

REQUEST FOR PROPOSAL RFP NO: PAG-022-003

A&E DESIGN CONSULTING SERVICES For The Installation of a Fuel Pipeline System for F1 Pier and Golf Pier Connectivity

PORT AUTHORITY OF GUAM
1026 Cabras Highway
Piti, Guam 96925

RORY J. RESPICIO
General Manager

APRIL 2022



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

REQUEST FOR PROPOSAL
RFP No. RFP-PAG-022-003
AE DESIGN AND CONSULTING SERVICES for the Installation of a Fuel Pipeline System
for F1 Pier to Golf Pier Connectivity.

The Port Authority of Guam (PAG), a public corporation and autonomous agency of the Government of Guam, will receive sealed proposals for the AE Design and Consulting Services for the Installation of a Fuel Pipeline System for F1 Pier to Golf Pier Connectivity project location is within the Port Authority of Guam property boundary along Route 11 in the Cabras Island, Piti, Guam.

A Pre-Proposal Conference will be held in the PAG Board of Directors Conference Room, 1st floor, PAG Administration Bldg., on **Tuesday, April 19, 2022 at 10:00 a.m., Chamorro Standard time (Guam Time)**. A site visit to the project location will immediately follow the pre-proposal conference. Please bring proper PPE's (safety vest, hard hats and closed toe shoes), writing materials and rain jackets, or umbrellas. Photos of the project and location are permitted. All offerors are encouraged to attend.


The deadline for all Questions & Concerns (Q&C) will be **on Friday, April 22, 2022, at 4:00 p.m. (Chamorro Standard Time) Guam Time**. All questions and concerns should be addressed and emailed to General Manager, Rory J. Respicio at rjrespicio@portofguam.com and copy to Annie LG Sablan at algsablan@portofguam.com, Steven P. Muna at spmuna01@portofguam.com and Pia Castro at pacastro@portofguam.com.

Proposals will be received, as described in the RFP and contract documents, until **4:00 P.M., Friday, May 13, 2022, Chamorro Standard Time (Guam Time)**, at the Procurement Office, located on the 1st Floor of the PAG Administration Building. Proposals submitted late will not be considered.

This RFP is posted on the Port's website: <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. A hard copy may also be picked up at the Port's Procurement Office located on the 1st floor of the PAG Administration Building.

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

For additional information, contact Steven P. Muna, Contract Management Administrator in the Procurement & Supply Division at 477-5931 ext. 340; or via email at Steven P. Muna at spmuna01@portofguam.com, please send email copy to Ms. Pia Castro at pacastro@portofguam.com.


Dominic G. Muna
Acting, General Manager

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PORT AUTHORITY OF GUAM (PAG)
Request for Proposal: RFP NO. PAG-022-003

A&E DESIGN CONSULTING SERVICES

Installation of a Fuel Pipeline System for F1 Pier and Golf Pier Connectivity

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REQUEST FOR PROPOSAL (RFP)
RFP No: PAG-RFP-022-003

A&E DESIGN CONSULTING SERVICES
FOR THE INSTALLATION OF A FUEL PIPELINE SYSTEM FOR F1 PIER AND GOLF PIER CONNECTIVITY

BASIC INFORMATION

I. BACKGROUND OVERVIEW:

The Port Authority of Guam (PAG), a public corporation and autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified and interested Professional Firm(s) to provide services to include, but not limited to A&E Design Consulting Services for the "Installation of a Fuel Pipeline System for F1 Pier and Golf Pier Connectivity Project.

II. INTRODUCTION

- A. The PAG will require Offeror(s) who may be supported by a sub-consultant to be ultimately responsible for services provided as part of the Proposal of Offeror(s).
- B. The PAG will use procedures prescribed by the Guam Procurement Act, 5 GCA §§5001-5805, and the DEPARTMENT OF ADMINISTRATION General Services Administration Procurement Regulations to establish a contract. The website to review the Guam Procurement Act is www.guamcourts.org/CompilerofLaws/GCA/Title5.html and the Guam Procurement Regulations is www.guamcourts.org/CompilerofLaws/GAR/02gar.html.
- C. Offerors are expected to have and shall have sole responsibility for the working knowledge of these laws and regulations.
- D. Issuing Office: This Request for Proposals (RFP) is issued by the PAG. No oral explanations in regard to the meaning of the RFP will be made and no oral instructions will be given before award of a contract to the selected Offeror. All proposals and any inquiries of prospective Offerors regarding this RFP must be in writing and must be to the attention of:

Mr. Rory J. Respicio
General Manager
Email: rjrespicio@portofguam.com

or

Mr. Steven P. Muna
Contract Management Administrator
Email: spmuna01@portofguam.com

Address: Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Tel: (671) 477-5931/35 Ext. 302 or 340
Fax: # (671) 477-4445 or (671) 472-1439

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

III. SCOPE OF SERVICES

Project Description

The PAG has applied for funding through the Economic Development Administration (EDA) for the design and construction of a Fuel Pipeline System for F1 Pier and Golf Pier Connectivity Project. The new fuel pipe system provides connectivity between the PAG's two (2) fuel piers to ensure that diesel fuel, jet fuel, and gasoline distribution and delivery remains uninterrupted for the island of Guam if either pier is impacted by natural or man-made incidents. In addition, the connectivity line is critically important in achieving port resiliency and will ensure the uninterrupted continuity of business and operations at the PAG should either pier be taken off-line for disaster related repairs and/or rehabilitation.

The Project consists of three (3) 10-inch fuel lines constructed along a 2,000-foot section of Route 11. The pipelines will support operations at Tristar Terminal Guam, Inc. (F1 Pier) and Mobil Oil Guam Inc. (Golf Pier). The pipeline is planned to be construction using conventional cut and cover methods with pipe casings installed at high traffic areas. As an alternative to cut and cover, horizontal directional drilling shall be considered from a cost and environmental perspective. The Architectural & Engineering (A&E) scope of services will be to develop preliminary and final design including plans, specifications, cost estimates, schedules, reports, and prepare necessary environmental documents. In addition, the A&E Design Team will assist the PAG in the bidding and provide construction support for the fuel piping installation. The A&E Design Team will be expected to include surveying, civil, structural, mechanical, electrical and geotechnical capabilities.

A. Investigation and Conceptual Development Phase

1. Initiate a Project kick-off meeting with all stakeholders to review the technical and operational objectives. Establish a clear set of expectations for Project design and construction.
2. Request utility drawings from local utility companies, gather existing reports and As-Built drawings of the existing right-of-way to understand the location and depth of existing utilities.
3. Research and obtain required right-of-way permit requirements to obtain necessary easements and construction permits along Route 11.
4. Conduct both a visual and topographic survey of the existing right-of-way, locating existing utilities, pavement features, ditch line, power poles and other surface features on or adjacent to the pipeline corridor. Topographic survey shall utilize PAG local datum and grid system.
5. Conduct a geotechnical investigation to determine soil conditions and ground water conditions. Investigations shall include a records search of previous geotechnical studies in the general area and feasibility discussion for alternative construction methods like horizontal directional drilling.
6. Request process flow diagrams (PFD) and P&IDs related to existing piping system and tie-in locations.
7. Conduct meeting(s) with stakeholders to understand existing product distribution and operations for each of the two fuel piers. These meetings shall provide knowledge of the operational characteristics for F1 Pier and Golf Pier, as well as develop methodology for pipeline tie-ins and implementation of a telemetry control system for the interconnected pipelines.
8. Conduct a site safety assessment to establish safety protocols and compliance with hazardous area classifications.

B. NEPA Environmental Compliance

In addition to the information provided in the initial Environmental Narrative, the PAG will ensure that environmental requirements are strictly implemented. Anticipated document for this Project is expected to be a Categorical Exclusion (CATEX). Due to the coastal proximity, a thorough environmental documentation may be anticipated. Environmental evaluation of the Project site, gaining environmental approval through NEPA, performing any necessary studies, reports, or surveys as required, and obtaining all the necessary agency permits for the Project are the main activities of this task. The Consultant shall set the strategy for clearing the Project location through the NEPA process as quickly as possible. The Consultant shall also set the best strategy for obtaining all the necessary permits, and then obtain the permits in an expeditious manner. Obtaining NEPA clearance will be a critical path activity for

the Project. The Consultant shall work in an efficient manner and coordinate with PAG and resource agencies in a proactive and effective way to deliver the NEPA clearance in a timely manner.

1. **Agency Coordination:** Schedule and attend initial meetings with resource agencies once the Project footprint has been established. The Consultant shall prepare and issue a scoping letter, and shall conduct agency coordination meetings with the Guam Environmental Protection Agency (GEPA), Guam Historic Preservation Office (GHPO), Guam Bureau of Statistics and Planning (CZMP), the US Army Corps of Engineers (USACE), US Fish & Wildlife Service, US Coast Guard and other environmental and regulatory agencies with an interest in the Project.

Deliverables

- a. Scoping letter for the Project for each of the agencies.
 - b. Agendas, draft and approved meeting minutes for each of the agencies' meetings.
2. **Environmental Analysis and Categorical Exclusion Documentation:** The Consultant shall perform environmental analyses and studies and prepare a Categorical Exclusion (CATEX) document in accordance with NEPA, US Department of Commerce and PAG requirements. The Consultant shall obtain PAG and (US Department of Commerce, if applicable) approval signatures on the completed CATEX documentation. Only the preferred alternative shall undergo environmental impact analysis as described in this section.
 - a. Perform a biological survey for the Project site and document determination finding in a report. Develop a draft and final report that addresses agencies' comments. If there are findings to endangered species or impacts consultant will coordinate with appropriate agencies and PAG on the requirements and prepare the consultation document and mitigation measures if necessary, to complete compliance with Section 7 of the Endangered Species Act and document in the CATEX.
 - b. Coordinate with GSHPO, Department of Parks and Recreation, about any potential cultural resources within the defined Project footprint. If required, Consultant will perform archaeological investigations for the Project location and document. Results of the appropriate determination shall be summarized and documented in the CATEX. Subsurface testing for archaeological investigations in advance of construction may be necessary. Prepare consultation document to complete compliance with Section 106 of the National Historic Preservation Act. Document findings in CATEX.
 - c. Based on the consultations with agencies including GEPA and USACE, assess the Project site for water quality impacts, and where appropriate, develop mitigation measures for potential construction impacts (e.g., air, water, noise, vibration, construction staging, and maintenance of traffic) resulting from the proposed Project, and report findings in the CATEX.
 - d. Assess the Project site for applicability of Underground Storage Tank (UST) requirements due to buried fuel line. Consultant will obtain UST permit if required.
 - e. Perform identification and delineations of wetlands of Project location if necessary.
 - f. Provide materials to support a public meeting including handouts, boards, and PowerPoint if required.

Deliverables

- a. Draft and Final letters to each of the agencies that documents consultation, findings, and mitigation measures.
 - b. Draft and final CATEX.
3. **Environmental Permits:** The Consultant shall prepare environmental permit applications and obtain approvals as required. Environmental permits anticipated for this Project include but is not limited to:
 - a. NPDES Permit for proposed roadway drainage discharges included in the plans prepared by the Consultant
 - b. USACE Section 404 permit
 - c. Guam EPA Section 401 permit
 - d. GUAM EPA UST

- e. Guam Coastal Zone Management Consistency Concurrence
- f. Guam Seashore Clearance Permit

Environmental permits that may be needed for this Project include a Guam Department of Land Utilization (GLUC) Wetland Permit.

Deliverables – 150 days from Notice to Proceed (NTP)

- a. Draft and Final approved permits.

C. Design Phase

The design phase consists of developing engineering plans, specifications, estimates and reports to address all aspects of the pipeline Project. In addition, a Project schedule shall be developed with a work break down schedule suitable to plan and monitor the various design activities. All designs shall be in compliance with 49 CFR 195, "Transportation of Hazardous Liquids by Pipeline". This Phase shall include:

1. **Basis of Design (BOD):** Provide an outline for the BOD to PAG and stakeholders for review and comment. As a minimum the BOD shall include elements noted above in Investigation and Conceptual Development Phase and the following:
 - a. Introduction and general Project description, site description with schematic diagrams to illustrate the pipeline location and tie-ins. Diagrams shall also include right-of-way depicting any conflicts and location of pipe casings.
 - b. Provide design criteria and list of regulatory codes and design standards.
 - c. Include material and equipment lists
 - d. Narrative on rely upon data and information and list of stakeholders.
 - e. Provide a narrative on the existing and new operation philosophy to include requirements for seamless interface between F1 Pier and Golf Pier distribution systems. Include telemetry and communications protocols to implement necessary control systems. Include preliminary PFDs related to the pipeline and tie-ins.
 - f. Provide discussion on geotechnical investigation and alternate method of construction utilizing horizontal directional drilling.
 - g. Summary of environmental process with a matrix identifying the required permits and current status.
 - h. Provide narratives on pipeline installation, hydrostatic testing, cleaning, pipe dewatering, pigging and safety protocols during construction, and commissioning,
 - i. Provide narratives for Project schedule and preliminary engineering estimate.
2. **Preliminary Design:** Prepare Preliminary Design Drawings, Technical Specifications outline, list of Bid Quantities, Design Calculations, and Preliminary Construction Cost. Preliminary Design Documents shall correspond to approximately the 30% design completion level. Specifications shall be prepared in Construction Specifications Institute (CSI) Master Format (2016) format, consisting of outline specifications at the Preliminary Design Stage. The Preliminary Cost Estimate shall use a Work Breakdown Structure (WBS) corresponding to the Bid Quantities, with appropriate contingencies per discussion with PAG.

Deliverables – 60 days from NTP

- a. Basis of Design
 - b. Preliminary Design (30%) Documents to include plan, profile of underground fuel pipelines, and associated cost estimates.
3. **Final Design:** Continue development of design documents, incorporating PAG and stakeholder comments on the Preliminary Design. Submit documents for PAG review at:

- a. **60% Design:** 60% Design document shall indicate the exact location and depth of the proposed fuel lines by implementing coordinate geometry; include refined plan and profile drawings, based on the topographic survey reflecting the existing site condition and topography along the design corridor; draft detailed technical specifications, details for pipe tie-ins, mechanical details, one-line diagrams for electrical, telemetry and control network. Details for pipe casing and crossings, structural details for foundations and support structures, plus material staging and storage areas, erosion and control requirements. Also provide an updated bid quantity, cost estimate and Project schedule, all for review by PAG and stakeholders.

Deliverables – 120 days from NTP

1. 60% Plans, specifications and cost estimate.
 2. Updated Project schedule.
 3. Updated Matrix for environmental permits and status.
 4. Provide memorandum explaining requirements and application status for right-of-way and easements as required for construction.
 5. Summary of PAG and stakeholder comments with A&E responses and disposition.
- b. **90% Design:** 90% Design documents shall be complete except for incorporation of PAG and stakeholder final comments, and shall include final drawings, technical Specifications, bid quantities, design calculations and construction cost estimate. PAG will provide the front-end Specifications and Form of Contract.

Deliverables – 180 days from NTP

1. 90% plans, specifications and cost estimate.
 2. Updated Project schedule.
 3. Submit final design calculations
 4. Submit final BOD document
 5. Update matrix for environmental permits and their status.
 6. Update status and requirements for right-of-way and easements for construction
 7. Summary of PAG and stakeholder 60% design comments with A&E responses and disposition.
- c. **100% Design:** Provide Issued for Construction Documents, incorporating PAG and stakeholder final comments on the 90% Design Documents.

Deliverables – 210 days from NTP

1. IFC plans, specifications and cost estimate.
2. Updated Project schedule
3. Updated matrix for environmental permits and their status. If available, submit approved permits.
4. Submit approved right-of-way construction permits together with acquired easement documents.
5. Summary of PAG and stakeholder 90% design comments with A&E responses and disposition.
6. Written procedures for conducting operations and maintenance activities and for the emergency responses.

D. Bidding Phase

1. Attend pre-bid meetings as required.
2. Respond to Request for Information (RFIs) from prospective bidders.
3. Prepare Contract addenda with sketches as required.

E. Construction Support Services

1. Conduct bi-weekly site inspections to generally observe the quality of construction. Advise the PAG or its Agent of any construction observed not to be in conformance with the Contract Documents.
2. Review Contractor's construction submittals including, but not limited to, materials certifications, shop drawings, delegated design elements, etc.

3. Respond to Contractor RFI's for interpretation of the Contract Documents and unanticipated field conditions.
4. Produce clarifying drawings or details as required to address RFI's.
5. Review construction contractor's change orders for completeness and conformance with design standards, construction requirements, permitting and costs.
6. Review and comment on contractor's baseline schedule for conformance with contract documents and construction sequencing.
7. Review and comment on notices of non-conformance.
8. Participate in pipeline testing, cleaning and commissioning. This includes attending coordination meetings reviewing applicable submittals and observing field testing, cleaning and commissioning activities. Coordinate with PAG's Construction Management Firm as required.
9. Review contractor redline drawings, then prepare and submit as-constructed drawings in accordance with PAG drawing standards.

F. Estimated Project Schedule

MILESTONE	PLANNED START DATE	PLANNED COMPLETION DATE
Investigation, preliminary design, permitting and environmental activities	June 1, 2022	Sept. 30, 2022
Final design	Oct. 1, 2022	Nov. 31, 2022
Completion of IFB documents to include solicitation announcements, evaluation of SOW, selection of contractors and issuance of contract	Dec. 1, 2022	Feb. 28, 2023
Start of construction	Mar. 1, 2023	Apr. 30, 2023
Construction period (10 months)	May 1, 2023	Feb. 28, 2024
Contractor turnover of asset to the PAG with warranty	Mar. 1, 2024	Apr. 30, 2024
PAG press release to general public of new capability	May 1, 2024	May 31, 2024

IV. TYPE OF CONTRACT:

A Service Agreement will be consummated between the Offeror and the PAG. A sample agreement is attached herein as **Attachment 1, for reference**. The PAG reserves the right to modify the sample Agreement during the proposal period or negotiation period. The Offeror(s) selected must be fully licensed to conduct business on Guam prior to execution of any contract resulting from this RFP.

V. SUBMISSION DEADLINE AND REQUIREMENTS:

All proposals in response to this RFP solicitation shall be in writing, must be time-stamped and received at the Procurement and Supply Division, located on the 1st floor of the PAG Administration Building, and shall be to the attention of the General Manager, **no later than 4:00pm, Chamorro Standard Time (Guam Time), Friday, May 13, 2022. No proposals shall be received after such date and time. Additionally, proposals transmitted via facsimile or email will not be accepted.**

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

VI. PRE-PROPOSAL CONFERENCE:

A Pre-Proposal Meeting is scheduled on **Tuesday, April 19, 2022 at 10:00 a.m., Chamorro Standard Time (Guam Time)** at the PAG Board of Director's Conference Room. A site visit will immediately follow the pre-proposal conference, all offerors are encouraged to attend. Please have PPE's with you to attend the site visit, at a minimum a Safety Vest, Closed-Toe shoes and a hard hat. No oral statements made at the Pre-Proposal Meeting or Site Visit by PAG Personnel shall be relied on. The PAG will respond in writing to all inquiries, questions, comments and suggestions.

All Requests for Information (RFI) inquiries, clarifications or questions must be submitted no later than **4:00 p.m. Chamorro Standard Time (Guam Time) Friday, April 22, 2022.** RFI shall reference the RFP Number, Project Title and must be addressed to the attention of the Port Authority of Guam:

To:	General Manager	or	Contract Management Administrator
	Mr. Rory J. Respicio		Mr. Steven P. Muna
	Email: rjrespicio@portofguam.com		Email: spmuna01@portofguam.com

Also, please cc Annie LG Sablan, Acting Procurement and Supply Manager, at algsablan@portofguam.com and Pia Castro at pacastro@portofguam.com.

VII. LATE PROPOSALS:

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

VIII. OPENING OF PROPOSALS:

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

IX. BUSINESS LICENSE:

Firm/Offeror(s) must be fully licensed to do business in Guam prior to the execution of any contract resulting from this RFP. Firm/Offeror(s) and Sub-Consultants must also be registered with the Guam PEALS Board and authorized to practice engineering on Guam.

X. TRADE SECRETS AND PROPRIETARY DATA:

Offerors may designate those portions of their proposal that contain trade secrets or proprietary data, which are to remain confidential. The PAG will examine any such request to designate portions of proposals as trade secrets or proprietary data as confidential and determine the validity of such request prior to entering into negotiations with prospective Offeror.

XI. CONTENTS OF THE PROPOSAL:

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

A. Transmittal Letter:

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

B. Statement of Qualifications:

The proposal should demonstrate the ability of the Offeror to perform and provide the services enumerated in the Scope of Services in Section III. The Statement of Qualifications must be current, accurate, and complete; thus, shall include the following:

1. The name of the Offeror, the location of Offeror's principal place of business and, if different, the place of performance of the proposed services, the age of the Offeror's business, the average number of employees over the past five (5) years and the current workload of the Offeror.
2. The abilities, qualifications, experience and the role of the key person(s) that would be assigned to perform the services contained in Section III.
3. A list of all contracts under which services similar in scope, size and discipline for the required services, which the Offeror has substantially performed or accomplished as the Prime and/or Principal Firm over the past five (5) years, including client names, addresses, phone numbers and point of contacts.
The information is required for the Offeror and each subcontractor, if any, but information on the Prime Offeror and subcontractor(s) should be presented separately. The purpose of this requirement is to provide the PAG with a basis for determining the Offeror's and subcontractors financial and technical capability for undertaking this project. The PAG is not interested in a voluminous description of all prior contracts undertaken, but rather a concise, thorough description of experience relevant to this project.
4. A detailed plan specifying how the scope of services will be accomplished to include time and personnel resources.
5. A plan giving as much detail as is practical explaining how the services will be provided, including but not limited to, tasks or activities, deliverables, timeline, etc.
6. A statement that the Offeror has established and implemented an Affirmative Action Plan.
7. A letter affirming the existence of a Drug Free Workplace Program and Policy at the firm.
8. A statement of agreement with the PAG's General Terms and Conditions and the Special General Provisions, which are made part of this RFP documents.
9. Statement of qualification on U.S. Government standard form SF 330 Architect, Engineer Qualification Part I and Part II, effective August 2016.
10. All items submitted in response to the RFP become the property of the PAG and none will be returned.

XII. SELECTION OF BEST QUALIFIED PROPOSER AND PROPOSAL:

1. **Evaluation and Ranking:** After receipt of all proposals, the Evaluation Committee established by the General Manager, will conduct an independent evaluation of all proposals received under this solicitation. Each proposal shall be evaluated according to the criteria as reflected herein and shall be ranked accordingly. The ranking of the proposals will be based on the total points awarded to the proposals by each Evaluation Committee member. Each proposal shall be evaluated on the following evaluation factors using a scale of one (1) to one hundred (100).

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

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

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

The highest ranked Offeror will be selected to enter into negotiations with the PAG. If an agreement can be reached as reasonable fees, a contract will then be prepared for signatures by both parties. The

signature of the PAG's General Manager or his designated representative is the only signature that will bind the PAG.

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

3. **Mandatory Features:**

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

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

XIII. EVALUATION CRITERIA:

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

1. A detailed plan with how the scope of services will be accomplished to include time and personnel resources, and schedule of activities to include start/completion dates. **(30 points)**
2. The ability of the Firm/Offeror(s) to perform the requisite services as reflected by technical training and education, general professional experience, specific experience in providing the services, and the qualifications and abilities of personnel proposed to be assigned to perform the services, which professional qualification and experience in this type of work or services, includes but is not limited to:
 - a. Knowledge of and experience with developing and reviewing design/specifications for the Project. **(10 points)**
 - b. Knowledge of and experience with Design of the Project. **(10 points)**
 - c. Knowledge of and experience with environmental issues, impact studies, and protection plans in line with the Project. **(10 points)**
3. The Firm/Offeror(s) record of past performances related to the scope of services detailed in Section III. **(20 points)**
4. The Firm/Offeror(s) availability of personnel in required disciplines for performance of the scope of work, including relevant equipment and facilities that are currently available or demonstrated to be available at the time of contracting. **(20 points)**

XIV. FEE PROPOSALS:

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

XV. REQUIRED FORMS:

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

1. Special Reminder to Prospective Offerors: This form is the checklist of the required forms to be submitted accompanying the proposals. By completion and submittal of this form, the Offeror

acknowledges and understand its intent and implications. Offerors are held responsible for ensuring that all documents required in this RFP, which may not appear on the checklist, are submitted with their proposal.

2. *Affidavit Disclosing Ownership and Commissions:* Guam Law requires that any partnership, sole proprietorship, or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship, or corporation at any time during the twelve (12) month period immediately preceding submission of the Proposal.

The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the work described in this RFP for the Offeror and shall contain the amounts of such commission, gratuity, or other compensation. The affidavit shall be opened and available to the public for inspection and copying.

1. Affidavit Disclosing Ownership and Commissions, **AG-Form 2**
2. Affidavit re Non-Collusion, **AG-Form 3**
3. Affidavit re No Gratuities or Kickbacks, **AG-Form 4**
4. Affidavit re Ethical Standards, **AG-Form 5**
5. Declaration re Compliance with U.S. DOL Wage Determination, **AG-Form 6**
6. Affidavit re Contingent Fees, **AG-Form 7**
7. Special Provision re: Restrictions Against Sex Offenders

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

GENERAL TERMS AND CONDITIONS

1. AUTHORITY:

This Request for Proposal (RFP) solicitation is issued subject to all the provisions of the Guam Procurement Act (Public Law 16-124) and the Guam Procurement Regulations (copies are available for inspection from the following website: www.guamcourts.org/CompilerofLaws/GCA/Title.html and [www.guamcourts.org/CompilerofLaws/GAR/\)/@gar.html](http://www.guamcourts.org/CompilerofLaws/GAR/)/@gar.html)

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

2. EXPLANATION TO OFFERORS:

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

3. METHOD OF AWARD:

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

4. REJECTION:

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

5. TAXES:

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

6. LICENSING:

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

7. COVENANT AGAINST CONTINGENT FEES:

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

8. JUSTIFICATION OF DELAY:

The Offeror who is awarded the proposal guarantees that the service will be completed within the agreed

upon completion date. If, however, the Offeror cannot comply with the completion requirement, it is the Offeror's responsibility to advise the PAG in writing explaining the cause and reason of the delay.

9. EQUAL EMPLOYMENT OPPORTUNITY:

In accordance with Governor of Guam's Executive Order 2006-16 and in compliance with the 14th Amendment to the Constitution, Section 5 (Bill of Rights) and 9(a) (Merit System), and federal laws; Title VI and VII of the Civil Rights Act.; the Civil Rights Act of 1991; Title I of the American Disabilities Act; the Equal Pay Act; the Age Discrimination in Employment Act; Section 504 of the Vocational Rehabilitation Act; Title IX of the Education Amendments of 1972; other pertinent federal laws and Guam laws; Title 4 of the Guam Code Annotated; Title 17, Chapter 2 of the Guam Code Annotated; Public law 14-28, Section 5; Public Law 15-17; Public Law 28-68; Public law 28-112 and other pertinent laws, it is the intent of the Government of Guam, hereinafter the Government:

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

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

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

10. ASSIGNMENT:

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

11. DETERMINATION OF RESPONSIBILITY OF PROPOSER:

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

SPECIAL GENERAL PROVISIONS

1. PROPOSALS:

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

2. GENERAL INTENTION:

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

3. AUTHORIZED REPRESENTATIVE AND CONTACT FOR CONTRACT ADMINISTRATION:

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

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

4. DISCUSSIONS:

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

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

5. PAYMENT:

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

6. RECEIPT AND HANDLING OF PROPOSALS:

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

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

7. WITHDRAWAL OF PROPOSALS:

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

Negligence on the part of the proposer, in preparing the proposal, grants no right for the withdrawal of the proposal, after it has been opened. All items submitted in response to the RFP become the property of the PAG and none will be returned.

8. LATE PROPOSALS:

Late proposals will **NOT** be accepted.

9. LIABILITY FOR COST TO THE PROPOSAL:

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

10. RIGHT TO AMEND, CANCEL OR REISSUE:

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

11. CONTRACT PROVISIONS:

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

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

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

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

By submitting a proposal, the Offeror will comply with the required federal contract provisions included (Refer to Appendix II to 2 CFR Part 200 - Contract Provisions for Non-Federal Entity Contracts under Federal Awards.)

12. SPECIAL PERMITS AND LICENSES:

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

13. LAWS TO BE OBSERVED:

- a. The Offeror accepts sole responsibility for compliance with any/all applicable federal and local laws, codes, ordinances, and regulations which in any affect those engaged or employed in the work, or the material or equipment used in or upon the site, contemplated by this RFP. No place of

misunderstanding or ignorance on the part of the Offeror of applicable laws, codes, ordinances, or regulations will in any way serve to modify any contract executed pursuant to this RFP.

- b. **Restriction Against Contractors/Consultants Employing Convicted Sex Offenders from Working at Government of Guam Venues.** (Subsection 5253 of Title 5 Guam Code Annotated)
 - i. No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam other than a public highway.
 - ii. All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
 - iii. Duties of the General Services Agency or Procurement Administrators. All contracts, bids or Request for Proposals shall state all the conditions in §5253(b).
 - iv. Any contractor/consultant found in violations of §5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.
- c. **Port Security Guidelines:** Any Offeror performing work on PAG property shall be required to comply with any applicable law, regulation, or policy regarding port security, including but not limited to 33 CFR 105 and the following conditions:
 - i. Contractors/Consultants and/or vendors authorized to conduct business within the controlled or restricted areas must pre-arrange their visits a minimum of twenty-four (24) hours in advance. Such notice shall indicate contractor/vendor company name, list of employees with either Social Security number or Driver's License number requesting entry, the time and date of their anticipated visit, and the nature of the business/work.
 - ii. No personnel, visitors or other non-employees shall have access to restricted areas without Port Police clearance or escort (when required) consisting of a properly identified employee authorized access.
 - iii. The Port Police Division currently issues identification cards to Port Authority employees, tenants, users and other persons authorized to enter the Commercial Port compound. Temporary IDs bear a control number and must be signed out to visitors requesting access in exchange for an acceptable valid photo ID. The temporary ID card must be worn and visibly displayed on the exterior of the bearer's clothing. Lost or misplaced temporary ID cards must

be reported immediately to the Port Police Division. Failure to report and/or return the issued temporary ID card constitutes a security breach and shall disallow holder to enter the terminal compound for the entire contractual period.

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

d. Transportation Workers Identification Credential (TWIC)

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

14. STATUS OF OFFEROR:

Offeror and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the PAG, and are not employees of either the PAG or the Government of Guam. Offeror and its officers, agents, servants and employees shall not accrue vacation or sick leave; participate in the government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to government of Guam employees. Offeror agrees that Offeror and its employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the 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 any contract pursuant to this RFP or any action taken pursuant to this RFP shall be deemed or construed in any manner or for any purpose to evidence or establish as between Offeror and the PAG a relationship of partnership, agency, association, joint, venture or representative, not authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the PAG for the Offeror.

15. INSURANCE:

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

16. OWNERS RIGHT TO REJECT PROPOSAL:

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

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

17. CONFIDENTIAL OR PROPRIETARY INFORMATION:

Proposals of Offerors who are not awarded the contract shall not be opened to public inspection, but will be part of the official procurement record. After award, the proposal of the Offeror receiving a contract will become available for public inspection. If the Offeror selected for award has requested in writing the non-disclosure of trade secrets or other proprietary data so identified, the PAG shall examine the designated information to determine whether such information shall become proprietary. If the PAG and the Offeror are unable to agree as to the disclosure of certain portions of the Offeror's proposal, the PAG shall inform the Offeror in writing what portion of the proposal will be disclosed and that, unless the Offeror withdraws the proposal or protests under 5GCA Article 9 (Legal and Contractual Remedies) of the Procurement Act, the information may be so disclosed. [Refer to Title 2, Guam Administrative Regulations, Division 4, Section 3114(h)(2)]

18. ETHICAL STANDARD:

The Offeror represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in Guam's Procurement Code or Regulations pertaining to ethics in public contracting. Offeror represents that it will comply with ethical obligations under Guam Procurement Law. See 5GCA Sections 5601-5677.

19. PROHIBITION AGAINST GRATUITIES AND KICKBACKS:

The respondents represent that it has not violated, is not violating, and promises that it will not violate the prohibition against any kickbacks set forth in the Guam Procurement Law. The prohibition is as follows: It is a breach of ethical standards for any person to offer, give or agree to give any government employee or former government employee, or for any government employee or former government employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation of proposal therefore. Further, it shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or order.

20. APPLICABILITY OF GUAM PROCUREMENT LAW:

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

ATTACHMENT 1 SAMPLE AGREEMENT

**AGREEMENT BETWEEN
THE
PORT AUTHORITY OF GUAM
AND
CONSULTANT**

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, the PAG issued a Request for Proposal (“RFP”) RFP No. PAG-022-003 seeking to retain a consultant to perform **A&E Design Consulting Services to the PAG for the Installation of a Fuel Pipeline System for F1 Pier and Golf Pier Connectivity**;

WHEREAS, the Consultant responded to the RFP through submitting a proposal (A&E Design for Consulting Services) 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 A&E Design Consulting Services pursuant to and in accordance with the Scope of Services as identified in Section III of the RFP, Consultant’s Proposal and Projects 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 Two (2) years with an option to extend for one (1) additional year commencing upon effective date of Task Order No. 1. The renewal of this agreement after the initial term shall be at the sole discretion of the PAG.

III. Compensation

A. Compensation. In consideration for the A&E Design Consulting Services performed under this Agreement, the PAG shall pay Consultant based on fees according to specific task order negotiated. The services under this agreement shall consist of negotiated and approved Task Orders and the total of all Task Orders issued will not exceed (\$_____ **Dollar Amount**) for the life of this contract, and that all work shall be performed and compensated in accordance with the terms herein and Task Orders 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. Information. The Consultant hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Consultant to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

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

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

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

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

VII. Conflicts of Interests/Ethics

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

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Consultant is a material breach of this Agreement and shall entitle the 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 96925

Attn: Mr. Rory J. Respicio, General Manager

TO CONSULTANT:

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

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

C. Any such decision shall be final and conclusive, unless fraudulent, or the contractor brings an action appealing the decision to the Office of Public Accountancy.

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

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. Disposition of Property and Materials; Intellectual Property Rights

A. All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this

Agreement shall be and remain the property of the 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.

XXVIII. 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.

XXIX. 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.

XXX. 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.

XXXI. Amendments/Modifications

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

***** Authorized Signatures appear below *****

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

Principle Engineer

RORY J. RESPICIO
General Manager

Date: _____

Date: _____

**LEGAL COUNSEL FOR
PORT AUTHORITY**

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

CHRISTINE K. CLAVERIA

JOSE B. GUEVARA III
Financial Affairs Controller

Date: _____

Date: _____

ATTACHMENT 2

REQUIRED FORMS



REQUEST FOR PROPOSALS (RFP) NO. RFP-PAG-022-003

PROJECT DESCRIPTION:

A & E DESIGN CONSULTING SERVICES FOR THE INSTALLATION OF A FUEL PIPELINE SYSTEM FOR F1 PIER AND GOLF PIER CONNECTIVITY

SPECIAL REMINDER TO PROSPECTIVE OFFERORS

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

- ☒ STATEMENT OF QUALIFICATION
- ☒ AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS (AG Form 002)
- ☒ AFFIDAVIT RE NON-COLLUSION (AG Form 003)
- ☒ AFFIDAVIT RE NO GRATUITIES OR KICKBACKS (AG Form 004)
- ☒ AFFIDAVIT RE ETHICAL STANDARDS (AG Form 005)
- ☒ DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (AG Form 006)
- ☒ AFFIDAVIT RE CONTINGENT FEES (AG Form 007)
- ☒ SPECIAL PROVISION: RESTRICTIONS AGAINST SEX OFFENDERS
- ☒ FEDERAL ANTI LOBBYING CERTIFICATION
- ☒ OTHER REQUIREMENTS: **PEALS License or Business License whichever is applicable upon request and/or prior to award.**

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

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

Signature of Authorized Representative

AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS

CITY OF _____)
) SS.
ISLAND OF GUAM)

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

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

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

Name	Address	% of Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

Name	Address	Compensation
_____	_____	_____
_____	_____	_____

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

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

Subscribed and sworn to before me this _____ day of _____, 20_____

NOTARY PUBLIC
My commission expires: _____

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

AFFIDAVIT RE NON-COLLUSION

CITY OF _____)

) SS.

ISLAND OF GUAM)

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

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

_____.

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

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

Signature of one of the following:

Offeror, if the offeror is an individual;

Partner, if the offeror is a partnership;

Officer, if the offeror is a corporation.

Subscribed and sworn to before me this _____ day of _____, 20_____

NOTARY PUBLIC

My commission expires: _____

AFFIDAVIT RE GRATUITIES OR KICKBACKS

CITY OF _____)
) SS.
ISLAND OF GUAM)

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

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

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

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

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

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

Subscribed and sworn to before me this _____ day of _____, 20____

NOTARY PUBLIC
My commission expires: _____

AFFIDAVIT RE ETHICAL STANDARDS

CITY OF _____)
) SS.
ISLAND OF GUAM)

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

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

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

Subscribed and sworn to before me this _____ day of _____, 20_____

NOTARY PUBLIC
My commission expires: _____

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

DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

CITY OF _____)
) SS.

ISLAND OF GUAM)

Procurement No.: _____

Name of Offeror Company: _____

I, _____ hereby certify under penalty of perjury:

(1) That I am _____ [please select one: the offeror, a partner of the offeror, an officer of the offeror] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

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

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

§ 5802. Benefits.

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

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [INSTRUCTIONS - Please attach!]

Signature

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

AFFIDAVIT RE CONTINGENT FEES

CITY OF _____)
) SS.
ISLAND OF GUAM)

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

1. The name of the offering company or individual is [state name of company]
2. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement -is made pursuant to 2 GAR Division 4 **111** 08(f).
3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 **111** 08(h).
4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the Offeror's officers, representatives, agents, subcontractors, and employees.

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

Subscribed and sworn to before me this _____ day of _____, 20_____

NOTARY PUBLIC
My commission expires: _____

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

SPECIAL PROVISIONS

RESTRICTION AGAINST SEX OFFENDERS EMPLOYED BY SERVICE PROVIDERS TO GOVERNMENT OF GUAM FROM WORKING ON GOVERNMENT PROPERTY

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

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

Subscribed and sworn to before me this _____ day of _____, 20_____

NOTARY PUBLIC
My commission expires: _____

**THIS SPECIAL PROVISION MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL
FEDERAL ANTI-LOBBYING CERTIFICATION**

Certification for Contracts, Grants, Loans, And Cooperative Agreements

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed