



## **REQUEST FOR PROPOSAL (RFP)**

Funded by Port Local Funds

**Port Authority of Guam Project No. RFP-PAG-024-001**

### **OSHA TRAINING AND CERTIFICATION SERVICES FOR MARITIME TERMINAL OPERATIONS PERSONNEL**

**ISSUED BY:** Port Authority of Guam  
1026 Cabras Highway, Suite 201  
Piti, Guam 96915

**PROPOSAL NO:** RFP-PAG-024-001

**ISSUE DATE:** December 2023

**DEADLINE:** January 5, 2024

**NAME AND LOCATION OF PROJECT:**  
Port Authority of Guam, 1026 Cabras Highway Suite, 201, Piti, Guam 96915

**PORT AUTHORITY OF GUAM DIVISION:** Human Resources

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## Section I.

### INSTRUCTIONS TO OFFERORS

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These Instructions to Offerors contain the following lettered paragraphs:

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#### A. PURPOSE

The Port Authority of Guam ("PAG") is issuing this Request for Proposals ("RFP") because it is seeking an experienced and qualified Offeror to provide professional Certification and Training Services ("Services") for the OSHA Training and Certification Services for Maritime Terminal Operations Personnel ("Project"). The issuance of this RFP in no way constitutes a commitment by the PAG to award a contract.

#### B. TYPE OF CONTRACT TO BE OFFERED AND TERM

1. The initial term of this contract is for a period of three (3) years. The contract that results from this solicitation will be a multi-term contract based on agreed-upon rates.

2. Extension Terms. At the sole option of the PAG, and upon satisfactory performance by the Contractor, the PAG may choose to extend this contract for successive periods of one (1) year, but not to exceed the total contract period of five (5) years. Any Renewal Term shall not be subject to negotiation, but shall be a continuation of the contract on the same terms, conditions, and pricing as in effect under the existing contract.

All Renewal Terms are subject to the availability of additional funds. In no case shall any extension or renewal extend the total term of the contract beyond five (5) years. Unless cancelled for lack of funds, terminated, renewed, or extended prior to expiration, the contract shall expire at the end of the Initial term or at the end of any subsequent Renewal Term exercised by the PAG.

### C. INSTALLMENT PAYMENTS

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

### D. REQUEST FOR PROPOSALS PACKAGE AND FORMS

The Request for Proposal package is available on PAG's website at: <https://portofguam.com/bids-and-rfps> where an electronic copy, in PDF, can be downloaded. All interested offerors must completely fill out the Bid Register information on the website. A hard copy may also be picked up at the Port's Procurement Office located on the 1<sup>st</sup> floor of the PAG Administration Building for a fee of \$25.00 USD.

### E. SUBMISSION OF PROPOSALS AND DUE DATE

If submitting in hard copy, sealed hard copy Proposals shall be submitted to include one (1) fully executed original, three (3) copies and one (1) electronic USB or CD in PDF format. Faxed or E-mailed Proposals will not be accepted.

Proposals and Proposal Documents may be signed by the Offeror electronically, and in any number of counterparts, each of which shall be deemed an original, but all of which together shall be submitted with the Proposal and shall constitute the Proposal. Failure to submit the required forms in the number or format required may be cause for rejection of Proposals due to non-responsiveness. See the Proposal Format and Content provisions for full instructions and minimum requirements for the content of the Proposal.

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

**Proposals must be received no later than FRIDAY, JANUARY 5, 2024 4:00 p.m., Chamorro Standard Time (C.S.T.). Proposals received after the closing time for receipt will not be considered.** Office hours for receipt of Proposal are Monday through Friday (excluding government of Guam Holidays), 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. **Hard copy Proposals may be hand delivered, delivered by mail, or delivered by other courier service to:**

**THE PORT AUTHORITY OF GUAM**  
Procurement and Supply Division,  
1<sup>st</sup> Floor Administration Building  
1026 Cabras Highway, Suite 201  
Piti, GU 96915  
Fax: (671) 472-1439

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

## **F. NO PRE-PROPOSAL DISCUSSIONS WITH OFFERORS**

No oral discussion, explanation, or instructions in regard to the meaning of any provision of this RFP will be allowed or given on or before the submission due date for all Proposals.

## **G. QUESTIONS/COMMUNICATIONS WITH OFFERORS PRIOR TO PROPOSAL SUBMISSION AND SINGLE POINT OF CONTACT**

All communications and any questions concerning possible discrepancies, omissions, or doubts as to the meaning of any provision of this RFP shall be raised before the submission due date for Proposals and shall be communicated in writing on or before **THURSDAY, DECEMBER 28, 2023 at 4:00pm Chamorro Standard Time (Guam Time)** to the following Single Point of Contact for the PAG:

### **THE PORT AUTHORITY OF GUAM**

c/o Steven P. Muna, Contract Management Administrator  
Procurement & Supply Division  
1026 Cabras Highway, Suite 201  
Piti, GU 96915

### **POC Name: STEVEN P. MUNA**

Email: [spmuna01@portofguam.com](mailto:spmuna01@portofguam.com) and [pagprocurement@portofguam.com](mailto:pagprocurement@portofguam.com)

Tel: (671) 477-5931

Fax: (671) 477-1439

Written answers to all timely and properly submitted written questions shall be provided within a reasonable time prior to the submission due date for Proposals. PAG will notify all Offerors of any substantive modification or clarification provided in response to any timely and properly submitted written questions. PAG may extend any applicable dates or due dates if any circumstance or information significantly amends the solicitation or makes compliance with the original proposed due dates impractical. PAG is not required to respond to untimely or improperly submitted questions or communications.

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

## **H. OTHER COMMUNICATIONS**

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

award of the contract, unless such contact or communication is specifically authorized by Guam's Procurement Law and Guam's Procurement Rules and Regulations.

## I. PROPOSAL FORMAT AND CONTENT

All Proposals and Proposal Documents must be submitted in writing. Offerors shall submit their written Proposals and Proposal Documents in a sealed envelope to include one (1) original, three (3) copies and one USB or CD electronic copy in PDF format. The outer envelope shall be marked in bold letters, "**Proposal for RFP-PAG-024-001 OSHA Training and Certification Services for Maritime Terminal Operations Personnel**". The envelope shall also be marked with the Offeror's name and the name of Offeror's authorized representative. Proposals and Proposal Documents shall be filled out in ink or typewritten and signed in black or blue ink. Erasures, strikeouts, or other types of changes, made to a Proposal, which are evident on its face, must be explained or noted over the signature of the Offeror. Unexplained erasures or alterations, and omissions to the Proposal or Proposal Documents may be cause for rejection by the government.

All Proposals must include:

- A cover letter on the Offeror's letterhead, listing the legal name of the Offeror, location of Offeror's principal place of business, location of the formation of Offeror's business entity, and current place(s) of operation and other projects. This cover letter must be signed in the legal name of the Offeror and by an authorized officer, representative, agent or employee of the Offeror, who has authority to bind the Offeror. Proof of authority to bind the Offeror may be requested by the PAG;
- A detailed plan for performance of the Services listed in the Scope of Services;
- A statement of the abilities, qualifications, and experience of all persons who would be assigned to provide the required Services under this RFP;
- A statement of the availability and capacity of the Offeror to perform the Services under this RFP;
- A listing of other contracts under which services similar in scope, size, or discipline were performed;
- A listing of any other contracts under which any services were performed within the last five (5) years;
- A statement of the age of Offeror's business, and average number of employees over the last five (5) years;
- A statement addressing any other factors deemed relevant to the RFP and stated as evaluation factors herein.

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

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

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

Cost or Pricing Data will be required from any Offeror selected to conduct contract negotiations, to be submitted prior to the negotiations. A Certification of the Cost or Pricing Data will also be required from the Offeror with whom a successful contract is negotiated. The Cost or Pricing Data and/or Certification of the Cost or Pricing Data shall be

requested separately by PAG when required. Neither the Cost or Pricing Data nor a Certification of the Cost or Pricing Data shall be submitted with the Offeror's Proposal.

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

- Cover letter referencing **RFP-PAG-024-001** which lists the contents of the Proposal and all required information about the Offeror, as set forth in this Paragraph
- Offeror's Proposal addressing all informational items and factors required in the RFP
- Proof of any required licensure to perform the Services on Guam (unless not required until a later time pursuant to the terms of this RFP)
- Affidavit Disclosing Ownership and Commissions *(AG Form 002) (attached)*
- Affidavit re: Non-Collusion *(AG Form 003) (attached)*
- Affidavit re: No Gratuities or Kickbacks *(AG Form 004) (attached)*
- Affidavit re: No Gratuities or Kickbacks *(AG Form 004) (attached)*
- Affidavit re: Ethical Standards *(AG Form 005) (attached)*
- Declaration re: Compliance with U.S. DOL Wage Determination *(AG Form 006) (attached)*
- Affidavit re: Contingent Fees *(AG Form 007) (attached)*
- Current U.S. Department of Labor Wage and Benefit Determination *(SCA) (attached)*
- Subcontractor Utilization Form *(attached)*
- Conflict of Interest Disclosure Form *(attached)*
- Certification of Non-Employment of Convicted Sexual Offenders *(attached)*

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

#### **J. PLAN FOR PERFORMING THE SERVICES**

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

#### **K. ABILITY, QUALIFICATIONS, EXPERIENCE, AND QUALITY OF PERSONNEL, EQUIPMENT, AND FACILITIES**

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

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

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

#### **L. AVAILABILITY AND CAPACITY OF THE OFFEROR TO PERFORM**

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

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

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

#### **M. OFFEROR'S RECORD OF PERFORMANCE ON SIMILAR PROJECTS**

As part of the written Proposal, the Offeror is required to provide proof to PAG that it has delivered a quality work



product on similar projects. The Offeror shall provide its past performance record on similar projects. Offeror should demonstrate a track record of effective planning, scheduling and on-time delivery, and successful performance on its projects. Offeror should also demonstrate a track record of teamwork, cooperation, fair dealing, client service, and relationships of mutual trust and confidence. Emphasis should include the quality of work and timeliness of delivery.

The Proposal shall include:

- A list of projects similar in scope and with emphasis on experience in Training and Certification Services for Maritime Terminal Operations. The list shall identify project name, project description, location, client references including contact name, address and telephone number, completion date, project budget, project role, type of services provided highlighting work performed similar in scope, and other pertinent information.
- A list of the Offeror's record of schedule performance (list original schedule versus final completion date) and explain any schedule deviations.
- A history of performance on projects similar in scope to this RFP that the Offeror was involved with over the past five (5) years. This description of Offeror's performance history should demonstrate Offeror's teamwork, cooperation, fair dealing, client service, and establishment of relationships of mutual trust and confidence.

#### **N. OFFEROR'S GENERAL EXPERIENCE AND PAST PERFORMANCE**

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

The Proposal shall include:

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

#### **O. EVALUATION FACTORS FOR PROPOSAL**

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

<b>EVALUATION FACTORS</b>	<b>SCORE</b>
<p><b>Quality of Proposal Content and Plan for Performing the Required Services:</b> Overall quality, comprehensiveness, and value of the Proposal’s presentation regarding the Services that provides the most benefit to Guam and in responding to items described in the Scope of Services section of this RFP. Proposed plan and method for accomplishing the Services, avoiding problems and delays, and resolving conflict. The Offeror’s approach to completing this Project on budget, on schedule, with high quality; and Offeror’s plans to meet PAG’s goals for the Services. The Plan shall include a Proposed Project Schedule.</p>	<b>30 Points</b>
<p><b>Ability, Qualifications, Experience, and Quality of Personnel, Equipment, and Facilities:</b> Specialized experience and qualifications of designated Project personnel to perform the Services, as reflected by technical training and education, general experience, specific experience in providing the Services, and the qualifications and abilities of personnel proposed to be assigned to perform the Services. Specialized benefits and/or quality of the Offeror’s resources, equipment, and/or any facilities Offeror intends to utilize to perform the Services.</p>	<b>20 Points</b>
<p><b>Availability and Capacity of Offeror:</b> The Offeror’s current capacity to successfully apply its skills and resources to perform and complete the Services on time and within budget at a level of quality expected by PAG. This includes an evaluation of the resources, personnel, facilities, and equipment currently available to perform the Services or demonstrably available at the time of contracting, and an evaluation of the Project Organizational Chart to complete the Services.</p>	<b>20 Points</b>
<p><b>Offeror’s Record of Past Performance on Similar Projects:</b> The Offeror’s specialized experience on projects similar in scope and type. Successful performance on projects that are similar in nature and scope. A demonstrated track record of effective planning, scheduling and on-time delivery performance on those similar projects. Successful performance of similar past projects. A demonstrated track record of teamwork, cooperation, fair dealing, client service and relationships of mutual trust and confidence.</p>	<b>20 Points</b>
<p><b>Offeror’s General Experience and Past Performance:</b> The Offeror’s general experience in all areas of its work. A demonstrated track record of effective planning, scheduling and on-time delivery performance on those schedules. Successful performance of all past projects. A demonstrated track record of teamwork, cooperation, fair dealing, client service and relationships of mutual trust and confidence.</p>	<b>10 Points</b>

**P. REQUEST FOR NON-DISCLOSURE OF CONFIDENTIAL DATA**

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

After receipt of a request to designate portions of the Proposal as confidential, the PAG will examine the request. PAG may review the material declared to be confidential to determine the validity of any requests for non-disclosure of trade secrets and other proprietary data identified in writing. The PAG will then inform the Offeror of its decision on the request in writing. If the parties do not agree as to the disclosure of certain data, the Offeror may then withdraw

the Proposal or submit a protest if permitted by law. If the Proposal is not withdrawn and no protest is received, then the PAG may disclose those portions of the Proposal for which a non-disclosure request was not granted.

**Q. MULTIPLE, ALTERNATE, OR LATE PROPOSALS**

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

**R. AMENDMENTS TO REQUEST FOR PROPOSALS**

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

**S. PRICE PROPOSALS**

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

All Price Proposals shall include a proposed Project budget addressing the entire time of performance only.

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

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

Pursuant to 2 CFR § 200.324(b), if the Offeror is selected for negotiations, PAG and the Offeror “must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed.” *Id.* **Offeror’s Price Proposal must include profit as a separate line item in its proposed budget and pricing.**

**T. COST OR PRICING DATA AND CERTIFICATION OF COST OR PRICING DATA**

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

**U. 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 Port Local Funds by the time of contracting. The government’s obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. The issuance of this solicitation does not compel the award of any contract.

All Offerors are required to comply with the terms and conditions of PAG’s applicable funding requirements.

## V. WAGE AND BENEFIT REQUIREMENTS

Whenever the government of Guam enters into a procured contractual arrangement with an Offeror for the provision of a service to the government of Guam, and the Offeror employs a person(s) whose purpose, in whole or in part, is the direct delivery of the service contracted by the government of Guam, then the Offeror shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of the contract deliverables to the government of Guam. The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to the Offeror by the government of Guam shall be used to determine the wages which shall be paid to employees pursuant to Guam's Procurement Law, if applicable. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by Guam's Procurement Law, that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply, if applicable. In addition to the required Wage Determination, any contract to which this requirement applies shall also contain provisions mandating health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

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

## W. SUBCONTRACTORS

1. **Subcontractor.** A subcontractor is a person or entity who has a direct contract with the Offeror/Contractor or a higher tier subcontractor to perform a portion of the Services in this solicitation.
2. **Award of Subcontracts and Other Contracts for Portions of the Services.**
  - a. All Offerors shall furnish in writing to PAG the names of all known persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed to provide subcontracting services on each principal portion of the Scope of Services by completing, signing, and attaching the Subcontractor Utilization Form to the Offeror's Proposal. PAG may conduct discussions with the Offeror: (1) stating whether PAG has reasonable objection to any such proposed person or entity; or (2) stating whether PAG requires additional time for review or additional information concerning the utilization of a proposed person or entity. If the Offeror fails to submit this form with its Proposal, that Offeror may be disqualified. If this occurs PAG will select the next highest ranked qualifying Offeror for negotiations.
  - b. PAG, the government of Guam, and the \*Federal Awarding Agency\* reserve the rights to object to Offeror's utilization of any subcontractor and to require substitution of the subcontractor for cause. The Offeror shall not contract with a proposed person or entity to whom PAG, the government of Guam, or the \*Federal Awarding Agency\* has made reasonable and timely objection. In the case of substitution or any other issue with subcontractors, the Offeror shall not be required to contract with anyone to whom the Offeror has made reasonable objection in writing to the PAG.
  - c. The Offeror shall not substitute a subcontractor, person or entity set forth in its Proposal or in the Subcontractor Utilization Form, located at Section XI of this RFP, unless Offeror has obtained the written consent of the PAG, or unless PAG requires such substitution. Offeror must notify PAG in writing prior to any termination or substitution of a subcontractor listed in the Proposal or Proposal Documents. Failure by the Offeror to follow these requirements shall constitute a material breach of the terms of this RFP, which may result in the termination of any awarded contract or other legally available remedies.

d. The Offeror shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any subcontract in excess of \$10,000 at any tier of services under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

3. **Subcontractor Relations.** By appropriate written agreement, the Offeror shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Offeror by the terms of its Proposal and any resulting Contract, and to assume toward the Offeror all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Offeror assumes toward PAG. Each subcontract agreement shall preserve and protect the rights of PAG under this solicitation with respect to the Services to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Offeror shall have full responsibility for the satisfactory performance of the Services under the RFP, the Proposal and Proposal Documents, the Scope of Services and any conditions, plans, or specifications, and any awarded contract, for any subcontracts which the Offeror may let.

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

If Offeror enters into any subcontracts for this procurement, Offeror shall also comply with all federal contracting requirements of 2 CFR § 200.321, including: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

#### **X. CONFLICTS OF INTEREST**

All Offerors must complete and submit the Conflict of Interest (COI) Disclosure Form located at Section XII of this RFP with the Offeror's Proposal. 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 Offeror 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 Proposal.

#### **Y. DISCLOSURE OF MAJOR SHAREHOLDERS**

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

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

If the Offeror and any Subcontractors determine that they have not developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or

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

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

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

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

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

## Section II.

### **GENERAL TERMS AND CONDITIONS**

#### **TABLE OF CONTENTS OF GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions contain the following lettered paragraphs:

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

**A. AUTHORITY**

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

- [www.guamcourts.org/CompilerofLaws/GCA/Title.html](http://www.guamcourts.org/CompilerofLaws/GCA/Title.html)
- [www.guamcourts.org/CompilerofLaws/GAR/@gar.html](http://www.guamcourts.org/CompilerofLaws/GAR/@gar.html)

The RFP requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith. By submitting a Proposal, Offerors agree to be bound by all the laws and regulations of Guam.

**B. SPECIAL RFP TERMS FOR MULTI-TERM CONTRACTS**

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

**C. CANCELLATION AND REJECTION**

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

**D. TAXES**

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

**E. WITHHOLDING ASSESSMENT FEE**

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

**F. PERMITS, LICENSING, AND COMPLIANCE WITH LAWS**

The selected Offeror shall be required to obtain all permits and comply with all Federal and Territorial laws, ordinances, or rules applicable to its professional licensing and the provision of equipment and services to the government of Guam. Specific information on licenses required by the government of Guam may be obtained from the Director of Revenue and Taxation. The Offeror shall provide a copy of all of its current, valid, appropriate business licenses, and Guam Business License or a statement of exemption pursuant to Title 11 of the Guam Code Annotated, §§ 70126 and 70130.

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

**G. MANDATORY PROHIBITIONS**

**1. Prohibition of Gratuities, Kickbacks, and Favors.**



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

*Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

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

**2. Prohibition of Employment of Sex Offenders.** No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

**3. Prohibition of Contingent Fees.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

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

## **H. MANDATORY WARRANTIES**

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

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

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

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

**4. Representation Regarding Ethical Standard.** Offeror represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the government of Guam Procurement Regulations.

#### **I. EQUAL EMPLOYMENT OPPORTUNITY**

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

#### **J. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

Offerors must meet all applicable ADA regulations and requirements.

#### **K. PROPOSALS**

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

#### **L. REVIEW OF PROPOSALS**

PAG intends to review the Proposals as soon as possible after the submission due date for Proposals as provided herein. The Proposals submitted will be the primary documents for evaluation. PAG reserves the right to waive any minor information or irregularity in the Proposals received. PAG may award, allow amendments, or reject Proposals in whole or in part as permitted by law. PAG is not responsible for any costs incurred by the Offerors. PAG reserves

the right to retain copies of all Proposals submitted regardless of whether an Offeror is selected for negotiations or awarded a contract. Submission of a Proposal constitutes acceptance of these terms and conditions by the Offeror.

**M. INDEPENDENT PRICE DETERMINATION**

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

**N. ACCEPTANCE OF SOLICITATION TERMS AND APPLICABLE LAWS**

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

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

If any part, term, or condition of this RFP is found to be contrary to the Guam Procurement Law, the Guam Code, any applicable Guam Administrative Rules and Regulations, or is found to contain ambiguous terms, then such portion of the RFP shall be interpreted or resolved in favor of or according to the provisions of the Guam Procurement Law or other applicable Guam law or rules.

**O. MODIFICATION OR WITHDRAWAL OF PROPOSALS**

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

**P. CLARIFICATION/DISCUSSION OF PROPOSALS**

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

**Q. EVALUATION FOR SELECTION**

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

## **R. RESPONSIBILITY OF OFFERORS**

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

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

## **S. SELECTION OF BEST-QUALIFIED OFFEROR**

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

## **T. NEGOTIATION AND AWARD OF CONTRACT**

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

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

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

#### **U. ACCESS TO RECORDS, INSPECTION, AND AUDIT REVIEW**

The PAG and any of its authorized representatives must have the right of access to any documents, papers, or other records of the Offeror which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect supplies and services and audit records at any Offeror or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine the Offeror's responsibility and capability of performing any contract to be awarded under a solicitation, and to determine whether the Offeror's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded Offeror is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Offeror's personnel for the purpose of interview and discussion related to such documents. By submitting a Proposal in response to this RFP, the Offeror agrees to abide by the following access, audit, and inspection terms:

1. *Access to Records and Retention.* The Offeror, including its subcontractors, if any, agrees that it shall maintain and retain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and relative to its cost or pricing data, and shall make such materials available at all reasonable times after submission of its Proposal, during any awarded contract term, and for three (3) years from the date of final payment under any awarded contract, for inspection in Guam or at any reasonable location designated by the PAG and authorized representatives, unless the Offeror is notified in writing by the cognizant agency for audit, the oversight agency for audit, the cognizant agency for indirect costs, or the PAG to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. Each subcontract by the Offeror shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.
2. *Right to Audit.* Offeror shall establish and maintain a reasonable accounting system that enables PAG to readily identify Offeror's assets, expenses, costs of goods, and use of funds. PAG and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Proposal or this solicitation which are kept by or under the control of the Offeror, including, but not limited to those kept by the Offeror, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including Proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Offeror shall, at all times during the term of any awarded contract and for a period of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Offeror shall at any time requested by PAG, whether before, during, or after completion of an awarded contract, and at Offeror's own expense make such records available for inspection and audit (including copies and extracts of records as required) by PAG. Such records shall be made available to PAG during normal business hours at the Offeror's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for PAG. Offeror shall ensure PAG has these rights with Offeror's employees, agents, assigns, successors, and subcontractors, and the

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

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

#### **V. LOCAL PROCUREMENT POLICY**

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

#### **W. RELATIONS WITH OTHER GOVERNMENT AGENCIES**

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

#### **X. OBLIGATIONS OF THE OFFEROR**

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

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

## Section III.

### **SCOPE OF SERVICES**

#### **OSHA TRAINING FOR MARITIME TERMINAL EQUIPMENT OPERATIONS**

The Jose D. Leon Guerrero Commercial Port – Port Authority of Guam (PAG), is seeking professional services from a firm or individual to provide training and certification services to comply with OSHA standards for Marine Terminal Equipment Operations Personnel.

The purpose of this RFP is to ensure all PAG operators receive a comprehensive understanding of the operator's role and responsibilities in improving safety on jobsites where cranes are in operation, and for other related areas of responsibilities. **The Qualified Offeror shall offer and convey the latest information available for the purpose of providing quality training and certification services for Maritime Terminal Equipment Operations personnel in accordance with the Occupational Safety and Health Administration (OSHA) standards, Chapter 29 CFR Parts, and all its applicable subparts, to include those consensus standards reflected therein.**

The intended deliverables of this project will include an updated Participant's Manual, Load Charts, as well as the Instructor's Guide and Power Point presentations summarizing the modules of the course material, updated test questions and original graphics. All materials will become the exclusive property of PAG. Presenters agree not to seek royalties from the sale and/or delivery of any of the modules in the course material.

The successful proposer will provide specific training courses to PAG Maritime Terminal equipment operators and personnel at a level to meet or exceed knowledge, skills, and abilities for position of maritime equipment operations and related areas, as designated within the Occupational Safety and Health Administration (OSHA) standards (CFR Chapter 29) and required by the PAG.

#### **THE SCOPE OF SERVICES FOR OSHA TRAINING AND CERTIFICATION FOR MARITIME TERMINAL OPERATIONS SHALL BE IN LINE WITH THE FOLLOWING AREAS OF OPERATIONS AND SAFETY:**

1. Transportation
2. Gantry Crane
3. Maintenance
4. Fire
5. Office
6. Management and Supervisor Operations
7. Personnel

#### **ALL TRAINING AND CERTIFICATION SERVICES DESCRIBED SHOULD INCLUDE TRAINING REFERENCES TO ALL APPLICABLE PARTS AND SUBPARTS OF 29 CFR.**

#### **SCOPE OF SERVICES WILL INCLUDE BUT IS NOT LIMITED TO THE FOLLOWING:**

1. Update existing material and add new materials as necessary to reflect advances in the designs of cranes and derricks, related hazards and the qualifications of employees needed for safe operations and other related areas;
2. Develop exercises or activities to facilitate participant learning;
3. Create a question examination, derived from material found within the Participant's Manual;

4. Include detailed learning outcomes in the Participant's Manual;
5. Include a new reference section based on existing curriculum that includes:
  - a. Updated glossary of terms
  - b. An index
  - c. A Participant's Registration and Evaluation Form
  - d. A listing of References
  - e. Resources and links for the participant to further learning on crane operations and safety measures;
6. Format lesson plans to current curriculum standards and identify time period requirements for completion of each module within the Course Material. The course shall consist of instruction on:
  - a. Safety responsibility and authority,
  - b. Elements of accident prevention,
  - c. Attitudes, leadership and motivation,
  - d. Hazards of long shoring, including peculiar local circumstances;
  - e. Accident investigation, and
  - f. Participants shall be trained in the use and application limits of the equipment, based on job duties;
7. Provide training and certification for Maritime Terminals Employees. Training will include but not limited to classroom instruction, completion of a written test and practical test for certification;
8. Identify qualifications essential of an instructor to successfully teach the course;
9. Include the Instructor's Registration and Evaluation Form;
10. Presentation shall include slides of all Course Materials, and ensure that all content within the presentation slides is covered in the same order in the Participant's Manual and Instructor's Guide, with consistent headings and language;
11. Submit copies of training and certification records to the PAG Human Resources office at the completion of all training activities;
12. Provide training and certification for other related Maritime Equipment Operations.

***THE ABOVE SCOPE OF SERVICES WERE DEVELOPED BY THE STAFF OF THE PORT AUTHORITY OF GUAM OCCUPATIONAL HEALTH & SAFETY, AND HUMAN RESOURCES DIVISIONS, AND APPROVED BY THE GENERAL MANAGER.***



Section IV.

**AFFIDAVIT DISCLOSING OWNERSHIP, INFLUENCE, COMMISSIONS AND CONFLICTS OF INTEREST**

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

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

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

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

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

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

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

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

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

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

--

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

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

--

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

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

Second Tier Owner Name \_\_\_\_\_

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

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

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

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

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

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

Name	Principal Place of Business Street Address
_____	_____
_____	_____

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

Name	Principal Place of Business Street Address
_____	_____
_____	_____

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

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

Executed on: \_\_\_\_\_ (date)

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

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

**Notary Public**  
**My commission expires:** \_\_\_\_\_.







**Section VIII.**  
**DECLARATION RE: COMPLIANCE WITH U.S. DOL WAGE DETERMINATION**  
*(AG Form 006)*

Procurement No.: \_\_\_\_\_

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

I, \_\_\_\_\_ hereby **certify under penalty of perjury:**

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

**§ 5801. Wage Determination Established.**

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

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

**§ 5802. Benefits.**

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

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

\_\_\_\_\_  
Signature





## Section X.

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

"REGISTER OF WAGE DETERMINATIONS	U.S. DEPARTMENT OF LABOR
UNDER THE SERVICE CONTRACT ACT	EMPLOYMENT STANDARDS ADMINISTRATION
By direction of the Secretary of Labor	WAGE AND HOUR DIVISION
	WASHINGTON D.C. 20210
Daniel W. Simms, Division of	Wage Determination No.: 2015-5693
Director Wage Determinations	Revision No.: 19   Date of Last Revision: 07/17/2023

Note: Contracts subject to the Service Contract Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026. If the contract is entered into on or after January 30 2022 or the contract is renewed or extended (e.g., an option is exercised) on or after January 30 2022: The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on the contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

OCCUPATION CODE - TITLE	FOOTNOTE RATE		OCCUPATION CODE - TITLE	FOOTNOTE RATE
01000 - Administrative Support And Clerical Occupations			01613 - Word Processor III	18.26
01011 - Accounting Clerk I	14.27***		05000 - Automotive Service Occupations	
01012 - Accounting Clerk II	16.02***		05005 - Automobile Body Repairer, Fiberglass	17.20
01013 - Accounting Clerk III	17.93		05010 - Automotive Electrician	16.16***
01020 - Administrative Assistant	21.43		05040 - Automotive Glass Installer	15.11***
01035 - Court Reporter	17.40		05070 - Automotive Worker	15.11***
01041 - Customer Service Representative I	12.75***		05110 - Mobile Equipment Servicer	12.96***
01042 - Customer Service Representative II	14.23***		05130 - Motor Equipment Metal Mechanic	17.20
01043 - Customer Service Representative III	15.62***		05160 - Motor Equipment Metal Worker	15.11***
01051 - Data Entry Operator I	12.16***		05190 - Motor Vehicle Mechanic	17.20
01052 - Data Entry Operator II	13.27***		05220 - Motor Vehicle Mechanic Helper	11.87***
01060 - Dispatcher, Motor Vehicle	17.39		05250 - Motor Vehicle Upholstery Worker	14.06***
01070 - Document Preparation Clerk	13.85***		05280 - Motor Vehicle Wrecker	15.11***
01090 - Duplicating Machine Operator	13.85***		05310 - Painter, Automotive	16.16***
01111 - General Clerk I	11.33***		05340 - Radiator Repair Specialist	15.11***
01112 - General Clerk II	12.36***		05370 - Tire Repairer	12.67***
01113 - General Clerk III	13.88***		05400 - Transmission Repair Specialist	17.20
01120 - Housing Referral Assistant	19.39		07000 - Food Preparation And Service Occupations	
01141 - Messenger Courier	11.37***		07010 - Baker	11.10***
01191 - Order Clerk I	12.57***		07041 - Cook I	14.44***
01192 - Order Clerk II	13.71***		07042 - Cook II	16.84
01261 - Personnel Assistant (Employment) I	15.95***		07070 - Dishwasher	9.69***
01262 - Personnel Assistant (Employment) II	17.85		07130 - Food Service Worker	10.11***
01263 - Personnel Assistant (Employment) III	19.89		07210 - Meat Cutter	13.34***
01270 - Production Control Clerk	22.97		07260 - Waiter/Waitress	9.73***
01290 - Rental Clerk	11.10***		09000 - Furniture Maintenance And Repair Occupations	
01300 - Scheduler, Maintenance	15.55***		09010 - Electrostatic Spray Painter	18.75
01311 - Secretary I	15.55***		09040 - Furniture Handler	11.37***
01312 - Secretary II	17.40		09080 - Furniture Refinisher	18.75
01313 - Secretary III	19.39		09090 - Furniture Refinisher Helper	13.77***
01320 - Service Order Dispatcher	15.40***		09110 - Furniture Repairer, Mi	16.32
01410 - Supply Technician	21.43		09130 - Upholsterer	18.75
01420 - Survey Worker	16.96		11000 - General Services And Support Occupations	
01460 - Switchboard Operator/Receptionist	10.78***		11030 - Cleaner, Vehicles	9.69***
01531 - Travel Clerk I	13.01***		11060 - Elevator Operator	9.69***
01532 - Travel Clerk II	14.12***		11090 - Gardener	14.28***
01533 - Travel Clerk III	15.09***		11122 - Housekeeping Aide	10.13***
01611 - Word Processor I	14.53***		11150 - Janitor	10.13***

OCCUPATION CODE - TITLE	FOOTNOTE RATE
11210 - Laborer, Grounds Maintenance	10.79***
11240 - Maid or Houseman	9.67***
11260 - Pruner	9.66***
11270 - Tractor Operator	13.07***
11330 - Trail Maintenance Worker	10.79***
01612 - Word Processor II	16.31
11360 - Window Cleaner	11.32***
12000 - Health Occupations	
12010 - Ambulance Driver	18.96
12011 - Breath Alcohol Technician	18.96
12012 - Certified Occupational Therapist Assistant	26.02
12015 - Certified Physical Therapist Assistant	26.02
12020 - Dental Assistant	18.79
12025 - Dental Hygienist	39.73
12030 - EKG Technician	28.73
12035 - Electroneurodiagnostic Technologist	28.73
12040 - Emergency Medical Technician	18.96
12071 - Licensed Practical Nurse I	16.95
12072 - Licensed Practical Nurse II	18.96
12073 - Licensed Practical Nurse III	21.14
12100 - Medical Assistant	13.42***
12130 - Medical Laboratory Technician	18.82
12160 - Medical Record Clerk	14.97***
12190 - Medical Record Technician	17.77
12195 - Medical Transcriptionist	16.95
12210 - Nuclear Medicine Technologist	41.68
12221 - Nursing Assistant I	12.43***
12222 - Nursing Assistant II	13.97***
12223 - Nursing Assistant III	15.24***
12224 - Nursing Assistant IV	17.12
12235 - Optical Dispenser	18.96
12236 - Optical Technician	16.95
12250 - Pharmacy Technician	15.49***
12280 - Phlebotomist	16.95
12305 - Radiologic Technologist	28.73
12311 - Registered Nurse I	23.50
12312 - Registered Nurse II	28.73
12313 - Registered Nurse II, Specialist	28.73
12314 - Registered Nurse III	34.76
12315 - Registered Nurse III, Anesthetist	34.76
12316 - Registered Nurse IV	41.68
12317 - Scheduler (Drug and Alcohol Testing)	23.50
12320 - Substance Abuse Treatment Counselor	23.50
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	21.42
13012 - Exhibits Specialist II	26.53
13013 - Exhibits Specialist III	32.45
13041 - Illustrator I	21.42
13042 - Illustrator II	26.53
13043 - Illustrator III	32.45
13047 - Librarian	29.38
13050 - Library Aide/Clerk	17.05
13054 - Library Information Technology Systems Administrator	26.53
13058 - Library Technician	18.11
13061 - Media Specialist I	19.15
13062 - Media Specialist II	21.42
13063 - Media Specialist III	23.87
13071 - Photographer I	19.15
13072 - Photographer II	21.42
13073 - Photographer III	26.53
13074 - Photographer IV	32.45
13075 - Photographer V	39.27
13090 - Technical Order Library Clerk	21.42
13110 - Video Teleconference Technician	19.15
14000 - Information Technology Occupations	

OCCUPATION CODE - TITLE	FOOTNOTE RATE
14041 - Computer Operator I	15.71***
14042 - Computer Operator II	17.22
14043 - Computer Operator III	19.19
14044 - Computer Operator IV	21.33
14045 - Computer Operator V	23.62
14071 - Computer Programmer I (see 1)	15.73***
14072 - Computer Programmer II (see 1)	19.50
14073 - Computer Programmer III (see 1)	23.84
14074 - Computer Programmer IV (see 1)	
14101 - Computer Systems Analyst I (see 1)	24.23
14102 - Computer Systems Analyst II (see 1)	
14103 - Computer Systems Analyst III (see 1)	
14150 - Peripheral Equipment Operator	15.71***
14160 - Personal Computer Support Technician	21.33
14170 - System Support Specialist	21.24
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	24.23
15020 - Aircrew Training Devices Instructor (Rated)	29.32
15030 - Air Crew Training Devices Instructor (Pilot)	34.91
15050 - Computer Based Training Specialist / Instructor	24.23
15060 - Educational Technologist	29.40
15070 - Flight Instructor (Pilot)	34.91
15080 - Graphic Artist	20.47
15085 - Maintenance Test Pilot, Fixed, Jet/Prop	34.91
15086 - Maintenance Test Pilot, Rotary Wing	34.91
15088 - Non-Maintenance Test/Co-Pilot	34.91
15090 - Technical Instructor	17.67
15095 - Technical Instructor/Course Developer	23.78
15110 - Test Proctor	15.70***
15120 - Tutor	15.70***
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	10.83***
16030 - Counter Attendant	10.83***
16040 - Dry Cleaner	12.36***
16070 - Finisher, Flatwork, Machine	10.83***
16090 - Presser, Hand	10.83***
16110 - Presser, Machine, Drycleaning	10.83***
16130 - Presser, Machine, Shirts	10.83***
16160 - Presser, Machine, Wearing Apparel, Laundry	10.83***
16190 - Sewing Machine Operator	12.88***
16220 - Tailor	13.40***
16250 - Washer, Machine	11.34***
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	19.46
19040 - Tool And Die Maker	24.46
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	15.36***
21030 - Material Coordinator	22.97
21040 - Material Expediter	22.97
21050 - Material Handling Laborer	12.57***
21071 - Order Filler	10.62***
21080 - Production Line Worker (Food Processing)	15.36***
21110 - Shipping Packer	17.12
21130 - Shipping/Receiving Clerk	17.12
21140 - Store Worker I	15.83***
21150 - Stock Clerk	22.26
21210 - Tools And Parts Attendant	15.36***
21410 - Warehouse Specialist	15.36***
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	25.04
23019 - Aircraft Logs and Records Technician	19.47
23021 - Aircraft Mechanic I	23.84
23022 - Aircraft Mechanic II	25.04
23023 - Aircraft Mechanic III	26.30
23040 - Aircraft Mechanic Helper	16.58

OCCUPATION CODE - TITLE	FOOTNOTE RATE
23080 - Aircraft Worker	21.03
23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	21.03
23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	23.84
23110 - Appliance Mechanic	19.46
23120 - Bicycle Repairer	15.61***
23125 - Cable Splicer	22.47
23130 - Carpenter, Maintenance	17.58
23140 - Carpet Layer	18.20
23160 - Electrician, Maintenance	19.37
23181 - Electronics Technician Maintenance I	18.20
23182 - Electronics Technician Maintenance II	19.46
23183 - Electronics Technician Maintenance III	20.72
23260 - Fabric Worker	16.94
23290 - Fire Alarm System Mechanic	16.77
23310 - Fire Extinguisher Repairer	15.61***
23311 - Fuel Distribution System Mechanic	20.72
23312 - Fuel Distribution System Operator	15.61***
23370 - General Maintenance Worker	13.24***
23380 - Ground Support Equipment Mechanic	23.84
23381 - Ground Support Equipment Servicer	19.47
23382 - Ground Support Equipment Worker	21.03
23391 - Gunsmith I	15.61***
23392 - Gunsmith II	18.20
23393 - Gunsmith III	20.72
23410 - Heating, Ventilation And Air-Conditioning Mechanic	19.27
23411 - Heating, Ventilation And Air Conditioning Mechanic (Research Facility)	20.50
23430 - Heavy Equipment Mechanic	19.50
23440 - Heavy Equipment Operator	18.10
23460 - Instrument Mechanic	20.72
23465 - Laboratory/Shelter Mechanic	19.46
23470 - Laborer	12.57***
23510 - Locksmith	19.46
23530 - Machinery Maintenance Mechanic	23.13
23550 - Machinist, Maintenance	20.72
23580 - Maintenance Trades Helper	11.77***
23591 - Metrology Technician I	20.72
23592 - Metrology Technician II	22.03
23593 - Metrology Technician III	23.33
23640 - Millwright	20.72
23710 - Office Appliance Repairer	19.46
23760 - Painter, Maintenance	17.04
23790 - Pipefitter, Maintenance	19.96
23810 - Plumber, Maintenance	18.75
23820 - Pneudraulic Systems Mechanic	20.72
23850 - Rigger	20.72
23870 - Scale Mechanic	18.20
23890 - Sheet-Metal Worker, Maintenance	19.55
23910 - Small Engine Mechanic	18.20
23931 - Telecommunications Mechanic I	19.96
23932 - Telecommunications Mechanic II	21.24
23950 - Telephone Lineman	20.62
23960 - Welder, Combination, Maintenance	19.96
23965 - Well Driller	21.13
23970 - Woodcraft Worker	20.71
23980 - Woodworker	15.61***
24000 - Personal Needs Occupations	
24550 - Case Manager	15.01***
24570 - Child Care Attendant	10.09***
24580 - Child Care Center Clerk	13.25***
24610 - Chore Aide	14.06***
24620 - Family Readiness And Support Services Coordinator	15.01***

OCCUPATION CODE - TITLE	FOOTNOTE RATE
24630 - Homemaker	16.12***
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	22.79
25040 - Sewage Plant Operator	22.89
25070 - Stationary Engineer	22.79
25190 - Ventilation Equipment Tender	15.72***
25210 - Water Treatment Plant Operator	22.89
27000 - Protective Service Occupations	
27004 - Alarm Monitor	10.90***
27007 - Baggage Inspector	9.63***
27008 - Corrections Officer	14.59***
27010 - Court Security Officer	14.59***
27030 - Detection Dog Handler	10.90***
27040 - Detention Officer	14.59***
27070 - Firefighter	14.59***
27101 - Guard I	9.63***
27102 - Guard II	10.90***
27131 - Police Officer I	14.59***
27132 - Police Officer II	16.21
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	13.24***
28042 - Carnival Equipment Repairer	14.46***
28043 - Carnival Worker	9.78***
28210 - Gate Attendant/Gate Tender	13.18***
28310 - Lifeguard	11.01***
28350 - Park Attendant (Aide)	14.74***
28510 - Recreation Aide/Health Facility Attendant	11.84***
28515 - Recreation Specialist	18.26
28630 - Sports Official	11.74***
28690 - Swimming Pool Operator	17.71
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	26.02
29020 - Hatch Tender	26.02
29030 - Line Handler	26.02
29041 - Stevedore I	24.21
29042 - Stevedore II	27.82
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	43.06
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	29.69
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	32.70
30021 - Archeological Technician I	18.17
30022 - Archeological Technician II	20.33
30023 - Archeological Technician III	25.19
30030 - Cartographic Technician	25.19
30040 - Civil Engineering Technician	25.19
30051 - Cryogenic Technician I	27.89
30052 - Cryogenic Technician II	30.80
30061 - Drafter/CAD Operator I	18.17
30062 - Drafter/CAD Operator II	20.33
30063 - Drafter/CAD Operator III	22.66
30064 - Drafter/CAD Operator IV	27.89
30081 - Engineering Technician I	16.19***
30082 - Engineering Technician II	18.17
30083 - Engineering Technician III	20.33
30084 - Engineering Technician IV	25.19
30085 - Engineering Technician V	30.80
30086 - Engineering Technician VI	37.27
30090 - Environmental Technician	25.19
30095 - Evidence Control Specialist	25.19
30210 - Laboratory Technician	22.66
30221 - Latent Fingerprint Technician I	27.89
30222 - Latent Fingerprint Technician II	30.80
30240 - Mathematical Technician	25.19
30361 - Paralegal/Legal Assistant I	19.54

OCCUPATION CODE - TITLE	FOOTNOTE RATE
30362 - Paralegal/Legal Assistant II	24.21
30363 - Paralegal/Legal Assistant III	29.61
30364 - Paralegal/Legal Assistant IV	35.83
30375 - Petroleum Supply Specialist	30.80
30390 - Photo-Optics Technician	24.92
30395 - Radiation Control Technician	30.80
30461 - Technical Writer I	25.19
30462 - Technical Writer II	30.80
30463 - Technical Writer III	37.27
30491 - Unexploded Ordnance (UXO) Technician I	27.37
30492 - Unexploded Ordnance (UXO) Technician II	33.11
30493 - Unexploded Ordnance (UXO) Technician III	39.69
30494 - Unexploded (UXO) Safety Escort	27.37
30495 - Unexploded (UXO) Sweep Personnel	27.37
30501 - Weather Forecaster I	27.89
30502 - Weather Forecaster II	33.93
30620 - Weather Observer, Combined Upper Air Or Surface Programs (see 2)	22.66
30621 - Weather Observer, Senior (see 2)	25.19
31000 - Transportation/Mobile Equipment Operation Occupations	
31010 - Airplane Pilot	33.11
31020 - Bus Aide	8.97***
31030 - Bus Driver	11.73***
31043 - Driver Courier	10.26***
31260 - Parking and Lot Attendant	9.91***
31290 - Shuttle Bus Driver	11.65***
31310 - Taxi Driver	11.41***
31361 - Truckdriver, Light	11.21***
31362 - Truckdriver, Medium	12.16***
31363 - Truckdriver, Heavy	16.11***
31364 - Truckdriver, Tractor-Trailer	16.11***
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	16.14***
99030 - Cashier	10.01***
99050 - Desk Clerk	9.71***
99095 - Embalmer	27.37
99130 - Flight Follower	27.37
99251 - Laboratory Animal Caretaker I	24.31
99252 - Laboratory Animal Caretaker II	26.56
99260 - Marketing Analyst	21.54
99310 - Mortician	27.37
99410 - Pest Controller	16.07***
99510 - Photofinishing Worker	14.38***
99710 - Recycling Laborer	17.32
99711 - Recycling Specialist	23.38
99730 - Refuse Collector	16.40
99810 - Sales Clerk	10.63***
99820 - School Crossing Guard	17.96
99830 - Survey Party Chief	23.99
99831 - Surveying Aide	13.65***
99832 - Surveying Technician	17.73
99840 - Vending Machine Attendant	24.31
99841 - Vending Machine Repairer	30.96
99842 - Vending Machine Repairer Helper	24.31

\*\*\*Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20 per hour). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands.

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.98 per hour, up to 40 hours per week, or \$199.20 per week or \$863.20 per month

HEALTH & WELFARE EO 13706: \$4.57 per hour, up to 40 hours per week, or \$182.80 per week, or \$792.13 per month\*

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

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; and 4 weeks after 3 years. Length of service includes the whole span of

continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173) HOLIDAYS: A minimum of eleven paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

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

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

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

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

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

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

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

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

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

**\*\* HAZARDOUS PAY DIFFERENTIAL \*\***

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

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

**\*\* UNIFORM ALLOWANCE \*\***

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

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed

and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

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

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

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

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

The process for preparing a conformance request is as follows:

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

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

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

**Section XI.**  
**SUBCONTRACTOR UTILIZATION FORM**

RFP NO. \_\_\_\_\_

PROJECT TITLE:

NAME OF PRIME OFFEROR:

E-MAIL ADDRESS:

ADDRESS:

TELEPHONE NO.:

FAX NO.:

The following subcontractors<sup>1</sup> (if known at the time of proposal submission) will be used on this Project (continue list on additional page if necessary):

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

Type Of Work to be Performed:

Estimated Dollar Amount of  
Subcontract:

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

\_\_\_\_\_  
Signature of Offeror (Prime Contractor)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

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

## Section XII.

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

Government of Guam PAG RFP No. RFP-PAG-024-001

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

This COI Disclosure Form is submitted in response to:

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

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

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

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

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

**Complete Legal Name of Offeror:** \_\_\_\_\_

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

**Telephone:** \_\_\_\_\_ **Fax No:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

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

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

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

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

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



3. Did the Offeror or any Associate of the Offeror conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers? **No**  **Yes**  **Comments:** \_\_\_\_\_
  
4. Does the Offeror or any Associate of the Offeror have any past, present or currently planned personal or financial interests which are an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”), with respect to the Procurement or award of this Contract or performing the work for PAG or acquisition of any real property for the Project? **No**  **Yes**  **Comments:** \_\_\_\_\_
  
5. Has the Offeror or an Associate of the Offeror offered to a Public Employee, or is the Offeror aware of any Public Employee that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Employee’s vote, official action or judgment would be influenced thereby? **No**  **Yes**  **Comments:** \_\_\_\_\_
  
6. Has (or will) the Offeror or an Associate of the Offeror provided a direct beneficial financial interest to any person within two years after the person ceased to hold a position as a Public Employee who was involved in the Procurement or Authorization for the Contract, or is the Offeror aware of any such person or Public Employee who has or will receive a direct beneficial financial interest within the two-year period? **No**  **Yes**  **Comments:** \_\_\_\_\_
  
7. Is the Offeror aware of any current or former Public Employee that has an Actual, Apparent or Potential Conflict of Interest with respect to the Procurement or award of this Contract or performing the work for PAG?  
**No**  **Yes**  **Comments:** \_\_\_\_\_
  
8. Does the prospective Contract/WOC include development of an Environmental Assessment (EA) or Environmental Impact Statement (EIS)? **No**  **Yes**   
**If yes**, in accordance with the disclosure statement requirements of Council on Environmental Quality Regulation, 40 C.F.R 1506.5(c), does the Offeror have any financial or other interest in the outcome of this Project; and/or does the Offeror have any agreement, enforceable promise, or guarantee to provide any future work on this Project? **No**  **Yes**  **Comments:** \_\_\_\_\_
  
9. Have Subcontractors or other Associates furnished COI Disclosure Forms, separate from the present form, which included conflicts or potential conflicts of interest? (If yes, attach the disclosures.)  
**No**  **Yes**  **N/A**  **Comments:** \_\_\_\_\_
  
10. If the prospective Contract/WOC includes personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Offeror or an Associate or an Affiliate of the Offeror a party to the subject public contract?  
**No**  **Yes**  **N/A**  **Comments:** \_\_\_\_\_
  
11. Has the Offeror or any Associate of the Offeror entered into personal services contract(s) with PAG for the purpose of advising or assisting in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to this procurement?  
**No**  **Yes**  **Comments:** \_\_\_\_\_

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

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

**Relatives and Former PAG Employees - Roles and Signatures**

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

<b>PART A: EMPLOYEES THAT LEFT PAG IN THE LAST YEAR.</b>																											
EMPLOYEE NAME/SIGNATURE	JOB PERFORMED FOR PAG	CURRENT ROLE WITH OFFEROR	DATE LEFT PAG																								
Name: _____  Sign: _____  Involved with this Procurement on behalf of PAG? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> Involved with Proposal development for this Procurement? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/>																											
Name: _____  Sign: _____  Involved with this Procurement on behalf of PAG? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> Involved with Proposal development for this Procurement? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/>																											
Name: _____  Sign: _____  Involved with this Procurement on behalf of PAG? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> Involved with Proposal development for this Procurement? <b>No</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/>																											
<p><b>Part B: Identify Associates of the Offeror that are Relatives or Members of the Household of PAG employees currently working for PAG, if the PAG employee had or will have any involvement with this Procurement or Contract.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Offeror Associate's Name</th> <th style="width: 35%;">Name and Relationship of Relative or Member of Household Employed at PAG</th> <th style="width: 20%;">Role at PAG</th> <th style="width: 20%;">PAG employee's Role with this Procurement</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>				Offeror Associate's Name	Name and Relationship of Relative or Member of Household Employed at PAG	Role at PAG	PAG employee's Role with this Procurement																				
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*(Make copies of this page as necessary to list additional employees or associates.)*

## **Section XIII.**

### **CONFLICT OF INTEREST GUIDELINES**

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

#### **1. Definitions.**

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

#### **2. Required Disclosures.**

**Submittal of a Correct and signed COI Disclosure Form is required if any of the following apply (note that for the purposes of these COI Guidelines "Public Employee" includes all PAG employees):**

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

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

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

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

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

### **3. Governing Standards.**

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

#### **Standards of Conduct Policy Regarding Former PAG Employees**

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

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

functions concerning the Project, not using the employee in preparation of proposals but allowing them to perform work on the Project, and not having the employee have direct contact with PAG staff formerly under his/her supervision.

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

#### **Standards of Conduct Regarding Current PAG Employees Conflicts of Interest**

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

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

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

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

- 4 GCA § 15201 states: "No employee shall solicit, accept, or receive, directly or indirectly, any gift valued singly or in the aggregate from a single source in excess of \$200, whether in the form of money, prize, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, when a reasonable person would infer that the gift is intended to influence the employee in the performance of that individual's official duties or is intended as a reward for any official action on that individual's part."
- 4 GCA § 15204 (a), (b), (c), and (d) provide: "No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or herself, a spouse, children, or others, including but not limited to the following:

(a) seeking other employment or contract for services by the use or attempted use of the individual's office or position;

(b) accepting, receiving, or soliciting compensation for the performance of official duties or responsibilities except as provided by law;

(c) using government time, equipment, or other facilities for private business purposes;

(d) soliciting, selling, or otherwise engaging in a financial transaction with a subordinate or a person or business whom the employee inspects or supervises in official capacity."

- 4 GCA § 15205 (a), (b), (c), (d), and (e) provide: "Conflicts of Interest.

(a) No employee shall take any official action directly affecting:

(1) business or other undertaking in which the employee has a financial interest; or

(2) private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity. A department head who is unable to be disqualified on any matter described in item (1) or (2) of this Subsection may be in violation of this Subsection even if the individual has complied with the disclosure requirements of § 15208; and a person whose position on a board, commission or committee is mandated by statute, resolution or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which such person has a financial interest; provided that the financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.

(c) No employee shall assist any person or business or act in a representative capacity before any territorial agency for any compensation in any transaction involving the Territory.

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

or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the Legislature or territorial agency of which the individual is an employee.

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

- 4 GCA § 15206 states: “Contracts.

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

(b) A territorial agency shall not enter into a contract with any person or business which is represented or assisted in a material manner in the matter by a person who has been an employee of that agency within the preceding twelve (12) months and who participated while in 8 territorial office or employment in a material manner in the matter with which the contract is directly concerned.”

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

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

#### **Standards of Conduct for Offerors and Contractors, and Organizational Conflicts of Interest Policy**

It is the policy of PAG to avoid, neutralize, or mitigate organizational conflicts of interest that might exist for all procurements. Each individual contracting situation shall be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The principles underlying this policy are: (1) preventing the existence of conflicting roles that might bias an Offeror’s judgment; and (2) Preventing unfair competitive advantage. In addition to the other situations described in these COI Guidelines, an unfair competitive advantage exists where an Offeror competing for award of any PAG contract possesses: (1) proprietary information that was obtained from a Public Employee without proper authorization; or (2) source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that Offeror in obtaining the contract.

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

- A conflict of interest exists when an Offeror that provides systems engineering and technical direction for a system is awarded a contract to supply the system or any of its major components; or is a subcontractor or



consultant to a supplier of the system or any of its major components; even if the Offeror did not have overall contractual responsibility for the system's development, its integration, assembly, and checkout, or its production. In this example, systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore, this Offeror should not be in a position to make decisions favoring its own products or capabilities.

- A conflict of interest exists when an Offeror develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation covering non-developmental items, to be used in a competitive procurement, and also submits a proposal or bid to be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial contract.
- If a single contractor develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation for non-developmental equipment, that contractor should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.
- When an Offeror develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation to be used in competitively acquiring a system or services, or provides material leading directly, predictably, and without delay to such a statement of work, scope of services, or technical specifications, it is a conflict of interest if that Offeror submits a Proposal or bid to supply the system, major components of the system, or the services, unless:
  - (i) It is the sole source;
  - (ii) It has participated in the development and design work; or
  - (iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications.
- Agencies should normally prepare their own statements of work, and scopes of services. When contractor assistance is necessary to develop, prepare, furnish, or draft any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation, the contractor is in a position to favor its own products or capabilities. To overcome the possibility of bias, Offerors are prohibited from supplying a system or services acquired on the basis of a statement of work or scope of services growing out of their services, unless:
  - (i) It is the sole source;
  - (ii) It has participated in the development and design work; or
  - (iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications.
- It is a conflict of interest for a contractor to participate in the evaluation of products or services that it offers. Contracts for the evaluation of offers for products or services shall not be awarded to an Offeror that will evaluate its own offers for products or services, or those of a competitor.

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

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

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

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

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

#### **Specific Federal Standards — Procurements Related to Design-Build and Design-Bid-Build**

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

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

Generally, a consultant who assists the state in preparing a Request for Proposals (RFP) document may not, subsequently, propose in response to the RFP. However, the state may determine that the consultant does not have a conflict of interest for a subsequent Procurement, if the consultant furnished only "low-level" documents that were incorporated into the RFP and made available to all offerors, and did not assist the state in the development of instructions to offerors or evaluation criteria for the RFP. These Design-Build regulations also apply to "improper

business practices and personal conflicts of interest” of the PAG’s selection team members. 23 CFR § 636.117 indicates that Federal Acquisition Regulations (“FARs”- specifically 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest) will apply to the state’s selection team members in the absence of relevant state laws and procedures. These regulations require government business to be “above reproach,” conducted “with complete impartiality and with preferential treatment for none” and with “the highest degree of public trust and an impeccable standard of conduct” to avoid “even the appearance of a conflict of interest.” In design-bid-build transactions, where engineering services are procured separately from the construction services, ordinarily the consulting Offeror providing the engineering services is not eligible to bid on the construction work for the Project.

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

#### **Specific Federal Standards - National Environmental Policy Act (NEPA)**

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

#### **4. COI Considerations Related to Previous Work on Projects.**

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

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

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

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

## **5. COI Disclosure Process.**

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

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

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

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

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

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

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

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

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 PAG on the Project are available to the public. A multi-specialty engineering Offeror that is the parent company of the geotechnical engineering Offeror submits a proposal to design the overall Project. Depending on the particular mitigating facts, PAG might determine in writing that the multi-specialty engineering Offeror is eligible to propose.
2. PAG seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Offerors employed a senior official from PAG who played a significant role in providing direction for the solicitation, six months ago. PAG initially assesses this situation as a potential Organizational Conflict of Interest and provides information to potential Proposers of this assessment through an addendum to the RFP. In its proposal, the Proposer provides mitigating information and written assurances that this individual works in an area of the company that will not be working on their program management proposal and that the individual will be isolated inside the company from any information associated with the program, will not be lobbying PAG, will not engage in any activities that would violate the PAG Code of Conduct Policy for the prescribed one-year period, and for a period of one year will not have a direct beneficial interest in the contract. Depending on the particular facts, PAG might determine that, while the proposing Offeror has a

potential Organizational Conflict of Interest, that conflict has been adequately mitigated and the Offeror will not be disqualified from submitting a proposal.

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

for construction work under the program. This determination will depend upon the precise relationship between the related entity and the Proposer.

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. PAG issues an RFP for A&E services to prepare plans, specifications, and estimate (PS&E) to replace a bridge. The PS&E will be completed as part of a design-bid-build process. One of the A&E firms proposing on the design services owns XYZ Inc., a subsidiary that provides program management services to PAG under a separate contract. PAG's intent, as advertised in the RFP, is to use XYZ Inc. for administration and oversight of the A&E design services for the bridge replacement project. The A&E firm that is the parent of XYZ Inc. would be ineligible for award of the A&E design contract.
10. PAG issues an IFB for construction services to replace a bridge. The replacement is being done using the design-bid-build process. One of the construction firms bidding on the public improvement project owns XYZ Inc., a subsidiary that provides construction contract administration and inspection services to PAG under a separate contract. PAG's intent, as advertised in the IFB, is to use XYZ Inc. for administration and inspection of the bridge replacement project. The construction firm that is the parent of XYZ Inc. would be ineligible for award of the construction contract.

### **DEFINITIONS**

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

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

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

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

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

**"Authorization"** (of the Contract). A public contract is authorized by a Public Employee if the Public Employee participated substantially in the procurement selection process or performed a significant role in the selection of an Offeror or the execution of the Contract. A significant role includes recommending approval or signing of the Contract, including serving as a reference, recommending selection or serving on a selection committee or team, or having the final authorizing authority for the Contract.

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

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

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

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

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

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

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

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

**“Member of the Household”** (of the Public Employee) means any person who resides with the Public Employee.

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

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

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

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

**“Potential Conflict of Interest”** means that an individual or Offeror, as a result of current plans, may reasonably be expected to have an actual conflict of interest. “Potential Conflict of Interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following: (a) an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position; (b) any action in the person’s official capacity which would affect, to the same degree, a class consisting of all inhabitants of the state or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or the person’s relative is associated, is a member or is engaged; or (c) membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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

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

**“Proposal”** means a bid, proposal, or other submission appropriate to a Procurement.

**“Proposer”** means a legally operating business entity submitting a Proposal in response to a Procurement.

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

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

**“Relative”** (of a Public Employee) means:

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

**“Subcontractor”** means a contractor or subcontractor at any tier lower than the awarded Contractor.



**Section XIV.**  
**CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL OFFENDERS**

**CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL OFFENDERS**

Pursuant to Guam Public Law 28-24, as amended by Guam Public Law 28-98, if a contract for services is awarded to an Offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of 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 in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the PAG of the conviction within twenty-four hours of the conviction and will immediately remove such convicted person from providing services on government of Guam property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the PAG will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the PAG, and the service provider shall notify the PAG when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the PAG, then the PAG in its sole discretion may suspend temporarily any contract for services.

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I, \_\_\_\_\_ being a duly authorized representative of the Offeror,  
*(print name)*

acknowledge the requirements described above, have ensured that the Proposal as submitted addresses these requirements, and certify that if awarded the contract, the Offeror will follow these mandates.

\_\_\_\_\_  
*(Company Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

## Section XV. PROPOSED CONTRACT

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

**THIS AGREEMENT** is entered into by and between the **PORT AUTHORITY OF GUAM (PAG)**, a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 (“Authority”) and (“**Consultant**”) authorized and licensed to do business in Guam, whose address is: \_\_\_\_\_.

**WHEREAS**, Port Authority of Guam has not received any federal funding or funding from the Guam Legislature, or the Government of Guam’s General Fund. All funding for this project is though Port generated local funds. The objective of the Project is for the Port Authority of Guam to find a qualified Offeror to provide services for OSHA Training and Certification for Maritime Terminal Operations. Effective date of this contract will commence when the final signature is affixed to this contract.

**WHEREAS**, the PAG issued a Request for Proposal (“RFP”) **RFP No. RFP-PAG-024-001** seeking to retain a consultant to perform professional **OSHA TRAINING AND CERTIFICATION SERVICES FOR MARITIME TERMINAL OPERATIONS PERSONNEL** at the Port Authority of Guam.

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

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

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

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

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

A. Scope of Services. The Consultant shall furnish **OSHA Training and Certification Services for Maritime Terminal Operations Personnel** pursuant to and in accordance with the Scope of Services as identified in Section III of the RFP, Consultants proposal and Cost proposal as agreed to by both parties. A copy of the RFP is attached as **Exhibit 1**, Consultant’s Proposal and Rates and Fees are attached as **Exhibit 2** and **Exhibit 3**, agreed to by both parties. Consultant shall provide status reports on the services performed and required under this Agreement upon request by the PAG.

B. Consultant Provisions of Resources. Consultant agrees to furnish all qualified personnel, materials and transportation to perform the consulting services provided for in this Agreement. Consultant represents that it and its employees possess the professional and technical expertise necessary to perform the services called for in this Agreement in a competent, professional manner, in line with the services of a typical consultant engaged in the same and similar field as consultant herein. The PAG may, in its sole discretion and based upon availability, provide staff assistance to consultant in furtherance of this Agreement. The Consultant shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. Other Work. The PAG acknowledges and agrees that Consultant may provide services to other

clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event the PAG discovers or determines that the Consultant is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Consultant must immediately cease performing those third-party services upon being provided written notice by the PAG and the PAG may invoke any further available remedies under the terms of this Agreement.

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

## II. Term of Agreement

The contract period shall be for an initial Three (3) year period commencing on the date of final signature by Port's General Manager. This contract will have an option to renew for two (2) additional one-year periods, not to exceed five (5) years. The extension of this agreement after the initial term shall be at the sole discretion of the PAG.

## III. Compensation

A. Compensation. In consideration for the OSHA Training and Certification services performed under this Agreement, the PAG shall pay Consultant based on fees according to rates and fees negotiated. The services under this agreement shall consist of negotiated and approved rates and fees and will not exceed **DOLLAR AMOUNT (\$000 ,000.00)** for the life of this contract, and that all work shall be performed and compensated in accordance with the terms herein as agreed upon and authorized by the Parties.

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

C. Expenses. Consultant shall be responsible for all expenses incurred in the performance stipulated under this Agreement.

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

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

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

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

#### **IV. Early Termination**

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

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

(ii) Termination in the Best Interest of the Government of Guam: The PAG may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to the Consultant and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Consultant's successful completion of services under this Agreement to the satisfaction of the PAG.

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

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

B. By Consultant. Termination for Cause: Consultant shall notify the PAG in writing of deficiencies or default in the performance of the PAG's duties under this Agreement. The PAG shall have twenty (20) days to correct the deficiency or cure the default, which period may be extended by consultant (said extension not to be unreasonably denied). Upon Consultant's termination of this Agreement for cause, the Consultant shall be entitled to payment, in accordance with Section III of this Agreement, for satisfactory services rendered up to the termination date and the PAG shall have no obligations to consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

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

D. Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from the PAG, the Consultant shall take timely, reasonable and necessary action to protect and preserve the property in the possession of consultant in which the PAG has an interest.

E. Additional Provisions. In the event that either party effects an Early Termination, it is expressly provided that the PAG may issue a new Request for Proposal with respect to such terminated services.

This provision shall not be deemed an admission or waiver of any rights and defenses with respect to rights of either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

**V. Contact Person**

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

**VI. Confidentiality**

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

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

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

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

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

**VII. Conflicts of Interests/Ethics**

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

B. It is expressly understood that breach of any of the covenants or warranties in this

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

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

**VIII. Waiver**

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

**IX. Severability**

If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

**X. Survival of Warranties**

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

**XI. Fees and Expenses**

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

**XII. Notices**

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

TO THE PAG:                   **PORT AUTHORITY OF GUAM**  
Jose D. Leon Guerrero Commercial Port  
1026 Cabras Highway, Suite 201  
Piti, Guam 96915

Attn: Mr. Rory J. Respicio, General Manager

TO CONSULTANT:           **CONSULTANT**  
(ADDRESS)

Attn: \_\_\_\_\_

**XIII. Assignment/Subcontractors**

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

**XIV. Successors and Assigns**

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

**XV. Scope of Agreement**

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

In the event of a contradiction between the provisions of any of the documents collectively comprising this Agreement - Request for Proposal, A&E Design Consulting Services, and the Offeror's Cost Proposal, the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time); and, third, to the provisions of the Proposal and Cost Proposal (as they may be clarified or amended from time to time).

**XVI. Captions**

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

**XVII. Counterparts**

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

**XVIII. Governing Law and Forum Selection**

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

**XIX. Compliance with Laws**

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

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

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

**XX. Disputes**

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

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

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

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

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

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

**XXI. Remedies**

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

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

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



### **XXIII. Liability**

A. Indemnification. Consultant shall indemnify and hold harmless the PAG and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but only to the extent caused or contributed to by) the negligent or wrongful act or omission of the Consultant or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance under this Agreement.

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

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

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

### **XXV. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions**

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

**XXVI. Independent Consultant and its Employees**

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

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

**XXVII. Disclosure**

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

**XXVIII. Disposition of Property and Materials; Intellectual Property Rights**

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

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

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

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

**XXX. Computation of Time**

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

**XXXI. Partial Invalidity**

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

**XXXII. Amendments/Modifications**

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

**XXXIII. Multi-Term and Availability of Funds/Cancellation Provisions**

This Agreement is contingent upon the availability of certified funds. Funds are available for the first fiscal period of this Agreement. The source of the funds for this Agreement is Port Local Funds. In the event that funds are not available for any succeeding fiscal period, the remainder of this Agreement shall be cancelled; however, this does not affect either Party's right to terminate under the termination clauses of the contract. If the Agreement is cancelled for insufficient funds, the awarded Contractor shall be reimbursed the reasonable value of any nonrecurring costs reasonably incurred but not amortized in the price of the supplies delivered or services performed under the Agreement. The Procurement Officer will notify the Contractor on a timely basis whether the funds are, or are not, available for the continuation of the Agreement for each succeeding fiscal period. The PAG may modify this Agreement based upon the availability of funds in succeeding fiscal periods. In such an event, the PAG shall provide notice to Contractor, and the Parties may attempt to renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, or decide not to attempt renegotiation, then the PAG shall cancel this Agreement in accordance with the Guam Procurement Regulations. The government of Guam and the PAG shall have no liability under this Agreement to the Contractor or to anyone else beyond the certified funds available for this Agreement.

**XXXIV. Standard Price Adjustment Clause**

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

1. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
2. by unit prices specified in the Proposal, Agreement, or subsequently agreed upon;
3. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
4. in such other manner as the parties may mutually agree; or
5. in the absence of an agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit

or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Law.

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

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

#### **XXXIV. Employee Benefits, Taxes and Insurances**

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

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

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

B. Tax and Withholding Liability. The Contractor assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments or tax payments required by the governments of the United States and Guam. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes or business privilege taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement, unless Contractor is a non-resident person or entity without a valid Guam Business

License, in which case a withholding fee equal to five percent (5%) of the total dollar value of this Agreement will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166).

C. Insurance. Contractor shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Workman's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Contractor agrees to hold harmless and indemnify \*AGENCY\*, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to: (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Contractor or Contractor's employees, officers, contractors, directors, agents, representatives, successors, or assigns; or (ii) Contractor's failure to comply with terms of this sub-paragraph B.

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

**XXXV. Claims Based Upon PAG's Action or Omissions**

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

1. Contractor shall have given written notice to the PAG:
  - a. prior to the commencement of the work involved, if at that time, Contractor knows of the occurrence of such action or omission;
  - b. within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or
  - c. within such further time as may be allowed by the PAG in writing.

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

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

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

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

**XXXVI. Statutory Interest**

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

**XXXVII. Mandatory Prohibitions**

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

Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

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

B. Prohibition of Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government of Guam contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

**XXXVIII. Contractor's Ethical Warranties**

A. Warranty against Employment of Sex Offenders. Contractor warrants that: (1) no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 Guam Code Annotated, or who has

been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of Contractor while on government of Guam property, with the exception of public highways; and (2) that if any person providing services on behalf of Contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry at any time during the performance of the contract, that such person will be immediately removed from working on government property and Contractor warrants that it will notify the General Manager of the PAG within twenty-four (24) hours of such conviction. If Contractor is found to be in violation of any of the provisions of this paragraph, then the PAG will give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four (24) hours of notice from the PAG, and Contractor shall notify the PAG when action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of notice from the PAG, then the PAG in its sole discretion may temporarily suspend this agreement.

B. **Covenant against Contingent Fees.** Contractor represents that it has not retained a person to solicit or secure a government of Guam contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

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

D. **Ethical Standard.** Contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the government of Guam Procurement Regulations.

### **XXXIX. Confidential Information**

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

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

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

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

**XXXX. Program Fraud and False or Fraudulent Statements or Related Acts**

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

**\*\*\* AUTHORIZED SIGNATURES APPEAR ON FOLLOWING PAGE \*\*\***



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

**CONSULTANT**

Port Authority of Guam

**JOSE D. LEON GUERRERO COMMERCIAL PORT**

\_\_\_\_\_  
**JOHN DOE**

President

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

\_\_\_\_\_  
**RORY J. RESPICIO**

General Manager

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

**APPROVAL TO FORM:**

**CERTIFICATION OF AVAILABILITY  
OF FUNDS:**

\_\_\_\_\_  
**JESSICA TOFT**

Legal Counsel Port Authority of Guam

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

\_\_\_\_\_  
**JOSE B. GUEVARA III**

Chief Financial Officer

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