for the Contractor or for any of his property and shall not be dismissed within 20 calendar days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 calendar days;
- (3) The Contractor shall refuse or fail, after Notice of Warning from the Contracting Officer, to supply enough properly skilled workmen or proper materials; or
- (4) The Contractor shall refuse to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified (or any duly authorized extension thereof) or shall fail to complete the work within said period, or;
- (5) The Contractor shall fail to make payments as specified to persons supplying labor or materials for the work, or;
- (6) The Contractor shall fail or refuse to regard laws, ordinances or the instructions of the Contracting Officer or otherwise be guilty of a substantial violation of any provision(s) of this contract, then, and in any such event, the Owner, upon the certificate of the Contracting Officer that sufficient cause exists to justify such action, and without prejudice to any other rights or remedy he may have may, with 10 calendar days' notice to the Contractor, terminate the employment of the Contractor and his right to proceed, either as to the entire work or (at the option of the Owner) as to any portion thereof as to which delay shall have occurred, and may take possession of the work and complete the work by contract or otherwise as the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment on that work until the work is finished. If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the expense of so completing the work (including compensation for additional managerial, administrative, and inspection services and any liquidated damages for delay), such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the work is so terminated, the Owner may take possession of and utilize in completing the work such materials, supplies, plant, and equipment as may be on the site of the work and necessary therefore. The expenses incurred through the Contractor's default shall be certified by the Contracting Officer.

(b) If the Owner does not terminate the right of the Contractor to proceed, the Contractor shall continue the work, in which event the Contractor shall pay to the Owner as fixed, agreed, and liquidated damages for each calendar day of the delay until work is completed or accepted the amount as set forth in the section of the specifications and the Contractor and his sureties shall be liable for the amount thereof.

(c) Provided that the right of the Contractor to proceed shall not be terminated, or the Contractor charged with liquidated damages because of any delays in the completion of the

work due to unforeseeable cause beyond the control and without the fault or negligence of the Contractor including, but not restricted to, acts of God or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such cases, if the Contractor shall, within ten days from the beginning of any such delay (unless the Owner shall grant a further period of time prior to the date of final settlement of the contract) notify the Owner in writing of the causes of delay through the Contracting Officer, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of facts justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto subject only to review procedures provided under Guam's Procurement Law and Claims Act.

#### **VIII. RIGHT TO ACCESS, AUDIT, AND INSPECT**

The Port Authority, US Maritime Administration, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives 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 Bid submittal, 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 Port Authority, the US Maritime Administration, the Comptroller General of the United States, or any of their duly authorized representatives, unless the Bidder is notified in writing by the US Maritime Administration, the cognizant agency for audit, the oversight agency for audit, the cognizant agency for indirect costs, or the Port Authority 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 Bidder shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.
- (b) **Right to Audit.** Contractor shall establish and maintain a reasonable accounting system that enables the Port Authority or the US Maritime Administration to readily identify Bidder's assets, expenses, costs of goods, and use of funds. The Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their 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 Bid submittal, 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 Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives, 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 Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives. Such records shall be made available to Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives 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 Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives. Contractor shall ensure Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives 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 Port Authority, the US Maritime Administration, the Comptroller General of the United States and 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 Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the Port Authority 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 Port Authority 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 Port Authority, the US Maritime Administration the Comptroller General of the United States and any of their authorized representatives' findings to Contractor.

- (c) Right to Enter and Inspect.** Port Authority, the US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives 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 Port Authority, the US Maritime Administration, the Comptroller General of the United States and 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 this Agreement, and may conduct any testing deemed necessary to determine whether the Contractor's or subcontractor's compliance or conformity to the solicitation or contract requirements. 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.

## **IX. CLAIMS, PAYMENTS**

### **1. Contractor's Title to Materials**

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies for which he accepts partial payments.

2. **Claims**

The Contractor agrees whenever required to do so by the Owner to furnish satisfactory evidence that all persons, firms or corporations who have done work or supplied materials under these specifications have been paid or have been duly notified of the completion of the work and have been secured to their satisfaction before the said Contractor shall be entitled to final payment.

In case such evidence is not furnished or in case any claim is filed with the Owner or any suit or action is instituted against the Owner as defendant or garnishee or against the Contractor in connection with the work performed or to be performed under the drawings, specifications or contract, the Owner may retain from the money due or to become due to the Contractor such sum or sums as in the judgment of the Contracting Officer will fully protect the Owner from loss, charge or expense by reason of such claim, suit or action. The Owner without prejudice to any other and further rights, may make any and all deductions for any loss, charge or expense sustained by it to which it would be entitled under the contract specifications or bond, or otherwise before paying over the balance of the sum or sums retained as aforesaid, if any, to the Contractor, his creditor, or any successful claimant against the Contractor.

No payment made or retained under this contract shall be held to relieve the Contractor and/or his sureties from his and/or their obligations under this bond to hold harmless and indemnify the Owner or its agents from any and all loss, charge or expense by reason of any unpaid claim whatsoever.

3. **Waiver of Mechanics Liens**

Contractor waives any right that he now has or in the future may have to claim a mechanic's lien against the real property or improvements thereon which are the subject of this contract, to secure payment for labor and materials furnished or to be furnished by him under this contract.

4. **Schedule of Values**

Within fourteen (14) days after receipt of notice to proceed, the Contractor shall submit for approval a schedule of the estimated values of the main branches of the work totaling the amount of the contract. The format to be used will be furnished by the Contracting Officer. These values will be used for determining partial payments and as a basis for changes in work as outlined in the General Conditions.

5. **Taxes**

The Contractor shall, without additional expense to the Owner, pay all applicable taxes. The successful bidder will be required to comply with the applicable sections of Titles 11 and 21 of the Guam Code Annotated, as regards to licenses and taxes. In addition to the general contractor's liability, subcontractors are also subject to these provisions. Subcontractors are also required to possess Guam Service Licenses. The Contractor will be required to submit a list of his subcontractors and the monetary amount of each subcontract.

6. **Materials, Services, and Facilities**

It is understood that except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.

7. **Patents**

The Contractor shall hold and save the Owner and his officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses, for or on account of



any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

8. **Payment by Contractor**

The Contractor shall pay:

- (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered;
- (b) for all materials, tools, and other expendable equipment to the extent of 90 percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used;
- (c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of such subcontractor's interest therein.

9. **Extras**

Except as otherwise herein provided, no charge for any extra work or materials will be allowed unless the same has been ordered in writing by the Owner and either the price is stated in such order or a definite acknowledgment is made that a change in price is involved subject to later determination.

10. **Changes in Work**

- (a) The Owner may at any time, by a written order, and without notice to the sureties, make changes in the drawings and specifications of this contract and within the general scope thereof. However, no change will be made which increases the total contract price without notice to sureties. In making any change, the charge or credit for the change shall be determined by the following method:
  - (1) The actual cost of:
    - I. Labor, including foreman
    - II. Materials entering permanently into the work
    - III. Equipment rental cost during time used on extra work
    - IV. Power and consumable supplies
    - V. Insurance
    - VI. To the above cost there shall be added a fixed fee to be agreed upon, but not to exceed 15% of the net cost. This fee shall be compensation to cover the cost of supervision, overhead, bond, profit and other general expenses.
- (b) The Contractor shall, when required by the Owner, furnish to the Owner an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered.
- (c) In figuring changes, instructions for measurement of quantities set forth in the specifications shall be followed.

- (d) If any part of the work as installed is at variance with the contract requirements, the Owner may, if he finds it to be in his interest, allow all or any part of such work to remain in place subject to a proper adjustment in the contract price.

11. **Payment to Contractor**

- (a) Unless otherwise provided in the specifications, the Owner will make partial payments to the Contractor after receipt and approval of the request for partial payment covering the work performed during the preceding calendar month. No payments for uninstalled materials on the site will be made unless such request is accompanied by a receipt or certification showing that the Contractor has made payment in full for such work done. In preparing such estimates, preparatory work done shall not be considered for payment. Materials delivered to site shall be considered for payment subject to the following conditions:
  - (1) The material shall be kept in a safe and enclosed warehouse or area located on site with restricted access.
  - (2) The receipt and issue of material must be controlled by a stock card kept in the warehouse.
  - (3) Insurance coverage required under **Chapter IV Section 12 of the General Conditions** shall include insurance of such material and shall include theft insurance.
  - (4) Request for payment must be accompanied with certification and receipts indicating the cost of material and showing that Contractor has made full payment for such material.
- (b) In making such partial payments there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of all work covered by the contract. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize payment in full of each progress payment for work performed beyond the 50 percent stage of completion. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount.
- (c) All materials and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payment have been made, or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.
- (d) Release of Claims - Neither the final payment or any part of the retained percentage shall become due until the Contractor shall deliver to the Owner through the Contracting Officer a complete release of all claims against the Owner arising under and by virtue of this contract, including claims of all subcontractors and suppliers of either materials or labor, other than such claims, if any, as may be specifically excepted by the Contractor.
- (e) Certificate of Completion - Upon completion and acceptance of all work whatsoever required and the release of all claims against the Owner as specified, the Contracting Officer shall file a written certificate with the Owner and with the Contractor as to the entire amount of work performed and compensation earned by the Contractor, including extra work and compensation therefore.
- (f) Final Payment - Within thirty (30) calendar days after the filing of such certificate of

completion, the Owner shall pay to the Contractor the amount therein stated less all prior payments and advances whatsoever to or for the amount of the contract. All prior estimates and payments including those relating to extra work shall be subject to correction by this payment which is throughout this contract called Final Payment.

- (g) Acceptance of Final Payment Constitutes Release - The acceptance by the Contractor of the final payment shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work, excepting the Contractor's claims for interest upon the final payments if this payment be improperly delayed. No payments, however, final or otherwise shall operate to release the Contractor or his sureties from any obligations under this contract or the performance and payment bonds.

## **X. MISCELLANEOUS**

### **1. Prohibited Interests**

- (a) No member or employee of the Guam Legislature or Delegate to Congress, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
- (b) No official or employee of the Government of Guam who is authorized in such capacity and on behalf of the Government to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Government of Guam authorized to exercise any legislative executive supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

### **2. Disputes**

- (a) Except as otherwise provided in this contract, any disputes arising under this contract shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive. The provision shall not be pleaded in any suit involving a question of facts arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative is alleged. Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence.
- (b) This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (2) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official representative or board on a question of law.

## **\*\*\*\* END OF GENERAL CONDITIONS \*\*\*\* SPECIAL PROVISIONS**

### **1. General Intention**

It is the declared intention and meaning to provide and secure all necessary labor, materials, equipment, tools, and services necessary for the delivery and completion of the project identified in the bid documents and specifications provided herein.

**2. Bid**

The Contractor and each subcontractor shall read the General Conditions immediately following these special provisions, and by the act of submitting a bid, shall be deemed to have accepted all conditions contained therein.

**3. Specifications and Standards**

The specifications and standards referenced in this specification (including addenda, amendments and errata listed) shall govern in all cases where the references thereto are made. In case of difference between the referenced specifications or standards and this specification or its accompanying drawings, this specification and its accompanying drawings shall govern to the extent of such difference, otherwise the referenced specifications and standards shall apply. Extra care shall be exercised to refer in requests for quotations in orders and in subcontracts to the referenced specifications and to all modifications thereof.

**4. Time for Completion**

It is hereby understood and mutually agreed, by and between the Contractor and the Port Authority of Guam, that the date of beginning the project, rate of progress and the time for completion of the work to be done hereunder are essential conditions of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the Notice to Proceed and shall be completed within the specified date in the Notice to Proceed, unless otherwise adjusted by mutual agreement and corresponding contract modification.

**5. Liquidated Damages**

It is hereby understood and mutually agreed by and between the Contractor and the Port Authority of Guam that liquidated damages shall be assessed for each calendar day the work remains incomplete after the date of final completion as set forth in the Notice-to-Proceed.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, the Contractor does hereby agree, as part of the consideration for the awarding of this contract, to pay to the Port Authority of Guam the **amount of \$4,000.00** per calendar day, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default of the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Port Authority of Guam because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Port Authority of Guam would in such event sustain and said amounts shall be retained from time to time by the Port Authority of Guam from current periodical estimates.

It is further agreed that time is of the essence of each portion of this contract, and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due.

- a) to any preference, priority or allocation order duly issued by the Port Authority of Guam.
- b) to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God or the public enemy, acts of the Port Authority of Guam, acts or another Contractor in the performance of a contract with the Port Authority of Guam, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; and
- c) to any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided further that the Contractor shall, within seven (7) calendar days from the beginning of delay,

give written notice as to the causes of the delay to the Contracting Officer, who will ascertain the facts and extent of the delay and notify the Contractor within reasonable time of his decision in the matter.

Contractor must note that Guam by nature has frequent rainfall events and high wind conditions that may cause suspension of work. Said suspensions shall not qualify for time extensions unless the weather is unusually severe. Unusually severe weather shall be defined as weather exceeding the Saffir-Simpson Tropical Cyclone Scale (SSTC) for a Tropical Storm Category B: Severe Tropical Storm with maximum sustained winds of 50 to 73 MPH (44-63 knots) and peak gusts of 65 to 94 MPH (57-81 knots) and with precipitation greater than the criteria established in the anticipated weather lost workdays paragraph. Other unusual weather conditions may be considered at the discretion of the Owner.

**6. Disposal**

Unsuitable materials resulting from Contractor's operations shall be disposed of in accordance with the local laws and/or policies of concerned agencies. Disposal, tipping fees/charges shall be at the Contractor's expense.

**7. Existing Site Investigation**

The Contractor shall investigate the project site prior to bidding and verify existing conditions/dimensions. Upon failure to do so, any changes due to conditions/dimensions not reflected in the plans will be done at the Contractor's expense.

**8. Technical Data**

The Contractor shall submit technical brochures, samples, shop drawings and details as required by the Project Specifications prior to purchase or installation.

**9. Material Standards**

All material and equipment must conform to applicable standards of organizations such as the American National Standard Institute (ANSI), the American Society for Testing and Materials (ASTM), the National Manufacturers Association (NEMA), and the Underwriters Laboratories (UL). Proof of such conformance shall be submitted to the Engineer for approval. References to various standards contained in the specification and drawings shall be understood to be the issue or revision in effect on the date of such deviation shall be detailed in a written request to the Port Authority of Guam for approval and shall not be initiated until written approval is received by the Contractor from the Port Authority of Guam.

a) **Contractor to submit proof of invoices, material tags and photos that all materials comply with Buy American Act.**

b) **Contractor to submit bi-weekly certified payroll of each employee with complete information to comply with Davis Bacon Act.**

**10. Contractor Furnished Equipment**

All materials and equipment required to complete the project shall be furnished by the Contractor.

**11. Owner Furnished Materials**

If materials are provided by the Port Authority of Guam, the Contractor shall be responsible to transport these items from their current locations to the job site.

a) The Contractor shall repair or replace these items if damaged during transport to the site. In addition, the Contractor shall repair any damage to public and private property caused by the transport of these items.

b) All materials and equipment if furnished by the Port Authority of Guam are in good condition. Prior to the start of construction, the Contractor shall inspect these items and acknowledge the receipt thereof. The Contractor is responsible for repairing and replacing any damage or theft of equipment or damage which causes the equipment to be inoperable from the date it was received and prior to final acceptance of this project. All expenses shall be the Contractor's responsibility.

**12. Underground Utilities Clearances if Applicable**

- a) The Contractor shall secure all permits required for construction including permits by the Department of Public Works, U.S. Navy, and other agencies involved.
- b) The Contractor shall coordinate with the government and private utility agencies in obtaining clearances prior to excavation. Extra care shall be taken so as not to damage any existing underground utilities. Any damaged utilities and any effects of the damage shall be the Contractor's responsibility.

**13. Surplus Materials**

Existing materials removed shall be cleaned, disassembled, and assured to be in good condition before transporting the materials to the locations designated by the Contracting Officer. Materials returned shall be signed for receipt given. The Contractor shall be responsible for proper accounting of all returned materials. Any difference between the credit receipts and removal quantities, as determined by the Contracting Officer, shall be the Contractor's financial responsibility. The difference shall be deducted from the total value of the Contract at the end of the project. Unsalvageable, rotten or junk materials, must be certified by the Port Authority's Inspector in writing, and shall be properly disposed of at an approved disposal location at the sole financial responsibility of the Contractor.

**14. Buy American Requirements**

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The project is a public work of the Federal Government under 41 U.S.C. § 8301.
- (b) This Section 11.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:
  - (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the U.S.;
  - (2) the Recipient may use information technology that is a commercial item;
  - (3) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
  - (4) the Recipient may use foreign construction materials if the USDOT has authorized their use under Section 11.2(d).
- (c) If the Recipient uses foreign construction material in violation of Section 11.2(b), the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under Section 8.1 and 2 C.F.R. 200.338.
- (d) The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under Section 6.1, if the USDOT determines that:
  - (1) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
  - (2) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
  - (3) the cost of domestic construction material is unreasonable.

The cost of a domestic construction material is unreasonable under Section 11.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.
- (e) The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under Section 11.2(d). If the Recipient makes a request under this Section 11.2(e), the

Recipient shall provide adequate information for the USDOT to evaluate the request, including:

- (1) a description of the foreign and domestic construction materials;
  - (2) unit of measure;
  - (3) quantity;
  - (4) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);
  - (5) time of delivery or availability;
  - (6) location of the construction project;
  - (7) name and address of the proposed supplier; and
  - (8) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for a waiver under Section 11.2(d);
  - (9) if the Recipient requests authorization under Section 11.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
  - (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.
- (f) The Recipient acknowledges that (1) this agreement is not a Government procurement contract; (2) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.
- (g) In this Section 11.2, the following definitions apply:

**"Commercially available off-the-shelf (COTS) item"**

- (1) Means any item of supply (including construction material) that is-
  - i. A commercial item as defined by 48 C.F.R. § 2.101;
  - ii. Sold in substantial quantities in the commercial marketplace; and
  - iii. Offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

**"Construction material"** means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

**"Cost of components"** means-

- (1) For components purchased by the Recipient, the acquisition cost, including transportation

costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

- (2) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

**"Domestic construction material"** means-

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if-
  - i. The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
  - ii. The construction material is a COTS item.

**"Foreign construction material"** means a construction material other than a domestic construction material.

**"United States"** means the 50 States, the District of Columbia, and outlying areas.

**15. Procurement of Recovered Materials**

Contractor and all subcontractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**16. DPW Building Permit**

The Owner has initiated the routing of the building permit application to advance the permitting process. To date, Land Management, Guam Waterworks Authority, Fire Prevention Bureau, Peals Board, Parks & Recreation, and Department of Agriculture have signed the building permit application and the Contractor's License Board, Guam Environmental Protection Agency, and Guam Power Authority have not. GEPA, GWA, and the Fire Prevention Bureau have provided conditions of approval for issuance of the building permit. All stakeholder agency conditions of approval for the building permit shall be considered incidental to the work and inclusive of the Contractors scope of services. The original progress copy of the building permit application will be provided to the successful bidder upon award to complete the permitting routing and issuance. The Contractor is reminded that procurement of the subject permit remains the responsibility of the Contractor. Updates with regard to agency signoffs can be provided upon request.

**17. Long Lead Items**

The Contractor's bid submittal shall include a list of all anticipated long lead equipment and material items with associated procurement and delivery times. The Contractor will be required to submit all long lead item submittals for review no later than 30 calendar days after issuance of the Notice-of-Award. Long lead procurement activities are those with an anticipated procurement sequence of over 120 calendar days.



## **18. “Or-Equal”**

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an “or equal” item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - i. it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - ii. it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - iii. it has a proven record of performance and availability of responsive service; and
      - iv. it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - i. there will be no increase in cost to the Owner or increase in Contract Times; and
      - ii. it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. Contractor’s Expense: Contractor shall provide all data in support of any proposed “or equal” item at Contractor’s expense.
- C. Engineer’s Evaluation and Determination: Engineer will be allowed a reasonable time to evaluate each “or-equal” request. Engineer may require Contractor to furnish additional data about the proposed “or-equal” item. Engineer will be the sole judge of acceptability. No “or-equal” item will be ordered, furnished, installed, or utilized until Engineer’s review is complete and Engineer determines that the proposed item is an “or-equal”, which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. Effect of Engineer’s Determination: Neither approval nor denial of an “or-equal” request shall result in any change in Contract Price. The Engineer’s denial of an “or-equal” request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. Treatment as a Substitution Request: If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to appropriate paragraph below.

## **19. Substitution**

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
2. The requirements for review by Engineer will be as set forth in by the Contract Documents, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - a. shall certify that the proposed substitute item will:
    - i. perform adequately the functions and achieve the results called for by the general design,
    - ii. be similar in substance to that specified, and
    - iii. be suited to the same use as that specified.
  - b. will state:
    - i. the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
    - ii. whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - iii. whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - i. all variations of the proposed substitute item from that specified, and
    - ii. available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. Engineer's Evaluation and Determination: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a written order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. Reimbursement of Engineer's Cost: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. Effect of Engineer's Determination: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a proposed Change Order.

**20. Storm Protection and Typhoon Condition Readiness**

When a severe storm warning is issued, take precautions to minimize danger to persons, and protect the work and nearby PAG property. Precautions must include, but are not limited to, closing openings; removing loose materials, tools and equipment from exposed locations; and removing or securing scaffolding and other temporary work. Close openings in the work when storms of lesser intensity pose a threat to the work or any nearby PAG property.

Unless directed otherwise, comply with:

- a) Condition FOUR (Sustained winds of 50 knots (57.54 mph) or greater expected within 72 hours): Normal daily jobsite cleanup and good housekeeping practices. Collect and store in piles or containers scrap lumber, waste material, and rubbish for removal and disposal at the close of each work day. Maintain the construction site including storage areas, free of accumulation of debris. Stack form lumber in neat piles less than 4 feet high. Remove all debris, trash, or objects that could become missile hazards.
- b) Condition THREE (Sustained winds of 50 knots (57.54 mph) or greater expected within 48 hours): Maintain "Condition FOUR" requirements and commence securing operations necessary for "Condition ONE" which cannot be completed within 18 hours. Cease all routine activities which might interfere with securing operations. Commence securing and stow all gear and portable equipment. Make preparations for securing buildings. Review requirements pertaining to "Condition TWO" and continue action as necessary to attain "Condition THREE" readiness. Coordinate with Owner's Representative for weather and COR updates and completion of required actions.
- c) Condition TWO (Sustained winds of 50 knots (57.54 mph) or greater expected within 24 hours): Curtail or cease routine activities until securing operation is complete. Reinforce or remove form work and scaffolding. Secure machinery, tools, equipment, materials, or remove from the jobsite. Coordinate with Owner's Representative for weather and COR updates and completion of required actions.
- d) Condition ONE. (Sustained winds of 50 knots (57.54 mph) or greater expected within 12 hours): Secure the jobsite, and leave PAG premises.

**21. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

Contractors that apply or bid for an award exceeding \$100,000 must file the required SF-LLL certification (See Volume 3: Required Forms and Affidavits). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

**22. Conflicts in Contract Documents**

When requirements as indicated in the Special Provisions and General Conditions conflict with the Drawings or Technical Specification, the more stringent shall apply.

**23. Applicable Federal Laws and Regulations**

By entering into the Agreement for this project, the Contactor assures and certifies that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to this Project. Performance under this Agreement shall be governed by and in compliance with the following requirements, as applicable. The applicable provisions to the Agreement include, but are not limited to those listed in Attachment - Applicable Federal Laws and Regulations.

**24. Grant Requirements and Contract Clauses**

By entering into the Agreement for this project, the Contactor assures and certifies that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to this Project. Performance under this Agreement shall be governed by and in compliance with the following requirements, as applicable. The applicable provisions to the Agreement include, but are not limited to those listed in Attachment - Grant Requirements and Contract Clauses.

**25. Attachment**

Progress copy of the Department of Public Works Building Permit Application to be provided by the Owner and Owners Representative.

**\*\*\*\*\* END OF SPECIAL PROVISIONS \*\*\*\*\***

**VOLUME 3**  
**REQUIRED FORMS AND AFFIDAVITS**



## SPECIAL REMINDER TO PROSPECTIVE BIDDERS

INVITATION FOR BID (IFB) NO. PAG-CIP-022-002

### **PROJECT TITLE: REBID OF THE CONSTRUCTION REHABILITATION FOR HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION**

Bidders are reminded to read the Instructions to Bidders attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, **one (1) original, two (2) copies, one (1) electronic file copy (CD or Flash drive) of all documents submitted in a PDF format**, at the date and time it is due.

- ( X ) COMPETENCY OF BIDDERS REQUIREMENTS (Refer Volume I, Paragraph II, subparagraph 13)
- ( X ) BIDDER QUALIFICATIONS STATEMENT / QUESTIONNAIRE (Form)
- ( X ) BID FORM and BID SCHEDULE
- ( X ) BID SECURITY (15% of the bid)
- ( X ) AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS (AG Form 002)
- ( X ) AFFIDAVIT RE NON-COLLUSION (AG Form 003)
- ( X ) AFFIDAVIT RE NO GRATUITIES OR KICKBACKS (AG Form 004)
- ( X ) AFFIDAVIT RE ETHICAL STANDARDS (AG Form 005)
- ( X ) DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (AG Form 006)
- ( X ) AFFIDAVIT RE CONTINGENT FEES (AG Form 007)
- ( X ) CONFLICT OF INTEREST (COI) DISCLOSURE FORM
- ( X ) FEDERAL ANTI-LOBBY CERTIFICATION FORMS
- ( X ) SUBCONTRACTOR UTILIZATION FORM (IF APPLICABLE)
- ( X ) OTHER REQUIREMENTS: (a) Valid Copy of Contractor's License as applicable to the project.

This reminder must be signed and included in the BID envelope. **Failure to comply with the above requirements will mean a disqualification and rejection of the bid submittal.**

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, \_\_\_\_\_, authorized representative of \_\_\_\_\_, acknowledge receipt of this Special Reminder to Prospective Bidders for the above referenced IFB and hereby attest that I have read and understand its intent and implications.

---

Signature of Authorized Representative

**BIDDER QUALIFICATION STATEMENT / QUESTIONNAIRE**

<b>THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT PERMITTED BY LAWS AND REGULATIONS</b>
--

**1. SUBMITTED BY:**

Official Name of Firm:

Address:

**2. SUBMITTED TO:**

**3. SUBMITTED FOR:**

Owner:

Project Name:

**TYPE OF WORK:**

**4. CONTRACTOR'S CONTACT INFORMATION**

Contact Person:

Title:

Phone:

Email:

**5. AFFILIATED COMPANIES:**

Name:

Address:

**6. TYPE OF ORGANIZATION:**

☐ SOLE PROPRIETORSHIP

Name of Owner:

Doing Business As:

Date of Organization:

☐ PARTNERSHIP

Date of Organization:

Type of Partnership:

Name of General Partner(s):

☐ CORPORATION

State of Organization:

Date of Organization:

Executive Officers:

- President:

- Vice President(s):

- Treasurer:

- Secretary:

☐ LIMITED LIABILITY COMPANY

State of Organization:

Date of Organization:

Members:

☐ JOINT VENTURE

Sate of Organization:

Date of Organization:

Form of Organization:

Joint Venture Managing Partner

- Name:

- Address:

Joint Venture Managing Partner

- Name:

- Address:

Joint Venture Managing Partner

- Name:

- Address:

## 7. LICENSING

Jurisdiction:

Type of License:

License Number:

Jurisdiction:

Type of License:

License Number:



## 8. CERTIFICATIONS

CERTIFIED BY:

Disadvantage Business Enterprise:

\_\_\_\_\_

Minority Business Enterprise:

\_\_\_\_\_

Woman Owned Enterprise:

\_\_\_\_\_

Small Business Enterprise:

\_\_\_\_\_

Other (\_\_\_\_\_):

\_\_\_\_\_

## 9. BONDING INFORMATION

Bonding Company:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

Bonding Agent:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Name:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Aggregate Bonding Capacity:

\_\_\_\_\_

Available Bonding Capacity as of date of this submittal:

\_\_\_\_\_

Provide a letter from the Bonding Company stating the Surety's opinion of the Bidder's ability to obtain payment and performance bonds for this project.

## 10. FINANCIAL INFORMATION

Financial Institution:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

Account Manager:

\_\_\_\_\_

Phone:

\_\_\_\_\_

INCLUDE AS AN ATTACHMENT AN AUDITED BALANCE SHEET FOR EACH OF THE LAST 3 YEARS

## 11. INSURANCE:

Provide letter(s) from Insurance Company(ies) documenting Bidder's ability to provide the required project insurance and limits as specified in Volume 2 - Special Provisions and General Conditions, General Conditions, Paragraph IV Duties of the Contracting Officer and Contractor Safety Measures, subparagraph, 11 Contractors and Subcontractor's Insurance. The letter(s) shall confirm the ability to provide each and every category of insurance and the minimum limits specified in SC-6.03 as well as the requirements for the Additional Insureds.

## 12. CONSTRUCTION EXPERIENCE:

Current Experience: List on **Schedule A** all uncompleted projects currently under contract (If Joint Venture list each participant's projects separately).

Similar Experience: List on **Schedule B** a minimum of four (4) Similar Projects in contract size or scope to the Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction Project. Each individual

Projects' cost for the four (4) Similar Projects must be greater than or equal to US \$20M. At least one of the Similar Projects must be for construction of a Wharf facility.

One (1) of the Similar Projects must have been completed in the past 5 years and the others must have been completed within the past (15) fifteen years. All reference projects must involve multi-disciplines of structural, civil, architectural, mechanical, electrical and instrumentation components as applicable. These projects shall demonstrate coordination with the Owner and other stakeholders as appropriate. The bidder must have been the primary contractor for all of the projects listed in this section. Describe projects in terms of degree of difficulty, challenges encountered, resolutions etc., or any pertinent information that might be used to evaluate your request for qualification. Each project reference shall include the name and contact information for the client and/or the contracting agent if not the same as the client. PAG reserves the right to contact references to confirm information provided.

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

### 13. SAFETY PROGRAM:

Name of Contractor's Safety Officer: \_\_\_\_\_

Include the following as attachments:

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) OSHA No. 300- Log & Summary of Occupational Injuries & Illnesses for the past 5 years.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all OSHA Citations & Notifications of Penalty (monetary or other) received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all safety citations or violations under any state all received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide the following for the firm listed in Section V (and for each proposed Subcontractor furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) the following (attach additional sheets as necessary):

Workers' compensation Experience Modification Rate (EMR) for the last 5 years:

YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____

Total Recordable Frequency Rate (TRFR) for the last 5 years:

YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____

Total number of man-hours worked for the last 5 Years:

YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____

Provide Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) Days Away from Work, Days of Restricted Work Activity or Job Transfer (DART) incidence rate for the particular industry or type of Work to be performed by Contractor and each of Contractor's proposed Subcontractors and Suppliers) for the last 5 years:

YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____

I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HERewith, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: \_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATED: \_\_\_\_\_

NOTARY ATTEST:  
SUBSCRIBED AND SWORN TO BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

NOTARY PUBLIC - STATE OF \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_

## REQUIRED ATTACHMENTS

1. Schedule A (Current Experience).
2. Schedule B (Previous Experience).
3. Audited balance sheet for each of the last 3 years for firm named in Section 1.
4. Evidence of authority for individuals listed in Section 6 to bind organization to an agreement.
5. Resumes of officers and key individuals (including Safety Officer) of firm.
6. Required safety program submittals listed in Section 13.
7. Additional items as pertinent.

## SCHEDULE A

### CURRENT EXPERIENCE

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

## SCHEDULE B

### **PROJECT NO. 1**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Project Engineer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Contract Bid Amount: US\$ \_\_\_\_\_

Final Contract Amount: US\$ \_\_\_\_\_

Contract Completion Time: Established Days: \_\_\_\_\_

Actual Completion Days: \_\_\_\_\_

Contract Dates: Notice to Proceed: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

Project Description:

Did this Contract require placement of sheet piles? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Were you the Primary Contractor on this Contract? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Percent of work completed by subcontractors? \_\_\_\_\_%

At any time during this Contract, did an environmental or permit violation occur?  
Yes: \_\_\_\_\_ No: \_\_\_\_\_

If Yes, Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe the project:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B

### **PROJECT NO. 2**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Project Engineer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Contract Bid Amount: US\$ \_\_\_\_\_

Final Contract Amount: US\$ \_\_\_\_\_

Contract Completion Time: Established Days: \_\_\_\_\_

Actual Completion Days: \_\_\_\_\_

Contract Dates: Notice to Proceed: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

Project Description:

Did this Contract require placement of sheet piles? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Were you the Primary Contractor on this Contract? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Percent of work completed by subcontractors? \_\_\_\_\_%

At any time during this Contract, did an environmental or permit violation occur?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

If Yes, Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe the project:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B

### **PROJECT NO. 3**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Project Engineer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Contract Bid Amount: US\$ \_\_\_\_\_

Final Contract Amount: US\$ \_\_\_\_\_

Contract Completion Time: Established Days: \_\_\_\_\_

Actual Completion Days: \_\_\_\_\_

Contract Dates: Notice to Proceed: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

Project Description:

Did this Contract require placement of sheet piles? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Were you the Primary Contractor on this Contract? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Percent of work completed by subcontractors? \_\_\_\_\_%

At any time during this Contract, did an environmental or permit violation occur?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

If Yes, Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe the project:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## SCHEDULE B

### **PROJECT NO. 4**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Project Engineer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Contract Bid Amount: US\$ \_\_\_\_\_

Final Contract Amount: US\$ \_\_\_\_\_

Contract Completion Time: Established Days: \_\_\_\_\_

Actual Completion Days: \_\_\_\_\_

Contract Dates: Notice to Proceed: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

Project Description:

Did this Contract require placement of sheet piles? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Were you the Primary Contractor on this Contract? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Percent of work completed by subcontractors? \_\_\_\_\_%

At any time during this Contract, did an environmental or permit violation occur?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

If Yes, Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe the project:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B

### **PROJECT NO. 5**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Project Engineer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Contract Bid Amount: US\$ \_\_\_\_\_

Final Contract Amount: US\$ \_\_\_\_\_

Contract Completion Time: Established Days: \_\_\_\_\_

Actual Completion Days: \_\_\_\_\_

Contract Dates: Notice to Proceed: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

Project Description:

Did this Contract require placement of sheet piles? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Were you the Primary Contractor on this Contract? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Percent of work completed by subcontractors? \_\_\_\_\_%

At any time during this Contract, did an environmental or permit violation occur?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

If Yes, Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe the project:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**BID FORM AND BID SCHEDULE**

To: General Manager  
Port Authority of Guam  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925

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

Gentlemen:

The undersigned (hereafter called the Bidder), a \_\_\_\_\_

\_\_\_\_\_  
*(Corporation, Partnership or Individual)*

organized and/or licensed to do business under the laws of \_\_\_\_\_, hereby proposes and agrees to furnish all the necessary labor, materials, equipment, tools and services necessary for the **REBID OF THE CONSTRUCTION REHABILITATION OF HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION IFB-PAG-CIP-022-002** all in accordance with the drawings, specifications and other contract documents prepared by the Port Authority of Guam for the sum of \_\_\_\_\_ US Dollars (\$\_\_\_\_\_) plus any and all sums to be added and/or deducted resulting from all extra and/or omitted work in accordance with the unit and/or lump sum prices stated in the itemized bid form attached hereto.

The undersigned has examined the location of the proposed work, the drawings, specifications and other contract documents and is familiar with the local conditions at the place where the work is to be performed.

The bid security attached, without endorsement, in the sum of not less than fifteen percent (15%) of the amount of the bid, is furnished to the Government as a guarantee that the contract will be executed and a performance and payment bond furnished within ten (10) working days after the acceptance of the bid of the undersigned. In the event that the undersigned bidder shall fail to execute the contract and furnish a satisfactory performance and payment bond under the conditions and within the time specified in this bid, the bid security shall be forfeited as liquidated damages for the delay and additional work and costs caused thereby in obtaining another bidder. The undersigned hereby agrees that the amount of the attached bid security is a reasonable forecast of potential damages and is not a penalty.

If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned within sixty (60) calendar days after the opening thereof, the undersigned agrees to execute the form of agreement included as one of the contract documents, and to furnish a performance and payment bond in an amount equal to one hundred percent (100%) of the contract amount within ten (10) working days after receipt of such notice.

The undersigned hereby acknowledges receipt of the following addenda:

ADDENDUM NO.	DATED
_____	_____
_____	_____
_____	_____
_____	_____

If awarded the contract, the undersigned agrees to complete the work within the required contract period as defined in the bid documents. The undersigned understands that the Port Authority of Guam reserves the right to reject any or all bids or to waive any informality or technicality in any bids in the interest of the Government. All other Work not listed in the following list are considered incidental and are an obligation of the Contractor under the various Bid Items as specified in the Bid at no additional cost to Owner.

Bidder will complete the Work in accordance with the Contract Documents for the following price(s) as delineated per scope item. Prices include all labor, materials, services, and equipment necessary for completion of the Work for a complete and operational wharf facility. All other Work not listed in the following list are considered incidental and are an obligation of the Contractor under the various Bid Items as specified in the Bid at no additional cost to Owner.

Bidder to include in other Bid item(s) the other costs (if any) associated with accepting such assignment and administering the assigned contract.

Interested Bidders must complete Table A Including Additive Bid Item 1. All blanks in the tables must be filled out.

**Definitions: LS = Lump Sum**

<b>TABLE A</b> <b>REHABILITATION OF HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION BID SCHEDULE</b>				
Item No.	Description	Quantity	Unit	Extended Amount
<b>1.0</b>	<b>MOBILIZATION</b> , not to exceed 4.00% of the overall bid price including move onto site, field offices, fit out field office and temporary utilities, project scheduling, long lead items submittals, construction sign, obtain building permit, other permits, all other mobilization items as specified in Contract Documents. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>2.0</b>	<b>INSURANCE &amp; BONDS</b> , not to exceed 1.00% of the overall bid price as specified in the Contract Documents.	<b>1</b>	<b>LS</b>	\$ _____
<b>3.0</b>	<b>EROSION CONTROL</b> , including silt fence, stabilization measures, ingress/egress soil tracking devices, seed & mulch, inlet protection, and all other erosion and sedimentation protection measures needed to protect the environment and comply with the Contract Documents and permitting. All other work associated with this bid item shall be considered incidental.			
<b>3.1</b>	<b>ON-SITE (H-WHARF)</b>	<b>1</b>	<b>LS</b>	\$ _____
<b>3.2</b>	<b>OFF-SITE (HIGHWAY 11)</b>	<b>1</b>	<b>LS</b>	\$ _____

<b>4.0</b>	<b>ENVIRONMENTAL PROTECTION AND PERMIT COMPLIANCE</b> , including biological monitor, testing for turbidity and other parameters, oil boom, turbidity curtain, vehicle sanitation station, implementing all permit conditions and other required BMPS, dust control, scheduling construction around environmental restrictions, public education, all other plans and actions required to protect the environment and comply with the Contract Documents and all associated permits. All other work associated with this bid item shall be considered incidental.			
<b>4.1</b>	<b>ON-SITE (H-WHARF)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>4.2</b>	<b>OFF-SITE (HIGHWAY 11)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>5.0</b>	<b>DEMOLITION</b> , including demolition of existing structures and infrastructure that interfere with construction, permits, pavement, utilities, storage, disposal or abandonment of demolished materials, as specified in the Contract Documents. All other work associated with this bid item shall be considered incidental.			
<b>5.1</b>	<b>ON-SITE (H-WHARF)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>5.2</b>	<b>OFF-SITE (HIGHWAY 11)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>6.0</b>	<b>MARINE STRUCTURES</b> , including debris removal, excavation, backfill, sheet piles, king piles, driven piles, double channel wale, steel tie rods, dynamic pile testing, fenders with panel, chains and chain plates, mooring fittings, marine concrete and reinforcement steel, protective coatings, survey and testing, all bollards as specified, and all other work and appurtenances needed to provide complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>7.0</b>	<b>SANITARY SEWER</b> , including piping of all sizes and materials, trenching and shoring, bedding, backfill, holding tank, controls, testing, dewatering, and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	<b>\$ _____</b>

<b>8.0</b>	<b>STORMWATER SYSTEM</b> , including all trenching, bedding, backfill, piping of all sizes and materials, inlets and grates, catch basins and grates, manholes and grates, flow splitter system, coalescing plate oil/water separators, cascade separator, concrete ditch, excavation and embankment, culvert piping and grates, concrete headwall, overflow weir, dewatering, and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.			
<b>8.1</b>	<b>ON-SITE (H-WHARF)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>8.2</b>	<b>OFF-SITE (HIGHWAY 11)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>9.0</b>	<b>WATER SYSTEM</b> , including piping, fittings, polyethylene encasement, concrete encasement, trenching, directional drilling, bedding, backfill, valves and valve box, air release valves, hydrants and bollards, reconnecting hydrants, lateral service connections, meters and meter box, backflow preventer, service connections, thrust block, testing, and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.			
<b>9.1</b>	<b>ON-SITE (H-WHARF)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>9.2</b>	<b>OFF-SITE (HIGHWAY 11)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>10.0</b>	<b>ELECTRICAL &amp; COMMUNICATION</b> , including PVC and rigid conduits for electrical and communication, risers, conductors, trenching, bedding, backfill, concrete duct banks and foundations, exterior lighting poles, bracket, and bollards, exterior lighted sign, grounding wires and rods, lightning protection system, electrical hand holes, communication hand holes, transformers, panel boards, safety disconnect switches, receptacles, interior and exterior lighting, testing, and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.			
<b>10.1</b>	<b>ON-SITE (H-WHARF)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>
<b>10.2</b>	<b>OFF-SITE (HIGHWAY 11)</b>	<b>1</b>	<b>LS</b>	<b>\$ _____</b>

<b>11.0</b>	<b>UTILITY BUILDING</b> , including foundation, concrete, reinforcement, doors, door hardware, interior finishes, and all other work and appurtenances needed to provide a complete and operational system. All other work shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>12.0</b>	<b>FIRE SYSTEM</b> , including pump packages, jockey pump, controllers, piping in building and within 5 feet perimeter of the building of all sizes and materials, fittings, valves, couplings, meters, instrumentation, fuel containment system, commissioning, testing, and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>13.0</b>	<b>WATER STORAGE RESERVOIR</b> , including earthwork, tank foundation, piping inside reservoir, piping within a five feet perimeter of the reservoir, valving, concrete, reinforcement steel, pre-stressed concrete tank, appurtenances, coating, disinfection, instrumentation, and control, testing and all other work and appurtenance needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>14.0</b>	<b>TEMPORARY TRAFFIC CONTROL</b> , including striping, signs, barricades, lights, flagger, traffic and safety supervisor and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>15.0</b>	<b>SANITARY SEWER FORCE MAIN</b> , including piping, fittings excavation, bedding, backfill, directional borings, air release valve w/manhole assembly, testing and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>16.0</b>	<b>SUBGRADE PREPARATION AND PAVING (ON-SITE WHARF)</b> , including clearing and grubbing, excavation, subgrade preparation, geo-grid, aggregate base, AC Pavement, PCC pavement, concrete curb, concrete bumper guard, survey, testing, and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____

<b>17.0</b>	<b>SUBGRADE PREPARATION (OFF-SITE HIGHWAY 11)</b> , including clearing and grubbing, saw-cut pavement, excavation, and embankment, stabilize existing subgrade, survey and testing and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>18.0</b>	<b>PAVING (OFF-SITE HIGHWAY 11)</b> , including geotextile, aggregate base course, hot mix asphalt, survey, testing, and all other work needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>19.0</b>	<b>FENCING</b> , including fence, gates, and all other work and appurtenances needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____
<b>20.0</b>	<b>SIGNING &amp; PAVEMENT MARKERS</b> , as specified in the Contract Documents and all other work and appurtenance needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.			
<b>20.1</b>	<b>ON-SITE (H-WHARF)</b>	<b>1</b>	<b>LS</b>	\$ _____
<b>20.2</b>	<b>OFF-SITE (HIGHWAY 11)</b>	<b>1</b>	<b>LS</b>	\$ _____
<b>21.0</b>	<b>PROJECT CLOSEOUT</b> , including commissioning, O&M manuals and as-built drawings (as-built drawings for not less than 1% of contract value and not less than \$35,000, and O&M Manuals not less than \$20,000), record documents, site cleanup, warranties, training, and all other work needed to provide a complete and operational system. All other work associated with this bid item shall be considered incidental.	<b>1</b>	<b>LS</b>	\$ _____

**TOTAL BID AMOUNT**

\$ \_\_\_\_\_

For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items. PAG will evaluate Bids and award contract by using the lowest responsive and responsible bidder offering for the BASE BID only (Basis of Award). After contract award, PAG may consider adding item(s) in the additive bid into the contract by change order.

If the bid is within the amount of funds available to finance the construction Contract, then the award will be made to the lowest responsive and responsible bidder. In the event all bids exceed the available budget, PAG may reject bids by individual line items until the individual line items fit within the available budget. Failure to submit a bid that conforms to the requirements of the Bid



Specifications in every respect may subject the bidder to being deemed non-responsive and therefore, having their bid rejected. Bidders are advised to completely fill out the forms provided in the Bid Specifications completely and fully and to provide all documents or other information otherwise required under the Bid Specifications in a timely manner and in the form requested.

**(TOTAL PRICE IN WORDS)**

\_\_\_\_\_

Attached hereto is an affidavit as proof that the undersigned has not engaged into any collusion with any person with respect to this bid or any other bid or the submitting of bids for the contract for which this bid is submitted.

RESPECTFULLY SUBMITTED BY:

\_\_\_\_\_  
(CONTRACTOR)

\_\_\_\_\_  
(BY)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(BUSINESS ADDRESS)

## **BID BOND**

BOND NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
*(Name of Contractor)*

as Principal, hereinafter called the Principal and \_\_\_\_\_  
*(Name of Surety)*

a duly admitted insurer under the laws of Guam, as Surety, hereinafter called the Surety, are held and firmly bound unto the Port Authority of Guam for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for: **REBID OF THE CONSTRUCTION REHABILITATION FOR HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION IFB-PAG-CIP 022-002.**

NOW THEREFORE, if the Port Authority of Guam shall accept the bid of the Principal and the Principal shall not withdraw said bid within sixty (60) calendar days after the opening of bids, and shall within ten (10) working days after the prescribed forms are presented to him for signature, enter into a Contract with the Port Authority of Guam in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such Contract and give such bond or bonds, if the Principal shall pay to the Port Authority of Guam the difference, not to exceed the amount hereof, between the amounts specified in said bid and such larger amount for which the Port Authority of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(PRINCIPAL) (SEAL)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(RESIDENT GENERAL AGENT)

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

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

Name	Address	% of Interest

Name	Address	Compensation
------	---------	--------------

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

NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

**THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL.**

## AFFIDAVIT RE NON-COLLUSION

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

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

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

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

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

Signature of one of the following:

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

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

NOTARY PUBLIC

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

AG Procurement Form 003 (Jul. 12,2010)

**THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL.**

## AFFIDAVIT RE GRATUITIES OR KICKBACKS

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

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

1. The name of the offering firm or individual is (state name of offeror/company) \_\_\_\_\_. Affiant is \_\_\_\_\_ (state one of the following: the offeror, a partner of the offeror, an officer of the offeror) making the foregoing identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the Offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 111 07 (e). Further, affiant promises, on behalf of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).

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

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

Signature of one of the following:

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

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

NOTARY PUBLIC

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

AG Procurement Form 004 (Jul. 12, 2010)

**THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL.**

## **AFFIDAVIT RE ETHICAL STANDARDS**

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

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

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

Signature of one of the following:

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

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

NOTARY PUBLIC

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

AG Procurement Form 005 (Jul. 12, 2010)

**THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL.**

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

Name of Offeror Company: \_\_\_\_\_

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

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.

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

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

AG Procurement Form 006 (Feb. 16, 2010)

**IFB-PAG-CIP-022-002**

## **AFFIDAVIT RE CONTINGENT FEES**

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

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

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

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

3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 111 08(h).

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

Signature of one of the following:

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

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

NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

AG Procurement Form 007 (July 15, 2010)

**THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL.**



## **CONFLIT 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 Sub-consultants and Subcontractors at any tier of a Proposal or Contract and shall ensure that the Offeror and each of its Sub-consultants 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 Port Authority):
  1. Is any Associate of the Offeror a former employee of Port Authority (within the last year)?
  2. Is any Associate of the Offeror a Relative or Member of the Household of a current employee of Port Authority 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 Port Authority 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 Port Authority?

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 Port Authority?
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 Port Authority 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 Port Authority) 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 Port Authority, 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 Port Authority 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 Port Authority employees, and the employment of former Port Authority employees, which are applicable to this procurement, and are explained below.

### **Standards of Conduct Policy Regarding Former Port Authority Employees**

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

Use of a former Port Authority employee by an Offeror on the same, or substantially similar Procurement, for which the employee performed a role or function for the Port Authority, unless mitigated to the satisfaction of the Port Authority, is prohibited for a period of one year following separation of employment with the Port Authority. 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 Port Authority 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 Port Authority 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 Port Authority staff formerly under his/her supervision.

For each Procurement, Offerors shall disclose to Port Authority the identification of any of Offeror's employee(s) that had been employed by Port Authority 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 Port Authority employee of their proposed role for the Offeror in the particular Procurement and any resulting Contract. Failure of an Offeror to disclose such relationship or to remedy such potential violation will result in the rejection of the Offeror's bid or cancellation of the Contract with the Port Authority as well as being grounds for cancellation of an Offeror's prequalification or designation of an Offeror as ineligible for future Procurements as not being a responsible bidder. (Also see below regarding the ban on any direct beneficial or financial interest.)

### **Standards of Conduct Regarding Current Port Authority 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.

**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 8 territorial office or employment in a material manner in the matter with which the contract is directly concerned.”

Port Authority’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 Port Authority’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 Port Authority 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 Port Authority 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 prepares and furnishes complete specifications covering non-developmental items, to be used in a competitive procurement, and 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 production contract.
- If a single contractor drafts complete specifications 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 prepares, or assists in preparing, a statement of work, scope of services, or technical specifications 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 prepare the statement of work or scope of services, 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 Port Authority to restrict Offeror's use of confidential or proprietary information obtained from previous affiliations with the Port Authority or the Government when competing for Port Authority 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 Port Authority 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 Port Authority 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 Port Authority's guidelines on the subject and specifically regulate both Organizational and Individual Conflicts of Interest. Port Authority'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 (Port Authority'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 Port Authority’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 Port Authority and such Offeror or Associate has not participated and will not participate in such acquisition for and in behalf of Port Authority (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 Port Authority 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 Port Authority 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 Port Authority 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 Port Authority demonstrated independent decision-making authority during the environmental process.

In such instances where Port Authority is satisfied in the manner described above, Port Authority 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 Port Authority, during the Procurement Process, and during the time of performance of any awarded Contract with Port Authority. 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 Port Authority, the Offeror and the Offeror's team. An Offeror must work together with Port Authority in an atmosphere of candor and accountability during the period of negotiation or performance of the Contract with Port Authority. Port Authority makes the final determination as to the adequacy of any COI disclosures or COI management plan offered by the Offeror.

Port Authority'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 Port Authority 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.

## **6. Examples of Conflict of Interest Situations.**

Port Authority 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 Port Authority 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.

1. 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 Port Authority 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, Port Authority might determine in writing that the multi-specialty engineering Offeror is eligible to propose.
2. Port Authority seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Offerors employed a senior official from Port Authority who played a significant role in providing direction for the solicitation, six months ago. Port Authority 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 Port Authority, will not engage in any activities that would violate the Port Authority 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, Port Authority 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.
3. Port Authority 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 desires to bid. Port Authority 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 Port Authority 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 Port Authority's concerns about the conflict. Depending on the particular facts, Port Authority determines that the company has an actual conflict of interest.
4. Port Authority 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, Port Authority 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.
5. Port Authority 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. Port Authority 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 Port Authority website prior to the RFP release. Port Authority 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.

6. Port Authority contracts with a consulting Offeror to assist Port Authority 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 Port Authority 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.
7. Port Authority seeks comprehensive program management services for a series of Transportation Projects. Prior to release of the RFP, Port Authority 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.). Port Authority may conclude the proposing Offeror does not have a conflict of interest that detracts from its eligibility for the program management award. Port Authority 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.
8. 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.
9. Port Authority 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 Port Authority under a separate contract. Port Authority'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.
10. Port Authority 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 Port Authority under a separate contract. Port Authority'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 Port Authority's COI Disclosure Form:

**"Actual Conflict of Interest"** means that an individual or Offeror is unable to render impartial assistance or advice to Port Authority, 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 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 Port Authority'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 Port Authority, 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 sub-consultant 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 Port Authority 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 Port Authority’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 Port Authority.

**“Project”** means any proposed or existing undertaking pertaining to such programs that are assigned to Port Authority 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 Port Authority 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.

**CONFLICT OF INTEREST (COI) DISCLOSURE FORM**

**Port Authority of Guam IFB-PAG-CIP-022-002**

Offerors under Contract or proposing to enter into a Contract with Port Authority 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 Port Authority employees).

**This COI Disclosure Form is submitted in response to:**

☐ Port Authority 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 Port Authority within the last year?  
No ☐ Yes ☐

b) Is any Associate of the Offeror a Relative or Member of the Household of a current Port Authority 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 Port Authority 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 a Port Authority 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 Port Authority 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 Port Authority? 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 Port Authority 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:**

### Relatives and Former Port Authority Employees - Roles and Signatures

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

Part A: Employees that left Port Authority in the last year			
Employee Name/Signature	Job Performed for Port Authority	Current Role with Offeror	Date left Port Authority
Name: _____ Sign: _____ <ul style="list-style-type: none"> <li>Involved with this Procurement on behalf of Port Authority?  <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/></li> <li>Involved with Proposal development for this Procurement? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/></li> </ul>			
Name: _____ Sign: _____ <ul style="list-style-type: none"> <li>Involved with this Procurement on behalf of Port Authority?  <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/></li> <li>Involved with Proposal development for this Procurement? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/></li> </ul>			
Name: _____ Sign: _____ <ul style="list-style-type: none"> <li>Involved with this Procurement on behalf of Port Authority?  <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/></li> <li>Involved with Proposal development for this Procurement? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/></li> </ul>			

**Part B: Identify Associates of the Offeror that are Relatives or Members of the Household of Port Authority employees currently working for Port Authority, if the Port Authority employee had or will have any involvement with this Procurement or Contract.**

<b>Offeror Associate's Name</b>	<b>Name and Relationship of Relative or Member of Household Employed at Port Authority</b>	<b>Role at Port Authority</b>	<b>Port Authority employee's Role with this Procurement</b>

**(Make copies of this form as needed to list additional employees.)**

**FEDERAL ANTI-LOBBYING CERTIFICATION**

**Certification for Contracts, Grants, Loans, And Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature/Authorized Certifying Official

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Applicant/Organization

\_\_\_\_\_  
Date Signed

**VOLUME 4**  
**SAMPLE CONSTRUCTION AGREEMENT &**  
**PERFORMANCE AND PAYMENT BOND FORM**

## **CONTRACT TERMS AND CONDITIONS**

**Final Contract may not be in exact form as provided.**

**This document, along with the Bid Documents provides notice to the Bidder of Bid and Contract terms and conditions required for this solicitation.**

### **AGREEMENT** **BETWEEN** **JOSE D. LEON GUERRERO COMMERCIAL PORT** **AND** **CONTRACTOR**

**THIS AGREEMENT** ("Agreement") is entered into by and between the **JOSE D. LEON GUERRERO COMMERCIAL PORT**, also known as the **PORT AUTHORITY OF GUAM**, a public corporation and autonomous instrumentality of the Government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 (the "Port"), and **CONTRACTOR** ("Contractor"), a Guam corporation authorized and licensed to do business in Guam, whose address is XXX E. Harmon Industrial Park Road Units XXX, Tamuning, Guam 969XX, with reference to the following facts:

### **RECITALS**

A. The Port previously issued an Invitation for Bid seeking Construction Services work for the **REBID OF THE CONSTRUCTION REHABILITATION FOR HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION**, under the **Invitation for Bid PAG-CIP-022-002**, a copy of which is attached to this Agreement as **EXHIBIT 1** and incorporated herein by this reference (the "IFB").

B. Pursuant to the IFB, the Port solicited sealed bids from qualified bidders for the **REBID OF THE CONSTRUCTION REHABILITATION FOR HOTEL WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION**, under the **Invitation for Bid PAG-CIP-022-002**.

C. Contractor responded to the IFB by submitting a bid to provide the services described in the IFB, a copy of which is attached to this Agreement as **EXHIBIT 2** incorporated herein by this reference (the "Bid"), and was selected by the Port as the lowest and most responsible and responsive qualified bidder.

D. The Contractor and all subcontractors must comply with the Federal Guidelines of the Equal Employment Opportunity Compliance Regulations pursuant to the 2 CFR Part 200 attached to this Agreement as **Exhibit 3**

E. The Port and Contractor have agreed to execute this Agreement in order to memorialize the terms and conditions on which Contractor shall provide the Construction Services to the Port.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, do hereby agree as follows:

#### **1. SERVICES TO BE PERFORMED**

**1.1 Scope of Work.** Contractor shall provide the services identified in the IFB and incorporated by reference as if fully set forth therein; and Contractor shall provide status reports on the services performed and required under this Agreement upon request by the Port. Contractor acknowledges and agrees that failure to promptly and satisfactorily perform all the services required under this Agreement constitutes a material breach of this Agreement.

**1.2 Contractor Provisions of Resources.** Contractor agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement.

Contractor represents and warrants that it and its employees possess the professional and technical expertise and knowledge, resources and experience to perform the services described herein in a professional, skillful and diligent manner. The Port may, in its sole discretion, provide staff assistance to Contractor in furtherance of this Agreement. Contractor acknowledges and agrees that its employees, agents and all other personnel engaged to provide the services hereunder shall be informed of all relevant provisions of this Agreement.

**1.3**     Location of Services. Except as otherwise approved by the Port, the site for services rendered under this Agreement shall be the Port Authority of Guam, Cabras Hwy., Piti, Guam and the Port's property in the jurisdiction of Piti at the Port Authority of Guam Compound and Administrative Bldg.

**1.4**     Site Condition Contractor's Responsibility. Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the services under this Agreement can and shall be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be solely at Contractor's own cost and expense, anything in this Agreement to the contrary notwithstanding.

## **2.       TERMS OF AGREEMENT**

**2.1**     Completion of Services. This Agreement shall be effective on the last signature date set forth on the signature page below, and shall continue until Contractor completes all services required hereunder unless earlier terminated in accordance with the terms of this Agreement. Contractor shall commence the performance of services required hereunder upon its receipt of a Notice to Proceed issued by the Port, and Contractor shall complete all required services under this Agreement within **Seven Hundred Ninety (790) calendar days from the issuance of a Notice to Proceed by the Port.**

**2.2**     Liquidated Damages. Contractor acknowledges and agrees that any delays in the completion of the services required hereunder shall subject Contractor to liquidated damages. For each day beyond the expiration of the **Seven Hundred Ninety calendar (790) calendar days from the issuance of a Notice to Proceed by the Port.** period after the issuance of the Notice to Proceed, Contractor agrees to pay, not as a penalty but as liquidated damages, **Four Thousand Dollars and Zero Cents (\$4,000.00)** per day to the Port. The parties agree that the foregoing amount is a reasonable amount for liquidated damages under the circumstances existing at the time this Agreement is entered into and constitutes a reasonable estimate of damages to the Port for any delays in the completion of services.

## **3.       COMPENSATION**

**3.1**     Compensation. In consideration for the services performed under this Agreement, the Port shall pay to Contractor an aggregate amount equal to **(DOLLAR AMOUNT \$\_\_\_\_\_)** in accordance with the terms and conditions set forth in this Agreement (the "Compensation"). The Compensation shall include any applicable Gross Receipts Tax.

### **3.2**     Payment Terms

(a)     IFB. The Port shall pay the Compensation to Contractor in accordance with the terms set forth in the IFB, and more specifically, the General Conditions section of the IFB.

(b)     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 Port a release in a form approved by the Port of claims against the Port arising under this Agreement. Contractor agrees to expressly waive 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*

**3.3 Expenses.** Contractor shall be solely responsible for all expenses incurred in the performance of services under this Agreement.

**3.4 No Compensation Prior to Approval of Agreement.** Contractor hereby waives any and all claims for any services performed by Contractor prior to (i) the full execution of this Agreement by all parties, and (ii) Contractor's receipt of a Notice to Proceed issued by the Port.

**3.5 United States Currency.** The Compensation payable to Contractor shall be in the currency of the United States.

#### **4. TERMINATION OF AGREEMENT**

##### **4.1 By the Port - Termination for Convenience**

(a) **Termination.** The Port may, when the interests of this territory so require, terminate this Agreement in whole or in part, for the convenience of the territory. The Port shall give written notice of the termination to Contractor specifying the part of this Agreement terminated and when termination becomes effective.

(b) **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated services and on the date set in the notice of termination Contractor shall stop services to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated services. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated services. The Port may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the Port. Contractor must still complete the services not terminated by the notice of termination and may incur obligations as necessary to do so.

(c) **Right to Construction and Supplies.** The Port may require Contractor to transfer title and deliver to the Port in the manner and to the extent directed by the Port:

(i) any completed construction; and

(ii) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawing, information, and agreement rights (hereinafter called "construction material") as Contractor has specifically produced or specially acquired for the performance of the terminated part of this Agreement. Contractor shall protect and preserve property in the possession of Contractor in which the Port has an interest. If the Port does not exercise its rights under this Section 4.1(c), Contractor shall use its best efforts to sell such construction, supplies, and construction materials in accordance with the standards set forth in 13 G.C.A. § 2706. Contractor acknowledges and agrees that the exercise by the Port of its rights under this Section 4.1 shall not be deemed to be a breach of this Agreement.

(d) **Compensation**

(i) Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by section 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 Port may pay Contractor, if at all, an amount set in accordance with Section 4.1(d)(iii), below.

(ii) The Port and Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed (x) the Compensation under this Agreement, plus reasonable settlement costs, *less* (y) any payments previously made by the Port, the proceeds of any sales of construction, supplies, and construction materials under Section 4.1(c), above, and the portion of Compensation remaining for services not terminated.

(iii) Absent complete agreement under Section 4.1(d)(ii), above, the Port shall pay Contractor the following amounts with respect to all services performed prior to the effective date of the notice of termination, provided that payments shall not be duplicated for any items set forth below pursuant to any other provision of this Agreement:

(A) the cost of such services plus a fair and reasonable profit on such portion of the services (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such services; provided, however, that if it appears that Contractor would have sustained a loss if the services would have been completed under this Agreement, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) the cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 4.1(b), above. These costs must not include costs paid in accordance with Section 4.1(d)(iii)(A), above.

(C) 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 this Agreement and 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 to Contractor under this Section 4.1(d)(iii) shall not exceed (x) the Compensation under this Agreement, plus settlement costs, *less* (y) any payments previously made by the Port, the proceeds of any sales of construction, supplies, and construction materials under Section 4.1(c), above, and the portion of Compensation remaining for services not terminated.

(iv) Cost claimed, agreed to, or established under Section 4.1(d)(ii) and (iii) shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

#### **4.2 By the Port - Termination for Default**

(a) Default. If Contractor refuses or fails to perform the services, or any separable part thereof, with such diligence as will assure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete the services within such time, or commits any other substantial breach of this Agreement, and further falls within fourteen (14) days after receipt of written notice from the Port to cure such default or to commence and continue correction of such refusal within such other time provided by the Port in writing, the Port may, by written notice to Contractor, declare Contractor in breach and terminate this Agreement or any portion thereof. In such event the Port may take over the responsibility of performing the services and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the services, such materials, appliances, and plant as may be on the site of the services and necessary therefor. Whether or not Contractor's right to proceed with the services is terminated, Contractor and Contractor's sureties shall be liable for any damage to the Port resulting from Contractor's refusal or failure to complete the services within the specified time.

(b) Liquidated Damages upon Termination. If fixed and agreed liquidated damages are provided in this Agreement, and if the Port terminates Contractor's right to proceed, the resulting damage shall consist of such liquidated damages for such reasonable time as may be required for final completion of the services required hereunder.



(c) Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in this Agreement, and if the Port does not terminate Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the services required hereunder are completed.

(d) Time Extension. Contractor's right to proceed shall not be so terminated nor Contractor charged with resulting damage including without limitation liquidated damages regardless of termination if:

(i) the delay in the completion of the services arises from causes such as: any preference, priority or allocation order duly issued by the Port; acts of God; acts of the public enemy; acts of the territory, and any other territorial entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the Port; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless Contractor furnished to Port proof that Contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire services which could not be compensated for by revising the sequence of Contractor's operations; and

(ii) Contractor, within ten (10) days from the beginning of any such delay (unless the Port grants a further period of time before the date of final payment under this Agreement), notifies the Port in writing of the

causes of delay. The Port shall ascertain the facts and the extent of the delay and extend the time for completing the services when, in the reasonable judgment of the Port, the findings of fact justify such an extension.

(e) Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this Section 4.2, it is determined for any reason that Contractor was not in default under the provisions of this Section 4.2, or that the delay was excusable under the provisions of this Section 4.2, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Port's exercise of a termination for convenience under Section 4.1, above.

(f) Additional Rights and Remedies. The rights and remedies of the Port provided in this Section 4.2 shall be in addition to any other rights and remedies provided by law or under this Agreement.

**4.3** Termination/Modification for Lack of Funds. The Port may terminate or modify this Agreement based upon a lack of funding. In such an event, the Port shall promptly provide notice to Contractor and within twenty (20) days of the notice, the parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to other provisions of this Section 4, as applicable.

**4.4** By Contractor - Termination for Cause. Contractor may elect to terminate this Agreement at any time for Cause, effective upon delivery of written notice of termination. For purposes of this Section 4.4, "Cause" shall mean the Port's failing to perform the duties and obligations imposed upon the Port hereunder and failing to cure such breach within twenty (20) days following delivery to the Port of written notice specifying the failures to perform, or, if such default cannot reasonably be remedied within such 20-day period, the Port fails to commence and diligently pursue remedial action within such 20-day period or fails to cure such default within sixty (60) days following delivery to the Port of written notice specifying the failures to perform. Upon the termination of this Agreement in accordance with this Section 4.4, the Port shall be obligated to pay Contractor for the portion of Compensation accrued and payable with respect to the satisfactory performance of services for the period ending on the effective date of termination.

**4.5** Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from the Port, Contractor shall take timely and reasonable and necessary action to protect and preserve the property in the possession of Contractor in which the Port has an interest.

**4.6 Additional Provisions.** The termination of this Agreement by any party pursuant to the provisions of this Section 4 shall not constitute, or be deemed to constitute, the waiver or release by such party of any rights or claims such party may have against the other party by reason of actions or omissions occurring on or before the effective date of termination. The parties acknowledge and agree that in the event of termination, the Port may issue a new Invitation for Bids with respect to such terminated services.

## **5. CONTACT PERSON.**

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 responsible for responding to the questions and direction of the Port. The contact person must be identified in writing within five (5) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person designated by Contractor under this Agreement.

## **6. CONFIDENTIALITY**

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

(a) The obligations under this Section 6 shall survive termination of this Agreement. Upon termination of this Agreement, all Confidential Information shall be returned promptly to the Port and all copies or derivations of the Confidential Information shall be physically and/or electronically destroyed. Contractor shall include a letter attesting to the return of Confidential Information and documenting the destruction of copies and derivations with the returned Confidential Information.

(b) Contractor shall not enter into any agreements or discussions with a third party concerning the Confidential Information without the prior written consent of the Port, and then only if Contractor requires the third party to agree to the terms of this Section 6 and the Confidential Information is provided to such third party only for purposes of enabling Contractor to discharge its responsibilities under this Agreement.

(c) The confidentiality obligations set forth in this Section 6 shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Confidential Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Confidential Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order issued by a court of competent jurisdiction.

**6.2 Equitable Relief.** Contractor (a) acknowledges that any violation of the provisions of this Section 6 may cause to the Port immediate and irreparable damage for which the Port cannot be adequately compensated by monetary damages, (b) therefore agrees that in the event of any such breach, the Port shall be entitled to such preliminary or other injunctive relief, an order for specific performance, and any other equitable relief as a court may determine to be appropriate, (c) hereby waives any requirement that the Port post, as a condition or other requirement of obtaining any such equitable relief, a bond or other collateral, and (d) further agrees that such equitable relief shall be in addition to any damages or other remedies provided by law and otherwise available to the Port by reason of Contractor's breach.

## **7. CONFLICTS OF INTERESTS; ETHICS**

**7.1** 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.

**7.2** Notwithstanding any other provision in this Agreement, Contractor acknowledges and agrees that any breach by Contractor of the covenants or warranties in this Section 7 shall be deemed a material breach of this Agreement and shall entitle the Port to immediately terminate this Agreement without liability.

## **8. COMPLIANCE WITH LAWS**

**8.1** General. Contractor shall comply with all applicable federal and local laws, statutes, regulations and ordinances with respect to this Agreement. Contractor represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

**8.2** Non-Discrimination in Employment. 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, and (ii) to post and to cause any subcontractor to post in a conspicuous place available to employees and applicants for employment, a notice setting forth the substance of clause (i), above.

### **8.3 Davis Bacon Requirements**

#### **8.3.1 Minimum Wages**

**8.3.1.1.** All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**8.3.1.2 (A)** The Port shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance

with the wage determination. The Port shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**8.3.1.2 (B)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Port agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Port to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Port or will notify the Port within the 30-day period that additional time is necessary.

**8.3.1.2 (C)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Port do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Port shall refer the questions, including the views of all interested parties and the recommendation of the Port, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Port or will notify the Port within the 30-day period that additional time is necessary.

**8.3.1.2 (D)** The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**8.3.1.3.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**8.3.1.4.** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

**8.3.2. Withholding.** The Port shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Port may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### **8.3.3 Payrolls and Basic Records.**

**8.3.3.1.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**8.3.3.2 (A)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Port if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Port. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Port if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Port, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

**8.3.3.2 (B)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**8.3.3.2 (B).1** That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

**8.3.3.2 (B).2** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

**8.3.3.2 (B).3** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**8.3.3.2 (C)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 8.3.3.2(B) of this section.

**8.3.3.2(D)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

**8.3.3.3** The contractor or subcontractor shall make the records required under paragraph 8.3.3 of this section available for inspection, copying, or transcription by authorized representatives of the Port or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **8.3.4. Apprentices and trainees**

**8.3.4.1 Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**8.3.4.2 Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid

fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**8.3.4.3 Equal Employment Opportunity.** During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and

will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.*

**8.3.5 Compliance with Copeland Act Requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

**8.3.6 Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as **the Port** may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

**8.3.7. Contract Termination: Debarment.** A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8.3.7. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**8.3.8. Disputes Concerning Labor Standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**8.3.9. Certification of Eligibility.**

**8.3.9.1.** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

**8.3.9.2.** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).



**8.3.9.3.** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**8.3.9.4. Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment.**

For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, Contractor and all subcontractors are prohibited from procuring, obtaining, or purchasing: 1) equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); 2) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); 3) telecommunications or video surveillance services provided by such entities or using such equipment; and 4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**9. Prohibition Against Gratuities and Kickbacks**

- A. Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- B. Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

**10. Domestic Products Preference.**

As appropriate and to the extent consistent with law, there is a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts, including all purchase orders for work or products under this sub-award. For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

**11. RETENTION AND ACCESS TO RECORDS AND OTHER REVIEW.** Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and shall make such materials available at its respective offices at all reasonable times for inspection by the Port for the period ending three (3) years following the expiration or termination of this Agreement. The Port agrees to comply with Contractor's reasonable requests for access to all documents and Port property reasonably necessary to the performance of Contractor's services under this Agreement.

**12. INDEMNIFICATION**

**12.1 Indemnification.** Contractor shall indemnify and hold the Port and each of its officers, agents, Board members and employees, harmless from and against all claims, losses, expenses, injuries, damages, actions,

lawsuits, judgments, and all other liabilities, including reasonable attorneys' fees for the defense thereof, arising from or relating to (i) Contractor's breach or failure to perform any of its obligations under this Agreement, (ii) the inaccuracy of any representation or warranty of Contractor under this Agreement, (iii) any violation of or noncompliance with any federal or local law or regulation by Contractor, or (iv) any act or omission of Contractor or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

**12.2 No Liability.** The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur with respect to Contractor, Contractor's officers, directors, agents, servants, subcontractors or employees, 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 by the negligence or willful misconduct of the Port. No Board member, officer, agent, or employee of the Port shall be personally liable to Contractor under or by reason of this Agreement or any of its provisions.

### **13. SUSPENSION OF WORK**

**13.1 Suspension for Convenience.** The Port may order Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Port may determine to be appropriate for the convenience of the territory.

**13.2 Adjustment of Cost.** If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of Port in the administration of this Agreement, or by the failure of the Port 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 this Agreement necessarily caused by such unreasonable suspension, delay, or interruption and this Agreement 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 Contractor; or

(b) such adjustment is provided for or excluded under any other provision of this Agreement.

**13.3 Time Restriction on Claim.** No claim under this Section 13 shall be allowed:

(a) for any costs incurred more than twenty (20) days before Contractor shall have notified the Port 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.

**13.4 Adjustments of Price.** Any adjustment in the Compensation payable under this Agreement made pursuant to this Section 13 shall be determined in accordance with Section 14, below.

### **14. PRICE ADJUSTMENT**

**14.1 Price Adjustment Methods.** Any adjustment pursuant to the terms of this Agreement in the Compensation payable under this Agreement, shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in this Agreement or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the applicable clause or provision, plus appropriate profit or fee, all as specified in this Agreement or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or

(e) in the absence of an agreement between the parties, by a unilateral determination by the Port of costs attributable to the event or situation covered by the clause or provision, plus appropriate profit or fee, all as computed by the Port in accordance with generally accepted accounting principles and applicable provisions under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 G.C.A. (Legal and Contractual Remedies) of the Guam Procurement Act.

**14.2** Submission of Cost or Pricing Data. Contractor shall submit cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

## **15. DISPUTES**

**15.1** All controversies between the Port and Contractor which arise under, or are by virtue of, this Agreement and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within 60 days after written request by Contractor for a final decision concerning the controversy; provided, however, that if the Procurement Officer does not issue a written decision, within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the Parties, then Contractor may proceed as if a decision adverse to the Port had been received.

**15.2** The Procurement Officer shall immediately furnish a copy of the decision to Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

**15.3** Any such decision shall be final and conclusive, unless fraudulent, or Contractor brings an action appealing the decision to the Office of Public Auditor. Either party shall have the right to appeal an adverse decision by the Public Auditor to the Superior Court of Guam as provided in 5 GCA Section 5707.

**15.4** Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where there has been a material breach of the contract by the Port; provided, however, that in any event Contractor shall proceed diligently with the performance of the contract where the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency has made a written determination that continuation of work under this Agreement is essential to the public health and safety.

## **16.0 CLAIMS BASED ON PORT ACTIONS OR OMISSIONS**

**16.1** Notice of Claim. If any action or omission on the part of the Port requiring performance changes within the scope of this 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 this Agreement in compliance with the directions or orders of the Port, 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:

(a) Contractor shall have given written notice to the Port:

(i) prior to the commencement of the services involved, if at that time the contractor knows of the occurrence of such action or omission;

(ii) 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 services; or

- (iii) within such further time as may be allowed by the Port in writing.

The 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 Port, 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 Port.

(b) The notice required by Section 16.1(a), above, 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

(c) Contractor maintains and, upon request, makes available to the Port 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.

**16.2 Limitations of Clause.** Nothing in this Section 16, however, shall excuse Contractor from compliance with any rules of law precluding any territorial 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 this Agreement.

**16.3 Adjustments of Price.** Any adjustment in the Compensation payable under this Agreement made pursuant to this Section 16 shall be determined in accordance with Section 14, above.

## **17. MODIFICATIONS INCLUDING THOSE DUE TO PUBLIC WELFARE, CHANGE IN LAW OR CHANGE IN MARKETING CONDITIONS.**

The Port shall have the unilateral power to modify this Agreement at any time subject to the written agreement of Contractor. The Port shall have the power to make changes in this Agreement and to impose new rules and regulations on Contractor under this Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. The Port shall give Contractor notice of any proposed change in this Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of Contractor. In the event the Port materially alters the obligations of Contractor, or the benefits to the Port, then this Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of Contractor, then Contractor or the Port shall be entitled to an adjustment in the rates and charges established under this Agreement. Contractor shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The Port and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to this Agreement, the Port and Contractor shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of Contractor directly and demonstrably due to any modification in this Agreement under this Section 17.

## **18. INDEPENDENT CONTRACTOR AND ITS EMPLOYEES**

**18.1 Status.** Contractor acknowledges that in performing services pursuant to this Agreement, Contractor (a) shall be an independent contractor and not an employee of the Port, (b) shall not be entitled to participate in any fringe benefit programs established by the Port for the benefit of its employees, and (c) shall be solely responsible for paying prior to delinquency, and shall indemnify, defend, and hold the Port free and harmless from and against, all income taxes, self-employment taxes, and other taxes (including any interest and penalties with respect thereto) imposed on the fees and compensation paid by the Port to Contractor pursuant to this Agreement.

**18.2 Limitation on Authority.** Contractor (a) shall not be an agent of the Port and shall have no authority to bind the Port or incur any liabilities in the name of the Port, and (b) shall indemnify, defend, and hold the Port free and harmless from and against all claims, costs, damages, and expenses arising from or related to a breach by Contractor of the limitation set forth in this Section 18.2.

**18.3 Port Security Guidelines.** In accordance with applicable local and federal rules and regulations, Contractor and its employees or agents must pre-arrange their visits to Port property with a minimum of twenty-four (24) hours advance notice. Such notice shall include Contractor's employee's or agent's names, Social Security or Driver's license numbers, and the time, date, and nature of the anticipated visit. Contractor shall not have access to restricted areas without Port Police clearance or an authorized escort when required. If required, Contractor shall comply with all applicable policies regarding issuance of Port visitor or identification cards. If required, Contractor shall obtain Transportation Workers Identification Credential (TWIC). If Contractor shall operate any vehicles on Port property, Contractor shall comply with all applicable policies regarding maintenance of insurance for vehicles, including submission of vehicle registration and proof of insurance for the vehicles.

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

## **20. DISPOSITION OF PROPERTY AND MATERIALS; INTELLECTUAL PROPERTY RIGHTS**

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

**20.2** All Work Products, including any and all intellectual property rights in said Work Product, arising out of this Agreement shall be the sole and exclusive property of the Port. Contractor explicitly acknowledges that the Port 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 Port.

## **21. EMPLOYMENT OF PERSONS CONVICTED OF A SEX OFFENSE.**

Contractor warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry, shall provide services on behalf of the Port while on the Port or Government of Guam property, with the exception of public highways. If any employee or agent of Contractor is providing services on government or Port property and is convicted subsequent to the effective date of this Agreement, then Contractor warrants that it will notify the Port of the conviction within twenty-four (24) hours of the conviction, and will immediately remove and prohibit such convicted person from providing services on government or Port property. If Contractor is found to be in violation of any of the provisions of this Section 21, then Contractor shall take corrective action within twenty-four (24) hours of the notice from the Port, and Contractor shall notify the Port when corrective action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of the notice from the Port, then the Port in its sole discretion may suspend the performance of services until corrective action has been taken.

## **22. COMPLIANCE WITH APPLICABLE FEDERAL LAWS AND REGULATIONS**

**22.1 Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S.

Department of Transportation, Maritime Administration (MARAD), as they may be amended from time to time, which are herein incorporated by reference and made part of this contract.

**22.2 Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

**22.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.

**22.4 Information and Reports:** The contractor will provide all information and reports required Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or MARAD to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or MARAD, as appropriate, and will set forth what efforts it has made to obtain information.

**22.5 Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or MARAD may determine to be appropriate, including, but not limited to:

- and/or
- (a) Withholding payments to the contractor under the contract until the contractor complies;
  - (b) Cancelling, terminating, or suspending a contract, in whole or in part.

**22.6 Incorporation of Provisions:** The contractor will include the provisions of paragraph one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or MARAD may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **23. MISCELLANEOUS**

**23.1 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.

**23.2 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 this Agreement.

**23.3 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.

**23.4 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.

**23.5 Notices.** All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English language, in writing. All notices required to be given under this Agreement by either party to the other may be effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth (5<sup>th</sup>) day after mailing, which occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this Section 23.5:

TO THE PORT: JOSE D. LEON GUERRERO COMMERCIAL PORT  
Port Authority of Guam  
Attention: Mr. Rory J. Respicio, General Manager  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925

With a copy to the Port's Legal Counsel of Record.

TO CONTRACTOR: CONTRACTOR  
Attention: John Doe President  
XXX E. Harmon Industrial Park Road, Units XXX,  
Tamuning, Guam 969XX

**23.6 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. All rights and interest of Contractor under this Agreement (including, but not limited to, Contractor's right to or interest in any part of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Contractor, Contractor agrees that any subcontractors retained by Contractor or assignees shall be subject to all provisions of this Agreement. Contractor agrees that with respect to any agreement entered into by Contractor with a subcontractor to perform any services required hereunder, such agreement shall specifically include the covenants, warranties, prohibitions and requirements set forth in Sections 7, 8, and 9, above.

**23.7 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.

**23.8 Entire Agreement; Amendments.** This Agreement, the IFB, and the Bid (a) represent the entire understanding of the parties regarding the subject matter hereof, and supersede and replace all prior and contemporaneous understandings regarding the subject matter hereof, whether oral or written, and (b)

except as otherwise expressly set forth in this Agreement, may not be modified or amended, except by a written instrument executed by the parties after the effective date of this Agreement.

**23.9 Conflicting Terms.** In the event of a conflict between the provisions of this Agreement, the IFB, and the Bid, the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of this Agreement (as it may be amended from time to time); second, to the provisions of the IFB; and third, to the provisions of the Bid.

**23.10 Effect of Headings.** The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only and should not affect construction or interpretation of any of its provisions.

**23.11 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be a single agreement.

**23.12 Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Guam. Each party consents to the jurisdiction of the courts of Guam for the purpose of construing or enforcing the rights and obligations created under this Agreement. The exclusive venue for all disputes that arise under this Agreement shall be the Superior Court in and for Guam.

**23.13 Computation of Time.** Whenever this Agreement provides for a time period of ten (10) days or less, weekends and Government of Guam holidays shall not be included in the computation. When this Agreement provides for a time period exceeding ten (10) days, weekends and Government of Guam holidays shall be included in the computation.

**23.14 Remedies.** Any dispute arising out of or under this Agreement shall be subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

**\*\*\* *Approval Signatures will appear on following page* \*\*\***



**WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth below their respective signatures.

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

**CONTRACTOR**

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

\_\_\_\_\_  
President

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

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

**APPROVED AS TO FORM:**

**CERTIFICATION OF AVAILABILITY  
OF FUNDS:**

\_\_\_\_\_  
**CHRISTINE K. CLAVERIA**  
Port Legal Counsel  
Jose D. Leon Guerrero Commercial Port

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

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

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

CONTRACT No.: \_\_\_\_\_

BUDGET ACCT. No.: \_\_\_\_\_

**LABOR AND MATERIAL PAYMENT BOND**

**BOND NO.** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_, as Principal, hereinafter called the "Principal" and \_\_\_\_\_ a corporation duly organized under the laws of the Territory of Guam, as Surety, hereinafter called "Surety", are held and firmly bound unto the **Port Authority of Guam, Jose D. Leon Guerrero Commercial Port** as Obligee, hereinafter called "Authority" for use and benefit of claimant as herein below defined, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for payment whereof the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written Agreement dated \_\_\_\_\_, 20\_\_\_\_, Entered into a Contract with the Authority for the Project Titled:

**REBID OF THE CONSTRUCTION REHABILITATION FOR HOTEL WHARF AND HIGHWAY 11 ROADWAY  
RECONSTRUCTION IFB-PAG-CIP 022-002**

in accordance with drawings and specifications prepared by the Authority, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct Contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-mentioned Principal and Surety hereby jointly and severally agree with the Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant, may sue this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execute thereon. The Authority shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall commence hereunder by any claimants:
  - A. Unless claimant, other than one having a direct Contract with the Principal, shall have given written notice to any two of the following: The Principal, the Authority, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, starting with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an

envelope addressed to the Principal, Authority or Surety, at any place where an office is regularly maintained for the transaction of business, or serves in any manner in which legal process may be served in Guam in which the aforesaid project is located, save such service need not be made by public officer.

- B. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
  - C. Other than in court of competent jurisdiction for the county or district in which the construction contract was to be performed.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(TITLE)

(SEAL)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(BONDING COMPANY)

\_\_\_\_\_  
(TITLE)

By: \_\_\_\_\_  
(ATTORNEY-IN-FACT)

**PERFORMANCE BOND**

**BOND NO.**\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_, as Principal,  
(Insert full name and address or legal title of Contractor)

hereinafter called Contractor and \_\_\_\_\_, a corporation duly organized under  
(Bonding Company)

the laws of the Territory of Guam, hereinafter called Surety, are held and firmly bound unto the **Port Authority of Guam, Jose D. Leon Guerrero Commercial Port** as Obligee, herein after called the "Authority" for use and benefit of claimants as herein below defined, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators; successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written Agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a Contract with the Authority for the Project Titled:

**REBID OF THE CONSTRUCTION REHABILITATION FOR HOTEL WHARF AND HIGHWAY 11 ROADWAY  
RECONSTRUCTION IFB-PAG-CIP 022-002**

in accordance with drawings and specifications prepared by the Authority which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if the Contractor shall promptly and faithfully perform said contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be and is declared by the Authority to be in default under the Contract, the Authority having performed territorial obligations thereunder, the Surety may promptly remedy the defaults or shall promptly;

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Authority and the Surety jointly of the lowest responsive, responsible Bidder, arrange for a Contract between such Bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph shall mean the total amount payable by the Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Authority to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Authority or successors of the Authority.

SIGNED AND SEALED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(BONDING COMPANY)

\_\_\_\_\_  
(TITLE)

BY: \_\_\_\_\_  
(ATTORNEY-IN-FACT)

**VOLUME 5**  
**SPECIFICATIONS, DRAWINGS AND**  
**ENVIRONMENTAL REPORTS**

Due to the large size of the Specification, Drawings and Reports, an electronic copy can be obtained at the Port Authority of Guam's Procurement Office on the 1<sup>st</sup> floor of the Port's Administration Building at Cabra's Island, Piti at no charge.