



**REQUEST FOR PROPOSAL
RFP NO: PAG 019-006**

**PROFESSIONAL SERVICES FOR THE MAINTENANCE
OF PORT'S COMPENSATION AND CLASSIFICATION
PLAN**

**Port Authority of Guam
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highwa, Suite 201
Piti, Guam 96925**

**RORY J. RESPICIO
GENERAL MANAGER**

September 2019



PORT OF GUAM

ATURIDATI PUETTON GUAHAN

Jose D. Leon Guerrero Commercial Port

1026 Cabras Highway, Suite 201, Piti, Guam 96925

Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445

Website: www.portguam.com



Lourdes A. Leon Guerrero

Governor of Guam

Joshua F. Tenorio

Lieutenant Governor

Request For Proposal No.

RFP-PAG-019-006

**Professional Services for the Maintenance of Port's
Compensation and Classification Plan**

The Port Authority of Guam (PAG), a public corporation and an autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified firm or professional individuals or companies (Offerors) to provide professional/technical services for the maintenance of PAG employee's Compensation & Classification plan.

Deadline for Request for Inquiries (RFI), is on or before 4:00 p.m., Friday, October 4, 2019 (Chamorro Standard Time/Guam Time). All Offerors are encouraged to submit any questions, concerns, or inquiries.

Request for Proposal (RFP) packages may be obtained at the PAG Procurement and Supply Division Office located on the 2nd floor of the PAG Administration Building, from Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m., or may be downloaded via Port Authority of Guam website at www.portguam.com.

Deadline for submission of all proposals is 4:00pm on Friday, October 18, 2019, (Chamorro Standard Time/Guam Time). All proposals must be submitted to the attention of the PAG General Manager.

PAG shall have the right to reject, in whole or in part, proposals or offers which have been submitted in response to this RFP, and/or cancel this RFP if it is determined to be in the best interest of the PAG and/or for whatever reason allowed by law and/or regulation. This right to reject and/or cancel is pursuant to GSA Procurement Regulation 3115 (d)(2)(A).

For additional information, contact Mr. Steven P. Muna Contract Management Administrator at (671) 477-5931/35 ext. 269 or email at: spmuna@portguam.com

RORY J. RESPICIO

General Manager

This Advertisement is paid with government funds by:
PORT AUTHORITY OF GUAM

REQUEST FOR PROPOSAL (RFP)

RFP NO. PAG -019-006

**PROFESSIONAL SERVICES FOR THE MAINTENANCE OF PORT'S
COMPENSATION AND CLASSIFICATION PLAN**

TABLE OF CONTENTS

Public Announcement

Basic Information

General Terms and Conditions

Special General Provisions

ATTACHMENT

Attachment No. 1

Scope of Service

Attachment No. 2

Required Forms

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

Attachment No. 3

Sample Contract

REQUEST FOR PROPOSAL (RFP)

RFP No.: PAG-019-006

FOR: *Professional Services for the Maintenance of Port's Compensation and Classification Plan*

BASIC INFORMATION

I. INTRODUCTION

- A. The Jose D. Leon Guerrero Commercial Port ("Port") is soliciting proposals from qualified firms or individuals licensed to conduct business on Guam to submit proposals to provide professional services for the maintenance of the Compensation and Classification Plan.
- B. The proposals should demonstrate the ability of the Offeror to perform and provide services enumerated in the Scope of Services set out below.
- C. The Individual/Firm selected will work closely with the General Manager or her designee.
- D. The Port will use procedures prescribed by the Guam Procurement Act, 5 GCA §§5001-5805, and DEPARTMENT OF ADMINISTRATION General Services Administration Procurement Regulations to establish a contract. The website to review the Guam Procurement Act is www.guamcourts.org/CompilerofLaws/GCA/Title5.html and Guam Procurement Regulations is www.guamcourts.org/CompilerofLaws/GAR/02gar.html.
- E. Offerors are expected to have and shall have sole responsibility for working knowledge of these laws and regulations.
- F. Issuing Office: This Request for Proposals (RFP) is issued by the Port. No oral explanations in regard to the meaning of the RFP will be made and no oral instructions will be given before award of a contract to the selected Offeror. All proposals and any inquiries of prospective Offerors regarding this RFP must be in writing and must be to the attention of:

Mr. Rory J. Respicio or
General Manager,
Email: rjrespicio@portguam.com

Mr. Steven P. Muna
Contract Management Administrator
Email: spmuna@portguam.com

Address: Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Tel: (671) 477-5931/35 Ext. 302 or 269
Fax. # (671)477-4445 or 472-1439

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

II. GENERAL INFORMATION:

The Port Authority embarks on a new era of modernization and transformation of the agency into a world-class seaport. In order to see this goal come to fruition, the PAG must retain workers, particularly those in maritime-related positions unique to port operations, and be able to competitively hire certified personnel with proper technical or professional skills and experience. Through Public Law 29-24, PAG was authorized to promulgate personnel rules and regulations which provides the employment and retention of persons on the basis of merit, and to provide limited authority to establish pay scales for Certified, Technical, and Professional Personnel.

In May 2008, PAG solicited for professional consultants to conduct a position classification and benefits study through a Request For Proposal (RFP). The Professional Services Contract was awarded to Alan Searle & Associates under this RFP in August 2008.

Additionally, in March 2009, the PAG Board of Director's approved the new Personnel Rules and Regulations for Maritime-Related Positions Unique to Port Operations for Certified, Technical and Professional Employees (PRR). This resulted in the enactment of Public Law 30-43 in July 2009, which officially adopted the PRR and authorized the compensation and benefit adjustments. In August 2009, through Board Resolution No. 09-06, the PAG Board of Directors approved and adopted the Jose D. Leon Guerrero Commercial Port Compensation and Classification Plan for Maritime Related Positions unique to Port Operations and Certified, Technical and Professional Positions.

III. PROFESSIONAL SERVICES REQUIRED:

The Port requires the Firm(s) to perform these services at the direction and in coordination with Port Authority of Guam (PAG).

At a minimum, the Firm or person shall have the following qualifications:

- Qualified to provide the professional services as identified in the Scope of Services (attachment No. 1).
- At least five years of conducting such professional services required under the

Scope of Services (attachment No.1)

- Is knowledgeable of the PAG's Compensation and Classification Plan.
- Must have experience in conducting training personnel to include and not limited to classroom setting.

IV. DESCRIPTION OF SERVICES:

A Preliminary Scope of Services, describing the work to be performed, is detailed in Attachment 1. Upon final selection of the best qualified Offeror, the Scope of Service may be modified and refined during fee negotiations.

V. TIME AND DURATION OF THE WORK INVOLVED:

It is anticipated that the selected Offeror will commence work immediately or from the Agreement execution date. The initial term of this contract is for a period of one (1) year, with the option to renew for additional one-year (1) periods, not to exceed the maximum contract term of five (5) years. At the end of any renewal period, PAG has the right to terminate this agreement within 30 days' notice to the awarded Offeror. The PAG is not obligated to renew the Agreement and does not have to give any reason if the PAG elects not to renew.

In the event of a third party involvement, any work provided by a third party will be approved by PAG before it is executed. PAG will have the authority to communicate with the third party as deemed necessary. All materials resulting from this contract will be the sole ownership of the Port Authority of Guam.

VI. TYPE OF CONTRACT:

A Service Agreement will be consummated between the Offeror and the Port. A sample agreement is attached herein as Attachment 3, for reference. The Port reserves the right to modify the sample Agreement during the proposal period or negotiation period. The Offeror(s) elected shall be fully licensed to conduct business on Guam prior to execution of any contract resulting from this RFP.

VII. SUBMISSION DEADLINE AND REQUIREMENTS:

All proposals in response to this RFP solicitation shall be in writing, must be time-stamped and received at the Procurement and Supply Division, located at the 2nd floor of the Port Authority of Guam (PAG) Administration Building, and shall be to the attention of the General Manager, no later than 4:00 pm Friday, October 18, 2019, Chamorro

Standard Time (Guam Time). No proposals shall be received after such date and time. Additionally, proposals transmitted via facsimile or email will not be accepted.

Offeror(s) must provide one (1) original, five (5) complete sets and one (1) digital electronic file copy (CD, USB, Thumb drive, etc.) 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.

VIII. REQUEST FOR INFORMATION DEADLINE:

All Requests for Information (RFI) (inquiries, clarifications, or questions) must be submitted in writing no later than 4:00 p.m. Chamorro Standard Time (Guam Time), Friday, October 4, 2019. RFI shall reference the RFP number, project title and must be addressed to the attention of the Mr. Rory J. Respicio, General Manager, Port Authority of Guam, and may be emailed to Contract Management Administrator Mr. Steven P. Muna at spmuna@portguam.com.

IX. LATE PROPOSALS:

Proposals submitted after the above submission deadline will not be accepted.

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 Port will examine any such request to designate portions of proposals as trade secrets or proprietary data as confidential and determine the validity of such request prior to entering into negotiations with prospective Offeror.

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 Title of RFP Offeror is responding to.

B. Statement of Qualifications:

The proposal should demonstrate the ability of the Offeror to perform and provide the services enumerated in the Preliminary Scope of Services attached herein as Attachment I. 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 year; and the current workload of the Offeror.
2. The abilities, qualifications, experience and the role of the key person(s) that would be assigned to perform the services contained in Attachment 1.
3. A list of all contracts under which services similar in scope, size and discipline for the required services, which the Offeror has substantially performed or accomplished as the Prime and/or Principal Firm over the past five (5) years, including client names, addresses, phone numbers and point of contacts. The list shall include at least three (3) contracts involving compensation and classification position structure, or similar work.

The information is required for the Offeror and each subcontractor, if any, but information on the Prime Offeror and subcontractor(s) should be presented separately. The purpose of this requirement is to provide the Port with a basis for determining the Offeror's and subcontractors financial and technical capability for undertaking this project. The Port is not interested in a voluminous description of all prior contracts undertaken, but rather a concise, thorough description of experience relevant to this project.

4. A 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.
5. A statement that the Offeror has established and implemented an Affirmative Action Plan.
6. A letter affirming the existence of a Drug Free Workplace Program and Policy at the firm.
7. A statement of agreement with the Port's General Terms and Conditions and the Special General Provisions, which are made part of this RFP documents.

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.

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

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

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

The highest ranked Offeror will be selected to enter into negotiations with the Port. If an agreement can be reached as to reasonable fees, a contract will then be prepared for signatures by both parties. The signature of the Port's General Manager or his designated representative is the only signature that will bind the Port.

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

XIII. EVALUATION CRITERIA:

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

1. The plan detailing how the scope of work/services will be accomplished to include time and personnel resources, and schedule of activities to include begin/end dates. **(maximum 30 points)**
2. The ability to perform the services as reflected by technical training, education, general experience, specific qualifications and abilities of key personnel proposed to be assigned to perform the services; **(maximum 35 points)**

3. The Past experience based on previous contracts of same or similar scope of services required in attachment 1, within the past five (5) years (**maximum 35 points**)

The General Manager will review the recommendation of the Evaluation Committee and shall, in concert with appropriate technical staff representatives, make the final selection.

XIV. FEE PROPOSALS:

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

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) months period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the work described in this RFP for the Offeror and shall contain the amounts of such commission, gratuity, or other compensation. The affidavit shall be opened and available to the public for inspection and copying.
3. Affidavit re Non-Collusion
4. Affidavit re No Gratuities or Kickbacks

5. Affidavit re Ethical Standards
6. Declaration re Compliance With U.S. DOL Wage Determination
7. Affidavit re Contingent Fees

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

General Terms & 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
www.guamcourts.org/CompilerofLaws/GAR/@gar.html

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

2. **EXPLANATION TO OFFERORS:**

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

3. **METHOD OF AWARD:**

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

4. **REJECTION:**

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

5. **TAXES:**

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

6. **LICENSING:**

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

7. COVENANT AGAINST CONTINGENT FEES:

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

8. JUSTIFICATION OF DELAY:

The Offeror who is awarded the proposal guarantees that the service will be completed within the agreed upon completion date. If, however, the Offeror cannot comply with the completion requirement, it is the Offeror's responsibility to advise the PAG in writing explaining the cause and reason of the delay.

9. EQUAL EMPLOYMENT OPPORTUNITY:

In compliance with the 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.

***END OF GENERAL TERMS AND CONDITIONS**

Special General Provisions

SPECIAL GENERAL PROVISIONS

1. PROPOSALS:

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

2. GENERAL INTENTION:

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

3. AUTHORIZED REPRESENTATIVE AND CONTACT FOR CONTRACT ADMINISTRATION:

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

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

4. DISCUSSIONS:

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

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

5. PAYMENT:

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

6. RECEIPT AND HANDLING OF PROPOSALS:

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

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

7. WITHDRAWAL OF PROPOSALS:

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

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

8. LATE PROPOSALS:

Late proposals will NOT be accepted.

9. LIABILITY FOR COST TO THE PROPOSAL:

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

10. RIGHT TO AMEND, CANCEL OR REISSUE:

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

11. CONTRACT PROVISIONS:

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

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

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

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

12. SPECIAL PERMITS AND LICENSES:

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

13. LAWS TO BE OBSERVED:

- a. The offeror accepts sole responsibility for compliance with any/all applicable federal and local laws, codes, ordinances, and regulations which in any affect those engaged or employed in the work, or the material or equipment used in or upon the site, contemplated by this RFP. No place of misunderstanding or ignorance on the part of the Offeror of applicable laws, codes, ordinances, or regulations will in any way serve to modify any contract executed pursuant to this RFP.
- b. Restriction Against Contractors/Consultants Employing Convicted Sex Offenders from Working at Government of Guam Venues. (Subsection 5253 of Title 5 Guam code Annotated)
 - i. No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam other than a public highway.
 - ii. All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
 - iii. Duties of the General Services Agency or Procurement Administrators. All contracts, bids or Request for Proposals shall state all the conditions in §5253(b).

- iv. Any contractor/consultant found in violations of §5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority
- c. **Port Security Guidelines:** Any Offeror performing work on PAG property shall be required to comply with any applicable law, regulation, or policy regarding Port security, including but not limited to 33 CFR 105 and the following conditions:
 - i. Contractors/Consultants and/or vendors authorized to conduct business within the controlled or restricted areas must pre-arrange their visits a minimum of twenty-four (24) hours in advance. Such notice shall indicate contractor/vendor company name, list of employees with either Social Security number or Driver's License number requesting entry, the time and date of their anticipated visit, and the nature of the business/work.
 - ii. No personnel, visitors or other non-employees shall have access to restricted areas without Port Police clearance or escort (when required) consisting of a properly identified employee authorized access.
 - iii. The PAG Police division currently issues identification cards to Port Authority employees, tenants, users and other persons authorized to enter the Commercial Port compound. Temporary I. D.'s, is without a photo, however bears a control number and must be signed out to visitors requesting access in exchange for an acceptable valid photo I.D. The temporary I.D. card must be worn and visibly displayed on the exterior of the bearer's clothing. Lost or misplaced temporary I.D. cards must be reported immediately to the Port Police Division. Failure to report and/or return the issued temporary I.D. card constitutes a security breach and shall disallow holder to enter the terminal compound for the entire contractual period.
 - iv. Contractor/Consultant must comply with the commercial Port's Insurance Policy (Policy Memorandum 97-001); submit listing and attach copies of registrations and proof of insurance of each company vehicle and/or equipment to be utilized and brought into the area. Third party contractual services shall be required to adhere to the same conditions as the primary contractor. If third party cannot fulfill the minimum insurance requirements the primary contractor shall be responsible to ensure coverage under their policy and show proof of coverage to Commercial Port Police prior to initiating performance.
 - v. Upon clearance of company vehicle and/or equipment documents submission, temporary passes will be issued by the Commercial Port Police

division. In instances where Contractor/Consultant/Vendors are required to conduct business or perform work in any of the areas within the terminal compound on a "near daily" seven (7) consecutive days basis, a written notice of twenty-Four (24) hours advance notice is required.

d. Transportation Workers Identification Credential (TWIC)

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

14. STATUS OF OFFEROR:

Offeror and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the PAG, and are not employees of either the Port or the government of Guam. Offeror and its officers, agents, servants and employees shall not accrue vacation or sick leave; participate in the government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to government of Guam employees. Offeror agrees that Offeror and its employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11 and its associated rules and regulations). Nothing in any contract pursuant to this RFP or any action taken pursuant to this RFP shall be deemed or construed in any manner or for any purpose to evidence or establish as between Offeror and the PAG a relationship of partnership, agency, association, joint, venture or representative, not authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the PAG for the Offeror.

15. INSURANCE:

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

16. OWNERS RIGHT TO REJECT PROPOSAL:

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

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

17. CONFIDENTIAL OR PROPRIETARY INFORMATION:

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

18. ETHICAL STANDARD:

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

19. PROHIBITION AGAINST GRATUITIES AND KICKBACKS:

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

20. APPLICABILITY OF GUAM PROCUREMENT LAW:

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

END OF SPECIAL GENERAL PROVISIONS

ATTACHMENT 1

SCOPE OF SERVICES

ATTACHMENT 1

SCOPE OF SERVICES

CLASSIFICATION OF COMPENSATION POSTIONS MAINTENANCE

Description Of Work Involved: A Preliminary Scope of Services describes the work to be accomplished. Upon final selection of the best qualified Offeror, the Scope of Services may be modified and refined during the fee negotiation.

1. Identify and update market data.
2. Provide job evaluation scores for any new, existing, or amended positions at PAG
3. Provide guidance of any changes needed for all allocated grade, step and sub-step positions of PAG employees
4. Assist and perform study for the implementation / migration to the next market target percentile
5. Assist in resolving any discrepancies associated with existing Performance Management Forms to include all necessary amendments improvements
6. Periodic training for PAG Human Resources staff on Strategic Pay Methodology and integration of market date in allocating the targeted percentile salaries
7. Provide enhancement training to PAG Management, and/or new Board Officials
8. Assist in resolving any appeals relative to the above
9. Meeting(s) and any presentation(s) relative to the above

ATTACHMENT 2

REQUIRED FORMS

(MUST BE SUBMITTED WITH YOUR PROPOSAL)



REQUEST FOR PROPOSALS (RFP) NO. RFP-PAG-019-006

PROJECT DESCRIPTION: PROFESSIONAL SERVICES for the MAINTENANCE of PORT'S COMPENSATION and CLASSIFICATION PLAN

SPECIAL REMINDER TO PROSPECTIVE OFFERORS

Proposers are reminded to read the Request For Proposal and General Terms and Condition attached to the RFP to ascertain that all of the following requirements checked below are submitted in the proposal envelope, **one (1) original, three (3) copies, one (1) digital 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)
- OTHER REQUIREMENTS: _____.

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

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

Required Forms

**AG Forms (2 thru 7) can be downloaded from the
AG's website at guamag.org**

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 venturers 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]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____

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 _____, 201__.

 NOTARY PUBLIC
 My commission expires: _____

DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

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

ATTACHMENT 3

SAMPLE CONTRACT

PROFESSIONAL SERVICE AGREEMENT
BETWEEN
JOSE D. LEON GUERRERO COMMERCIAL PORT
AND
CONSULTANT
PROFESSIONAL SERVICES FOR THE MAINTENANCE OF PORT'S
COMPENSATION AND CLASSIFICATION PLAN

THIS AGREEMENT is entered into by and between the JOSE D. LEON GUERRERO COMMERCIAL PORT, also known as the PORT AUTHORITY OF GUAM ("Port"), a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 and CONSULTANT ("Consultant") a firm authorized and licensed to do business in Guam, whose address is XXX Chalan XXXXX XXXX, Suite XXX, Hagatna, Guam 96910.

WHEREAS, the Port issued a Request for Proposal ("RFP"), RFP No. PAG 019-006, seeking to retain a consultant to provide professional/technical services for the **Maintenance of the Port's Classification and Compensation Plan** identified in the RFP and within the Port Authority on Cabras Island, Piti, Guam.

WHEREAS, the Consultant responded to the RFP through submitting a proposal to provide services in accordance with the RFP, and was selected as the most qualified offeror.

WHEREAS, the Port desires to retain the Consultant as an independent consulting service on the terms and conditions set forth in this Agreement and Consultant has agreed to accept such terms and conditions;

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 services to be rendered are of a special and temporary nature which are in the best public interest to be performed under contract by professional personnel other than employees of the Port; and

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

I. Statement of Services to be Performed.

A. Scope of Work. Consultant shall provide (describe the scope of service to be

performed.).

Consultant shall perform all of the professional services as described in the Scope of Services as identified in the RFP and the Consultant's Proposal, each attached herewith as Exhibits 1 and 2, respectively and incorporated as part of this Agreement. Consultant shall provide status reports on the services performed and required under this agreement upon request by the Port. Consultant recognizes that failure to perform all the services required under this Agreement constitute a material breach of this Agreement.

B. Consultant Provisions of Resources. Consultant agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement. Consultant represents that it and its employees possess the professional and technical expertise necessary to perform the services of a typical Consultant engaged in the same and similar field as Consultant herein. The Port 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 Port 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 Port 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 Port and the Port may invoke any further available remedies under the terms of this Agreement.

D. Location of Services. Services under this Agreement will be performed within the property of the Port. Consultant may perform the services under this Agreement at any suitable location as approved by the Port.

II. Term of Agreement.

The contract period shall be for One (1) year, with annual renewal options and may be renewed annually for an additional one-year (1) period, but not to exceed the total contract term of five (5) years. The annual renewal of this agreement after this initial term shall be at the sole discretion of the Port, if reasonable and justified and subject to price adjustment and availability of appropriated and/or budgeted funds. If no funds are appropriated and/or budgeted in the next fiscal year, the contract may be terminated upon giving of a minimum of thirty (30) day prior written notice to the beginning of the next fiscal year.

III. Compensation.

A. Compensation. In consideration for the services performed under this Agreement, the Port shall pay Consultant based on fees agreed upon by both parties and as a result of negotiations. The services under this agreement shall be consistent with the scope of service and

compensated in accordance with the terms herein and agreed upon and authorized by the Parties.

B. Payment Terms. Payment shall be made as set forth in this Agreement including its Exhibits, and based on deliverables. Payment shall only become due upon the receipt and certification by the Port of documents and reports described in Scope of Work 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 Port of unsatisfactory performance by the Consultant, Consultant shall immediately remedy its performance. Failure to remedy said unsatisfactory performance may result in the Port taking action in accordance with Section IV of this Agreement.

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

D. No Compensation Prior to Approval of Agreement. The Port shall not be liable to Consultant for any services performed by Consultant prior to full execution of this Agreement by all parties, and 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 Port a release in a form approved by the Port of claims against the Port 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 Port. The Port reserves the right to cancel or terminate this Agreement prior to its completion

(i) Termination without Cause: The Port 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 Port may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to the 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 Port.

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

(iv) **Effects and Responsibilities of Parties for Early Termination by the Port:** In the event of an Early Termination without cause or for the best interests of Guam under paragraphs (i) and (ii) of this section, the 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 Port, the Port shall pay the Consultant for all satisfactory services rendered up to that point. The Port reserves all rights at law and equity in the event of an early termination, including arising out of a default or for other causes.

B. By Consultant.

(i) **Termination without Cause:** Consultant reserves the right to terminate this Agreement prior to its completion, without cause, upon thirty (30) days written notice to the Port. Upon Consultant's termination of this Agreement without cause, the Consultant shall be entitled to payment for satisfactory services (as determined in the sole discretion of the Port) rendered up to the termination date and the Port shall have no other or further obligation to 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.

(ii) **Termination for Cause:** Consultant shall notify the Port in writing of deficiencies or default in the performance of the Port's duties under this Agreement. The Port shall have twenty (20) days to correct the deficiency or cure the default, which period may be extended by Consultant (said extension not to be unreasonably denied). Upon Consultant's termination of this Agreement for cause, 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 Port shall have no further obligations to Consultant. 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 Port may terminate or modify

this Agreement based upon a lack of funding. In such an event, the Port 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 Port, the Consultant shall take timely and reasonable and necessary action to protect and preserve the property in the possession of Consultant in which the Port has an interest.

E. Additional Provisions. In the event that either party effects an Early Termination, it is expressly provided that the Port may issue a new Request for Proposal with respect to such terminated services. This provision shall not be deemed an admission or waiver of any rights and defense with respect to rights to either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

V. Contact Person.

The 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 responsible for responding to the questions and direction of the Port. The contact person must be identified in writing within five (5) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person designated by the 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 Port. All of the Information shall be returned promptly after use to the Port and all copies or derivations of the Information shall be physically and/or electronically destroyed. Consultant shall include a letter attesting to the 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 Port, and then only if the Consultant requires the third party (ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party (ies) only for purposes of enabling the 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 portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the 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 Port to immediately terminate this Agreement. Consultant agrees that in the event of a breach or violation of this Section, the Port shall have the right to terminate this or any other Agreement with the 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 Port and provide such statement to the Port.

VIII. Prohibition Against Gratuities and Kickbacks

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

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

IX. Waiver.

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

X. Severability.

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

XI. Survival of Warranties.

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

XII. Fees and Expenses.

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

XIII. Notices.

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

TO THE PORT:

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

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

TO CONTRACTOR: Consultant
 ADDRESS
 XXX Chalan XXXXX, Suite XXX
 Hagatna, Guam 96910

XIV. 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 of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Consultant, Consultant agrees that any subcontractors retained by Consultant or assignees shall be subject to all provisions of this Agreement.

XV. Successors and Assigns.

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

XVI. Scope of Agreement.

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

In the event of a contradiction between the provisions of any one or more of the documents collectively comprising this Agreement, RFP, Consultant Proposal and Payment Terms the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time) and third, to the provisions of the Consultant Proposal and Payment Terms (as they may be clarified or amended from time to time).

XVII. Captions.

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

XVIII. Counterparts.

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

XIX. Governing Law and Forum Selection.

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

XX. Compliance with Laws.

A. In General. The 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.

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 Port. The Port agrees to comply with reasonable requests of Consultant to provide access to all documents and Port 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 Port and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but

only to the extent caused or contributed to by) the negligent or wrongful act or omission or the Consultant or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

B. The Port not Liable. The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the 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 Port. In addition, no Board member, officer, agent, or employee of the Port shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the Port assumes no liability for any accident or injury that may occur to 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 Port 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 Port. The Consultant agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or interruption. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of 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 consultant in the performance of an agreement with the Government of Guam, fires, floods, typhoons, earthquakes, epidemics, quarantine restrictions, strikes, freight, or embargoes.

XXIV. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.

The Port shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Consultant. The Port shall have the power to make changes in the Agreement 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 or due to a change in law. The Port shall give the Consultant notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Consultant. In the event the Port materially alters the obligations of the Consultant, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Consultant, then the Consultant or the Port 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 Port 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 changes in law. When such modifications are made to the Agreement, the Port 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 Port, and are not employees of either the Port 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 Port at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Consultant and the Port a relationship of partnership, agency, association, joint venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the Port or the 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, 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 Port, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of 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 Port all matters regarding Consultant which if not disclosed to the Port would materially affect the Port'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 Port, regardless of whether Consultant is in possession of such Work Product, and may be used by the Port without permission from Consultant and without any additional costs to the Port.

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

XXVIII. Employment of Persons Convicted of a Sex Offense.

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

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

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

XXX. Computation of Time.

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

XXXI. Partial Invalidity.

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

XXXII. Amendments/Modifications.

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

*****SIGNATURES APPEAR ON THE NEXT PAGE*****

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

JOSE D. LEON GUERRERO
COMMERCIAL PORT

CONSULTANT

RORY J. RESPICIO
General Manager

CONSULTANT
President

Date: _____

Date: _____

APPROVED AS TO FORM:

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

JOSEPH B McDONALD
Attorney for The Port Authority of Guam

JOSE B. GUEVARA III
Financial Affairs Officer, Controller

Date: _____

Date: _____